Initial Information for Submittal

A. Please note the following dates and deadlines:
   • **May 13, 2016**: Deadline for the submission of proposals at 12:00 PM (Eastern Time)
   • **May 2, 2016**: Deadline for questions about the RFP at 12:00 PM (Eastern Time)

B. Complete proposals are to be submitted to the Designated Contact stipulated in Section 1.4.
RFP RESPONSE FORM

RFP RESPONSE FORM: C031426 – SOLAR HIGHWAY INITIATIVE SERVICES FOR NYSDOT

Please review this RFP, complete the following information, and e-mail to the DEPARTMENT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (see Section 5.8) before questions or other communications with the Department regarding this solicitation can be initiated.

___________  WE DO INTEND TO SUBMIT A PROPOSAL

___________  WE DO NOT INTEND TO SUBMIT A PROPOSAL FOR THE FOLLOWING REASONS:

_______________________________________________________________________

Name and Address of Organization (Include Zip Code):
_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

Date: ________________

Typed Name and Title: ________________________________________________

Telephone: _____________________ Fax: ____________________________

E-Mail Address: _______________________________________________________

Please e-mail to: Peter.Russell@dot.ny.gov
# CONSULTANT CHECKLIST FOR PROPOSAL SUBMISSION

## NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
SOLAR HIGHWAY INITIATIVE SERVICES FOR NYS DOT
Proposal #C031426

### Part I - Technical and Management Submittal

- 10 printed and bound hard copies of Part I plus one copy of Part I on CD/DVD in MS Office 2007 compatible format.
- Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the words “Solar Highway Initiative RFP Part I — Technical and Management Proposal (C031426)"
- Signed Cover Letter on official business letterhead
- Table of Contents identifying each major section and page numbers
- Executive Summary of proposed approach
- Approach and Scope of Services
- Project Schedule
- Organization and Staffing
- Experience
  - Complete and submit Attachment #7: Key Personnel Resume and References
  - Complete and submit Attachment #8: Firm Profile and References
  - Complete and submit Attachment #9: Standard Equipment Specifications

### Part II - Pricing and Contract Submittal

- 3 printed and bound hard copies of Part II plus one copy of Part II on CD/DVD, in MS Excel 2007 compatible format
- Securely sealed and clearly labeled with the words “Solar Highway Initiative RFP, Part II — Cost and Contract Proposal (C031426)"
- Required Cost information (complete and submit Attachment 12, Cost Proposal)
- Complete and submit Attachment 2: Consultant Information and Certifications (sign both Sections II and III)
- Complete and submit the two Forms required by Attachment 3: Procurement Lobbying Law Compliance Forms
- Complete and submit Attachment 5: Form AOR Acknowledgement of Receipt
- Complete and submit Attachment 6: Non-Collusive Bidding Certification
- Complete and submit Attachment 10: Bundle Preference Form
REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
SOLAR HIGHWAY INITIATIVE SERVICES FOR NYS DOT
Proposal #C031426

1. INTRODUCTION .......................................................................................................................... 1
   1.1. Purpose ................................................................................................................................. 1
   1.2. Background .......................................................................................................................... 1
   1.3. Minimum RFP Responsiveness ............................................................................................ 2
   1.4. Designated Contact ............................................................................................................. 3
   1.5. Iran Divestment Act ........................................................................................................... 3
   1.6. RFP Modifications ............................................................................................................... 4
2. CIVIL RIGHTS REQUIREMENTS .......................................................................................... 5
   2.1. Disadvantaged Business Enterprise Participation .............................................................. 5
   2.2. Minority and Women-owned Business Enterprise Participation ........................................ 5
   2.3. Diversity Practices .............................................................................................................. 5
   2.4. Title VI Assurance ............................................................................................................. 5
3. PROJECT AND CONTRACT OBJECTIVES ........................................................................ 6
   3.1. Project Objectives ................................................................................................................ 6
   3.2. Contract Objectives ............................................................................................................ 6
   3.3. Definitions and Acronyms ................................................................................................ 6
   3.4. Contract Terms and Rate Adjustments .............................................................................. 7
4. SCOPE OF SERVICES .......................................................................................................... 8
   4.1. Categorization of Work ...................................................................................................... 8
   4.2. Project Overview ................................................................................................................ 9
   4.2.1. Project Phasing ............................................................................................................. 9
   4.2.2. Potential Sites and Bundle Pricing ................................................................................. 10
   4.2.3. Sale of Electricity .......................................................................................................... 12
   4.2.4. Environmental Attributes, Tax Credits and Environmental Incentives ....................... 12
   4.2.5. Summary of Current Federal Tax Incentives ................................................................. 12
   4.2.6. NY-SUN Incentive Program ......................................................................................... 12
   4.2.7. Time is of the Essence ................................................................................................. 13
   4.2.8. Failure to Complete Work On Time ............................................................................. 13
   4.3. Project Engineering Considerations ................................................................................... 13
   4.3.1. Land Use/Civil Requirements: ...................................................................................... 13
   4.3.1.1. Clear Zone and Set Back from Adjacent Property: ..................................................... 14
   4.3.1.2. Permits and Right of Way: ....................................................................................... 14
   4.3.1.2. Environmental: ........................................................................................................ 16
   4.3.1.2.1. Environmental Site Compliance: ...................................................................... 17
   4.3.1.2.2. Drainage: .............................................................................................................. 18
   4.3.1.2.3. Tree and Vegetation Removal: .......................................................................... 18
   4.3.1.3. Geotechnical: ......................................................................................................... 20
   4.3.1.4. Safety Plan: .............................................................................................................. 20
   4.3.1.5. Operation and Maintenance: ................................................................................. 20
   4.3.1.6. Facilities-Assessment Inspection: ............................................................................ 20
   4.4. Tasks .................................................................................................................................. 21
4.4.1. Project Management and Coordination: ................................................................. 21  
4.4.2. Technical Approach ......................................................................................... 21  
4.4.2.1. Sample Solar Facility: .................................................................................. 21  
4.4.2.2. Environmental: ............................................................................................ 22  
4.4.2.3. Safety Plan: .................................................................................................. 22  
4.4.2.4. Utility Coordination and Interconnection: ..................................................... 22  
4.4.2.5. Operation and Maintenance: ....................................................................... 22  
4.4.2.6. Decommissioning: ....................................................................................... 22  
4.4.2.7. PV Racking Requirements: ......................................................................... 23  
4.4.2.8. Monitoring and Data Acquisition System (DAS): ....................................... 24  
4.4.2.9. General Photovoltaic Requirements ............................................................. 24  
4.4.2.10. Electrical Requirements .......................................................................... 25  
4.4.2.11. Reports ....................................................................................................... 26  
4.4.3. Project Schedule ............................................................................................. 27  
4.4.4. Organization and Staffing ............................................................................... 27  
4.4.5. Experience ........................................................................................................ 28  
4.4.6. Labor and Material (Payment) Bond ............................................................... 28  
4.4.7. Insurance Requirements ................................................................................. 29  
5. PROPOSAL FORMAT AND CONTENTS ............................................................. 33  
5.1. Part I: Technical and Management Submittal .................................................... 33  
5.1.1. Cover Letter, and Title page (2 page maximum), indicating: ......................... 33  
5.1.2. A Table of Contents ......................................................................................... 34  
5.1.3. Executive Summary (2 page maximum) ......................................................... 34  
5.1.4. Approach and Scope of Services ................................................................. 34  
5.1.4.1. Project Management and Coordination (3 page maximum) ....................... 34  
5.1.4.2. Technical Approach (20 page maximum) .................................................. 35  
5.1.5. Project Schedule (2 page maximum) ............................................................ 38  
5.1.6. Organization and Staffing (6 page maximum) ............................................... 40  
5.1.7. Experience (13 page maximum) ................................................................. 41  
5.1.8. Performance Bond ......................................................................................... 42  
5.2. Part II: Cost and Administrative Submittal ...................................................... 42  
5.2.1. Cost Proposal ................................................................................................. 43  
5.2.2. Administrative Section ................................................................................. 44  
6. CRITERIA FOR EVALUATION OF PROPOSALS ........................................ 47  
6.1. General .............................................................................................................. 47  
6.2. Pre-Screening of Proposals ............................................................................. 48  
6.3. Technical and Management .......................................................................... 49  
6.4. Cost ................................................................................................................... 50  
7. ADMINISTRATIVE SPECIFICATIONS ....................................................... 51  
7.1. Proposal Submission .......................................................................................... 51  
7.2. State’s Rights ...................................................................................................... 51  
7.3. Consultant Responsibility when Proposing Former NYSDOT or NYSTA Employees 52  
7.4. Method of Payment .......................................................................................... 53  
7.5. Information for the Selected Consultant ......................................................... 53  
7.5.1. Vendor Responsibility .................................................................................... 53  
7.5.2. Registration with NYSDOT .......................................................................... 53  
7.5.3. Registration with Statewide Financial System (SFS) .................................... 54  
7.5.4. Insurance Requirements of this Project ....................................................... 54
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.5.5.</td>
<td>Contractor Tax Certification</td>
<td>54</td>
</tr>
<tr>
<td>7.5.6.</td>
<td>Wage And Hours Provisions</td>
<td>55</td>
</tr>
<tr>
<td>7.6.</td>
<td>Inquiries and Information</td>
<td>55</td>
</tr>
<tr>
<td>7.7.</td>
<td>Protest Procedure</td>
<td>55</td>
</tr>
<tr>
<td>7.8.</td>
<td>Tentative Schedule of Key Events</td>
<td>55</td>
</tr>
<tr>
<td>8.</td>
<td>ATTACHMENTS</td>
<td>56</td>
</tr>
<tr>
<td>8.1.</td>
<td>ATTACHMENT 1: NYSDOT MASTER POWER PURCHASE AGREEMENT</td>
<td>56</td>
</tr>
<tr>
<td>8.2.</td>
<td>ATTACHMENT 1-A: NYSTA MASTER POWER PURCHASE AGREEMENT</td>
<td>116</td>
</tr>
<tr>
<td>8.3.</td>
<td>ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS</td>
<td>149</td>
</tr>
<tr>
<td>8.4.</td>
<td>ATTACHMENT 3: PROCUREMENT LOBBYING LAW COMPLIANCE</td>
<td>151</td>
</tr>
<tr>
<td>8.5.</td>
<td>ATTACHMENT 4: NEW YORK BUSINESS REPORTING</td>
<td>153</td>
</tr>
<tr>
<td>8.6.</td>
<td>ATTACHMENT 5: FORM AOR</td>
<td>154</td>
</tr>
<tr>
<td>8.7.</td>
<td>ATTACHMENT 6: NON-COLLUSIVE BIDDING CERTIFICATION</td>
<td>155</td>
</tr>
<tr>
<td>8.8.</td>
<td>ATTACHMENT 7: KEY PERSONNEL RESUME AND REFERENCES</td>
<td>158</td>
</tr>
<tr>
<td>8.9.</td>
<td>ATTACHMENT 8: FIRM PROFILE AND REFERENCES</td>
<td>160</td>
</tr>
<tr>
<td>8.10.</td>
<td>ATTACHMENT 9: STANDARD EQUIPMENT SPECIFICATIONS</td>
<td>169</td>
</tr>
<tr>
<td>8.11.</td>
<td>ATTACHMENT 10: BUNDLE PREFERENCE FORM</td>
<td>170</td>
</tr>
<tr>
<td>8.12.</td>
<td>ATTACHMENT 11: PERMIT FORMS</td>
<td>171</td>
</tr>
<tr>
<td>8.12.1.</td>
<td>NYSDOT Use and Occupancy Permit – PERM 32</td>
<td>171</td>
</tr>
<tr>
<td>8.12.2.</td>
<td>NYSDOT Highway Work Permit</td>
<td>171</td>
</tr>
<tr>
<td>8.12.3.</td>
<td>NYSTA Occupancy Permit (“The Use &amp; Occupancy Permit”)</td>
<td>171</td>
</tr>
<tr>
<td>8.12.4.</td>
<td>NYSTA Work Permit (the “Highway Work Permit”)</td>
<td>171</td>
</tr>
<tr>
<td>8.12.5.</td>
<td>NYSTA Annual Work Permit</td>
<td>171</td>
</tr>
<tr>
<td>8.13.</td>
<td>ATTACHMENT 12: COST WORKSHEET</td>
<td>172</td>
</tr>
<tr>
<td>9.</td>
<td>APPENDICIES</td>
<td>173</td>
</tr>
<tr>
<td>9.1.</td>
<td>APPENDIX 1: SITE SPECIFIC PORTFOLIO BUNDLES</td>
<td>173</td>
</tr>
<tr>
<td>9.2.</td>
<td>APPENDIX 2: SAMPLE SOLAR FACILITY</td>
<td>173</td>
</tr>
</tbody>
</table>
REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
SOLAR HIGHWAY INITIATIVE SERVICES FOR NYSDOT
Proposal #C031426

1. INTRODUCTION

1.1. Purpose
The New York State Department of Transportation (“Department”) invites Proposals from qualified Providers to plan, design, construct, finance, operate, and maintain solar photovoltaic (“PV”) energy generating facilities at multiple locations across the State within Department and New York State Thruway Authority (NYSTA) highway rights-of-way and other properties. These locations throughout the state have been split into seven bundles grouped by electricity Load Zones. Providers may submit a proposal for each individual bundle, and may submit a proposal for one bundle, two bundles, three bundles, four bundles, five bundles, six bundles, or all seven bundles; however a maximum of three bundles will be awarded to any one Provider.

The Provider will sell the electricity output to either the Department or NYSTA through Master Power Purchase Agreements (the “PPA”). The Department’s PPA will be in the form attached hereto as Attachment 1 and the NYSTA PPA will be in the form attached hereto as Attachment 1-(A). The Agreement shall be entered into for a period of not less than 15 years. The term “Provider” shall refer to an individual, sole proprietorship, firm, partnership, joint venture, corporation, or other legal entity that designs, builds, operates, and maintains solar photovoltaic power plants.

1.2. Background
The Department and NYSTA have identified potential solar sites for solar PV development installations across the State. Solar PV development sites will be identified by the Provider from this list of preselected potential sites found in Appendix 1, for final Department or NYSTA approval, as applicable.

The Department’s portion of the project will require the Provider to build 16 MW DC aggregated capacity across the state capable of generating approximately 20 million kWh AC per year. NYSTA’s portion of the project will require the Provider to build 2.6 MW DC aggregated capacity across the state capable of generating approximately 3.3 million kWh AC per year. Sites will be distributed non-equally across the seven bundles. Further, each of the electricity Load Zones within the seven bundles shall have a separate service delivery level established within a particular bundle. Bundle and Load Zone power requirements can be found in Appendix 1. Providers may offer proposals utilizing only the sites identified in the list provided. The Provider will be solely responsible for developing, applying for and maintaining all
Interconnection Applications. The Provider is also responsible for paying all application costs, potential interconnection research costs and impact costs imposed by the utility, and all other actions necessary for the development of any sites.

It is the Department’s and NYSTA’s intent that solar PV design, construction, operation and maintenance be one hundred percent (100%) financed by the Provider. No Department or NYSTA funds will be expended to pay for the design, construction, activation, operation, maintenance, repair, or decommissioning and removal of any Facility. Furthermore, the Provider shall be responsible for any costs related to the PV system during the term of the PPA, including, but not limited to, network upgrades, environmental costs, curtailment costs, fees, or similar items that might not yet be identified or may arise after PPA execution or commercial operation commences. The Provider shall make “Net Metering Credits” available for the benefit of the Department or NYSTA. The Provider shall apply for and obtain an incentive under the appropriate NYSERDA NY-SUN program.

It is the opinion of the Department that this solicitation is authorized under Article 9 of the NYS Energy Law.

1.3. Minimum RFP Responsiveness

Any Firm that does not provide all of the following by the RFP deadline may be determined to be non-responsive and may, at the Department’s discretion, be removed from further consideration (prior to the technical evaluation of proposals):

1. Part I of the Proposal – Technical and Management submission
2. Part II of the Proposal – Cost and Contract submission
3. Completion of all applicable attachments:
   Attachment 2 Consultant Information and Certification Form
   Attachment 3 Procurement Lobbying Law Forms
   Attachment 4 New York Business Reporting
   Attachment 5 Form AOR
   Attachment 6 Non-Collusive Bidding Certification
   Attachment 7 Key Personnel Resumes and References
   Attachment 8 Firm Profile and References
   Attachment 9 Standard Equipment Specifications
   Attachment 10 Bundle Preference Form
   Attachment 12 Cost Submission
4. Submission of proof of NYSERDA NY-Sun certification under either the Commercial/Industrial (>200kW) program or the combined (<200kw) and (>200kw) program
5. Submission of copies of the Provider’s audited financial statements for the past three years as detailed in Section 5.1.7.
1.4. Designated Contact

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department’s Designated Contact for this procurement is:

Primary Contact:

Peter Russell, New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, NY 12232, USA
E-mail: Peter.Russell@dot.ny.gov

The above named person, as the Department’s Designated Contact for this procurement, shall be the Department’s only point of contact and source of information for this procurement

1.5. Iran Divestment Act

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), §165-a, effective April 12, 2012. This act may be viewed in its entirety at http://www.ogs.ny.gov/about/regs/docs/ida2012.pdf.

Pursuant to SFL §165-a(3)(b), the Commissioner of the Office of General Services (OGS) has developed and maintains a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). The list may be found on the OGS website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf.

By submitting a bid in response to this solicitation or by assuming the responsibility of an Agreement awarded hereunder, Provider (or any assignee) certifies that, it will not utilize, on such Agreement, any subcontractor that is identified on the prohibited entities list. Additionally, any Contractor seeking to renew or extend an Agreement or assume the responsibility of an Agreement awarded in response to this solicitation, must certify at the time the Agreement is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Agreement, should the Department or NYSTA receive information that a Provider (or any assignee) is in violation of the above-referenced certification, the Department will offer the Provider (or any assignee) an opportunity to respond. If the Provider (or any assignee) fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the Department or NYSTA shall take such action as may be appropriate
including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a Agreement, and to pursue a responsibility review with respect to any entity that is awarded a Agreement and appears on the prohibited entities list after contract award.

1.6. RFP Modifications

If necessary, the Department will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the Department web site (https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities) regularly to check for Modifications. The final Modification will be posted on the Department’s web site not later than seven calendar days prior to the Proposal due date. If an additional Modification is required within seven days of the Proposal due date, the Proposal due date shall be revised such that there will be seven days from the final Modification to the Proposal due date.
2. CIVIL RIGHTS REQUIREMENTS

2.1. Disadvantaged Business Enterprise Participation

Not Applicable

2.2. Minority and Women-owned Business Enterprise Participation

Not Applicable

2.3. Diversity Practices

Not Applicable

2.4. Title VI Assurance

The Department, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written Department solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any Agreement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.
3. PROJECT AND CONTRACT OBJECTIVES

3.1. Project Objectives

The objective of this project is to contract with entities (the “Provider”) to install solar photovoltaic facility development(s) within and along the highway rights of way, residencies, rest areas, facilities and/or vacant property owned by the Department or Thruway Authority. The Provider will finance, build, operate and maintain the project through a solar Power Purchase Agreement. The Provider will realize the benefits of available solar incentives and the State will benefit from alternative energy sources and potentially reduced electricity costs.

3.2. Contract Objectives

The Contract Objective for this solicitation is to select a responsive and responsible Contractor via a fair and equitable Best Value Request for Proposal process. Once selected, the winning Provider(s) will enter into Master Power Purchase Agreements with the Department and/or NYSTA. These Master Power Purchase Agreements will follow the format found in Attachment 1 and 1-(A). As each site is developed, a site specific addendum to the Power Purchase Agreement will be executed and will document the details of the site including details such as the term of the agreement and development plans.

3.3. Definitions and Acronyms

**Access Modification** - Access modification shall mean any proposed new access point or revised access point to a freeway or ramps. Freeway access modifications can involve trails, bikeways, utility placements or other non-highway use. Note that a change in the access control line is not necessarily an access modification. Similarly, an access modification may not change the access control lines (e.g., reconfiguring a freeway to freeway interchange). Changes in access control that create new access points or revised access points on the main line or ramps are access modifications, and are subject to the procedures in Appendix 8 of the NYSDOT Highway Design Manual.

**Bundle** - Any one of seven groupings of preselected potential Installation Sites (as defined below), on New York State Department of Transportation-owned or New York State Thruway Authority-owned property across the state, eligible to be awarded in any such size groupings under RFP #C031426, as further detailed in Appendix 1. Bundles may include potential Installation Sites distributed in one or more Load Zones.

**Change Order Items** – Items that are defined as extra work. Acceptable change order items are found in Attachment 12- Cost Item Worksheet.
Highway Clear Zone - Portion of the roadside border width, starting at the edge of the through traveled way, which the Department/NYSTA commits to maintaining in a cleared condition for safe use by errant vehicles.

Installation Site - Any of the various locations for potential System installation on Purchaser-owned or Purchaser-controlled lands, buildings or other facilities within any of the seven above-described Bundles of potential Installation Sites as further detailed in Appendix 1.

Master Power Purchase Agreement (PPA or Agreement) - The contract document to be executed by the apparent best-value proposer for each Bundle awarded under this RFP, shown attached as Attachment 1 for the Department (for Bundles 1-4) and as Attachment 1-(A) for the NYSDTA (for Bundles 5-7). Such Master Power Purchase Agreement shall include the General Conditions, Performance Guarantee Agreements (PGA), and the Addenda, Appendices, Attachments, Exhibits and Schedules attached thereto.

NYSDOT – New York State Department of Transportation (“Department”)

NYSTA – New York State Thruway Authority

Operational Date (or Commercial Operation Date) - The date upon which a PV system at an Installation Site has passed acceptance testing requirements and has been installed properly, in accordance with all requirements under this RFP, (including all required permits and approvals by the Department or NYSTA), and the System has been approved for interconnected operation by the Local Electric Utility and any other Governmental Authority for whom approval is required to operate the System as further detailed in Section 3 of the Master Power Purchase Agreement found in Attachment 1 or 1-(A).

Provider - An individual, sole proprietorship, firm, partnership, joint venture, corporation, or other legal entity that designs, builds, operates, and maintains solar photovoltaic power plants. The terms Provider, Providers and Proposer shall be used interchangeably.

Purchaser – Refers to either the NYSDOT or the NYSTA.

Right of Way (ROW)-Department of Transportation - Property under the jurisdiction of the Department of Transportation.

Right of Way (ROW)-Thruway Authority - Property under the jurisdiction of NYSTA.

3.4. Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant will commence on July 1, 2016. The base term or duration for the Agreement is fifteen years. The Agreement may be extended for up to five additional two-year periods at the Department’s or
NYSTA’s sole discretion, and subject to approval by the Office of the State Comptroller.

During the term of the contract the Producer Price Index Series ID PCU221122221122, Electric Power Distribution found at: http://data.bls.gov/timeseries/PCU221122221122 as published by the U.S. Department of Labor, Bureau of Labor Statistics will be used as a basis for adjusting the price per kWh rates subject to a maximum adjustment of plus or minus three percent (+/-3%) annually beginning on March 1, 2019. See Attachment 1, Master Power Purchase Agreement, Schedule 2, kWh Rate Table for allowable adjustment time periods and requirements.

4. SCOPE OF SERVICES

4.1. Categorization of Work

The scope of this solicitation includes, but is not limited to:

- Preliminary design and site investigations, final design, project management and construction of all facilities. This includes but is not limited to: all equipment and materials for construction, site preparation, all subcontractors, consultants and permits;
- Coordination with the local utility company for the Facility interconnection to the power grid;
- Complete operation and maintenance of the Facility, including grounds and access ways, for the entire term of the Agreement;
- Coordination with the Department or NYSTA for all permits, construction, operation, maintenance, repair or upgrade of the Facility to assure that the Facility is operated and maintained without disruption to highway operations except as specifically approved by the Department or NYSTA on entities’ respective rights of way;
- Decommissioning. The Facility shall be decommissioned and the site shall be restored to a natural state upon expiration or termination of the Agreement. Decommissioning responsibilities include the removal of: any perimeter fences, any concrete or steel foundations, all metal structures (mounting racks and trackers), all PV modules, above ground and underground cables, transformers, inverters, fans, switch boxes, fixtures, and otherwise restoring the premises to its original condition or mutually-agreed-upon natural state.

As context for this program, Proposers are advised that the Department and NYSTA may plan to consider other real estate holdings with an interest of studying sites for future possible development of solar generating stations.

In addition, Proposers should note that with respect to any specific power production level required to be built, provided and maintained for each load zone the Department and NYSTA reserve the right, in the Department’s and NYSTA’s sole discretion, to order up to
twenty percent more or less (± 20%) than the specified power production level quantity. Proposer’s bid price, as expressed in a cost per kilowatt-hour, must remain firm within such plus or minus twenty percent (± 20%) for the applicable load zone.

4.2. Project Overview
The Department’s portion of the project will require the Provider to build 16 MW DC aggregated capacity across the state capable of generating approximately 20 million kWh AC per year. NYSTA’s portion of the project will require the Provider to build 2.6 MW DC aggregated capacity across the state capable of generating approximately 3.3 million kWh AC per year. This total power production capability will be distributed across the state, at multiple visible locations, and must also maximize the Department’s and NYSTA’s electricity cost savings across the state, but must not produce more power than the Department or NYSTA can remote net-meter in any given load zone.

4.2.1. Project Phasing
In the RFP Phase of this project, Providers will submit proposals to be evaluated for contract award (RFP Submittal). Once an apparent Best Value Provider(s) has been selected, Providers will submit a list of those particular sites it proposes to be developed from the portfolio of available installation sites within that Bundle, along with renderings of these proposed sites (Initial Site Proposal). The Department or NYSTA will review this Initial Site Selection Proposal for environmental, cultural, and other requirements. Providers will be notified when these sites have received initial approval. Providers will need to submit more detailed plans for the initially approved sites, along with the permit applications (Detailed Site Plans). Once the Detailed Site Plans are approved, work on any approved sites can begin. A potential time frame for these stages is as follows:

<table>
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<tr>
<th></th>
<th>NYSDOT</th>
<th>NYSTA</th>
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<tr>
<td></td>
<td>Sequential</td>
<td>Concurrent</td>
</tr>
<tr>
<td>RFP Submittal</td>
<td></td>
<td>Mid-May 2016</td>
</tr>
<tr>
<td>Designation/Tentative Award</td>
<td></td>
<td>Mid June 2016</td>
</tr>
<tr>
<td>Power Purchase Agreement</td>
<td></td>
<td>Mid June 2016</td>
</tr>
<tr>
<td>(PPA) Signature by</td>
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<tr>
<td>Department/NYSTA</td>
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<tr>
<td>Submittal of PPA to OSC</td>
<td></td>
<td>Late June 2016</td>
</tr>
<tr>
<td>Initial Site Request due</td>
<td></td>
<td>Early July 2016</td>
</tr>
<tr>
<td>Initial Site Request approved</td>
<td></td>
<td>Late July 2016</td>
</tr>
<tr>
<td>Final Approval of PPA by OSC</td>
<td>Early August 2016</td>
<td>November 2016</td>
</tr>
<tr>
<td>Detailed Site Plans due</td>
<td>November 2016</td>
<td>Detailed Site Plans approved</td>
</tr>
<tr>
<td>-------------------------</td>
<td>---------------</td>
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<tr>
<td>Early September 2016</td>
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<td>Early October 2016</td>
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</table>

*Note: the above dates and timeframes are approximations, subject to change, and are not guaranteed. This information is provided solely to assist Proposers in understanding the process and to aid Proposers in their scheduling estimates and plans.

**PPA Signature by NYSTA and Initial NYSTA Site Request Approval are subject to NYSTA Board Approval, which is necessary before submission to OSC.

***Material changes may require NYSTA Board approval

4.2.2. Potential Sites and Bundle Pricing

The Department has identified 51 preselected potential sites (Installation Sites) across the state which have been combined into seven bundles: the DOT Western NY Bundle (Bundle 1) consists of Department sites in Load Zones A, B, and C; the DOT Capital Mohawk Bundle (Bundle 2) is Department sites in Load Zones E and F; the DOT Hudson Valley Bundle (Bundle 3) is comprised of Department sites in Load Zones G, H, and I; the DOT Long Island/NYC Bundle (Bundle 4) made up of Department sites in Load Zones J and K; Thruway West Bundle (Bundle 5) consists of NYSTA sites in Load Zones A, B, and C; Thruway Capital Mohawk Bundle (Bundle 6) consists of NYSTA sites in Load Zones E and F; and Thruway Hudson Valley Bundle (Bundle 7) is comprised of NYSTA sites in Load Zone G. Please note that there are currently no sites in Load Zone D. The list of preselected potential site locations can be found in Appendix 1. All PV installations made as a result of this solicitation will be selected from the provided list.

Although the Department and NYSTA have conducted site surveys and other due diligence, Providers should anticipate that there may be some sites within each Load Zone for which unforeseen conditions or other factors exist which may result in the inability to proceed with an individual site or sites as described.

Note – A small number of the potential sites provided may have additional access restrictions, particularly those sites located off an Interstate Highway. In the event no other sites are commercially reasonable within a Load Zone for installation of the required Solar Facilities, the Department or NYSTA may decide to seek an exception from the Federal Highway Administration (FHWA) to break “No Access” locations within the highway right-of-way (ROW) to facilitate construction and maintenance of Solar Facilities. The Department or NYSTA will retain responsibility for coordination with the FHWA. Permission to allow a permanent break-in-access are only authorized on an exception basis, and should be avoided to the maximum extent possible.
For each of the seven Bundles there is an aggregate annual production requirement that must be met. Within each Bundle there is an annual production requirement for each Load Zone within that particular Bundle. These production requirements can be found in Appendix 1.

Providers may provide proposals for one or more Bundles, however a maximum of three bundles will be awarded to any one Provider. Providers wishing to bid on more than one Bundle shall submit Attachment 11, Bundle Preference Form, indicating the order in which they wish to be awarded contracts. If a Provider has the top-ranked proposals in more than three Bundles, then the order indicated on the Preference Form will be used to determine which Bundles the Provider shall be awarded.

The pricing for an individual PV system is tied to the costs associated with constructing an overall portfolio of projects. Price proposals shall be submitted and will be evaluated as fixed prices ($/kWh) in the form of a flat price. Pricing based solely on individual system size will not be considered. Proposers shall provide pricing for each Load Zone given the Sample Solar Facility description as defined in Appendix 2.

Provider will be obligated to guarantee its bid price per kilowatt-hour by Load Zone given standard site conditions as defined in Appendix 2. However, Provider shall submit Change Order Adjustment Factors, expressed in $/kWh, for certain pre-set dollar ranges for allowable change orders for significant variance from the standard site conditions in accordance with Attachment 12 Cost Worksheets. If Provider proposes no Change Order Adjustment Factors, it must insert “none” on the appropriate line. Change Order Adjustment Factors will be evaluated as part of the Provider’s Cost proposal using a regression model.

Providers must, however, exercise due diligence in establishing its bid price per kilowatt hour. After award, any such Change Order Adjustment Factors shall be applied to the price per kilowatt hour for a particular Installation Site only under the circumstance(s) defined in Attachment 12 Cost Worksheets, if discovered following additional due diligence by the awarded Proposer(s), and not otherwise reasonably foreseeable. The awarded Proposer(s), will be required to provide a full accounting of such Change Orders to the Department or NYSTA for review and approval. Any Change Orders shall be for the direct actual cost of an allowable Change Order. No profit margin, overhead, or other indirect cost shall be included in such Change Order. The applicable approved Change Order Adjustment Factor shall be added to the bid price per kilowatt-hour for the Installation Site at issue for the duration of the Term of that Installation Site. After execution, if awarded Provider(s) discovers that a prospective Installation Site requires extensive amounts of Change Orders in comparison to the amount of power produced by the site, the Department or NYSTA will direct the Provider to identify other, more cost-effective, Installation Sites within the potential site list provided. Any Change Order Adjustment Factor shall also be eligible for a Consumer Price Index Adjustment in accordance with Section 3.4 – Contract Terms and Rate Adjustments.
4.2.3. Sale of Electricity

The Provider will enter into a Power Purchase Agreement with the Department or NYSTA for the purchase of electricity generated by the system and delivered to the Purchaser.

4.2.4. Environmental Attributes, Tax Credits and Environmental Incentives

Purchaser is the owner of all Environmental Attributes as defined in the Master Power Purchase Agreement, page 59. Provider is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser’s purchase of electricity under this Agreement does not include any Environmental Incentives or any to Tax Credits arising from the Provider’s ownership and operation of the System, both of which shall be retained by Provider. Purchaser shall cooperate with Provider in obtaining, securing and transferring all Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Provider. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall promptly pay such amounts over to Provider.

4.2.5. Summary of Current Federal Tax Incentives.

The Business Energy Investment Tax Credit (“ITC”) program, authorized under 26 USC 48 (Section 48), reduces federal income taxes by offering a 30 percent tax credit to owners or long-term lessees for qualified solar installations, as well as wind and other types of renewable energy. The tax credit is equal to 30 percent of the total project expenditures, including all equipment costs, direct costs and indirect costs. Under the Modified Accelerated Cost-Recovery System (“MACRS”), the full value of a qualifying Solar PV system can be depreciated over a period of five (5) years, even though its useful life is closer to 20-25 years. This allows the solar project Provider to monetize those tax benefits sooner, increasing the overall value of the project. Due to their status as tax-exempt entities, the Department and NYSTA cannot take advantage of these federal tax incentives. As such, the Provider will retain all rights associated with the ITC and MACRS tax incentives.

4.2.6. NY-SUN Incentive Program

The Provider will be responsible for applying for and obtaining an incentive under the appropriate NY-SUN program.
4.2.7. Time is of the Essence

Time is of the essence with respect to the implementation of these projects. At least 50% of the sites in Bundles 1-4 must be operational by June 30, 2017 (“Phase 1 Completion Date”). The remaining 50% of the Department installation sites for the PV Systems must be operational by December 31, 2017 (“Phase 2 Completion Date”). All sites in the Thruway Bundles (Bundles 5-7) must be operational by December 31, 2017 (“Phase 3 Completion Date”).

4.2.8. Failure to Complete Work On Time

For each calendar day, or any portion thereof, that any work remains uncompleted at any Installation Site after the Completion Dates specified in Section 4.2.7 above, Liquidated Damages shall be assessed against the Provider for that Installation Site from the scheduled contract completion date, for the applicable Phase, to the final date of completion of the work.

Liquidated damages will be in the amount per calendar day specified in Table 4.2.8, Schedule of Liquidated Damages below. The Department or NYSTA may waive such portions of the liquidated damages as may accrue if the work is deemed to be in such condition as to allow safe operational use for the generation of electricity. Permitting the Provider to continue and finish the work or any part of it after the time fixed for its completion or after the date to which the time for completion may have been extended, will in no way constitute a waiver on the part of the Department or NYSTA of any of their rights under the contracts. The Provider is responsible and liable for said liquidated damages even in the event that the Provider abandons the performance of the contract or the Provider's employment is terminated pursuant to the provisions of this contract. All liquidated damages shall be applied as an offset to future invoices.

<table>
<thead>
<tr>
<th>kW- Size of installation at site</th>
<th>Damages per Calendar Day</th>
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<tbody>
<tr>
<td>From More Than To and Including</td>
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<tr>
<td>1 kW</td>
<td>$64.00</td>
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<tr>
<td>100 kW</td>
<td>$126.00</td>
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<tr>
<td>200 kW</td>
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<td>1,500 kW</td>
<td>$1,280.00</td>
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<tr>
<td>2,000 kW</td>
<td>$1,600.00</td>
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4.3. Project Engineering Considerations

4.3.1. Land Use/Civil Requirements:

All proposed Solar PV sites require approval by the Department or NYSTA within their respective rights of way. Sites within any Highway’s Right-of-Way
(ROW) shall not adversely affect the safety, design, construction, operation, maintenance, or stability of the highway and shall not interfere with or impair future highway expansion or other permitted occupancies within the right of way.

For each of the pre-construction requirements listed below in this section 4.3.1, the Department and NYSTA will determine whether the proposed site may continue to be eligible for final installation, or whether an alternative site within the Load Zone must be proposed for installation by the Provider. If no alternative site within the Load Zone is available, then the Department reserves the right to make available an alternative site within the Bundle or to identify a new similarly situated substitute site to the Load Zone or Bundle. Pricing for any such alternative site or substitute site, shall conform to the Load Zone Price (including any appropriate Change Order Adjustments) in which the alternative site or substitute site will thereafter be located.

4.3.1.1.1. Clear Zone and Set Back from Adjacent Property:
Keeping the highway clear zone safe and free of fixed objects is of paramount importance to NYSDOT and NYSTA. For this solar initiative, NYSDOT and NYSTA have established clear zone and fixed object setbacks that exceed standards in NYSDOT’s Highway Design Manual, Chapter 10. For this project, all PV facilities and other solar appurtenances shall be installed, at a minimum, 50 feet from the edge of a travel lane along mainline highway and ramp segments. Further, no array shall obstruct the sight distances along the highway or cause glare for drivers on any roadway. Sight distances for both intersections and stopping shall conform to AASHTO A Policy on Geometric Design on Highways and Streets, Chapter 9. Adhering to the above setbacks will keep sight distances free of any obstructions. In addition, all portions of the development must be at least 30 feet from all property lines.

Providers shall demonstrate in site plans submitted to NYSDOT and NYSTA that no fixed objects will be placed in the clear zone and no visual obstruction will occur when placing PV facilities or other solar appurtenances by adhering to the above setbacks and sight line stipulations. Any exceptions to these requirements must be brought to NYSDOT and NYSTA’s attention and reviewed by the Department or NYSTA for approval.

4.3.1.1.2. Permits and Right of Way:
The Providers will not be allowed on the ROW until all permits are acquired. Providers shall arrange with state authorities and utility companies for permits, fees, and service connections, verifying locations and arrangement, and pay applicable charges including inspections.
The following link may be used for the Department’s Permit Unit: https://www.dot.ny.gov/divisions/operating/oom/transportation-systems/traffic-operations-section

Permits required by this project include, but are not limited to:

**Use and Occupancy Permit:**
The Provider will need to work with the Department and NYSTA to obtain their respective required Use and Occupancy permits. The Department and NYSTA will provide guidance in completing these applications, and will have final permit approval authority. Provider shall be responsible for compliance with any conditions resulting from a permit issued in connection with each proposed development: **Form PERM 32.** (See Attachment 8.12.1)
Note: The Standard Fee will be waived by the Department for such Use and Occupancy Permits required under this project.

**NYSDOT Highway Work Permit:**
The use of NYS highway Right of Way must be completed in accordance with the terms and conditions of a highway work permit issued by the Commissioner of Transportation or his duly assigned agent, in accordance with the NYS Highway Law, Article 3, Section 52. (See Attachment 8.12.2)

**NYSDOT Annual Maintenance Permit:**
Providers will be required to safely and properly maintain the solar arrays installed in the right-of-way throughout the duration of the contract. Providers must also perform certain ground maintenance duties at the installation site (e.g., snow removal, waste disposal, tree trimming, mowing, and vegetation control). Therefore, Providers will need to obtain Annual Work Permits issued by NYSDOT/NYSTA. Access to the solar arrays to safely conduct maintenance activities will be dependent on site conditions and shall be subject to certain terms stipulated in the Annual Work Permit. If a Provider has multiple sites, NYSDOT/NYSTA may elect to consolidate such multiple sites into one Annual Work Permit.

**Thruway Authority Work Permits:**
The use of NYSTA Right of Way must be completed in accordance with the terms and conditions of a work permit and in accordance with the TAP 401 and other appropriate requirements as highlighted in TAP 401 U and TAP 421 (A – E). (See Attachment 8.12.3 for Permits and other information)
Continued maintenance and operation will require the issuance of an Annual Thruway Authority Work Permit.

Annual Work Permits are Division specific instruments that may be issued where an occupant of Authority Property has an on-going requirement to maintain facilities authorized under an Occupancy Permit, lease or grant of easement (e.g., snow removal, waste disposal, tree trimming, mowing, and vegetation control). The work authorized by a Permit shall be performed in a professional manner to the satisfaction of the Authority. All work by or for a Permittee shall be done at no expense to the Authority.

Other Permits:
The Provider will need to obtain any and all required permits and approvals for their activities. Other permits may include, but are not limited to, permits and/or authorization from adjacent property owners as needed to accommodate access during initial construction and future inspection and/or maintenance activities. Initial construction on Thruway right of way will require the issuance of a Thruway Authority Construction Permit to assure compliance with NY State Building Code.

**PV Facility Roadway Entrance:**
Planning, design, construction, and maintenance of entrances to the PV facility shall conform to the obtained permit and the standards in Chapter 5 - Appendix 5A of the Highway Design Manual (https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm).
Changes in access will not be allowed in areas that have highway boundaries designated as right-of-way without access. Utility connections crossing the highway boundary shall be subject to the approval of the Department, NYSTA and Federal Highway Administration if applicable. Proposed entrances will be included in the Initial Site Request.

**Environmental Permits (if necessary):**
See Environmental Section (4.3.1.2) below for details

**4.3.1.2. Environmental:**
All necessary site preparation is the responsibility of the Provider and shall comply with Federal and State requirements.

Environmental impacts are to be kept to a minimum.
4.3.1.2.1. Environmental Site Compliance:
The Department and NYSTA have completed checklists for each site (including an initial environmental pre-screening), which are provided in Appendix 1 as an aid to the Provider’s in-depth review of environmental issues prior to site selection. After contract execution, the Provider will submit, as part of their Initial Site Request, conceptual facility layouts for each site they select. The Department or NYSTA will evaluate each site and conceptual layout under applicable federal and state environmental laws, rules and regulations and the related FHWA, Department and/or NYSTA guidelines for compliance with such laws, rules and regulations in highway design.

State Pollutant Discharge Elimination System (SPDES):
The provider shall keep the soil disturbance at a minimum for the construction of the PV facility at any site. If the cumulative disturbance is one acre or more at any site or multiple sites that are within a quarter mile of each other, including any utility construction, the provider shall be responsible for filing the SPDES Notice of Intent (NOI) with the NYSDEC and preparing a Stormwater Pollution Prevention Plan in compliance with the SPDES permit. The provider shall comply with all the permit conditions during the PV installation.

Archeological Site Encounter:
All sites have been pre-screened by the Department and NYSTA for cultural resources in order to comply with Section 106 of the National Historic Preservation Act of 1966 and implementing regulations (36 CFR Part 800) or the New York State Historic Preservation Act of 1980, Section 14.09 (9 NYCRR §428), as applicable. There were no cultural resources issues identified during this initial pre-screening. Further confirmation by the NYSDOT Regional Cultural Resource Coordinator is necessary for sites selected by the provider. During the installation of the PV facility, if any archeological remains are encountered, the provider shall stop work and contact the Department or NYSTA project manager immediately. The Department or NYSTA will coordinate with New York State Office of Parks, Recreation and Historic Preservation / State Historic Preservation Office, and with the FHWA if Section 106 applies, to determine the proper course of action.

Wetlands:
All sites have been pre-screened by the Department and NYSTA and no wetlands were identified at the sites during this initial pre-screening. Further verification is necessary for sites selected by the provider. If permits are required (i.e. NYSDEC Article 24 Freshwater Wetlands Permit for sites within the 100-foot Adjacent Area of a NYSDEC Freshwater Wetland), the provider shall prepare the permit application and
be responsible for any required fees. The provider shall comply with all the permit conditions during the PV installation.

Hazardous and Contaminated Material Encounter:
During the construction of the PV facility, if unknown subsurface hazardous and/or contaminated materials are encountered or an unexpected, reportable environmental incident occurs, the provider must stop work and contact the Department or NYSTA Project Manager immediately. The Provider shall be required to undertake appropriate mitigation steps to prevent the spread of contamination and to protect the health of workers and the public. Providers shall prepare an incident response strategy with respect to potential contaminated or hazardous materials.

4.3.1.2.2. Drainage:
Unless approved by the Department or NYSTA, existing drainage patterns shall not be altered. Provider is required to address any drainage impacts in their site design and preserve the functionality of the adjoining drainage system and cannot exceed adjoining system capacity. Permanent and temporary drainage systems shall be compatible with existing watershed drainage systems in adjacent properties. Where drainage patterns will or must be changed from existing patterns, the Department’s or NYSTA’s Project Manager must be contacted for approval.

Work that would affect any drainage infrastructure shall be undertaken to prevent discharge of runoff that carries excavation or demolition debris. All drainage systems that would be altered by the array construction shall be installed in accordance with the Highway Design Manual, Chapter 8, Highway Drainage.

https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-8

All earthwork and grading shall be performed in such a manner to avoid any flooding, ponding or erosion.

4.3.1.2.3. Tree and Vegetation Removal:
Tree/Vegetation Removal: Each Detailed Site Plan shall include a Tree/Vegetation Removal Plan depicting the limits of all areas proposed for clearing and grubbing and any individual trees proposed for removal. Although removal of some trees up to 6” diameter breast height (DBH) is anticipated, the following removals should generally be avoided:

- **Healthy, native** trees greater than 4” DBH.
• Trees or vegetation that provides screening for residential areas or have been identified by the adjacent community/local government entity as culturally or otherwise significant. NYSDOT and/or NYSTA can assist in the identification of such trees and vegetation on the selected sites and work with the Provider to adjust plans to avoid their removal.

**Restoration:** The Detailed Site Plans shall also include a plan for site stabilization and restoration after panel installation. The plans will be reviewed and approval by NYSDOT and/or NYSTA and shall show, at a minimum:

• Minor grading to eliminate construction ruts and maintain positive drainage;
• Reestablishment of vegetative cover (grasses) where disturbance has occurred and where plans do not call for gravel or other surface treatment;
• The layout of any proposed fencing.

**Compliance/approvals:** Proposed tree removals must comply with the United States Endangered Species Act (ESA), since tree removals can entail disturbance to endangered and threatened fauna, either by direct disturbance to nests, etc. or through timing. All sites selected by the Provider will be screened by NYSDOT and/or NYSTA for the presence of, or proximity to, endangered or threatened fauna such as the northern long-eared bat. Detailed Site Plans for each site must demonstrate no direct disturbance and a commitment to compliance with any required time constraints.

The Provider must also:

• Comply with Section 107-01 Laws, Rules, Regulations and Permits of the [NYSDOT Standard Specifications](page 126).
• Dispose of all trees, brush and debris in accordance with Section 201-Clearing and Grubbing of the [NYSDOT Standard Specifications](page 183) and but only first as approved by NYSDOT/NYSTA. NYSDOT/NYSTA reserves the right to do their own disposal. If marketable timber is salvaged from NYSTA site(s), by Provider or its contractor, all revenue generated by the Provider, in no event less than fair market value of such disposition(s), shall be remitted directly back to NYSTA.
• Comply with applicable soil erosion and sediment control regulations and requirements and employ best practices at all times during site operations (see NYSDEC’s [Construction Stormwater Toolbox]).
• Use mechanical removal of vegetation unless use of herbicides is approved by NYSDOT and/or NYSTA prior to application.
• Notify NYSDOT and/or NYSTA and obtain approval before any tree or vegetation removal.

4.3.1.3. Geotechnical:
The Department or NYSTA Geotechnical review may be required based on location of conduit installation for interconnection point.

4.3.1.4. Safety Plan:
The Provider will work with the Department or NYSTA in the development of a work zone traffic control plan for each site. The Department’s Work Zone Traffic Control Manual is located on the Department’s web page at: https://www.dot.ny.gov/divisions/operating/oom/transportation-systems/safety-program-technical-operations/work-zone-control/traffic-control-manual. This manual is intended to provide anyone working within the state Right-of-Way with the basic principles and elements constituting a safe work zone.

All Work zone plans will be developed by the Provider and submitted to the Department or specific to NYSTA, WZTC 619 Standard Sheets shall be submitted, for review and approval as part of the permit review process. The Department or NYSTA may impose site-specific work time and day restrictions to minimize traffic impacts, and will include them as permit conditions.

4.3.1.5. Operation and Maintenance:

Full maintenance protocol shall be approved by the Department or NYSTA for review and approval within 90 days of installation as well as annually via an Annual Work Permit or NYSTA Work Permit as described in Section 4.3.1.2 of this RFP. The Provider shall comply with all applicable state and federal environmental regulations and requirements that may affect protocols and procedures associated with maintaining the sites, including, but not limited to those described in Section 4.3.1.2 of this RFP. Mowing, vegetation control, and litter removal shall be the responsibility of the provider and shall be included in the maintenance protocol.

4.3.1.6. Facilities-Assessment Inspection:

A Facility Assessment Inspection protocol shall be provided to the Department or NYSTA for review and approval within 90 days of installation, as well as annually via an Annual Work Permit or NYTA Work Permit as described in Section 4.3.1.2 of this RFP. The Provider shall comply with all applicable state and federal environmental regulations and requirements that may affect protocols and procedures associated with maintaining the sites, including, but not limited to those described in Section 4.3.1.2 of this RFP.

At a minimum, the protocol shall include: performing inspections at a regular interval of at least once every two years; submission of written inspection reports; methods
for addressing any deficiencies found; provision for as-built plans for each site upon repairs of such deficiencies; and, post construction inspections.

Such inspections shall be ordered and paid for by the Provider. Circumstances requiring a more frequent Facilities-Assessment Inspection, which shall be determined by the Department or NYSTA based upon a material adverse effect on the Facility, shall include: (a) findings of either a Post-Construction Inspection or other inspection that indicate the presence of previously undetected deterioration or deficiencies; (b) severe wind and/or ice storms or such other extreme condition; and (c) if the Site is subjected to a corrosive environment or incidents of vandalism.

Repairs will be completed at no cost to the Department or NYSTA.

NYSDOT and NYSTA Project Managers shall track all such inspections to ensure that they are performed every four years, or as needed based on other circumstances listed above.

Such inspections shall be performed by qualified persons, as determined by NYSDOT or NYSTA, having a thorough understanding of the solar Photovoltaic Systems Inspection and current National Electric Codes (NEC), or similar equivalent.

4.4. Tasks

4.4.1. Project Management and Coordination:

The Provider shall be responsible for designing, constructing, commissioning, operating, maintaining and decommissioning the Facilities. In addition the Provider will be responsible for electric grid connection through Interconnectivity Agreements. Providers should develop a management approach to Facility implementation, a plan for executing the project to meet the scheduled Operational Dates, and a plan for operating and maintaining the Facility for the duration of the entire term of the Master Power Purchase Agreement including any extensions to the Agreement. Providers will control and coordinate with subcontractors and third parties including other state and local agencies and the public. Providers should identify key risk areas of the project and address how they will be managed.

4.4.2. Technical Approach

4.4.2.1. Sample Solar Facility:

For the purposes of evaluation, Providers have been given a Sample Solar Facility in Appendix 2 which shall be used to design the basic facility layout upon which the base price will be based. The information provided in Appendix 2 is for
planning and cost submission purposes only and does not constitute any guarantee of site conditions.

4.4.2.2. Environmental:
Providers shall comply with requirements in Section 4.3.1.2, Environmental.

4.4.2.3. Safety Plan:
Providers shall comply with requirements in Section 4.3.1.4, Safety Plan.

4.4.2.4. Utility Coordination and Interconnection:
Locate, verify, and plan cable routes prior to commencement of work. Longitudinal runs within the interstate ROW are generally prohibited except for fiber optic communication facilities pursuant to NYSDOT’s Accommodation Plan. Contact “Dig Safe” and clear existing utilities prior to commencing any excavations.

Prepare and submit plans to the Department or NYSTA for review and approval as appropriate for the temporary or permanent replacement or relocation of any highway lighting or operations element, including poles, transformers, equipment shelters, boxes, and related features. Provide sufficient detail to demonstrate how the proposed modifications would be functionally equal to the feature being replaced.

Providers shall be responsible for procuring all equipment (including upgrades to existing equipment) needed to transmit and interconnect the project to the grid.

Providers must coordinate all interconnection work with the respective utility and perform all work in strict compliance with all stipulations of the interconnection permit thereby. Providers must maintain ownership of utility and communication interconnections within the Department or NYSTA highway ROW. The Department or NYSTA shall have final approval of interconnection locations and design.

4.4.2.5. Operation and Maintenance:
Providers shall comply with requirements in Section 4.3.1.5, Operation and Maintenance.

4.4.2.6. Decommissioning:
Upon expiration or termination of the Agreement, the Provider shall be responsible for decommissioning and restoring the site to its pre-constructed status. Decommissioning responsibilities include the removal of: any perimeter
fences, any concrete or steel foundations or piles, removal of all metal structures (mounting racks and trackers), all PV modules, above ground and underground cables and/or conduits, transformers, inverters, fans, switch boxes, fixtures, and otherwise restoring the premises to its original condition or mutually-agreed-upon natural state.

4.4.2.7. PV Racking Requirements:
Any solar PV array shall be situated such that no portion of the array will cause reflective glare to any motorist in any direction on any highway. Further, to reduce any potential argument that such glare could exist, only solar panels manufactured specifically as low-glare panels may be used, and only dark-colored non-reflective framing/racking components may be used.

All structural materials shall have adequate corrosion and grounding protection for the soils and environment and shall last a minimum of 25 years without replacement.

Racking and frame components, and mounting system foundations shall be designed to withstand the above and below grade environmental conditions of the site location for a minimum of 25 years without corrosion or replacement.

All structural and nonstructural components will be designed to resist the effects of gravity, seismic, wind and other applicable loads in accordance with the requirements of the prevailing New York State Regulations and Laws for Minimum Design Loads.

In areas that collect or convey stormwater, Solar PV arrays shall be supported on freestanding foundations either driven or drilled into the ground to avoid any effect on drainage patterns.
All drawings associated with the project must be sealed by a Professional Engineer registered within the State of New York.

The lowest edge of the solar modules shall be elevated a minimum 3 feet above the ground level.

PV modules should be installed in a single contiguous area with Department or NYSTA approval. Connections to PV modules should generally have short cable runs from the array to inverter equipment.

All exposed (outdoor) conduit or raceway should have threaded (for conduit) and bolted (for other raceway) connections with expansion joints as necessary to allow for thermal movement.

Material requirements:
• Fasteners and hardware throughout the system shall be stainless steel or materials of equivalent corrosion resistance
• Unprotected steel shall not to be used in any components
• All non-metallic exposed materials shall be sunlight and UV resistant

4.4.2.8. Monitoring and Data Acquisition System (DAS):
Proposals must include installation of an automated data acquisition system (“DAS”) at each Installation Site to measure and monitor the PV system performance and operation in accordance with the following specifications. The DAS may be integrated into the inverter and system or externally interfaced with the PV system to collect required data. Monitoring and reporting must be included for the entire term of the PPA. The DAS shall include instrumentation (with a stability < 2% change over a one year period) that allows the measurement of:

a) Plane-of-array irradiance (W/m², ±2%)  
b) Ambient temperature (sensor to be placed in a shaded location) (°C ±2°)  
c) Wind speed (starting threshold 2.98 mph & accuracy < 2%)  
d) Wind direction: (range 360° - accuracy ± 2%)  
e) Revenue grade AC kWh electric meter. (0.2% accuracy per American National Standards Institute (ANSI) C12.20)  
i) Power production from the PV system (AC kW, ±2%)

The DAS shall provide a real-time high-definition graphical overview of the system via a web interface. The DAS shall record and maintain historical data for the life of the agreement at fifteen minute intervals. The DAS shall have the ability to push data via one of the following protocols: ftp, sftp, http or https.

4.4.2.9. Other Miscellaneous Requirements
The Provider shall not place any advertising on the solar site.

No buildings, structures or appurtenances may be placed on the solar site for purposes other than solar power production, distribution, maintenance, safety, and use. The entire project array, including all equipment and appurtenances, shall be contained within the area defined by the agreement.

Installations must meet applicable governmental statutes, codes, ordinances, and accepted engineering and installation practices.

In certain circumstances, Providers may be permitted to relocate existing free-standing lighting and other free-standing Department–owned or NYSTA-owned features that might shade the project. Such facilities shall be replaced by the Provider to provide the same level of service to functionally replace the existing system. Providers will be required to provide designs stamped and signed by a New York State Registered Professional Engineer to show that the replacement
system will meet or exceed the existing level of service of the system being relocated. Such relocation must be reviewed and approved by the Department or NYSTA to ensure there is no compromise in safety to the traveling public.

Solar PV inverters shall include the necessary equipment, controls and accessories for the inverter to meet all code requirements and to function properly as part of a power generation facility. Environmental ratings shall be appropriate for site conditions. Inverters shall be capable of operating at rated capacity at the expected ambient temperatures at the site and at the altitude of the site. Inverters shall employ a maximum power point tracking scheme to optimize inverter efficiency over the entire range of PV panel output for the given site design conditions. Inverters shall comply with Institute of Electrical and Electronic Engineers (IEEE) 519 requirements for harmonics, and inverter output shall be protected by an AC output circuit breaker. Inverters shall communicate with the DAS system using a common, non-proprietary protocol. The inverter manufacturer shall provide a warranty of at least 5 years.

4.4.2.10. Electrical Requirements

**Electrical equipment requirements:**
Solar and electric equipment specified and installed, should be new, high quality, and shall meet or exceed the requirements of all local, state, and federal regulatory requirements including but not limited to all applicable requirements of the following. The NEC (National Electrical Code, NFPA 70), Underwriter’s Laboratories (UL) requirements for listings (i.e. Inverters-UL1741 and Modules-UL1703), as well as, provisions outlined by ASTM (American Society of Testing Material) the IEC (International Electrotechnical Commission) and the IEEC (Institute of Electrical and Electronics Engineers) as applicable to the installations. Organizations certified by the Occupational Safety and Health Administration (OSHA)-as an approved testing agency meeting the UL 1703 specifications is also acceptable.

Solar modules shall provide industry standard energy production warrantees (at least 90% of nameplate energy production after 10 years and 80% nameplate energy production after 20 years). Solar inverters specified should have a minimum 95% California Energy Commission (CEC) weighted efficiency and 10 year materials and workmanship warranty.

Solar modules shall provide at least a 5 year workmanship and materials warranty.

**Electrical design requirements:**
Provider shall coordinate all interconnection work with the respective utility and perform all work in strict compliance with all stipulations of the interconnection permit thereby.

Conduit shall be rigid galvanized steel (RGS) for aboveground installations, and rigid PVC Schedule 40 for below-grade installations unless otherwise approved.

String combiner boxes must include properly-sized fusing, and all metal equipment components must be bonded and grounded as required by National Electrical Code (NEC).

Outdoor electrical equipment including but not limited to disconnects and combiners shall have National Electrical Manufacturer Association (NEMA) Type 3R or NEMA Type 4 ratings and be UL Listed.

PV module strings – groups of PV modules electrically connected in series – shall be designed in accordance with the inverter manufacturer’s maximum DC voltage input specifications and applicable code requirements for maximum system voltage. The PV system shall operate with a maximum voltage of 600 Vdc or 1000 Vdc, unless otherwise approved by the Department or NYSTA. Maximum system voltage shall be consistent between installations. All equipment shall be rated for the maximum system voltage as required.

PV module arrays – groups of PV strings electrically connected in parallel – shall be designed in accordance with the inverter manufacturer’s maximum DC current and power input specifications and applicable code requirements for maximum operating DC current and power.

The PV system shall be connected to the Facility's electrical distribution system in accordance with the applicable sections of the NEC, including 690 and 705, and in accordance with all other applicable codes and standards. Provider shall be responsible for modifying the Facility electrical distribution system as required to accommodate the PV system. However, proposed modifications to Facility electrical distribution system must first be reviewed and approved by the Department or NYSTA as applicable.

The PV system shall be metered separately and connected in parallel with utility facilities.

4.4.2.11. Reports
Provider shall prepare a status report and submit it to the Department Project Manager and the NYSTA Project Manager every six months. This report will show a breakdown by Bundle of any maintenance activities, repairs or system
downtime that have taken place in the last six months, scheduled maintenance or repairs, and downtime anticipated to take place in the next six months, and a performance summary.

All reports must be in Word, Excel, PDF or another format acceptable to the Department. Documents must be available when requested by the Department or NYSTA or automatically shared with the Department or NYSTA in electronic format via e-mail or managed file transfer (for larger sized documents). Should the Department or NYSTA want to review records pertaining to this Agreement at the selected Provider’s offices, the Department and NYSTA shall be given access to those files upon reasonable notice.

The Provider must maintain all records at a location accessible by Department and NYSTA staff, as applicable and in an electronic format acceptable to the Department and NYSTA. Per the Agreements to be entered into, all records produced under these Agreements with the Department and NYSTA shall be the property of the Department and NYSTA, as applicable. Should the work between the Department or NYSTA as applicable and the selected Provider be terminated, all records shall be promptly turned over to the Department or NYSTA or their designated recipients.

Failure of the Provider to provide the above reports completed and within the time frames specified will result, at the Department’s or NYSTA’s discretion, in a liquidated damage of 5% of the invoice amount for that specific report. All liquidated damages will be billed as an offset against the relevant invoice.

4.4.3. Project Schedule

The Department is committed to building 16 MW DC aggregated capacity across the state capable of generating approximately 20 million kWh AC per year contracted under a Master Power Purchase Agreement. In each Bundle, 50% of the sites shall be built and operational by June 30, 2017 (Phase 1 Completion Date), and 100% shall be built and operational by December 31, 2017 (Phase 2 Completion Date).

NYSTA is committed to building 2.6 MW DC aggregated capacity across the state capable of generating approximately 3.3 million kWh AC per year contracted under a Master Power Purchase Agreement, built and fully operational by December 31, 2017 (Phase 3 Completion Date).

4.4.4. Organization and Staffing

Providers should create an organizational chart that describes the reporting relationships of all key personnel identified in this Section and team
members/partners. The Provider will be responsible for providing the following Key Personnel:

- **Project Manager** - for all phases of the proposed Facility’s development. Project Manager shall have 3 years of experience but 5 is preferred; and should have at least 5 years of experience managing projects of a similar scope and size. Experience with solar development in a highway ROW is desirable.

- **Account Manager** - for the post-commissioning phase of facility operations, who will manage Operations and Maintenance and Customer Service issues. Account Manager should have at least 5 years of experience managing operations and maintenance for projects of a similar scope and size.

Personnel for key positions should have relevant experience and expertise and a record of managing and producing quality work on projects of a similar nature to this proposal. The Project Manager and Account Manager can be the same person.

### 4.4.5. Experience

To be considered for this solicitation a Provider must be a NYSERDA NY-Sun approved contractor and installer, under either the Commercial/Industrial (>200kW) program or the (<200kw) and (>200kw) combined program.

Credentialing info is located on the NYSERDA web page at:

- [http://www.nyserda.ny.gov/Contractors/Become-a-Contractor](http://www.nyserda.ny.gov/Contractors/Become-a-Contractor)

In addition, it is desired that Providers have the following experience:

- Have installed commercial solar facilities (1 MW or greater) for large businesses or municipal governments in the last five years
- Have managed solar farm type facilities for at least five years
- Experience with solar installations in a highway ROW is preferred

### 4.4.6. Labor and Material (Payment) Bond

The executed Agreement must be accompanied by a Labor and Material Bond. The Contractor shall provide a bond with sufficient sureties, in a form approved by the Department or NYSTA, guaranteeing prompt payment of monies due all persons supplying the Contractor or Subcontractor with labor and materials employed and used in carrying out the contract, which bond shall inure to the benefit of the persons supplying such labor and materials, until all installation work has been completed by the Provider and accepted by the Department or NYSTA. The
amount of the Labor and Material Bond shall be five hundred thousand dollars ($500,000) for each Bundle.

4.4.7. Insurance Requirements

**Workers’ Compensation Insurance And Disability Benefits Requirements**
Workers’ Compensation Law (WCL) §57 and §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers’ compensation and disability benefits insurance coverage.

These requirements apply to both original contracts and renewals, whether the Department or NYSTA is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal of contract.

1. Proof of Compliance with Workers’ Compensation Coverage Requirements:
An ACORD form is NOT acceptable proof of workers’ compensation coverage. In order to provide proof of compliance with the requirements of the Workers’ Compensation Law pertaining to workers’ compensation coverage, a contractor shall:

A) Be legally exempt from obtaining Workers’ Compensation insurance coverage; or
B) Obtain such coverage from an insurance carrier; or
C) Be a Workers’ Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Department at the time of bid submission or shortly after the opening of bids:

A) Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, that New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers’ Compensation Board’s website (www.wcb.ny.gov). Reference applicable RFP # on the form.

B) Certificate of Workers’ Compensation Insurance:
   1) Form C-I05.2 (9/07) if coverage is provided by the contractor’s insurance carrier, contractor must request its carrier to send this form to the Department, or
   2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the Department.
C) Form SI-12, Certificate of Workers’ Compensation Self-Insurance available from the New York State Workers’ Compensation Board’s Self-Insurance Office.


2. **Proof of Compliance with Disability Benefits Coverage Requirements:**

In order to provide proof of compliance with the requirements of the Workers’ Compensation Law pertaining to disability benefits, a contractor shall:

A) Be legally exempt from obtaining disability benefits coverage; or

B) Obtain such coverage from an insurance carrier; or

C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the DOT Purchasing Office at the time of bid submission or shortly after the opening of bids:

A) Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers’ Compensation Board’s website (www.wcb.ny.gov). Reference applicable RFP# on the form.

B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the Department; or

C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board’s Self-Insurance Office at 518-402-0247 to obtain this form.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: the New York State Department of Transportation / the People of the State of New York (50 Wolf Road, Albany, NY 12232) and the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder). New York State Thruway Authority is to be listed as additionally insured.

**WORKERS’ COMPENSATION LAW (WCL) CONTRACTOR DEBARMENT**

For any public work contract subject to Article 8 of the New York State Labor Law, such contract, including amendments or renewals that extend the term of an existing contract, cannot be awarded to a vendor or any substantially owned
affiliate of a vendor, that is debarred pursuant to WCL Section 141-b. Additionally, a contractor shall be required to replace any subcontractor, at no additional cost to the State, found to be debarred pursuant to WCL Section 141-b during the course of the contract.

**INSURANCE**

In addition to the Worker’s Compensation and Disability Benefits Insurance requirements set forth above, if in furnishing items hereunder, the Contractor will perform any installation, construction, training or maintenance, inspection or any other work on State property, then the Contractor shall procure and maintain at its own expense and without compensation by the State, until final acceptance by the State of services provided by the contract, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do such business in the State, covering such on-site work.

The types and limits of insurance are as follows:

1. **COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE** for the protection of the Contractor and the State of New York or the NYSTA as against any claims, suits, demands or judgments by reason of bodily injury, including death, and for any claims resulting in property damage occurring on or in proximity to the area of the on-site project work with a limit of not less than $5,000,000 (combined property damage and/or bodily injury, single limit per occurrence/aggregate).

2. **COMPREHENSIVE BUSINESS AUTOMOBILE LIABILITY INSURANCE** with a limit of not less than $1,000,000 each accident. Such liability insurance is to cover liability arising out of any vehicle including owned, leased, hired, and non-owned vehicles bearing, or required by NYS Vehicle and Traffic Law to bear license plates.

3. **OWNERS AND CONTRACTORS PROTECTIVE LIABILITY (OCP) INSURANCE** shall be furnished when the estimated cost of the work to be performed in the Department’s right-of-way at any area of on-site work equals or exceeds $250,000. Such OCP Insurance shall have a minimum liability limit of $1,000,000 per occurrence, with “New York State Department of Transportation or the “New York State Thruway” as the Named Insureds.

4. **PROPERTY LOSS INSURANCE** shall be carried by the Contractor on the System for replacement costs thereof, during the life of the systems’ operation.

Before commencing work, the Contractor shall furnish to the State a certificate or certificates of insurance in form satisfactory to the State showing compliance with
this paragraph, which certificate or certificates are to name the State of New York or the New York State Thruway Authority (as applicable) as additional insureds. Such policies may not be changed or canceled until thirty (30) days written notice has been given to the State or NYSTA. An industry standard ACORD 25 form (with ACORD 855 New York Construction Certificate of Liability Insurance Addendum) is acceptable evidence of the required liability coverage for the Department. For NYSTA a Supplemental Insurance Certificate TA-W51343-9 (12/2015) is also required in addition to the ACCORD 25 and ACCORD 855. A copy of the TA-W51343-9 certificate form can be found on this web page. http://www.dfs.ny.gov/insurance/insurers/cert_ins_approved.htm
5. PROPOSAL FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two parts, bound separately. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Contract submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is not to be included in the Part I submittal. Your proposal should follow the format listed below.

Web links, photographs, and illustrations (except for the organizational chart) are not to be included unless specifically required in this section. An 8 ½ by 11-inch single-spaced, 11-point minimum font format is preferred for typed pages, and an 11 by 17 inch format is preferred for drawings and schedules. The Technical and Management Submittal shall not exceed 50 pages.

Proposers are to submit a single Technical and Management volume as described in section 5.1 below and a single Cost and Administrative volume as described in Section 5.2 below. Using Attachment 12, Proposer’s may submit cost bids for one or more Bundles. However, a Proposer will only be awarded a maximum of three Bundles. Refer to section 4.2.2 of the RFP for additional information.

NOTE: The Department will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. If a Proposer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Additionally, Proposers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

Note: Cost information is not to be included in the Part I submittal, and Technical and Management information is not to be included in Part II submittal.

5.1. Part I: Technical and Management Submittal

Part I shall include the following sections:

5.1.1. Cover Letter, and Title page (2 page maximum), indicating:

Name, address and phone number of the proposer, and the name, title, address, email, and telephone number of person(s) with authority to negotiate and who may be contacted during the procurement process.
5.1.2. A Table of Contents.

5.1.3. Executive Summary (2 page maximum)

The Executive Summary shall be written in non-technical style and contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the Proposal and the Proposer’s ability to satisfy the technical requirements of the project. The Executive Summary shall not exceed two pages or one double-sided sheet.

The Executive Summary shall include the following:
1. An explanation of the organization and contents of the Technical Proposal; and
2. Particular aspects of the Proposal that may be beneficial for the Department to consider in its review.

5.1.4. Approach and Scope of Services

Describe the approach for performing the work and accomplishing project objectives. Provide a detailed scope of services which describes by task what will be done. A general scope of services is outlined under Section 4. You may base your scope of services on these tasks, or suggest alternative tasks which could improve the ability of the project to meet its objectives. The Department wants to allow maximum flexibility for the inclusion and consideration of ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Fully explain and justify your approach, however, if it significantly departs from the general scope of services or if the general scope of services requires clarification or re-working. The Technical and Management submittal shall correspond to each component in section 5.1.4 and itemized by subsection numbers.

This section should address the following:

5.1.4.1. Project Management and Coordination (3 page maximum)
This section of the Proposal shall set out the Proposer’s management approach to Facility implementation, its plan for executing the project to meet the scheduled Operational Date, and its plan for operating and maintaining the Facility for the duration of the Master Power Purchase Agreement term.

This section shall clearly:
• Provide a general project approach which:
a. Illustrates the Proposer’s understanding of the Project and its general approach to Facility design, construction, commissioning, electric grid connection, operation, maintenance, and decommissioning;
b. Includes a high-level overview of how the work will be accomplished, such as the Proposer’s capability to control and coordinate with subcontractors, third party activities, and other resources, including a description of the work flow;
c. Defines how the Proposer will communicate with the Department and/or NYSTA, its agents, and other state and local agencies and the public;
d. Identifies the key risk areas of the project and how they will be managed. At a minimum, include the initial identification of significant technical, resource, and management issues that have the potential to impede project progress and strategies to minimize impacts from those issues.
e. Identify specifically how management will be involved in schedule issues and past practices employed to manage schedule risk and recover lost time.
f. Provide a list of all other work in progress.

5.1.4.2. Technical Approach (20 page maximum)

The Minimum Technical Requirements provided in Section 4, Scope of Work shall be used as the basis for development of the Technical Approach Section. Proposers are instructed to identify their approach to meeting or exceeding the requirements of the program. The Proposal should include a point-by-point response to this RFP. Proposers may provide additional materials to assist in the evaluation of each proposed Facility. This section shall be limited to 20 pages.

A. Solar Photovoltaic Energy Generating Facility

1. For the “Sample” Solar Facility detailed in Appendix 2, provide drawings and a narrative that describe:
   a. Proposed PV panel layout, including azimuth and tilt, and minimum clearance height of panels off the ground, set back from edge of pavement;
   b. Inverter location;
   c. Technical specifications for solar PV modules, inverters, racking systems, transformers, and other electrical equipment and system components. Include information regarding any warranties or guarantees for the specific equipment proposed.
   d. Any proposed security means and methods (fencing and gates, lighting, cameras, wireless monitoring equipment) that the Provider deems necessary subject to Department or NYSTA approval;
e. Energy production modeling and production estimates in kWh over the first one year period. Include assumed methodology, meteorological information, array orientation, racking type, and detailed losses; and
f. Vegetation plan details including tree removal and putting disturbed land back to natural state after initial construction,
g. Identify any expected degradation of the system output over the term of the Agreement and methods employed to mitigate.
h. Clearly mark the highway clear zone and setback from property lines for the sample site.
i. Include a narrative description explaining why the Proposer made the choices that they did.

2. Describe the approach for coordinating design and construction with the Department, NYSTA, utility companies, and others;

3. Describe the approach to assuring that the Facility will achieve acceptance by the utility company;

4. Identify how the constructed system components will serve to satisfy the minimum technical requirements specified in Section 4. Complete and attach Attachment 9 Standard Equipment Specifications. All related design calculations, including those which justify the performance metrics, should be included within an Appendix to the Proposal;

5. Describe the approach to ordering, receiving, warehousing, protecting, and installing Facility materials and equipment to achieve the project schedule;

6. Describe the approach to integrating the power into the regional grid including the use of poles, overhead wires, or buried conduit. Also identify the use of manholes, hand holes, junction boxes, and other power infrastructure;

7. Describe methods of construction and repair of areas altered by the construction or operation of the Facility. Provider should provide typical details; and

8. Detail the amount of work and approach to clearing and preparing sites prior to PV installation.

B. Environmental

1. Provide a brief summary of any potential environmental impacts and proposed mitigation associated with the installation and operation of the system(s) at the premises (e.g. drainage, glare, vegetation, wildlife).

C. Safety Plan

1. Describe how the Provider will comply with the requirements in Section 4.4.2.3.

D. Utility Coordination
1. Describe the proposed approach to dealing with the utility and the means to keep the utility company informed of construction schedules and changes that may affect their facilities, including problems that are likely to arise and the planned approach to problem resolution.

E. Operation and Maintenance

1. Identify and explain the schedule and access requirements for regularly scheduled maintenance, including manpower and equipment; and

2. Identify and explain the expected useful life of each of the proposed major system components.

F. Decommissioning

1. Describe the decommissioning plan, including the proper disposal or recycling of the solar modules, removal of perimeter fences, foundations, metal structures (mounting racks and trackers), PV modules, above ground and underground cables, transformers, inverters, fans, switch boxes, fixtures, and otherwise restoring the premises to its original condition or mutually agreed upon natural state at the end of the term; and

2. Describe or explain the proposed approach and timeline for communicating and coordinating with the Department and/or NYSTA to implement the decommissioning plan.

G. PV Racking

1. Include in the narrative details regarding how the PV Racking requirements listed in Section 4.4.2.7 will be met.

H. Monitoring and Data Acquisition System

1. Provide a detailed description of the DAS system and the end-user interface. Include a sample of how the website will appear. Describe how the proposed DAS meets program requirements as described in the scope of work. Provide a detailed description of the data file format and provide one example file. Describe how the system is architected for reliability and data integrity.

I. General Photovoltaic

1. Include in the narrative, details regarding how the General Photovoltaic requirements listed in Section 4.4.2.9 will be met.

J. Electrical Equipment and Design

Include in the narrative, details regarding how the Electrical Equipment and Design requirements listed in Section 4.4.2.10 will be met. Submit catalog sheets for inverters, switches, transformers, PV panels and other major equipment. The PV System components must be installed consistent with the manufacturer’s recommendations.
K. Additional Regulatory Requirements

1. Where applicable, narrative should state any additional regulatory requirements and how the Proposer will comply with those regulations.

5.1.5. Project Schedule (2 page maximum)

Provide a summary schedule that depicts the timing, duration and sequence of activities to complete the facility.

The Department is committed to building 16 MW DC aggregated capacity across the state capable of generating approximately 20 million kWh AC per year contracted under a Master Power Purchase Agreement. In each Bundle, 50% of the sites shall be built and operational by June 30, 2017 (Phase 1 Completion Date), and 100% shall be built and operational by December 31, 2017 (Phase 2 Completion Date).

NYSTA is committed to building 2.6 MW DC aggregated capacity across the state capable of generating approximately 3.3 million kWh AC per year contracted under a Master Power Purchase Agreement, built and fully operational by December 31, 2017 (Phase 3 Completion Date).

The Proposer should submit a Gantt Chart (not included in the 2 page limit), showing all major construction, design and approval activities. The Gantt Chart shall be presented in hard copy printed on an 11” by 17” sheet with all as-printed font sizes at least 8 point. For the purposes of this section, major construction, design and approval activities shall be defined as the following: (if applicable):

- Assembly of Project Delivery Team
- Final Design and Engineering Plans
- Approvals and Permits
- Materials procurement, Mobilization, Site Preparation
- Construct Foundations and Support Structures
- Assemble PV Modules, Power Inverters, Electrical, Inter-utility and Security systems
- System Commissioning
- Commercial Operation and Close-out

For the purposes of developing the project schedule, Providers shall assume a 10 calendar day response period for review of the Initial Site Request and a 21 calendar day response period for review of the Secondary Site Request. Department/NYSTA reviews will be to assess how the project design and construction activities satisfy the minimum technical requirements. The Department and NYSTA shall not be obligated to compensate or provide relief to
the selected Provider in any manner for delays in the Department’s submittal reviews. These estimates are for the Provider’s use in developing the schedule only and are not a guarantee of actual approval times.

The Proposer’s schedule should allow for a design preparation period and for the required review process prior to construction of facility components. The schedule shall also consider any electrical infrastructure upgrades required by the utility company.

Provide the following:

A. A brief narrative description supporting the schedule development, including:
   1. Methods for meeting completion milestones and flexibility within the schedule to manage the delivery times for elements of the Facility;
   2. The approach to rescheduling activities to achieve schedule recovery objectives and how these objectives will be enforced; and
   3. The approach to integrating subcontractor, permitting, and utility company activities into the project schedule.

B. Complete the following table for the Sample Solar Facility described in Appendix 2 and submit with the Technical Proposal. This table shall be completed again for each proposed facility location and submitted with the Initial Site Request.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Proposed Milestone Date</th>
</tr>
</thead>
</table>

### 5.1.6. Organization and Staffing (6 page maximum)

A. Provide an 11 X 17, one-sided page organizational chart for the project showing the names of the Key Personnel identified in Section 4.4.4. Include in the chart which individual will have supervisory responsibility for the functional areas:

i. Project Management & Obtaining Permits

ii. Quality Control

iii. Procurement
   a. Facility Materials and Equipment

iv. Engineering Design, including:
   a. Power System Design
   b. Interfacing the Facility output with a utility company

v. Construction Management

vi. Customer Service/Operations and Maintenance, including staff location

vii. Safety

viii. Environmental/Mitigation/Compliance

ix. Public Outreach and Communications

If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the project to meet the Operational Date(s). The Provider’s Project Manager shall serve as the primary contact with the Department and NYSTA Project Managers. The Provider’s Project Manager is responsible for the performance of all key personnel, production staff and support staff assigned to this Agreement by the
Provider, as well as contractual matters on the Provider’s side. Describe the level and type of interaction with the Department and NYSTA.

Submit Attachment 8, Provider Key Personnel Resume and References for each Key Personnel title identified in Section 4.4.4. Indicate proposed key personnel who are, or have, worked on similar projects including their familiarity with highway safety requirements and design if applicable. Include names, addresses and phone numbers of contact points with the listed clients. The Department reserves the right to request information from any source so named. List existing workload and availability of the Project Manager for the period of design and construction.

The Key Personnel (as identified in Section 4.4.4) proposed by the designated Provider are an important factor in the evaluation of its proposal. Thus, the Department and NYSTA expect that the personnel proposed will be available at the start of the terms of the respective Agreements. As a result, any personnel proposed by the designated Provider that does not perform the work required for their title under the Agreement for the initial 30 calendar days after the effective date of the Notice to Proceed will, at the Department’s or NYSTA’s discretion, result in a $10,000 charge per personnel title as liquidated damages.

In addition, if at any time during the term of the Agreement a member of the Provider’s Key Personnel needs to be replaced, the Provider shall have 30 calendar days to submit a qualified Candidate (same level of experience and expertise) to the Department or NYSTA for approval. In the event the Provider is unable to provide a qualified Candidate within 30 calendar days, and the Department and/or NYSTA must use in-house staffing, or the Department and/or NYSTA must hire a separate consultant to provide the personnel, the Department or NYSTA will, at its discretion:

- Charge and bill the Provider $100/hour for the use of in-house Department and/or NYSTA personnel, or
- Charge and bill the Provider a 10% administrative fee on top of and in addition to whatever the Department and/or NYSTA is billed by an out-of-house consultant. If, for example, the Department or NYSTA must hire a separate consultant to provide a service at $100/hour, the Department or NYSTA will charge and bill the Provider $110.

The determination that a Candidate is “qualified” is the sole decision of the Department or NYSTA. All such liquidated damages specified above will be billed as an off-set against future Provider invoices.

5.1.7. Experience (13 page maximum)
The qualifications and prior experience of the Provider are of great importance to the Department and NYSTA. Direct, prior experience in installing and managing commercial solar PV facilities generating greater than 1 MW in a highway ROW is highly desirable. In addition, the Provider must be a NYSERDA NY-Sun approved contractor and installer under either the Commercial/Industrial (>200kW) program or the combined (<200kw) and (>200kw) program.

- Provide a list of projects currently in progress and those completed within the last five years which are relevant to this effort. Detail the total number of megawatts of PV as well as the number of sites your firm has constructed, the number of operational PV systems under your firm’s management, types of customers your firm has worked with, system performance for three (3) systems to date (expected vs. actual energy production) that were installed by your firm, and your firm’s experience with respect to designing, installing, financing, owning, operating and maintaining PV systems in a highway ROW.

- Provide number of PV systems that have been financed by you and/or your financing partner. Provide demonstration of capital available to fund the proposed (and future) projects such as a Letter of Financing Commitment or other like financing document. The Department and NYSTA reserve the right to request and receive from the Provider additional material as the Department and NYSTA may deem reasonably necessary to corroborate a Provider’s ability to finance construction, design, installation, operation and maintenance of the contemplated PV systems.

- Provide Firm References on Attachment 8 for five customers who worked with your firm during the installation phase. References should clearly indicate the size of the system, date of completion, and the role played by your firm.

- Provide Firm References on Attachment 8 for five customers who are currently receiving operations and maintenance service from your firm.

5.1.8. Performance Bond

Submit a surety bond in the amount specified in Section 4.4.6 of this RFP for the faithful performance of the Agreement terms as detailed herein. Surety bond will not be included in the page limit.

5.2. Part II: Cost and Administrative Submittal

Part II of the proposal consists of two general sections:

- A Cost Proposal, which shall set forth the price per kWh for performing the work in the scope of services; and

- The Administrative Section, which shall specify the proposer’s acceptance of the terms and conditions contained in the Master Power Purchase Agreement enclosed as Attachment 1 to this solicitation, as well as other administrative items as specified.
The above general sections shall include the following:

5.2.1. Cost Proposal

The Department requires that all cost information be presented using the RFP-provided Microsoft Excel spreadsheets (see Attachment 12, ‘Cost Worksheet) in both a hardcopy Part II response and an electronic copy on CD, securely presented in the Part II response. The accuracy of calculations and formulas in the spreadsheet are the sole responsibility of the Proposer. Attachment 13 contains instructions to guide completion of this form. Should any questions arise pertaining to this form and its instructions, please submit them to the designated Department contact person before the Question & Answer deadline.

In the event of a discrepancy between the hard copy Proposal and the electronic copy, the hard copy submittal will take precedence. In addition, any hard copy submission submitted pursuant to this RFP shall take precedence over any electronic copies submitted as required within this RFP.

When completing the Excel cost worksheets included in Attachment 12, Proposers shall follow these instructions:
1. The costs the proposer provides within the Cost Proposal must include ANY AND ALL one-time and recurring fees, charges, or costs for the duration of the Agreement, including but not limited to:
   a. All direct and indirect costs, all overhead, fees, profit,
   b. Labor, parts, shipping, material and equipment cost;
   c. All net–metering and all other interconnections with utilities, and all upgrades to utility lines or systems necessary to meet the RFP requirements;
   d. Software licensing;
   e. Emergency work;
   f. Maintenance services as specified herein;
   g. Repairs and replacement of major or minor parts as necessary;
   h. Administrative, reporting or other requirements;
   i. Travel costs, parking fees, and any other ancillary fees including permits; licenses, insurance, etc., and
   j. Services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.
2. Terminology used in the cost spreadsheets for products and services must be consistent with the terminology used in the technical portion of the response.
3. All worksheets included in Attachment 12 must be completed in order for the response to be considered complete.
4. **Changes shall not be made to the spreadsheet format or formulas. Proposers shall not attach any additional or qualifying information.**

5.2.2. **Administrative Section**

All signatures on each copy must be an original.

a) **Acceptance of Terms and Conditions**
   Proposers shall complete and submit the “Consultant Information and Certifications Form,” included as Attachment 2 to this RFP, to indicate their acceptance of all of the terms and conditions contained in the Department’s Master Power Purchase Agreement for Bundles 1-4 (Attachment 1) and/or NYSTA’s Master Power Purchase Agreement for Bundles 5-7 (Attachment 1-(A)). Altering this form without the prior expressed written approval of the Department is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. **No exceptions to any of the Master Power Purchase Agreement’s terms and conditions will be entertained by the Department or NYSTA.** Conditional bids will be deemed non-responsive.

b) **Modification Acknowledgement Forms**
   The Proposer shall include a completed Attachment 5: Form AOR, acknowledging receipt of any Modifications issued by the Department.

c) **Non-Collusion Bidding Certification**
   All Proposers shall submit a completed Attachment 6: Non-Collusive Bidding Certificate.

d) **Procurement Lobbying Law**
   There are separate requirements for 1.) the Department and 2.) NYSTA regarding the Procurement Lobbying Law (PLL). The requirements are detailed below:


   Filing the two required forms is mandatory for all Proposers in order to be considered for contract award. These forms are:

   - Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)
2.) NYSTA requirements – All proposers should become familiar with NYSTA’s Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence; refer to Attachment 4: Procurement Lobbying Law Compliance.

Filing the two required forms is mandatory for all Proposers in order to be considered for contract award. These forms are:


Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.

Use Proposal Number C031426 wherever requested in the forms. Please call or e-mail the individual(s) identified as the Designated Contacts in section 1.4 of this RFP if you have any questions regarding how to complete these required forms.

Per the Procurement/Lobbying Law of 2005, any person who wishes to contact the Department or NYSTA regarding this project during the restricted period (i.e. from advertisement through designation), may only contact the persons noted in Section 1.4 to this solicitation.

For additional information, refer to Attachment 4: Procurement Lobbying Law Compliance.

e) Bundle Preference Form

All Proposers shall complete and submit Attachment 10: Bundle Preference Form indicating the order in which they wish to be awarded contracts. If a Provider has the top-ranked proposals in more than three Bundles, then the
order indicated on the Preference Form will be used to determine which Bundles the Provider shall be awarded.

f) Certifications
   • Submission of proof of NYSERDA NY-Sun certification under either the Commercial/Industrial (>200kW) program or the combined (<200kw) and (>200kw) program.
   • Proof of having applied for or obtained the appropriate NY-SUN incentive.

g) Financial Statements
   Provide copies of the Provider’s audited financial statements for the past three years. If a Provider does not have audited financial statements, Provider should submit any financial statements that it does have (e.g. lines of credit, statements compiled by an outside accounting firm, etc.) and any other information Provider feels is pertinent in establishing the financial stability of its business/organization. If a Provider has questions about what evidence of the Provider’s financial stability will be acceptable to the Department/NYSTA, the Provider should communicate with the designated contact person.
6. CRITERIA FOR EVALUATION OF PROPOSALS

6.1. General

Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness (reference Section 1.3). Those which do not shall be deemed non-responsive and shall be removed from further consideration.

Proposals shall then be evaluated by the Department using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations; however, price is a significant factor in the Department’s evaluation of proposals. Technical proposals will be scored based on the information provided under Section 5.1 in accordance with the pre-established criteria listed in Section 6.3. The cost portion of Section 5.2 will be point scored in accordance with the pre-established criteria listed in Section 6.4.

Technical and Management Proposal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management personnel. Committee members will score each proposal individually and then meet as a group to discuss the proposals. Evaluators will be allowed to revise scores on the basis of the committee discussions. Only proposals determined to be technically acceptable and susceptible for contract award will be considered further and have their cost proposal included in the selection process.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their proposal through written clarifications. If written clarifications are required to complete the technical evaluation of proposals, evaluators will be allowed to revise their technical scores based on this additional information. Furthermore, the Department reserves the right to ask clarifying questions regarding each cost proposal (Part II).

The Department reserves the right to request best and final offers from firms that are determined to be susceptible for contract award.

An award shall be made to the Proposer whose proposal receives the highest total score after considering all technical and cost/price evaluation factors. Should the Department opt to request best and final offers, it reserves the right to re-score technical and cost proposals. Further, the Department reserves the right to re-score technical and cost proposals should a firm withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring.

Note: In the event two or more proposals are found to be “substantially equivalent”, the Department and NYSTA reserves the right to determine the award recipient under the terms of State Finance Law §163 (10)(a).
At the conclusion of the evaluation process, an announcement of the Department’s designation(s) will be posted on the Department web site. All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing. Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, or commit the Department or NYSTA to pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, neither the Department nor NYSTA shall have any obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department or NYSTA, as applicable is approved and executed by the vendor and all necessary State officials. Notwithstanding anything to the contrary contained in this RFP NYSTA Board authorization will be necessary for the Thruway Bundle agreements.

6.2. Pre-Screening of Proposals

The Department will conduct a pre-screening of each proposal to ensure all contents have been submitted in accordance with the minimum proposal responsiveness requirements as specified in the RFP. RFP specifications include that it is the Department’s sole discretionary determination as to whether a proposal is complete (reference “Minimum RFP Responsiveness” Section 1.3). Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness section may be deemed non-responsive by the Department and may not be considered further.

Failure by a Proposer to meet the following requirements will result in the proposal being deemed non-responsive and its Technical and Cost submission will not be evaluated.

**NYSERDA NY-Sun Requirements**

Verify that Provider has submitted:

1. Proof of NYSERDA NY-Sun certification under either the Commercial/Industrial (>200kW) program or the combined (<200kw) and (>200kw) program; and
2. Proof of having applied for or obtained the appropriate NY-SUN incentive

**Production Goal**

Verify that the Production Levels stated in Appendix 1 for each of the Load Zones within the Bundle(s) being bid on is met.

**Performance Bond**

Verify that Provider has supplied a Performance Bond that meets the specifications in Section 4.3.6.
6.3. Technical and Management

The technical and management proposal will be scored and will represent 50% of the total score for a proposal. The major evaluation criteria are listed in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance.

A proposal to be deemed technically acceptable and susceptible to contract award must receive an average raw committee score of 25.00 points or higher out of a total possible of 50 points.

1. Experience (10 Points)
   a. Quality, extent and relevance of current and prior experience of the firm installing commercial solar facilities greater than 1MW in previous 5 years.
   b. Quality, extent and relevance of current and prior experience of the firm managing solar facilities in the past five years.
   c. Quality, extent and relevance of current and prior experience of the firm installing solar facilities in a highway ROW.
   d. Demonstrated ability to finance the design, construction, installation, operation, and maintenance of the contemplated PV systems.

2. Project Management & Coordination (10 Points)
   a. Degree to which proposal reflects understanding of the Project and its general approach to Facility design, construction, commissioning, electric grid connection, operation, maintenance, and decommissioning.
   b. Demonstrates the Proposer’s capability to control and coordinate with subcontractors, third party activities, and other resources, including a description of the work flow
   c. The Proposer’s plan for communicating with the Department and/or NYSTA, its agents, and other state and local agencies and the public;
   d. Quality, extent and relevance of the key risks identified and mitigation measures used to minimize the impact form these issues.

3. Project Schedule (10 Points)
   a. Completeness and reasonableness of Gantt schedule.
   b. Completeness and reasonableness of the Sample Solar Facility schedule.
   c. Degree to which the narrative supports the schedule development, including methods for meeting completion milestones and flexibility within the schedule, the approach to rescheduling activities to achieve schedule recovery objectives and how these objectives will be enforced, and the approach to integrating subcontractor, permitting, and utility company activities into the project schedule

4. Technical Approach (9 Points)
a. Quality of technical approach for the Sample PV Solar Facility detailed in Appendix 2, including a description of how the requirements for the Sample Solar Facility as described in section 5.1.4.2 are met.
b. Quality of the technical approach regarding Environmental, Safety, Utility Coordination, PV Racking, and General Photovoltaic requirements.
c. Quality of the plan for Operation and Maintenance.
d. Quality of the plan for the Monitoring and Data Acquisition System.
e. Quality of the plan for Decommissioning.

5. Organization and Staffing (8 Points)
   a. Quality of the Organization Chart, presenting a clear picture of the roles and reporting relationships between the Key Personnel.
   b. Quality of plan for phasing key personnel into project.
   c. Quality, extent and relevance of experience, education and training of Key Personnel.

6. Quality of Proposal (3 Points)
   d. Organization and quality of proposal submittal which reflects project needs and understanding.

6.4. Cost
The cost portion of the cost and contract proposal will be point scored and will represent 50% of the total score for a proposal. The price per kWh bid by the Provider will be evaluated using a regression model taking into account both the base price and the Change Order values bid. The Provider with the lowest price in each Bundle will be awarded the maximum number of points available. Other vendors will be given a prorated number of points based on the following formula:

\[
\text{Score} = \text{Low Price for Bundle} \times \frac{\text{Points Available}}{\text{Provider Price for Bundle}}
\]
7. ADMINISTRATIVE SPECIFICATIONS

7.1. Proposal Submission

The proposal shall be signed by an official authorized to bind the offeror.

Proposers shall submit 10 copies of Part I and four copies of Part II.

Your proposal must be received by the Department by Noon on May 13, 2016. The proposal must be addressed to:

Peter Russell
NYS Department of Transportation
50 Wolf Road, 6th floor
Albany, New York 12232
Attention: # C031426 Solar Highway Initiative RFP

7.2. State’s Rights

All proposals, upon submission to the Department, shall become its property for use as deemed appropriate. By submitting a proposal, the Provider covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. With regard to proposal submitted, the Department asserts the following prerogatives with regard to proposals submitted:

a. To accept or reject any or all proposals;

b. To correct any arithmetic errors in any or all proposals;

c. To change the proposal’s due date upon appropriate notification to interested firms;

d. To eliminate any mandatory RFP requirement or specification unmet by all offerors in the evaluation of received proposals;

e. To adopt any or all of a successful offeror’s proposal;

f. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state or NYSTA to do so;

g. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;

h. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;

i. To eliminate any requirement that is found to be unmet by all offerors;

j. To make inquiries, by means it may choose, into the offeror’s background or statements made in the proposal to determine the truth and accuracy of all statements made therein;
k. To select and award the Agreement to the offeror whose proposal represents the best value to the Department and NYSTA;

l. Should the Department determine that the negotiations with the selected offeror will not result in an Agreement, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;

m. Any Agreement entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such Agreement to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this Agreement may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

7.3. Consultant Responsibility when Proposing Former NYSDOT or NYSTA Employees

It is the consultant’s responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual’s responsibility to comply with the Public Officer’s Law.

The following procedure applies if either of the following criteria is met.

- It is two years or less between the date that the individual is proposed and the individual’s date of separation from the State or NYSTA.

- The individual proposed has worked on the project while employed by the Department or NYSTA regardless of how long ago they left the Department or NYSTA.

Procedure

- Before the consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (http://www.jcope.ny.gov/) that approves their participation in the project as they are proposed.

- A copy of this opinion must be on file in the consultant’s office and available for review by NYSDOT or NYSTA, as applicable if requested.

- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.
7.4. Method of Payment

Payment for services provided under the agreement resulting from this RFP will be fixed for the duration of the agreement unless changed by an executed supplemental agreement. The Consultant will designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the Agreement.

Requests for payments shall be made by the designated consultant on standard payment request forms (FIN 421). Use proper procedure for billing each deliverable: Submit a draft billing to the Department’s assigned Project Manager via the following sample electronic billing: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions. The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS FIN 421 payment request forms.

7.5. Information for the Selected Consultant

7.5.1. Vendor Responsibility

In accordance with the NYS Finance Law, the Department will only make contract award to vendors that are determined to be responsive and responsible. All selected offerors of Agreements will be required to submit a Vendor Responsibility Questionnaire through the Office of the State Comptroller website via http://www.osc.state.ny.us/vendrep/index.htm before finalization of an Agreement. Offerors must certify the accuracy of the information they provide in the questionnaire. In addition, any subconsultant providing services valued at $100,000 or more under the Department Master Power Purchase Agreement will be required to submit a Vendor Responsibility Questionnaire through the Office of the State Comptroller website and any subconsultant providing services valued at $50,000 or more under the NYSTA Master Power Purchase Agreement will be required to submit a Vendor Responsibility Questionnaire through the Office of the State Comptroller website.

7.5.2. Registration with NYSDOT

Consultant firms entering into Agreements with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb). All consultant firms entering into Non-Architectural/Non-Engineering agreements are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to: legal firm name; Federal Identification Number (FEIN); ownership type; DBE, MBE and/or WBE status;
firm principals; and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement.


Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb Administrator by email at css@dot.state.ny.us or by telephone at 518-457-2600.

7.5.3. Registration with Statewide Financial System (SFS)

Should this solicitation lead to a designation, the Prime consultants will be required to electronically register with the Statewide Financial System (SFS) - if not already registered. NYSDOT and/or NYSTA will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT and/or NYSTA is doing business with.

7.5.4. Insurance Requirements of this Project

Please carefully read the terms and conditions of the Agreement appended as Attachment 1 and 1-(A) of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Section 4.4.7 of this RFP. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

7.5.5. Contractor Tax Certification

Per Section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of $100,000 for the sale of goods or services must complete and submit Forms ST-220-TD and ST-220-CA (Contractor Certifications) prior to negotiation of a contract with State agencies or NYSTA. You should make yourself familiar with these forms by visiting the following Web sites:
7.5.6. Wage And Hours Provisions.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Provider'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, Provider 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 Provider 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 the State of any State approved sums due and owing for work done upon the project.

7.6. Inquiries and Information

All questions concerning this solicitation must be directed only to the individual specified in Section 1.4 of this RFP. The last date to submit questions for this solicitation is stated in Section 7.8 below.

Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the Department web site.

7.7. Protest Procedure

The Department has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by the Department. The complete procedure can be accessed via: https://www.dot.ny.gov/main/business-center/consultants/general-info

7.8. Tentative Schedule of Key Events

The Department will attempt to adhere to the following tentative schedule with regard to progressing this solicitation:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Release Date:</td>
<td>April 15, 2016</td>
</tr>
<tr>
<td>Question Submittal Deadline:</td>
<td>May 3, 2016</td>
</tr>
<tr>
<td>Proposals Due:</td>
<td>May 13, 2016, 12 noon Eastern Time</td>
</tr>
<tr>
<td>Recommendation &amp; Designation:</td>
<td>Approximately mid June, 2016</td>
</tr>
<tr>
<td>Agreement Finalizing:</td>
<td>Two weeks</td>
</tr>
<tr>
<td>Agreement Award:</td>
<td>4–6 weeks after completion of Agreement finalizing</td>
</tr>
</tbody>
</table>
8. ATTACHMENTS

8.1. ATTACHMENT 1: NYSDOT MASTER POWER PURCHASE AGREEMENT
This Agreement (“Agreement” as further defined in Section 1.1) is made and entered into as of this XX day of insert month, 201X (“Effective Date”) and is witnessed and acknowledged by insert awarded bidder with its principal office at insert full address (hereinafter “Provider”) and the New York State Department of Transportation, (hereinafter the “Department” or “Purchaser”), existing under the laws of the State of New York and having its principal place of business located at 50 Wolf Road, Albany, New York, 12232 as evidenced by their signature on the last page of this document. Purchaser and Provider are referred to herein individually as a “Party” and collectively as the “Parties”

WITNESSETH:

WHEREAS, Article 9 of New York State Energy Law Provides authority for the Department to obtain long-term energy and cost savings by facilitating prompt incorporation of energy conservation improvements or energy production equipment, or both, in connection with buildings or facilities owned, operated or under the supervision of the Department, in cooperation with providers of such services and associated materials from the private sector; and,

WHEREAS, Such arrangements for energy conservation improvements or energy production equipment are intended to improve and protect the health, safety, security, and welfare of the people of the state by promoting energy conservation and independence, developing alternate sources of energy, and fostering business activity; and,

WHEREAS, Purchaser issued a Request for Proposals #C031426- Solar Highway Initiative Services for NYSDOT and NYSTA - for the provision of Solar Energy Services (as hereafter defined), (the “RFP”), which is attached hereto and made a part hereof as Exhibit _____; and,

WHEREAS, such Solar Energy Services include the installation and operation of solar photovoltaic systems and the ancillary equipment associated therewith (“the Systems”) upon certain Premises (as hereafter defined) for the purpose of providing Solar Energy Services; and,

WHEREAS, The RFP solicited Proposals for such Solar Energy Services at six different groupings of potential Installation Sites (“Bundles”)

WHEREAS, Provider has agreed to provide a System and submitted a Proposal for Bundle#__________ dated insert RFP deadline date (the “Proposal”) which is attached hereto and made a part hereof as Exhibit ____;

Purchaser desires that Provider provide such Solar Energy Services via such System, and Provider is willing to do the same;
NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Production” means the amount of Energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” means this Master Power Purchase Agreement (PPA), including the General Conditions, Performance Guarantee Agreements (PGA), and the Addendums, Appendices, Attachments, Exhibits and Schedules attached hereto.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented 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) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law, or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has
continued undefended, or any order, judgment or decree approving or ordering any of the
foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or a Federal Reserve Bank holiday.

“Bundle” means any one of seven groupings of preselected potential Installation Sites (as
defined below), on New York State Department of Transportation-owned or New York State
Thruway Authority-owned property across the state, eligible to be awarded in any such seven
groupings under RFP #C031426 via this Agreement, as further detailed in Appendix 1.

“Commercial Operation Date” has the meaning set forth in Section 3.3(b).

“Commercial Operation - Addendum for Installation Sites” shall mean the contract mechanism
for establishing the Commercial Operation date for each of the various locations for potential
System installations, and to bring such particular installation site under the terms of the Master
Power Purchase Agreement and the Performance Guarantee Agreement.

“Confidential Information” has the meaning set forth in Section 15.1.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations
related to the Premises as may be set forth in a lease, if applicable, or by any association or other
organization, having the authority to impose restrictions.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which the Agreement terminates other than by
reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider under the
circumstances described in Section 2.2, Section 4.3(a) or Section 11.2.

“Energy” means electric energy measured in kilowatt-hours (“kWh”) or in megawatt-hours
(“MWh”).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets,
and allowances, howsoever entitled, attributable to the System, the production of electrical
energy from the System and its displacement of conventional energy generation, including
(a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx),
nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions
of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons,
sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United
Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the
actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and
(c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

“Environmental Incentives” means any and all credits, rebates, subsidies, payments or other incentives that relate to self–generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means this Master Power Purchase Agreement, excluding the Addendums, Exhibits and Schedules hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.
“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Persons” means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

“Initial Term” has the meaning set forth in Section 2.1.

“Installation Work” means the site preparation, design, construction, placement, erection and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Installation Site” shall mean any of the various locations for potential System installation on Purchaser-owned or Purchaser-controlled lands, buildings or other facilities as described in Schedule 1.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kilowatt-hour (kWh) set forth in Schedule 2 payable for the services to be provided hereunder including Energy, and heat.

“Liens” has the meaning set forth in Section 7.1(e).

“Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) with such bank having a credit rating of at least A- from Standard & Poor’s Rating Group and A3 from Moody’s Investor Service, and otherwise being in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all reasonable attorneys’ fees and other reasonable costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Option Price” has the meaning set forth in Section 2.3.

“Party” or “Parties” has the meaning set forth in the preamble hereof.
“Person” means an individual, partnership, corporation, limited-liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Premises” means the premises at each Installation Site as described in Schedule 1. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Purchase Date” means the day that occurs on the date that is the sixth (6th) anniversary, the tenth (10th) anniversary, and the fifteenth (15th) anniversary of the Commercial Operation Date, provided that if such day is not a Business Day, the Purchase Date shall be the next Business Day to occur after such day.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Renewal Term” has the meaning set forth in Section 2.1.

“Representative” has the meaning set forth in Section 15.1.

“Security Agreement” has the meaning set forth in Section 8.2.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) or (b) the maximum rate allowed by Applicable Law.

“System Operations” means the Provider’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

“Tax Credits” means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the installation, ownership, or production of energy from the System.

“Term” has the meaning set forth in Section 2.1.

“Transfer Time” has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement
that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

1.3 Entire Agreement and Order of Precedence. This Agreement forms the entire agreement between the parties and supersedes all written or oral, prior or contemporaneous communications between the parties relating to the subject matter of this Agreement. In case of a conflict or discrepancy among the elements of this Agreement, such conflict or inconsistency shall be resolved by giving precedence to the document elements in the following order: (1) Exhibits A and A-1; (2) the General Conditions, (3) the Schedules, (4) Exhibit B (5) Addendums, (6) the RFP, (7) the Proposal, (8) All other Exhibits, and (9) Attachment and Appendices.

2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for fifteen (15) years from the Commercial Operations Date (“Initial Term”), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed at the Department’s sole discretion, under the same terms and conditions, for up to five additional two (2) year terms (a “Renewal Term”), subject to approval by the NY State Comptroller. The Initial Term and the subsequent Renewal Terms, if any, are referred to collectively as the “Term.”

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days’ prior written notice. In such event, except as provided herein Purchaser shall pay, as liquidated damages, an amount equal to (i) the Early Termination Fee set forth on Schedule 3, (ii) any and all other amounts previously owed to Provider under this Agreement, and (iii) the cost of removing the System. Upon such payment, Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser’s payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically without further liability to either Party with respect to the Agreement.

2.3 Purchase Option. On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the “Option Price”) equal to the Fair Market Value of the System as of the Purchase Date. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser’s intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of
receipt of Purchaser’s notice, Provider shall specify the Fair Market Value of the System as of
the Purchase Date as determined by Provider in a commercially reasonable manner. Purchaser
shall then have a period of thirty (30) days after notification of the Option Price to confirm or
retract its decision to exercise the purchase option or; if, in Purchaser’s sole opinion, the Option
Price stated by Provider is not equal to the Fair Market Value of the System, to dispute the
determination of the Fair Market Value of the System. In the event Purchaser confirms its
exercise of the purchase option in writing to Provider (whether before or after any determination
of the Fair Market Value determined pursuant to Section 2.4), (i) the Parties shall promptly
execute all documents necessary to (A) cause title to the System to pass to Purchaser on the
Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System
to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such
payment to be made in accordance with any previous written instructions delivered to Purchaser
by Provider or Provider’s Financing Party, as applicable, for payments under the Agreement.
Upon execution of the documents and payment of the Option Price, in each case as described in
the preceding sentence, the Agreement shall terminate automatically without further liability to
either Party with respect to the Agreement. For the avoidance of doubt, payment of the Option
Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the
event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the
provisions of the Agreement shall remain applicable as if the Purchaser had not exercised any
option to purchase the System.

2.4 Determination of Fair Market Value. If the Purchaser believes the Option Price indicated by
Provider in accordance with Section 2.3 is greater than the then-current Fair Market Value (as
determined by Provider in a commercially reasonable manner) and Purchaser disputes such
stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the
Parties shall mutually select an independent appraiser with experience and expertise in the
Photovoltaic Solar Power industry. Such appraiser shall subject to applicable Internal Revenue
Service processes and requirements act in a commercially reasonable manner and in good faith to
determine the Fair Market Value of the System as of the applicable Purchase Date and shall set
forth such determination in a written opinion delivered to the Parties. The valuation made by the
appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of
the appraisal shall be borne by Purchaser if such appraisal results in a value equal to or greater
than the Fair Market Value provided by Provider pursuant to Section 2.3; the costs of the
appraisal shall be borne by Provider if such appraisal results in a value ten percent (10%) or
more lower than the Option Price provided by Provider pursuant to Section 2.3; otherwise, the
Parties shall equally share the cost of the appraisal.

2.5 Removal of System at Expiration. Subject to Purchaser’s exercise of its purchase option
under Section 2.3, upon the expiration or earlier termination of the Agreement, Provider shall, at
Provider’s expense, remove all of its tangible property comprising the System from the Premises
on a mutually convenient date but in no case later than one hundred and twenty (120) days after
the Expiration Date. The Premises shall be returned to its original condition except for ordinary
wear and tear. This shall include restoration of the grounds of the premises to an agreed-upon natural vegetative state, and restoration of such grounds to a comparable land use. For purposes of Provider’s removal of the System, Purchaser’s covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed-upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Provider’s cost.

2.6 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) the Provider determines that the Premises, as is, is insufficient to accommodate the System;

(b) there exist unforeseeable site conditions (including environmental conditions) or installation requirements that were not known as of the Effective Date and that could reasonably be expected to very significantly increase the cost of Installation Work or would adversely and very significantly affect the electricity production from the System as designed;

(c) there is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors;

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it;

(e) Provider has not received a fully executed (i) license substantially in the form of Exhibit B from the owner of the Premises, and (ii) a release or acknowledgement from any mortgagee of the Premise, if required by Provider’s Financing Party, to establish the priority of its security interest in the System, and (iii) such other documentation as may be reasonably requested by Provider to evidence Purchaser’s ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term;

(f) there has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises;

(g) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to Energy generated by the System under a net-metering
arrangement mutually agreeable to the Parties, subject to applicable law and the utility’s requirements; or

(h) Purchaser has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

3. PURCHASER RIGHT TO REVIEW CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with the requirements of the RFP, Applicable Law, and consistent with generally-accepted utility practices. Provider shall also be responsible for arranging and entering into all necessary agreements as well as bearing all the costs for: all site preparation, all net-metering and all other interconnections with utilities, and all upgrades to utility lines or systems necessary to meet the requirements of this Agreement and the RFP. Purchaser shall have the right to review all construction and installation plans and designs, including engineering evaluations of the impact of the System.

(a) Prior to commencing any work at each installation site, the Provider must submit and receive approval for each installation site via the following NYSDOT-issued permits:

(1) Permit for Use of State-Owned Property - form ROW 75 (“The Use & Occupancy Permit”) as shown in Attachment 8.12.1, which documents Purchaser’s grant of a limited license (See Section 7(d) to the Provider and approval for the Provider to access and utilize the lands at the indicated Premises and to place, construct and maintain facilities thereon; AND,

(2) Highway Work Permit For Utility - form PERM 32 (the “Highway Work Permit”) as shown in Attachment 8.12.2, which documents Purchaser’s approval of the construction and installation plans at the indicated Premises. Provider must perform all installation, operation and maintenance work for the System pursuant to the terms and conditions of the applicable Highway Work Permit.

(3) Annual Maintenance Permit – also submitted via the above-mentioned form PERM 32, as shown in Attachment 8.12.2, which documents Purchaser’s approval of out-year routine maintenance of the system and installation site grounds by the Provider.

(b) Provider shall perform the Installation Work at the Premises only between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise agreed to in writing by the owner of the Premises. The Department and NYSTA shall be notified and
approve hours for the Installation Work, 15 days prior to work commencing. Installation Work shall be conducted in a manner that minimizes inconvenience to and interference with the use of the Premises to the maximum extent commercially practical.

3.2 Approvals; Other Permits. Purchaser shall reasonably assist Provider in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable Covenants, Conditions and Restrictions (“CCR’s”), and provided further that Purchaser shall not bear the costs of obtaining same.

3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System at each installation site in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by commercial solar photovoltaic energy system integrators and operators in the United States.

(b) If the results of such testing indicate that the System is capable of generating Energy for at least forty-eight (48) consecutive hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility and any other Governmental Authority from whom approval is required to operate the System, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the “Commercial Operation Date.”

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider’s Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result Purchaser’s negligence or breach of its obligations hereunder shall be reimbursed by Purchaser to the extent of such negligence or breach. Such maintenance shall also include snow and ice removal and cleaning of the PV panels as necessary to meet required performance levels. Purchaser shall not be responsible for any and all repairs, maintenance or replacements necessitated by any theft of, or vandalism to, the System or any of its individual components by any individual or third-party, absent a showing that the vandalism or theft resulted from intentional willful misconduct by the Purchaser’s officers, employees, and/or agents acting within the scope of their employment by the Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System.

4.3 System Disruptions.
(a) Substitution of Premises. If, for reasons other than Provider’s negligence, willful misconduct, or breach of its obligations hereunder or as otherwise provided for in this Agreement, Purchaser must revoke the permit for any of the Premises at any Installation Site whereby the Provider no longer has sufficient access rights necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises for such Installation Site in a location with similar capability to accommodate the System, or (ii) terminate the Agreement for the Premises located at such Installation Site, pursuant to Section 2.2. In connection with such substitution, Purchaser and Provider shall amend this Agreement to specify the substitute premises. Purchaser shall also provide any new owner, or mortgagee any consents or releases required by Provider’s Financing Party in connection with the substitute premises. If Purchaser is unable to obtain such consents and releases for a substitute premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all reasonable costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises. Provider shall remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser’s rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, at the Purchaser’s expense, the Premises shall be returned to its original condition, except for ordinary wear and tear. This shall include restoration of the grounds of the Premises to an agreed-upon natural vegetative state, and restoration of such grounds to a comparable land use. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Services as if Provider was capable of operating the System during any transfer or installation time period (the “Transfer Time”). For the purpose of calculating Services Payments that would have otherwise been due that would have been generated during such Transfer Time, Services shall be deemed to have been produced during the Transfer Time at the average rate over the preceding twelve (12) months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Transfer Time.

(b) System Disruptions. In the event that (1) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly, significant alteration or movement of the System, or (2) any act or omission of Purchaser or Purchaser’s employees, Affiliates, or agents (collectively, a “Purchaser Act”) results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble, partially disassemble, or reduce the size or capacity of the system by less than twenty percent (20%) or move the System and (ii) continue to make all payments for the Services during such period of System disruption (the “Disruption Period”) as if Provider was capable of operating the
System during such Disruption Period, and. For the purpose of calculating Services Payments that would otherwise have been due for such Disruption Period, Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Disruption Period.

5. DELIVERY OF SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100%) of the Energy generated by the System and delivered to the Purchaser during each relevant month of the Term at the kWh Rate specified in Schedule 2.

The Energy delivered by Provider to Purchaser hereunder shall be referred to as “Services.”

5.2 Estimated Annual Production. The annual estimate of Energy generation with respect to the System for any given year as determined pursuant to this Section shall be the “Estimated Annual Production.” The Estimated Annual Production for each year of the Term is set as forth in Schedule 4.

5.3 Environmental Incentives. Purchaser is the owner of all Environmental Attributes. Provider is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser’s purchase of electricity under this Agreement does not include, Environmental Incentives or the right to any Tax Credits arising from the Provider’s ownership and operation of the System, all of which shall be retained by Provider. Purchaser shall cooperate with Provider in obtaining, securing and transferring all Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Provider. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall promptly pay such amounts over to Provider.

5.4 Title to System. Subject to Purchaser’s exercise of its purchase option under Section 2.3, throughout the Term, Provider or Provider’s Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider’s Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider’s request, a disclaimer or release from such lien holder.
6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment for the Services provided at each installation site during each month in an amount equal to the Energy generated by the System and delivered to the Purchaser in such month, multiplied by the applicable kWh Rate for the installation site as stated in Schedule 2 for the applicable contract year in which such month occurs (“Services Payment”).

In the event that Purchaser is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser shall terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an “Invoice Date”), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Services Payment in respect of the immediately preceding month. The Invoice shall be itemized by installed system and shall include the meter number for each system, the kWh Rate being charged for the system, and state the kWh generated by the system and delivered to the Purchaser during the billing cycle. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder on all properly submitted invoices within thirty (30) days after the date of the applicable Invoice Date in accordance with NYS Finance Law Article XI-A.

6.4 Disputed Payments. If a bona fide dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, provided that Purchaser shall not be required to pay the disputed amounts owed hereunder until such dispute has been resolved by the Parties.

7. GENERAL COVENANTS.

7.1 Provider’s Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (i) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (ii) immediately notify Purchaser it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.
(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Services at a commercially-reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured in order to enable Provider to perform such obligations.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Services, and System Operations and shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party’s security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics’, labor or materialman’s lien), charge, security interest, encumbrance or claim of any nature (“Liens”) on or with respect to the Premises or any interest therein, arising from Provider’s performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys’ fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2 Purchaser’s Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.

(b) Liens. Other than as provided for in this Agreement, Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the Purchaser or its officers or employees when acting within the course and scope of their employment.

(c) Consents and Approvals. Purchaser or Provider shall ensure that any authorizations required of Purchaser or Provider under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall reasonably cooperate with Provider, at Provider’s request, to obtain such approvals, permits, rebates or other financial incentives.
(d) Access to Premises, Grant of License. Purchaser shall grant to Provider a license (the “License”) for each approved installation site via a Use and Occupancy Permit ROW 75 form as shown in Attachment 8.12.1. Each such License commencing on the Effective Date and, subject to Purchaser’s right to revoke the License as described herein, continuing until the date that is one hundred and twenty (120 days) after the expiration or termination of this Agreement (the “License Term”), containing all the rights necessary for Provider to use and occupy portions of the Premises (the “License Area”) for the installation, operation and maintenance of the System pursuant to the terms and conditions of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, and access to electrical panels and conduits to interconnect or disconnect the System with the Premises’ electrical wiring. During the License Term Purchaser shall ensure that Provider’s rights under the License and Provider’s access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. Regardless of whether Purchaser is owner of the Premises or leases the Premises from a landlord, Purchaser hereby covenants that (i) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (ii) neither Purchaser nor Purchaser’s landlord will interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, that Purchaser and Purchaser’s landlord shall at all times have access to and the right to observe the Installation Work or System removal. Notwithstanding anything to the contrary in this Agreement, Purchaser may, at any time during the Term, upon 60 days’ prior written notice to Provider, revoke the License, provided that any such revocation of the License, except for a revocation for a Provider Default, or for Force Majeure, shall act as an early termination of this Agreement pursuant to Section 2.2.

(e) Temporary staging/storage space during installation or removal. Purchaser shall use commercially reasonable efforts to provide for sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) Insolation. Purchaser understands that unobstructed access to sunlight (“Insolation”) is essential to Provider’s performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System’s Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Provider immediately and shall cooperate with Provider in preserving the System’s existing Insolation levels. If however, Purchaser’s operational needs cannot be met in any other reasonably practicable manner, and Purchaser must move forward with constructing a structure that could interfere with Provider’s Insolation levels at a particular installation site, then the following shall apply:
(i) If the impact is a reduction of one percent (1%) or less to the annual production of the System affected, no compensation shall be due the Provider.

(ii) If the impact is a reduction of more than one percent (1%), but less than twenty five percent (25%) to the annual production of a System, then Provider may make a request for an equitable energy price adjustment to the kWh price to account for lost revenue. Purchaser shall have 90 days in which to accept or reject such energy price adjustment. If rejected, the parties shall have a 30 day period to negotiate in good faith the basis and price of the energy price adjustment. Within 10 days after the expiration of such 30-day period the Purchaser shall either accept or decline the energy price adjustment. If Purchaser declines, or fails to respond within such 10 day-period, then Provider may elect to treat such declination as a partial termination of the System at that particular installation site, (using the same method used to calculate a termination payment under Section 2.2 above on a prorated basis) after taking into account the nature and location of the structure and the impact on Insolation, and the year in which the structure is installed.

(iii) If the impact is a reduction of more than twenty five percent (25%) to the annual production of a System, the Purchaser shall have 90 days in which to offer a mutually-agreeable substitute premises for such impacted Installation Site in accordance with Section 4.3. If Purchaser does not offer such Substitute Premises, or fails to respond within such 90-day period, then Provider may elect to treat such declination as a termination of the System at that particular installation site, (using the same method used to calculate a termination payment under Section 2.2 above) after taking into account the nature and location of the structure and the impact on Insolation, and the year in which the structure is installed.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement and shall maintain such right and authority throughout the Term;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors’ rights generally;
(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to materially adversely affect its ability to perform its obligations hereunder or carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or, in the case of Provider, any of its Affiliates is a party or by which it or, in the case of Provider, any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the “Security Interest”) in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) to Purchaser’s knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises;

(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider’s Financing Party’s Security Interest therein;

(c) to Purchaser’s knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement. Any Financing Party shall be an intended third party of this Section 8.2.

9. SURCHARGES. Purchaser shall either pay or reimburse Provider for surcharges assessed on the generation, sale, delivery or consumption of electric energy produced by the System; provided, however, Purchaser will not be required to pay or reimburse Provider for any surcharges during periods when Provider fails to deliver electric energy to Purchaser due to the action or omission of Provider. “Surcharges” means any, generation, use, consumption, excise, transaction, regulatory fees, surcharges or other similar charges; but shall not include any occupation, franchise or privilege taxes, fees or charges assessed by reason of the Provider’s equipment and facilities being present on Purchaser’s property. Also, for purposes of this Section 9, “Surcharges” shall not include any income taxes or similar taxes imposed on Provider’s revenues due to the sale of energy under this Agreement, which shall be Provider’s responsibility; nor shall “Surcharges” include any sales or real property taxes, it being recognized that Purchaser is a governmental entity exempt from payment for same.
10. FORCE MAJEURE.

10.1 Definition. “Force Majeure Event” means includes, but is not limited to any act or event that prevents the affected Party from substantially performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (provided that the claiming Party shall not be required to suffer prejudice or use commercially unreasonable measures to remedy a Force Majeure event). Force Majeure Events shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; severe windstorms; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, and failure of equipment not utilized by Provider or under its control. A Force Majeure Event shall not be based on the economic hardship or financial condition of either Party. Force Majeure shall not be based on (i) Purchaser’s inability economically to use or resell the Services purchased hereunder; or (ii) the loss or failure of Provider’s supply.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall: (i) promptly notify the other Party in writing of the existence of, and details regarding, the Force Majeure Event; (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has significantly affected a Party’s performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party whose obligations are not directly affected by Force Majeure shall be entitled to terminate the Agreement upon ninety (90) days’ prior written notice to the affected Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.
MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
BUNDLE #________

10.4 Removal of System. Upon any termination of the Agreement pursuant to this Section 10, Provider will remove the System pursuant to Section 2.5 hereof at the expense of the Party whose performance is not directly affected by the Force Majeure event.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a “Provider Default”): (i) A Bankruptcy Event shall have occurred with respect to Provider; (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within ten (10) Business Days from receipt of notice from Purchaser of such past due amount; (iii) Provider breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.1 as a separate Provider Default) and such breach or failure is not cured within thirty (30) days after Purchaser’s written notice of such breach or failure; (iv) any representation or warranty made in this Agreement by Provider is not true and complete in any material respect when given or at any time during the Term; (v) INTENTIONALLY OMITTED; and (vi) Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Provider under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Purchaser.

(b) Purchaser’s Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and shall be entitled to liquidated damages in an amount equal to the positive difference, if any, of the Fair Market Value of the Services anticipated to be provided over the remaining Term, as determined by Purchaser in a commercially reasonable manner, and the Services Payments associated with such Services (“Termination Amount”). Upon termination of this Agreement in accordance with this Section, Purchaser shall promptly calculate the Termination Amount, if any, owed by Provider and submit an invoice to Provider for such amount. Provider shall pay such Termination Amount within ten (10) Business Days after receipt of such invoice in accordance with the payment directions specified by Purchaser (“Termination Amount Payment Date”). In the event Provider, in good faith, disputes Purchaser’s calculation of the Termination Amount, the Parties shall then act in good faith to resolve any such dispute, including but not limited to utilizing a procedure substantially similar to that provided for in Section 2.4 in the event that the Parties are unable to resolve such dispute; provided however that if through such procedures the Termination Amount is determined to be equal to or greater than that calculated by Purchaser, Provider shall pay all costs associated with such procedure, or otherwise the Parties shall share such costs equally.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

11.2 Purchaser Defaults and Provider’s Remedies.
(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a “Purchaser Default”): (i) A Bankruptcy Event shall have occurred with respect to Purchaser; (ii) Purchaser breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.2 as a separate Purchaser Default) and such breach or failure is not cured within thirty (30) days after Provider’s written notice of such breach or failure; (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount; (iv) any representation or warranty made in this Agreement by Purchaser is not true and complete in any material respect when given or at any time during the Term; and (v) Purchaser consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Purchaser under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Provider.

(b) Provider’s Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, and Provider shall be entitled to receive from Purchaser, as liquidated damages, an amount equal to the sum of (i) the Early Termination Fee pursuant to Section 2.2, (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof at the expense of the defaulting Party.

12. LIMITATIONS OF LIABILITY.

12.1 UNLESS EXPRESSLY HEREBIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HERUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HERUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTWITHSTANDING THE FOREGOING, PROVIDER SHALL REMAIN LIABLE, WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL
13. ASSIGNMENT.

13.1 Assignment by Purchaser. Purchaser may assign or transfer this Agreement to any other New York State agency, authority or public benefit corporation or public corporation that is the successor in interest of the NYSDOT and that is backed by the full faith and credit of the State of New York without the Provider’s prior consent, provided that (a) Purchaser shall promptly notify Provider of any such assignment in writing, (b) such assignee shall assume all of Purchaser’s obligations under the Agreement in writing; and (c) such assignment shall in no event compromise the tax treatment of this Agreement or the Provider. Any assignment that does not comply with the foregoing shall be invalid.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 7, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand-delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above if received during normal business hours on a Business Day or otherwise such notice shall be deemed delivered on the next Business Day.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser’s business (“Confidential Information”) to the other or, if in the course of its performance of this Agreement, or if in the course of negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall:

(a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and
(b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement.

Notwithstanding the above, a Party may, with the consent of the other party (such consent not to be unreasonably conditioned, delayed, or withheld), provide such Confidential Information to its officers, directors, members, managers, employees, agents, attorneys, accountants and consultants, Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, “Representatives”), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by its Representatives. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

(a) becomes publicly available other than through the receiving Party or its Representatives;

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) is independently developed by the receiving Party;

(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. The Parties acknowledge that this Agreement is subject to the New York State Freedom of Information Law (“FOIL”) as set forth in Article 6 of the New York State Public Officers Law, and that only Provider’s proprietary information that satisfies the requirements of § 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and the Purchaser shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the Provider that refer to, or that describe
any aspect of, the Agreement; At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser’s prior written authorization.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party is entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

16. INDEMNITY.

16.1 Provider’s Indemnity. Subject to Section 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the “Purchaser Indemnified Parties”) from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following:

(a) any claim by a third party for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider’s negligence or willful misconduct or

(b) any claim by a third party regarding any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations, and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser’s Indemnity. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Purchaser or of its officers or employees when acting within the course and scope of their employment. In accordance with § 9-103(2) of New York State Energy Law, this Agreement shall be deemed executory only to the extent monies are
appropiated and available for the purpose of the contract, and no liability on account herefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

17. INSURANCE.

Provider shall maintain such insurance coverage as required under the RFP, in full force and effect throughout the Term.

18. MISCELLANEOUS.

18.1 Intentionally Omitted.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser and approved by the New York State Attorney General as to form, and by the Office of Comptroller.

18.3 Industry Standards. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Intentionally Omitted

18.5 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.6 Survival. The obligations under Article 16 (Indemnity) or under all other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law other than New York General Obligations Law § 5-1401. The Parties agree that any dispute hereunder will be litigated in a court of competent jurisdiction in New York.

18.8 Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Purchase and Provider, or between either or both of them and any other Party.
18.9 Third-Party Beneficiaries. Except as expressly provided herein to the contrary, this Agreement is intended solely for the benefit of the Parties thereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party thereto.

18.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

18.11 Forward Contract; Service Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. The payment of the Termination Amount or Early Termination Fee made or to be made by one Party to the other Party under this Agreement constitutes a “settlement payment” and/or a “transfer” under the United States Bankruptcy Code. This agreement constitutes a “master netting agreement” and each party is a “master netting agreement participant” within the meaning of the United States Bankruptcy Code. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

18.12 Iran Divestment. By entering into this Agreement, Provider certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York Office of General Services website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf and further certifies that in the performance of this Agreement, it will not utilize any subcontractor that is identified on the Prohibited Entities List. Provider agrees that should it seek to renew or extend this Agreement, it must provide the same certification at the time of renewal or extension. Provider also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before NYSDOT may approve any request for assignment of this Agreement. During the term of the Agreement, should NYSDOT receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, NYSDOT will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Provider in default. NYSDOT reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of this Agreement, and to pursue a responsibility review with Provider should it appear on the Prohibited Entities List hereafter.

18.13 Grounds to Termination for Provider’s Responsibility.
(a) General Responsibility. Provider shall at all times during the Term remain Responsible Provider agrees, if requested by Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(b) Suspension of Work (for Non-Responsibility). The Commissioner of NYSDOT or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time. In the event of such suspension, Provider will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Provider must Contract activity may resume at such time as the Commissioner of NYSDOT or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

(c) Termination (for Non-Responsibility). Upon written notice to Provider, and a reasonable opportunity to be heard with appropriate NYSDOT officials or staff, the Contract may be terminated by Commissioner of NYSDOT or his or her designee at Provider's expense where Provider is determined by the Commissioner of NYSDOT or his or her designee to be Non-Responsible. In such event, the Commissioner of NYSDOT or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

18.14 Non-Appropriation Event

It is the present intention and expectation of the Purchaser that the applicable budgetary entity, within the limits of available funds and revenues will make an appropriation of a sufficient amount to fund Purchaser's obligations hereunder during each fiscal year of the Term; provided however, this declaration of intent shall not be binding upon any future applicable budgetary entity in any future fiscal year, except to the extent of any previously appropriated funds. Purchaser shall use reasonable good-faith efforts to have funds properly budgeted, appropriated, allotted, or otherwise made available for this Agreement (including obtaining legislative and other authorizations for use of such funds) and to satisfy such conditions in a timely manner. All payments made by Purchaser under this Agreement shall constitute currently budgeted expenditures and shall not constitute or give rise to a general obligation debt, an indebtedness, or multiple fiscal-year direct or indirect debt or other financial obligation whatsoever within the meaning of any constitutional or statutory provisions or limitation.

(a) If an appropriation for this Agreement is not made for Purchaser by the applicable budgetary entity for any fiscal year, of Purchaser during the Term (a “Non-Appropriation Event”), Purchaser shall promptly give notice of such Non-Appropriation Event (the “NAE Notice”). Notwithstanding the occurrence of a Non-Appropriation Event or the delivery of the NAE Notice, Purchaser will not interrupt or impair the delivery of Energy or jeopardize Provider’s sale, transfer, or other monetization of tax incentives.

(b) Following receipt by Provider of an NAE Notice, and continuation of the Non-Appropriation Event beyond 180 days, then Provider in its sole discretion: (i) may terminate this Agreement and remove the System. or (ii) may (in its sole discretion) continue to operate the
System and deliver the Energy to Purchaser or to a third party or utility company without payment by Purchaser therefore during the applicable fiscal year (and each fiscal year thereafter until an appropriation is made). Under the circumstances of (ii), other than with respect to the obligation to make payment for energy delivered, all obligations under this Agreement shall remain in full force and effect.

(c) Upon the continuation of the Non-Appropriation Event beyond 180 days, Provider shall give notice to Purchaser within 30 days of Provider’s election among options (i) and (ii) under subsection (b) above. If Provider does not provide such notice to Purchaser of Provider’s election under the subsection (c) within such period, Provider shall be deemed to have elected option (ii) under subsection (b) above, provided that, if Provider elects or is deemed to have elected option (ii) it may subsequently change its election at any time prior to written notice to Purchaser.

(d) If Provider elects option (i) under subsection (b) above, Provider shall cause the System to be disconnected and removed from the Site and Purchaser shall pay Provider all reasonable removal costs within 30 days after receiving Provider’s invoice for such removal costs.
MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
BUNDLE #_______

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

New York State Department of Transportation <Insert Providers Name>

Signature: __________________________ Signature: __________________________
Print Name: __________________________ Print Name: __________________________
Title: __________________________ Title: __________________________
Date: __________________________ Date: __________________________

APPROVED AS TO FORM APPROVED AND FILED
ATTORNEY GENERAL STATE COMPTROLLER

By: __________________________ By: __________________________
Date: __________________________ Date: __________________________
MASTERC POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
BUNDLE #________

ACKNOWLEDGMENT BY NOTARY PUBLIC

STATE OF ___
:
SS.: ___

COUNTY OF ___

On the ____ day of ___________________ in the year 20__, before me personally appeared:
______________________________________, known to me to be the person who executed the
foregoing instrument, who, being duly sworn by me did depose and say that _he resides at

______________________________________, Town of ___________________________, County of ___________________________,
State of ___________________________; and further that:

[Check One]

☐ If an individual): she/he executed the foregoing instrument in his/her name and on his/her own
behalf.

☐ If a corporation): she/he is the ______________________________ of
____________________________________, the corporation described in said instrument; that, by
authority of the Board of Directors of said corporation, she/he is authorized to execute the foregoing
instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that
authority, she/he executed the foregoing instrument in the name of and on behalf of said corporation
as the act and deed of said corporation.

☐ If an unincorporated association): she/he is the ______________________________ of
____________________________________, the firm described in said instrument; that, she/he is
authorized to execute the foregoing instrument on behalf of the firm for the purposes set forth therein;
and that, pursuant to that authority, she/he executed the foregoing instrument in the name and on behalf of said firm as the act and deed of said firm.

☐ If a partnership): she/he is the ______________________________ of
____________________________________, the partnership described in said instrument; that, by the
terms of said partnership, she/he is authorized to execute the foregoing instrument on behalf of the
partnership for the purposes set forth therein; and that, pursuant to that authority, she/he executed the
foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

__________________________________________
Notary Public

86
MASTER POWER PURCHASE AGREEMENT
SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
BUNDLE #_______

Exhibit A (NYSDOT)
APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. 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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract 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 contract 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 contract. If this is a building service contract 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
MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
BUNDLE #________

any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract 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 the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, 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 contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee’s Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee’s Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number
MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
BUNDLE #_______

or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) 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 the seller or lessor 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. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor’s obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development’s Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. 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
Albany, New York  12245
Telephone:  518-292-5100
Fax:  518-292-5884
email: opa@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
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
BUNDLE #_______

https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid 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 contract and agrees to cooperate with the State in these efforts.

21. 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.

22. 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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. 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, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law Section 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf
Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law Section 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

Updated January 2014
Exhibit A-1
SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
   (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
   (b.) cancellation, termination or suspension of the contract, in whole or in part.

6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
Purchaser acknowledges that Provider will be financing the installation of the System either through a lender or with financing accommodations from one or more financial institutions (the “Financing Party”) and that the Provider may sell or assign the System to the Financing Party and/or may secure the Provider’s obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. Any such financing shall be conducted in accordance with the terms and conditions of the Agreement and this Exhibit B. In order to facilitate a necessary sale or conveyance, to such Financing Party, in connection with such financing, and with respect to any such Financing Party of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to either the sale or conveyance or collateral assignment by Provider to the lender that has provided financing of the System, of the Provider’s right, title and interest in and to the Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of the Agreement:

   (i) the Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under the Agreement in accordance with the terms of the Agreement as if the Financing Party were the Provider, in the event of a Provider Default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the System;

   (ii) the Financing Party shall have the right, but not the obligation, to pay all sums due under the Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of the Agreement as if such Financing Party were Provider; and

   (iii) upon the exercise of remedies under its security interest in the System, or any conveyance from Provider to the Financing Party in lieu thereof, the Financing Party shall promptly give notice to Purchaser. Any such exercise of remedies shall not constitute a default under this Agreement.

(d) **Right to Cure.**
(i) Purchaser will not exercise any right to terminate or suspend the Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right. As provided for in Section (c) of this Exhibit B, the Financing Party shall have the right to cure any Provider Default within the time periods specified within the Agreement as if the Financing Party were the Provider.

(ii) If the Financing Party, pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider’s assets and shall, within the time periods described in Sub-section (c)(i) of this Exhibit B above, cure all defaults under the Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under the Agreement, and the Agreement shall continue in full force and effect.

(e) Approvals Required for Further Assignment or Sale. In no event, however, may any Financing Party assign the Agreement, or assign, transfer, convey, subcontract, sublet or otherwise dispose of any right, title, or interest in the Agreement or in the system to any other party without the prior consent, in writing, of the Department, subject to approval by the New York State Comptroller. Any attempts to do so without the Department’s written consent, are null and void.
SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
AND THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

EXHIBIT C

RFP

[To be Incorporated by Reference]
SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
AND THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

EXHIBIT D

Proposal

[To be Incorporated by Reference]
SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
AND THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

Schedule 1 – Installation Sites

<Insert List of potential Installation Sites for this Bundle from Appendix 1 Site Specific Portfolio Bundles here>
The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule for the energy produced by the solar panel system used at the installation sites within this Bundle.

<table>
<thead>
<tr>
<th>Installation Site #</th>
<th>Installation Site Description</th>
<th>kWh Rate ($/kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>As per winning bid price</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>As per winning bid price</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>As per winning bid price</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>As per winning bid price</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>As per winning bid price</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>As per winning bid price</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>As per winning bid price</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>As per winning bid price</td>
</tr>
</tbody>
</table>

Price Index kWh Rate Adjustments.

During the term of the contract the Producer Price Index Series ID PCU221122221122, Electric Power Distribution found at: http://data.bls.gov/timeseries/PCU221122221122 as published by the U.S. Department of Labor, Bureau of Labor Statistics will be used as a basis for adjusting the price per kWh rates at a maximum adjustment of 3% annually.

Beginning on March 1, 2019 the price per kWh rates for all installation sites within the Bundle will be subject to an adjustment annually. The adjustment, to be effective on March 1 of that year (hereinafter “the base month”) shall be equal to the percentage increase or decrease as published for the preceding calendar year (January 1, thru December 31) subject however, subject to a maximum cap of plus or minus three percent ( +/- 3%) increase or decrease per year.

The Provider has the sole responsibility to request, in letter form, an adjusted rate and must provide a copy of the index and other supporting documentation necessary to support the increase or decrease with the request. This request and documentation must be received at the NYSDOT or NYSTA’s Project Manager’s address within three months of the March base month of each year. To ensure timely delivery, certified mail is recommended. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the prior calendar year. Producer Price Index. Once approved, the contractor will be notified in writing.

Should a Provider fail to submit the request and supporting documentation to the proper location within three months of the applicable March 1 date, contractor shall be deemed to have waived its right to any increase in price for that year, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology. If at any time the index
becomes unavailable, the Department or NYSTA, whichever is applicable, reserves the right to substitute a comparable replacement.

If the Agreement is extended for the optional years the price per kWh rates will be subject to an increase or decrease, applying the same rules as in the initial term.

* Note- kWh Rates at a particular installation site may be allowed a Charge Order Adjustment in certain circumstances subject to certain threshold levels, in accordance with RFP Section 4.2.2 - Potential Sites and Bundle Pricing. Any such authorized Change Order Adjustments must be approved by the Department and/or NYSTA as applicable, will be documented within that particular Installation Site’s Commercial Operation - Addendum for Installation Sites (See Schedule 7 below)
Schedule 3 – Early Termination Fee & Option Price

The Early Termination Fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 4.3(a) or Section 11.2 of the General Conditions shall be equal to the sum of (i) reasonable compensation, on a net after tax basis assuming a tax rate of 35%, for the actual loss or recapture of any portion of (A) any the investment tax credit for the System value; and (B) any MACRS accelerated depreciation taken for the System, (C) any lost Environmental Incentives that accrue or are otherwise assigned to Provider pursuant to the terms of this agreement (Provider shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made); and (ii) removal costs; and (iii) any and all other amounts previously accrued under this agreement and then owed by Purchaser to Provider; and (iv) Liquidated Damages as compensation for all other administrative, legal, direct and indirect losses, costs or damages of any type or description incurred at a Liquidated Damage amount established as equal to fifty percent (50%) of the net present value (using a discount rate equal to the Stated Rate as defined in this Agreement) of the remaining projected payments over the Term post-termination, had the Term remained effective for the full initial term.
Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

<Insert Required Annual kWh Production for each Load Zone within the Bundle from Appendix 1 – Site Selection – Load Zone and Bundle Requirements of the RFP here>
Schedule 5 – Identification of Provider’s Financing Party

Provider shall provide Purchaser with notice information for any Financing Party within a reasonable time after such Financing Party assumes any interest in the System.
This Performance Guarantee Agreement (this “Agreement”) is entered into by the parties listed below (each a “Party” and collectively the “Parties”) as of the date signed by Provider below (the “Effective Date”).

This Agreement sets forth the terms and conditions of a performance guarantee provided by Provider in conjunction with that certain Master Solar Power Purchase Agreement (“PPA”) by and between Provider and Purchaser dated <insert date here>. All capitalized terms used hereunder shall have the meanings given such terms in the PPA. The term of this Agreement shall be concurrent with the term of the PPA.

1. **Warranty.** Provider guarantees that during the term of the PPA the System will generate the guaranteed kilowatt-hours (kWh) (“Guaranteed kWh”) of energy to Purchaser set forth as follows:

   A. Commencing on the fifth anniversary of the Commercial Operation Date, if at the end of each successive sixty (60) month anniversary thereof, the cumulative Actual kWh (defined below) generated by the System at each individual Installation Site is less than the Guaranteed kWh, then Provider will send Purchaser a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Provider will make that payment within thirty (30) days after the end of the relevant calendar year.

   B. Commencing on the fifth anniversary of the Commercial Operation Date, if at the end of each successive sixty (60) month anniversary thereof the Actual kWh at each individual Installation Site is greater than the Guaranteed kWh during any sixty (60) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

   C. **Guaranteed kWh:** The Guaranteed kWh for each Installation Site, brought into the Agreement via Addendum, shall be set at 98% of the Year 1 - Required Annual kWh Production Table in accordance with Schedule 4 of the PPA for each of the applicable Installation Sites as shown in the following table:
**SYSTEM SIZE & PRODUCTION TABLE**

Installation Site:  # Example

For example purposes only, using a 100,000 kWh per year system

Year 1 Designed Capacity Level - 100,000 kWh per year

<table>
<thead>
<tr>
<th>Description</th>
<th>Energy Provider</th>
<th>System KW Size</th>
<th>~ Sq. Ft. Needed</th>
<th>Price per kWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Load Zone: Example Installation Site# Example</td>
<td>NMPC</td>
<td>85.30</td>
<td>8,530</td>
<td>&lt;insert winning bid price - per Schedule 2 along with any applicable Change Order Cost Adjustment Factors&gt;</td>
</tr>
</tbody>
</table>

kWh Production w/ Maximum 1%/yr. allowable degradation factor

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1ST YR*</td>
<td>100,000</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2ND YR</td>
<td>99,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3RD YR</td>
<td>98,010</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>4TH YR</td>
<td>97,030</td>
<td></td>
<td></td>
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<tr>
<td>5TH YR</td>
<td>96,060</td>
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</tbody>
</table>

Guranteed kWh (at required 98% level per PGA)

<p>| | | | | |</p>
<table>
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<tr>
<td>1ST YR*</td>
<td>100,000</td>
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<td>99,000</td>
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<td>98,010</td>
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<td>4TH YR</td>
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<td>5TH YR</td>
<td>96,060</td>
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<td>6TH YR</td>
<td>95,099</td>
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<td>7TH YR</td>
<td>94,148</td>
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<tr>
<td>8TH YR</td>
<td>93,207</td>
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<td>9TH YR</td>
<td>92,274</td>
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<tr>
<td>10TH YR</td>
<td>91,352</td>
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<tr>
<td>11TH YR</td>
<td>90,438</td>
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<td>12TH YR</td>
<td>89,534</td>
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<tr>
<td>13TH YR</td>
<td>88,638</td>
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<tr>
<td>14TH YR</td>
<td>87,752</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15TH YR</td>
<td>86,875</td>
<td></td>
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</tr>
</tbody>
</table>

480,300 kWh True Up Term Years 1-5

456,760 kWh True Up Term Years 6-10

434,370 kWh True Up Term Years 11-15
D. “Actual kWh” means the AC electricity produced by the System in kilowatt-hours measured and recorded by Provider during each successive sixty (60) month anniversary of the Commercial Operation Date. The measurement of Actual kWh use the [specify monitoring system here] or to the extent such services are not available, Provider will estimate the Actual kWh by using reasonable commercial methods.

E. “Guaranteed Energy Price per kWh” means the dollar value per kWh, calculated as the amount, if any, in dollars per kWh, by which the aggregate value of the Actual Utility kWh price exceeds the PPA kWh price calculated for each billing periods or portions thereof that occurred in such Five-Year period; provided, however, that such amount shall in no case exceed five cents ($0.05) per kWh.

F. Effective Date: The term of the Agreement shall commence on the Effective Date and shall continue for fifteen (15) years from the Commercial Operation Date (the “Term”), unless and until the earlier termination of the PPA. If the Parties to the PPA elect to renew the PPA at the end of its term as provided for therein, Purchaser may request that this Agreement be renewed in conjunction with the PPA. Provider shall promptly respond to such request with the terms under which Provider will renew this Agreement.

2. Exclusions. The Warranty does not apply reasonable system downtime due to any repair, replacement or correction required due to the following:

A. Someone other than Provider or its approved service providers installs, removes, re-installs or repairs the System;

B. Destruction or damage to the System or its ability to safely produce energy not caused by Provider or its approved service providers while servicing the System (e.g., a tree falls on the System);

C. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA to the extent such failure or breach impacts System production (such as if Purchaser modifies or alters the System);

D. Purchaser’s breach of this Agreement including being unavailable to provide access or assistance to Provider in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;

E. Any Force Majeure Event (as further detailed below);

F. A power or voltage surge caused by Purchaser or any party or event not within Provider’s control, including a grid supply voltage outside of the standard range specified by the Utility;

G. Any System failure not caused by a Provider breach under the PPA (e.g., such as making roof repairs); or

H. Theft of the System, or vandalism of the System.
Nothing in this Agreement shall be construed as a warranty or guarantee by Provider that the Purchaser (or any beneficiary of this Agreement) will realize saving as a result of this Agreement or the PPA. Provider’s guarantee hereunder is a guarantee of electrical production from the System and not of any savings resulting from such electrical production.

3. **Force Majeure.** A Force Majeure Event shall mean the occurrence of those events meeting the definition of Force Majeure as defined in the PPA under Section 10.1- Force Majeure. If Provider is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, Provider will be excused from whatever performance is affected by the Force Majeure Event, provided that:
   A. Provider, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
   B. Provider’s suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
   C. No Provider obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

4. **Applicable Law.** All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law other than New York General Obligations Law § 5-1401. The Parties agree that any dispute hereunder will be litigated in a court of competent jurisdiction in New York.

5. **Survival, Changes.** This Agreement, includes the New York State Standard Terms and Conditions, or the Standard Clauses For New York State Thruway Authority And New York State Canal Corporation Procurement Contracts, as Exhibit A, whichever is applicable. The Provider’s obligations under this Agreement shall survive any and remain with Provider, and shall survive any assignment by Provider to Financing Entity or any other third party. In the event of a conflict between this Agreement and NYS or NYSTA Exhibit A, the NYS or NYSTA , Exhibit A as applicable, will control.

Any change to the terms and conditions of this Agreement must be in writing and signed by both Parties and approved by the New York State Office of the Attorney General and the Office of the State Comptroller.

If any provision of this Agreement, or portion thereof, is held by a court of competent jurisdiction to be contrary to law or otherwise unenforceable, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in full force and effect.

[**SIGNATURE PAGE Follows**]
SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
AND THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

New York State Department of
Transportation/NYSTA, as applicable

Signature: ___________________________ Signature: ___________________________

Print Name: ___________________________ Print Name: ___________________________

Title: ___________________________

Date: ___________________________

Providers Name

Signature: ___________________________

Print Name: ___________________________

Title: ___________________________

Date: ___________________________

APPROVED AS TO FORM
ATTORNEY GENERAL

By: ___________________________

Date: ___________________________

APPROVED AND FILED
STATE COMPTROLLER

By: ___________________________

Date: ___________________________
SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION
AND THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

ACKNOWLEDGMENT BY NOTARY PUBLIC

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of ___________________ in the year 20__, before me personally appeared:
_____________________________________, known to me to be the person who executed the
foregoing instrument, who, being duly sworn by me did depose and say that _he resides at
_____________________________________, Town of ________________________,
County of ________________________, State of ______________________; and further that:

[Check One]

☐ If an individual): she/he executed the foregoing instrument in his/her name and on his/her own
behalf.

☐ If a corporation): she/he is the _______________________________ of
____________________________________, the corporation described in said instrument; that, by
authority of the Board of Directors of said corporation, she/he is authorized to execute the foregoing
instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that
authority, she/he executed the foregoing instrument in the name of and on behalf of said corporation
as the act and deed of said corporation.

☐ If an unincorporated association): she/he is the ______________________________ of
___________________________________, the firm described in said instrument; that, she/he is
authorized to execute the foregoing instrument on behalf of the firm for the purposes set forth therein;
and that, pursuant to that authority, she/he executed the foregoing instrument in the name and on
behalf of said firm as the act and deed of said firm.

☐ If a partnership): she/he is the ______________________________ of
___________________________________, the partnership described in said instrument; that, by the
terms of said partnership, she/he is authorized to execute the foregoing instrument on behalf of the
partnership for the purposes set forth therein; and that, pursuant to that authority, she/he executed the
foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

________________________________________
Notary Public
This addendum No.______ is dated_______. This addendum is issued under and executed pursuant to that certain Master Power Purchase Agreement (PPA) and that Certain Performance Guarantee Agreement (PGA) by and between the New York State Department of Transportation, (hereinafter “the Department” or “Purchaser”), existing under the laws of the State of New York and having its principal place of business located at 50 Wolf Road, Albany, New York, 12232 {or, as applicable, the New York State Thruway Authority, (hereinafter “NYSTA” or “Purchaser”) a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, and having its principal place of business located at 200 Southern Boulevard, Albany, New York, 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189 } AND <insert awarded bidder> with its principal office at <insert full address> (hereinafter “Provider”) and

Now therefore the Provider and Purchaser hereby agree to add this Installation Site #______ to Department or NYSTA, as applicable, Contract#________ from the list of available Installation Sites found in Schedule 1 of the Master Power Purchase Agreement as described below:

System Premises:

- <Insert Name and address of approved site/facility from the portfolio of potential Installation Sites Exhibit_____>

Placement of facilities/Licensed area. (As per attached Exhibit No <match Installation Site # here. for site specific solar panel design map and applicable Use and Occupancy Permit for the site) <also append aerial photo of Installation Site>

Equipment:

- Racking: Insert brand or type or equivalent
- Type: Insert “Roof-mounted” or “Ground-mounted”
- Modules: Insert brand or type XX Watt or equivalent
- Inverter: Insert brand or type or equivalent
- Monitoring: Insert brand or type

Base kWh Rate: <insert winning bid price here> 

List Change Order Adjustments from Standard Site Conditions (if any):

Change Order Adjustment to kWh price: ________________

Adjusted kWh Rate: <Base kWh Rate plus any Change Order Adjustment here>
System Size: <insert XX.XX kWDC> (As per Schedule 4 - Required Annual Production - System kW Size for this Installation Site.)

<insert Year 1 Design Capacity in the table below, then calculate kWh Production w/ Maximum 1%/yr. allowable degradation factor>
**SYSTEM SIZE & PRODUCTION TABLE**

Installation Site: *Example*

For example purposes only, using a 100,000 kWh per year system

<table>
<thead>
<tr>
<th>Year 1 Designed Capacity Level</th>
<th>100,000 kWh per year</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Energy Provider</th>
<th>System KW Size</th>
<th>~ Sq. Ft. Needed</th>
<th>Price per kWh</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Load Zone:</strong> Example Installation Site# Example</td>
<td>NMPC</td>
<td>85.30</td>
<td>8,530</td>
<td>&lt;insert winning bid price - per Schedule 2 along with any applicable Change Order Cost Adjustment Factors&gt;</td>
</tr>
</tbody>
</table>

**kWh Production w/ Maximum 1%/yr. allowable degradation factor**

<table>
<thead>
<tr>
<th>Year</th>
<th>kWh Production</th>
<th>Guaranteed kWh (at required 98% level per PGA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1ST YR*</td>
<td>100,000 kWh</td>
<td>100,000 x .98 = 98,000 kWh</td>
</tr>
<tr>
<td>2ND YR</td>
<td>99,000 kWh</td>
<td>99,000 x .98 = 97,020 kWh</td>
</tr>
<tr>
<td>3RD YR</td>
<td>98,010 kWh</td>
<td>98,010 x .98 = 96,050 kWh</td>
</tr>
<tr>
<td>4TH YR</td>
<td>97,030 kWh</td>
<td>97,030 x .98 = 95,090 kWh</td>
</tr>
<tr>
<td>5TH YR</td>
<td>96,060 kWh</td>
<td>96,060 x .98 = 94,140 kWh</td>
</tr>
</tbody>
</table>

**480,300 kWh True Up Term Years 1-5**

| 6TH YR | 95,099 kWh | 95,099 x .98 = 93,200 kWh |
| 7TH YR | 94,148 kWh | 94,148 x .98 = 92,270 kWh |
| 8TH YR | 93,207 kWh | 93,207 x .98 = 91,340 kWh |
| 9TH YR | 92,274 kWh | 92,274 x .98 = 90,430 kWh |
| 10TH YR | 91,352 kWh | 91,352 x .98 = 89,520 kWh |

**456,760 kWh True Up Term Years 6-10**

| 11TH YR | 90,438 kWh | 90,438 x .98 = 88,630 kWh |
| 12TH YR | 89,534 kWh | 89,534 x .98 = 87,740 kWh |
| 13TH YR | 88,638 kWh | 88,638 x .98 = 86,870 kWh |
| 14TH YR | 87,752 kWh | 87,752 x .98 = 86,000 kWh |
| 15TH YR | 86,875 kWh | 86,875 x .98 = 85,140 kWh |

**434,370 kWh True Up Term Years 11-15**
Scope:

1. **Provider Responsibilities**

   a) **Design Preparation:** Inspect the proposed System mounting site to assure long-term safety and stability.

   b) **Rebate:** Prepare all rebate documentation and communicate with all relevant agencies, if applicable.

   c) **Design:** Produce and provide CAD single-line electrical and layout drawings of the System. Drawings will consist of a complete site plan showing the location of the array, inverters, and routing of conduits, an elevation showing panel visibility from the street, and any details necessary for the plan check and permitting.

   d) **Pre-installation Conference:** Before System installation, conduct a pre-installation conference at the project site to review procedures, schedules, safety, and coordination of the installation. Several conferences may be needed if the complexities and installation schedules so require.

   e) **Procurement, Installation:** Furnish all necessary mounting hardware, photovoltaic modules, electrical equipment, and labor for installation of the System up to the utility grid interconnection point[s] as indicated in this Agreement.

   f) **Permits:** Obtain all permits required to perform the Work.

   g) **Inspections:** Serve as the owner’s representative for applicable System inspections.

   h) **Site Safety:** Jobsite safety meetings once per week during Installation Work, or upon addition of new personnel to the jobsite.

   i) **Site Access:** During construction, Provider will be responsible for the security of the system, equipment, tools and other materials related to the Provider’s Work.

   j) **Acceptance Testing and System Commissioning:** Provider shall:

      i. Conduct an inspection, test and commissioning procedure to insure that the System is installed in a professional manner and consistent with prudent industry practices. A record of the installation and the major components including modules, inverters, transformers, and source circuit combiners will be documented in a test and commissioning report.

      ii. Test and verify that all non-current-carrying metal parts are solidly grounded and all equipment and System grounding is installed and functional per NEC 2008.

      iii. Test and verify that phase sequencing, fuse continuity, and open circuit voltage are within the manufacturers recommended range at the DC disconnect.

      iv. Test and verify that the inverter is operating effectively within the typical start up time and record the DC operating voltage, phase currents, and inverter power.
v. Provide complete operation and maintenance manual for the System (two printed copies and one electronic copy). The manual will include: (i) as-built drawings, (ii) as-built shop drawings, (iii) a copy of any required submittals or filing, (iv) product cut sheets, (v) product operation manuals, (vi) a copy of the photo record, (vii) written Utility approval, (viii) product warranties; and (ix) supplier and installer contact information.

k) Solar Monitoring System: <Insert specific description from by awarded provider> All Purchaser systems will be accessible through a single data access including system-level and aggregated system data.

2. Purchaser Responsibilities
   a) Site Preparation: Responsible for pre-installation site clean-up including removal of all debris and obstacles that may impede System installation.
   b) Site Access: Responsible for security access to the System after installation. During installation, Provider will be responsible for the security of the system, equipment, tools and other materials related to the Provider’s Work.
   c) Existing Facilities: Provide all relevant design and as-built drawings of the existing facilities to facilitate System design and installation.
   d) System Management: Provide a single point of contact for each installation. Purchaser point of contact shall have authority for all written requests for project changes and shall be available on 24 hours’ notice. In the event that Provider is providing its services as a subcontractor and its work is part of a larger program, Purchaser will keep Provider informed about the overall progress of the program for which Provider’s work is a part, and coordinate Provider’s work with the work being performed by Purchaser’s other contractors, including giving Provider sufficient advance notice (at least 5 business days) of when Provider is to perform the work under this Agreement. The foregoing shall not limit Purchaser’s obligations under the terms and conditions of this agreement.

3. Order of Precedence
   The Parties agree that the terms of Contract#________ and the Master Power Purchase Agreement, and the Performance Guarantee Agreement are incorporated herein.
PROVIDER: Insert NAME

By: _________________________________________

Name: _______________________________________

Title: ________________________________________

Date: ________________________________________

PURCHASER: New York State Department of Transportation or The New York State Thruway Authority, as applicable

By: _________________________________________

Name: TBD

Title: Insert title of NYSDOT or NYSTA Project Manager

Date: ________________________________________
8.2. ATTACHMENT 1-A: NYSTA MASTER POWER PURCHASE AGREEMENT

The following Master Power Purchase Agreement – Solar Highway Initiative For the New York State Thruway Authority shall be used and apply to all NYSTA Sites under the RFP, (Bundles 5, 6 and 7) in lieu of the Department of Transportation’s Solar Highway Initiative Master Power Purchase Agreement shown as Attachment 1.

Note: Many of the terms and conditions contained within this Attachment 1-(A) are essentially similar to the Department of Transportation Master Power Purchase Agreement shown as Attachment 1. There are however some differences, as the NYSTA is a public authority, not a state agency. Therefore Proposers should read through this Attachment 1-(A) carefully as well.
This Agreement (“Agreement” as further defined in Section 1.1) is made and entered into as of this XX day of insert month, 201X (“Effective Date”) and is witnessed and acknowledged by insert awarded bidder with its principal office at insert full address (hereinafter “Provider”) and the New York State Thruway Authority, (hereinafter “NYSTA” or “Purchaser”) a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, and having its principal place of business located at 200 Southern Boulevard, Albany, New York, 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189), as evidenced by their signature on the last page of this document. Purchaser and Provider are referred to herein individually as a “Party” and collectively as the “Parties”

WITNESSETH:

WHEREAS, Article 9 of New York State Energy Law Provides authority for NYSTA to obtain long-term energy and cost savings by facilitating prompt incorporation of energy conservation improvements or energy production equipment, or both, in connection with buildings or facilities owned, operated or under the supervision of the NYSTA, in cooperation with providers of such services and associated materials from the private sector; and,

WHEREAS, Such arrangements for energy conservation improvements or energy production equipment are intended to improve and protect the health, safety, security, and welfare of the people of the state by promoting energy conservation and independence, developing alternate sources of energy, and fostering business activity; and,

WHEREAS, the New York State Department of Transportation (“NYSDOT”) issued a Request for Proposals #C031426- Solar Highway Initiative Services for NYSDOT and NYSTA - for the provision of Solar Energy Services (as hereafter defined), (the “RFP”), which is attached hereto and made a part hereof as Exhibit ______; and,

WHEREAS, such Solar Energy Services include the installation and operation of solar photovoltaic systems and the ancillary equipment associated therewith (“the Systems”) upon certain Premises (as hereafter defined) for the purpose of providing Solar Energy Services; and,

WHEREAS, The RFP solicited Proposals for such Solar Energy Services at seven (7) different groupings of potential Installation Sites (“Bundles”)

WHEREAS, Provider has agreed to provide a System and submitted a Proposal for Bundle#__________ dated insert RFP deadline date (the “Proposal”) which is attached hereto and made a part hereof as Exhibit ____;
Purchaser desires that Provider provide such Solar Energy Services via such System, and Provider is willing to do the same;

WHEREAS, on at Meeting No. _______, the NYSTA Board adopted Resolution No. __________, which authorizes NYSTA’s Executive Director or her designee to enter into this Agreement with Provider to perform the aforementioned services.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Production” means the amount of Energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” means this Master Power Purchase Agreement (PPA), including the General Conditions, Performance Guarantee Agreements (PGA), and the Addendums, Appendices, Attachments, Exhibits and Schedules attached hereto.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented 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) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to
bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or a Federal Reserve Bank holiday.

“Bundle” means any one of seven groupings of preselected potential Installation Sites (as defined below), on New York State Department of Transportation-owned or New York State Thruway Authority-owned property across the state, eligible to be awarded in any such seven groupings under RFP #C031426 via this Agreement, as further detailed in Appendix 1.

“Commercial Operation Date” has the meaning set forth in Section 3.3(b).

“Commercial Operation - Addendum for Installation Sites” shall mean the contract mechanism for establishing the Commercial Operation date for each of the various locations for potential System installations, and to bring such particular installation site under the terms of the Master Power Purchase Agreement and the Performance Guarantee Agreement.

“Confidential Information” has the meaning set forth in Section 15.1.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2, Section 4.3(a) or Section 11.2.

“Energy” means electric energy measured in kilowatt-hours (“kWh”) or in megawatt-hours (“MWh”).
“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

“Environmental Incentives” means any and all credits, rebates, subsidies, payments or other incentives that relate to self–generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 10.1.
“General Conditions” means this Master Power Purchase Agreement, excluding the Addendums, Exhibits and Schedules hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Persons” means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

“Initial Term” has the meaning set forth in Section 2.1.

“Installation Work” means the site preparation, design, construction, placement, erection and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Installation Site” shall mean any of the various locations for potential System installation on Purchaser-owned or Purchaser-controlled lands, buildings or other facilities as described in Schedule 1.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kilowatt-hour (kWh) set forth in Schedule 2 payable for the services to be provided hereunder including Energy, and heat.

“Liens” has the meaning set forth in Section 7.1(e).

“Letter(s) of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) with such bank having a credit rating of at least A- from Standard & Poor’s Rating Group and A3 from Moody’s Investor Service, and otherwise being in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and
expenses (including all reasonable attorneys’ fees and other reasonable costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Option Price” has the meaning set forth in Section 2.3.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Person” means an individual, partnership, corporation, limited-liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Premises” means the premises at each Installation Site as described in Schedule 1. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Purchase Date” means the day that occurs on the date that is the sixth (6th) anniversary, the tenth (10th) anniversary, and the fifteenth (15th) anniversary of the Commercial Operation Date, provided that if such day is not a Business Day, the Purchase Date shall be the next Business Day to occur after such day.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Renewal Term” has the meaning set forth in Section 2.1.

“Representative” has the meaning set forth in Section 15.1.

“Security Agreement” has the meaning set forth in Section 8.2.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) or (b) the maximum rate allowed by Applicable Law.

“System Operations” means the Provider’s operation, maintenance and repair of the System performed in accordance with the requirements herein.
“Tax Credits” means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the installation, ownership, or production of energy from the System.

“Term” has the meaning set forth in Section 2.1.

“Transfer Time” has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

1.3 Entire Agreement and Order of Precedence. This Agreement forms the entire agreement between the parties and supersedes all written or oral, prior or contemporaneous communications between the parties relating to the subject matter of this Agreement. In case of a conflict or discrepancy among the elements of this Agreement, such conflict or inconsistency shall be resolved by giving precedence to the document elements in the following order: (1) Exhibits A and A-1, (2) the General Conditions, (3) the Schedules, (4) Exhibit B, (5) Addendums, (6) the RFP, (7) the Proposal, (8) All other Exhibits, and (9) All other Appendices.

2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for fifteen (15) years from the Commercial Operations Date (“Initial Term”), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed at NYSTA’s sole discretion, under the same terms and conditions, for up to five additional two (2) year terms (a “Renewal Term”), subject to approval by the NY State Comptroller. The Initial Term and the subsequent Renewal Terms, if any, are referred to collectively as the “Term.”

2.2 Early Termination. Purchaser may terminate the Agreement prior to any applicable Expiration Date for any reason upon sixty (60) days’ prior written notice. In such event, except as provided herein Purchaser shall pay, as liquidated damages, an amount equal to (i) the Early Termination Fee set forth on Schedule 3, (ii) any and all other amounts previously owed to Provider under this Agreement, and (iii) the cost of removing the System. Upon such payment,
Provider shall cause the System to be disconnected and removed from the Premises. Upon Purchaser’s payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically without further liability to either Party with respect to the Agreement.

2.3 Purchase Option. On any Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System for a purchase price (the “Option Price”) equal to the Fair Market Value of the System as of the Purchase Date. To exercise its purchase option, Purchaser shall, not less than one hundred and eighty (180) days prior to the proposed Purchase Date, provide written notice to Provider of Purchaser’s intent to exercise its option to purchase the System on such Purchase Date. Within thirty (30) days of receipt of Purchaser’s notice, Provider shall specify the Fair Market Value of the System as of the Purchase Date as determined by Provider in a commercially reasonable manner. Purchaser shall then have a period of thirty (30) days after notification of the Option Price to confirm or retract its decision to exercise the purchase option or; if, in Purchaser’s sole opinion, the Option Price stated by Provider is not equal to the Fair Market Value of the System, to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the purchase option in writing to Provider (whether before or after any determination of the Fair Market Value determined pursuant to Section 2.4), (i) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and (B) assign all vendor warranties for the System to Purchaser, and (ii) Purchaser shall pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider’s Financing Party, as applicable, for payments under the Agreement. Upon execution of the documents and payment of the Option Price, in each case as described in the preceding sentence, the Agreement shall terminate automatically without further liability to either Party with respect to the Agreement. For the avoidance of doubt, payment of the Option Price shall be in lieu of and instead of any payments as described in Section 2.2 hereof. In the event Purchaser retracts its exercise of, or does not timely confirm, the purchase option, the provisions of the Agreement shall remain applicable as if the Purchaser had not exercised any option to purchase the System.

2.4 Determination of Fair Market Value. If the Purchaser believes the Option Price indicated by Provider in accordance with Section 2.3 is greater than the then-current Fair Market Value (as determined by Provider in a commercially reasonable manner) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an independent appraiser with experience and expertise in the Photovoltaic Solar Power industry. Such appraiser shall subject to applicable Internal Revenue Service processes and requirements act in a commercially reasonable manner and in good faith to determine the Fair Market Value of the System as of the applicable Purchase Date and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of
the appraisal shall be borne by Purchaser if such appraisal results in a value equal to or greater than the Fair Market Value provided by Provider pursuant to Section 2.3; the costs of the appraisal shall be borne by Provider if such appraisal results in a value ten percent (10%) or more lower than the Option Price provided by Provider pursuant to Section 2.3; otherwise, the Parties shall equally share the cost of the appraisal.

2.5 Removal of System at Expiration. Subject to Purchaser’s exercise of its purchase option under Section 2.3, upon the expiration or earlier termination of the Agreement, Provider shall, at Provider’s expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than one hundred and twenty (120) days after the Expiration Date. The Premises shall be returned to its original condition except for ordinary wear and tear. This shall include restoration of the grounds of the premises to an agreed-upon natural vegetative state, and restoration of such grounds to a comparable land use. For purposes of Provider’s removal of the System, Purchaser’s covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed-upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Provider’s cost.

2.6 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) the Provider determines that the Premises, as is, is insufficient to accommodate the System;

(b) there exist unforeseeable site conditions (including environmental conditions) or installation requirements that were not known as of the Effective Date and that could reasonably be expected to very significantly increase the cost of Installation Work or would adversely and very significantly affect the electricity production from the System as designed;

(c) there is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors;

(d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it;
(e) Provider has not received a fully executed (i) license substantially in the form of Exhibit B from the owner of the Premises, and (ii) a release or acknowledgement from any mortgagee of the Premise, if required by Provider’s Financing Party, to establish the priority of its security interest in the System, and (iii) such other documentation as may be reasonably requested by Provider to evidence Purchaser’s ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term;

(f) there has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises;

(g) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to Energy generated by the System under a net-metering arrangement mutually agreeable to the Parties, subject to applicable law and the utility’s requirements; or

(h) Purchaser has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.

3. PURCHASER RIGHT TO REVIEW CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with the requirements of the RFP, Applicable Law, and consistent with generally-accepted utility practices. Provider shall also be responsible for arranging and entering into all necessary agreements as well as bearing all the costs for: all site preparation, all net-metering and all other interconnections with utilities, and all upgrades to utility lines or systems necessary to meet the requirements of this Agreement and the RFP. Purchaser shall have the right to review all construction and installation plans and designs, including engineering evaluations of the impact of the System.

(a) Prior to commencing any work at each installation site, the Provider must submit form TA-W5124: Thruway Permit Application and receive approval for each installation site via the following NYSTA-issued permits:

(1) NYSTA Occupancy Permit (“The Use & Occupancy Permit”) as shown in Attachment 8.12.3, which documents Purchaser’s grant of a limited license (See Section 7(d) to the Provider and approval for the Provider to access and utilize the lands at the indicated Premises and to place, construct and maintain facilities thereon; AND,
Attachment 1-(A)

MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

(2) NYSTA Work Permit (the “Highway Work Permit”) as shown in Attachment 8.12.4, which documents Purchaser’s approval of the construction and installation plans at the indicated Premises. Provider must perform all installation, operation and maintenance work for the System pursuant to the terms and conditions of the applicable Highway Work Permit.

(3) NYSTA Annual Work Permit – as shown in Attachment 8.12.5, which documents Purchaser’s approval of out-year routine maintenance of the system and installation site grounds by the Provider.

(b) Provider shall perform the Installation Work at the Premises only between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise agreed to in writing by the owner of the Premises. Installation Work shall be conducted in a manner that minimizes inconvenience to and interference with the use of the Premises to the maximum extent commercially practical.

3.2 Approvals; Other Permits. Purchaser shall reasonably assist Provider in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable Covenants, Conditions and Restrictions (“CCR’s”), and provided further that Purchaser shall not bear the costs of obtaining same.

3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System at each installation site in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by commercial solar photovoltaic energy system integrators and operators in the United States.

(b) If the results of such testing indicate that the System is capable of generating Energy for at least forty-eight (48) consecutive hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility and any other Governmental Authority from whom approval is required to operate the System, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the “Commercial Operation Date.”

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider’s Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result Purchaser’s negligence or breach of its obligations hereunder shall be reimbursed by Purchaser to the extent of such negligence or breach. Such maintenance shall also include snow
and ice removal and cleaning of the PV panels as necessary to meet required performance levels. Purchaser shall not be responsible for any and all repairs, maintenance or replacements necessitated by any theft of, or vandalism to, the System or any of its individual components by any individual or third-party, absent a showing that the vandalism or theft resulted from intentional willful misconduct by the Purchaser’s officers, employees, and/or agents acting within the scope of their employment by the Purchaser.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System.

4.3 System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider’s negligence, willful misconduct, or breach of its obligations hereunder or as otherwise provided for in this Agreement, Purchaser must revoke the permit for any of the Premises at any Installation Site whereby the Provider no longer has sufficient access rights necessary to operate the System prior to the Expiration Date, then Purchaser shall either (i) provide Provider with a mutually agreeable substitute premises for such Installation Site in a location with similar capability to accommodate the System, or (ii) terminate the Agreement for the Premises located at such Installation Site, pursuant to Section 2.2. In connection with such substitution, Purchaser and Provider shall amend this Agreement to specify the substitute premises. Purchaser shall also provide any new owner, or mortgagee any consents or releases required by Provider’s Financing Party in connection with the substitute premises. If Purchaser is unable to obtain such consents and releases for a substitute premises, the substitution shall not be allowed and Purchaser shall terminate the Agreement pursuant to Section 2.2. Purchaser shall pay all reasonable costs associated with relocation of the System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises. Provider shall remove all of its tangible property comprising the System from the vacated Premises prior to the termination of Purchaser’s rights to use such Premises. Upon removal of the tangible property comprising the System from the Premises, at the Purchaser’s expense, the Premises shall be returned to its original condition, or to such condition as directed by NYSTA, except for ordinary wear and tear. This shall include restoration of the grounds of the Premises to an agreed-upon natural vegetative state, and restoration of such grounds to a comparable land use, unless otherwise directed by NYSTA. In connection with any substitution of Premises, Purchaser shall continue to make all payments for the Services as if Provider was capable of operating the System during any transfer or installation time period (the “Transfer Time”). For the purpose of calculating Services Payments that would have otherwise been due that would have been generated during such Transfer Time, Services shall be deemed to have been produced during the Transfer Time at the average rate over the preceding twelve (12)
months (or, if the substitution occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Transfer Time.

(b) System Disruptions. In the event that (1) the owner or lessee of the Premises repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly, significant alteration or movement of the System, or (2) any act or omission of Purchaser or Purchaser’s employees, Affiliates, or agents (collectively, a “Purchaser Act”) results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Provider for all work required by Provider to disassemble, partially disassemble, or reduce the size or capacity of the system by less than twenty percent (20%) or move the System and (ii) continue to make all payments for the Services during such period of System disruption (the “Disruption Period”) as if Provider was capable of operating the System during such Disruption Period, and. For the purpose of calculating Services Payments that would otherwise have been due for such Disruption Period, Services shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation), discounting for any planned or other maintenance outages of the System that had been scheduled by the Provider to occur during such Disruption Period.

5. DELIVERY OF SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100 %) of the Energy generated by the System and delivered to the Purchaser during each relevant month of the Term at the kWh Rate specified in Schedule 2.

The Energy delivered by Provider to Purchaser hereunder shall be referred to as “Services.”

5.2 Estimated Annual Production. The annual estimate of Energy generation with respect to the System for any given year as determined pursuant to this Section shall be the “Estimated Annual Production.” The Estimated Annual Production for each year of the Term is set as forth in Schedule 4.

5.3 Environmental Incentives. Purchaser is the owner of all Environmental Attributes. Provider is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser’s purchase of electricity under this Agreement does not include, Environmental Incentives or the right to any Tax Credits arising from the Provider’s ownership and operation of the System, all of which shall be retained by Provider. Purchaser shall cooperate with Provider in obtaining, securing and transferring all Environmental Incentives and the benefit of all Tax
Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Provider. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall promptly pay such amounts over to Provider.

5.4 Title to System. Subject to Purchaser’s exercise of its purchase option under Section 2.3, throughout the Term, Provider or Provider’s Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider’s Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment for the Services provided at each installation site during each month in an amount equal to the Energy generated by the System and delivered to Purchaser in such month, multiplied by the applicable kWh Rate for the installation site as stated in Schedule 2 for the applicable contract year in which such month occurs (“Services Payment”).

In the event that Purchaser is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser shall terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2, including, without limitation, the payment to Provider of the Early Termination Fee.

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an “Invoice Date”), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Services Payment in respect of the immediately preceding month. The Invoice shall be itemized by installed system and shall include the meter number for each system, the kWh Rate being charged for the system, and state the kWh generated by the system and delivered to the Purchaser during the billing cycle. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder on all properly submitted invoices within thirty (30) days after the date of the applicable Invoice Date in accordance with State Public Authorities Law §2880 and 21 NYCRR Part 109.
6.4 Disputed Payments. If a bona fide dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, provided that Purchaser shall not be required to pay the disputed amounts owed hereunder until such dispute has been resolved by the Parties.

7. GENERAL COVENANTS.

7.1 Provider’s Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (i) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (ii) immediately notify Purchaser it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Services at a commercially-reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured in order to enable Provider to perform such obligations.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Services, and System Operations and shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party’s security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics’, labor or materialman’s lien), charge, security interest, encumbrance or claim of any nature (“Liens”) on or with respect to the Premises or any interest therein, arising from Provider’s performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys’ fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2 Purchaser’s Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.
(b) Liens. Other than as provided for in this Agreement, Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the Purchaser or its officers or employees when acting within the course and scope of their employment.

(c) Consents and Approvals. Purchaser or Provider shall ensure that any authorizations required of Purchaser or Provider under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall reasonably cooperate with Provider, at Provider’s request, to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises, Grant of License. Purchaser shall grant to Provider a license (the “License”) for each approved installation site via an Use and Occupancy Permit as shown in Attachment 8.12.3. Each such License commencing on the Effective Date and, subject to Purchaser’s right to revoke the License as described herein, continuing until the date that is one hundred and twenty (120 days) after the expiration or termination of this Agreement (the “License Term”), containing all the rights necessary for Provider to use and occupy portions of the Premises (the “License Area”) for the installation, operation and maintenance of the System pursuant to the terms and conditions of this Agreement, including ingress and egress rights to the Premises for Provider and its employees, and access to electrical panels and conduits to interconnect or disconnect the System with the Premises’ electrical wiring. During the License Term Purchaser shall ensure that Provider’s rights under the License and Provider’s access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. Regardless of whether Purchaser is owner of the Premises or leases the Premises from a landlord, Purchaser hereby covenants that (i) Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and (ii) neither Purchaser nor Purchaser’s landlord will interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, that Purchaser and Purchaser’s landlord shall at all times have access to and the right to observe the Installation Work or System removal. Notwithstanding anything to the contrary in this Agreement, Purchaser may, at any time during the Term, upon 60 days’ prior written notice to Provider, revoke the License, provided that any such revocation of the License, except for a revocation for a Provider Default, or for Force Majeure, shall act as an early termination of this Agreement pursuant to Section 2.2.

(e) Temporary staging/storage space during installation or removal. Purchaser shall use commercially reasonable efforts to provide for sufficient space at the Premises for the temporary
storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling.

(f) Insolation. Purchaser understands that unobstructed access to sunlight ("Insolation") is essential to Provider’s performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System’s Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Provider immediately and shall cooperate with Provider in preserving the System’s existing Insolation levels. If however, Purchaser’s operational needs cannot be met in any other reasonably practicable manner, and Purchaser must move forward with constructing a structure that could interfere with Provider’s Insolation levels at a particular installation site, then the following shall apply:

(i) If the impact is a reduction of one percent (1%) or less to the annual production of the System affected, no compensation shall be due the Provider.

(ii) If the impact is a reduction of more than one percent (1%), but less than twenty five percent (25%) to the annual production of a System, then Provider may make a request for an equitable energy price adjustment to the kWh price to account for lost revenue Purchaser shall have 90 days in which to accept or reject such energy price adjustment. If rejected, the parties shall have a 30 day period to negotiate in good faith the basis and price of the energy price adjustment. Within 10 days after the expiration of such 30-day period the Purchaser shall either accept or decline the energy price adjustment. If Purchaser declines, or fails to respond within such 10 day-period, then Provider may elect to treat such declination as a partial termination of the System at that particular installation site, (using the same method used to calculate a termination payment under Section 2.2 above on a prorated basis) after taking into account the nature and location of the structure and the impact on Insolation, and the year in which the structure is installed.

(iii) If the impact is a reduction of more than twenty five percent (25%) to the annual production of a System, the Purchaser shall have 90 days in which to offer a mutually-agreeable substitute premises for such impacted Installation Site in accordance with Section 4.3. If Purchaser does not offer such Substitute Premises, or fails to respond within such 90-day period, then Provider may elect to treat such declination as a termination of the System at that particular installation site, (using the same method used to calculate a termination payment under Section 2.2 above) after taking into account the nature and location of the structure and the impact on Insolation, and the year in which the structure is installed.
8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement and shall maintain such right and authority throughout the Term;
(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors’ rights generally;
(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to materially adversely affect its ability to perform its obligations hereunder or carry out the transactions contemplated herein; and
(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or, in the case of Provider, any of its Affiliates is a party or by which it or, in the case of Provider, any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the “Security Interest”) in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

(a) to Purchaser’s knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises;
(b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider’s Financing Party’s Security Interest therein;
(c) to Purchaser’s knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement. Any Financing Party shall be an intended third party of this Section 8.2.
9. SURCHARGES. Purchaser shall either pay or reimburse Provider for surcharges assessed on the generation, sale, delivery or consumption of electric energy produced by the System; provided, however, Purchaser will not be required to pay or reimburse Provider for any surcharges during periods when Provider fails to deliver electric energy to Purchaser due to the action or omission of Provider. “Surcharges” means any, generation, use, consumption, excise, transaction, regulatory fees, surcharges or other similar charges; but shall not include any occupation, franchise or privilege taxes, fees or charges assessed by reason of the Provider’s equipment and facilities being present on Purchaser’s property. Also, for purposes of this Section 9, “Surcharges” shall not include any income taxes or similar taxes imposed on Provider’s revenues due to the sale of energy under this Agreement, which shall be Provider’s responsibility; nor shall “Surcharges” include any sales or real property taxes, it being recognized that Purchaser is a governmental entity exempt from payment for same.

10. FORCE MAJEURE.

10.1 Definition. “Force Majeure Event” means includes, but is not limited to any act or event that prevents the affected Party from substantially performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (provided that the claiming Party shall not be required to suffer prejudice or use commercially unreasonable measures to remedy a Force Majeure event). Force Majeure Events shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; severe windstorms; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, and failure of equipment not utilized by Provider or under its control. A Force Majeure Event shall not be based on the economic hardship or financial condition of either Party. Force Majeure shall not be based on (i) Purchaser’s inability economically to use or resell the Services purchased hereunder; or (ii) the loss or failure of Provider’s supply.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall: (i) promptly notify the other Party in...
writing of the existence of, and details regarding, the Force Majeure Event; (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has significantly affected a Party’s performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party whose obligations are not directly affected by Force Majeure shall be entitled to terminate the Agreement upon ninety (90) days’ prior written notice to the affected Party. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

10.4 Removal of System. Upon any termination of the Agreement pursuant to this Section 10, Provider will remove the System pursuant to Section 2.5 hereof at the expense of the Party whose performance is not directly affected by the Force Majeure event.

11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a “Provider Default”): (i) A Bankruptcy Event shall have occurred with respect to Provider; (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within ten (10) Business Days from receipt of notice from Purchaser of such past due amount; (iii) Provider breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.1 as a separate Provider Default) and such breach or failure is not cured within thirty (30) days after Purchaser’s written notice of such breach or failure; (iv) any representation or warranty made in this Agreement by Provider is not true and complete in any material respect when given or at any time during the Term; (v) INTENTIONALLY OMITTED; and (vi) Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Provider under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Purchaser.

(b) Purchaser’s Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and shall be entitled to liquidated damages in an amount equal to the positive difference, if any, of the Fair Market Value of the Services anticipated to be provided over the remaining Term, as determined by Purchaser in a commercially reasonable manner, and the Services Payments associated with such Services
Attachment 1-(A)

MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #_______

(“Termination Amount”). Upon termination of this Agreement in accordance with this Section, Purchaser shall promptly calculate the Termination Amount, if any, owed by Provider and submit an invoice to Provider for such amount. Provider shall pay such Termination Amount within ten (10) Business Days after receipt of such invoice in accordance with the payment directions specified by Purchaser (“Termination Amount Payment Date”). In the event Provider, in good faith, disputes Purchaser’s calculation of the Termination Amount, the Parties shall then act in good faith to resolve any such dispute, including but not limited to utilizing a procedure substantially similar to that provided for in Section 2.4 in the event that the Parties are unable to resolve such dispute; provided however that if through such procedures the Termination Amount is determined to be equal to or greater than that calculated by Purchaser, Provider shall pay all costs associated with such procedure, or otherwise the Parties shall share such costs equally.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

11.2 Purchaser Defaults and Provider’s Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a “Purchaser Default”): (i) A Bankruptcy Event shall have occurred with respect to Purchaser; (ii) Purchaser breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.2 as a separate Purchaser Default) and such breach or failure is not cured within thirty (30) days after Provider’s written notice of such breach or failure; (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount; (iv) any representation or warranty made in this Agreement by Purchaser is not true and complete in any material respect when given or at any time during the Term; and (v) Purchaser consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Purchaser under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Provider.

(b) Provider’s Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, and Provider shall be entitled to receive from Purchaser, as liquidated damages, an amount equal to the sum of (i) the Early Termination Fee pursuant to Section 2.2, (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof at the expense of the defaulting Party.
12. LIMITATIONS OF LIABILITY.

12.1 UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTWITHSTANDING THE FOREGOING, PROVIDER SHALL REMAIN LIABLE, WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY ATTRIBUTABLE TO THE NEGLIGENCE OR OTHER TORT OF THE PROVIDER, ITS OFFICERS, EMPLOYEES OR AGENTS.

13. ASSIGNMENT.

13.1 Assignment by Purchaser. Purchaser may assign or transfer this Agreement to any other New York State agency, authority or public benefit corporation or public corporation that is the successor in interest of NYSTA and that is backed by the full faith and credit of the State of New York without the Provider’s prior consent, provided that (a) Purchaser shall promptly notify Provider of any such assignment in writing, (b) such assignee shall assume all of Purchaser’s obligations under the Agreement in writing; and (c) such assignment shall in no event compromise the tax treatment of this Agreement or the Provider. Any assignment that does not comply with the forgoing shall be invalid.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 7, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand-delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above if received during normal business hours on a Business Day or otherwise such notice shall be deemed delivered on the next Business Day.
14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser’s business (“Confidential Information”) to the other or, if in the course of its performance of this Agreement, or if in the course of negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall:

   (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and

   (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement.

   Notwithstanding the above, a Party may, with the consent of the other party (such consent not to be unreasonably conditioned, delayed, or withheld), provide such Confidential Information to its officers, directors, members, managers, employees, agents, attorneys, accountants and consultants, Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, “Representatives”), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by its Representatives. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

   (a) becomes publicly available other than through the receiving Party or its Representatives;
Attachment 1-(A)

MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY

BUNDLE #________

(b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) is independently developed by the receiving Party; or

(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. The Parties acknowledge that this Agreement is subject to the New York State Freedom of Information Law (“FOIL”) as set forth in Article 6 of the New York State Public Officers Law, and that only Provider’s proprietary information that satisfies the requirements of § 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and the Purchaser shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the Provider that refer to, or that describe any aspect of, the Agreement; at no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser’s prior written authorization.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party is entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

16. INDEMNITY.

16.1 Provider’s Indemnity. Subject to Section 12, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the “Purchaser Indemnified Parties”) from and against any and all Claims arising from or related to Provider’s performance under this Agreement. Provider’s indemnification obligation shall be limited to the amount of the Indemnification Amount, but in no event shall Provider’s total liability in respect of all Claims under this Section 16 exceed the amount of the Indemnification Amount.

16.2 Purchaser’s Indemnity. Purchaser agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the “Provider Indemnified Parties”) from and against any and all Claims arising from or related to Purchaser’s performance under this Agreement. Purchaser’s indemnification obligation shall be limited to the amount of the Indemnification Amount, but in no event shall Purchaser’s total liability in respect of all Claims under this Section 16 exceed the amount of the Indemnification Amount.
Attachment 1-(A)

MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

Parties”) from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following:

(a) any claim by a third party for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider’s negligence or willful misconduct or

(b) any claim by a third party regarding any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations, and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

16.2 Purchaser’s Indemnity. Subject to and consistent with Section 361-b of the Public Authorities Law, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Purchaser or its officers or employees when acting within the course and scope of their employment. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

17. INSURANCE.

Provider shall maintain such insurance coverage as required under the RFP, in full force and effect throughout the Term.

18. MISCELLANEOUS.

18.1 Intentionally Omitted.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser and approved by the New York State Attorney General as to form and by the Office of Comptroller.

18.3 Industry Standards. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Intentionally Omitted

18.5 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or
Attachment 1-(A)

MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.6 Survival. The obligations under Article 16 (Indemnity) or under all other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law other than New York General Obligations Law § 5-1401. The Parties agree that any dispute hereunder will be litigated in a court of competent jurisdiction in New York.

18.8 Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Purchase and Provider, or between either or both of them and any other Party.

18.9 Third-Party Beneficiaries. Except as expressly provided herein to the contrary, this Agreement is intended solely for the benefit of the Parties thereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party thereto.

18.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

18.11 Forward Contract; Service Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. The payment of the Termination Amount or Early Termination Fee made or to be made by one Party to the other Party under this Agreement constitutes a “settlement payment” and/or a “transfer” under the United States Bankruptcy Code. This agreement constitutes a “master netting agreement” and each party is a “master netting agreement participant” within the meaning of the United States Bankruptcy Code. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

18.12 Iran Divestment.

Iran Divestment Act Certification required by - Section 2879-c of the Public Authorities Law
a. As used in this Section 18.12, “person” has the meaning set forth in paragraph (e) of subdivision 1 of Section 165-a of the State Finance Law.

b. Provider hereby provides the following certification:

By signing this Contract, 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. Such list is known as the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York Office of General Services website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf. Provider further certifies that in the performance of this Agreement, it will not utilize any subcontractor that is identified on the Prohibited Entities List. Provider agrees that should it seek to renew or extend this Agreement, it must provide the same certification at the time of renewal or extension. Provider also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before NYSTA may approve any request for assignment of this Agreement. During the term of the Agreement, should NYSTA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, NYSTA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then NYSTA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Provider in default. NYSTA reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of this Agreement, and to pursue a responsibility review with Provider should it appear on the Prohibited Entities List hereafter.

18.13 Grounds to Termination for Provider’s Responsibility.

(a) General Responsibility. Provider shall at all times during the Term remain Responsible Provider agrees, if requested by NYSTA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity
(b) Suspension of Work (for Non-Responsibility). NYSTA, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time. In the event of such suspension, Provider will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Provider may resume Contract activity at such time as NYSTA issues a written notice authorizing a resumption of performance under the Contract.

(c) Termination (for Non-Responsibility). Upon written notice to Provider, and a reasonable opportunity to be heard with appropriate NYSTA officials or staff, the Contract may be terminated by NYSTA at Provider's expense where Provider is determined by NYSTA to be Non-Responsible. In such event, NYSTA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

New York State Thruway Authority  <Insert Providers Name>

Signature: ______________________________  Signature: ______________________________

Print Name: ______________________________  Print Name: ______________________________

Title: ______________________________  Title: ______________________________

Date: ______________________________  Date: ______________________________

APPROVED AS TO FORM  APPROVED AND FILED
ATTORNEY GENERAL  STATE COMPTROLLER

By: ______________________________  By: ______________________________

Date: ______________________________  Date: ______________________________
MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

ACKNOWLEDGMENT BY NOTARY PUBLIC

STATE OF }
COUNTY OF }

On the ____ day of _________________ in the year 20__, before me personally appeared: ________________________________________, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at ____________________________________________, Town of ________________________________________, County of ________________________________________, State of _______________________________________ ; and further that:

[Check One]

☐ If an individual): she/he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ If a corporation): she/he is the ___________________________ of ________________________________, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, she/he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, she/he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ If an unincorporated association): she/he is the ___________________________ of ________________________________, the firm described in said instrument; that, she/he is authorized to execute the foregoing instrument on behalf of the firm for the purposes set forth therein; and that, pursuant to that authority, she/he executed the foregoing instrument in the name and on behalf of said firm as the act and deed of said firm.

☐ If a partnership): she/he is the ___________________________ of ________________________________, the partnership described in said instrument; that, by the terms of said partnership, she/he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, she/he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

__________________________________________
Notary Public
MASTER POWER PURCHASE AGREEMENT

SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #________

EXHIBIT A (NYSTA) - Insert Standard Clauses For New York State Thruway Authority And New York State Canal Corporation Procurement Contracts (Usually Labeled Appendix A)
MASTER POWER PURCHASE AGREEMENT
SOLAR HIGHWAY INITIATIVE SERVICES
FOR THE NEW YORK STATE THRUWAY AUTHORITY
BUNDLE #_______

Note: Other than Exhibit A (NYSTA) shown above, all of the other remaining Schedules, Exhibits, and Attachments referenced in the terms and conditions contained within this Attachment 1-(A) shall mirror those Schedules, Exhibits, and Attachments shown in Attachment 1-the Department of Transportation Master Power Purchase Agreement.
8.3. ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS
(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBERS: C031426
PROJECT TITLES: Solar Highway Initiative

I. CONSULTANT INFORMATION

FIRM NAME: ______________________________________________________________
ADDRESS:_________________________________________________________________
CITY:__________________________ STATE: __________
ZIP CODE: __ __ __ __ - __ __ __
TELEPHONE: (_____) _____ - ________ FAX: (_____) _____ - ________
E-MAIL ADDRESS: _________________________________________________________
CONTACT PERSON: ________________________________________________________

Consultant’s Federal Identification Number (FIN): _____________________________
Consultant’s NYSDOT Consultant Identification Number (CIN): ________________

• Please indicate below the name, title, address, and telephone/fax numbers of the person who
  prepared this proposal, as well as any other individual(s) with authority to negotiate and
  contractually bind the Proposer and also who may be contacted during the period of proposal
  evaluation:

Preparer’s Name/Title: _____________________________________________________
Address: __________________________________________________________________
Telephone: (____) _____ - ________ FAX: (____) _____ - ________

Other Authorized Individual(s):
Name/Title:________________________________________________________________
Address: __________________________________________________________________
Telephone: (____) _____ - ________ FAX: (____) _____ - ________
II. PROPOSER CERTIFICATIONS

By signing below, I, _____________________________, authorized individual

(Name)
of ________________________________ make the following

(Firm)
certifications regarding the subject proposal:

- 180-Day Offer: This proposal is a firm offer for a 180-day period from the date of submission.
- The firm has read and will follow the procedure outlined in Section 7.3 of the RFP if it proposes the services of a former NYSDOT or NYSTA employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility Questionnaire via the OSC VendRep portal within 10 days of notification of designation.
  (http://www.osc.state.ny.us/vendrep/forms_vendor.htm)
- ST-220: If selected for contract award greater that $100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
  http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
  http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

Signature: ____________________________________________

III. ACCEPTANCE OF AGREEMENT

By signing below, I, _____________________________, authorized individual

(Name)
of ________________________________ hereby certify that I have read and

(Firm)
accept all terms and conditions contained in the Agreement, including the Standard Clauses for All New York State Contracts and the Standard Clauses for New York State Thruway Authority And New York State Canal Corporation Procurement Contracts which are included as Exhibit A to this Request for Proposals.

Signature: ____________________________________________

(Name of Acceptor)
8.4. ATTACHMENT 3: PROCUREMENT LOBBYING LAW COMPLIANCE

1. **Required Forms:** The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant’s proposal.

- Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) [https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf)

2. **NYSDOT Guidelines and Procedures**

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through Contract Management (*Designated Contacts). Until a designation is made, communication with any other NYSDOT or NYSTA employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.


3. **Summary of the policy and prohibitions regarding permissible contacts**

   **a) Contacts prior to designation:**
   Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:
   - The Contract Management Designation Contract Analyst
   - The Contract Management Designation Analyst Supervisor
   - The Contract Management Civil Rights Unit Supervisor
   - The Contract Management Assistant Directors
   - The Contract Management Director

   These are some communications exempted from this restriction:
   - Participation in a pre-proposal conference.
   - Protests, complaints of improper conduct or misrepresentation

   If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, that Proposer cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the Proposer.

   **b) Contacts after designation**
   NYSDOT identifies its primary negotiation contacts. The designated contacts include:
   - The Contract Management Designation Contract Analyst
   - The Contract Management Designation Analyst Supervisor
   - The Contract Management Civil Rights Unit Supervisor
   - The Contract Management Assistant Directors
The Contract Management Director
The Consultant Management Bureau consultant job manager
The Consultant Management Bureau consultant job manager’s immediate supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT/NYSTA employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT/NYSTA employee.

c) Information Required from Offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:
The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

Person’s name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

d) Applicability to an executed contract:
Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Proposer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department/NYSTA may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:
   http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html  (Advisory Council FAQs)

For more information, go to NYSDOT’s Web Site at http://www.dot.ny.gov or contact:

Peter Russell
NYSDOT Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: Peter.Russell@dot.ny.gov
Tele: (518) 485-8620
8.5. ATTACHMENT 4: NEW YORK BUSINESS REPORTING

Not Applicable.
8.6. ATTACHMENT 5: FORM AOR

ACKNOWLEDGMENT OF RECEIPT OF RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

<table>
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<tr>
<th>NAME OF PROPOSER</th>
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We hereby acknowledge receipt of the Solar Highway Initiative (Proposal #C031426) Request for Proposals, dated April 15, 2016 and subsequent responses to questions and Modifications issued by the Department, as listed below.

Add additional lines in tables below, if needed.

<table>
<thead>
<tr>
<th>Modification number:</th>
<th>Date issued by Department:</th>
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8.7. ATTACHMENT 6: NON-COLLUSIVE BIDDING CERTIFICATION

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

SECTION 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this ______ day of ________, 20____ as the act and deed of said corporation of partnership.
NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

<table>
<thead>
<tr>
<th>NAMES OF PARTNERS OR PRINCIPALS</th>
<th>LEGAL RESIDENCE</th>
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IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

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<tr>
<th>NAME</th>
<th>LEGAL RESIDENCE</th>
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<tbody>
<tr>
<td>President:</td>
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<tr>
<td>Secretary:</td>
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<td>Treasurer:</td>
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<tr>
<td>President:</td>
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<td>Secretary:</td>
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<td>Treasurer:</td>
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NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

Identifying Data
Potential Contractor: ________________________________________________

Address: _______________________________________________________

                        Street

______________________________________________________________

City, Town, etc.

Telephone:_____________ Title__________________________

If applicable, Responsible Corporate Officer

Name:____________________ Title__________________________

Signature: ____________________________________________________

Joint or combined bids by companies or firms must be certified on behalf of each participant.

__________________________________________
Legal name of person, firm or corporation

By ____________________________________________

Name

Title

Address: ________________________________

                        Street

City State

__________________________________________
Legal name of person, firm or corporation

By ____________________________________________

Name

Title

Address: ________________________________

                        Street

City State

157
8.8. ATTACHMENT 7: KEY PERSONNEL RESUME AND REFERENCES

Instructions:
- Complete Attachment 7 for each Key Personnel title identified in the RFP.
- Attachment 7 shall not exceed three pages in length
- Proposer’s may expand the boxes as necessary
- The term “Client” below refers to the past project owner. “Client” is NOT a Prime Contractor where the proposing firm acted in the capacity as a Subcontractor.

<table>
<thead>
<tr>
<th>1. Personnel Name and Title:</th>
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<tbody>
<tr>
<td>2. Title Assigned for this Project:</td>
<td></td>
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<tr>
<td>3. Firm working for on this Project:</td>
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<tr>
<td>4. Current Employment Status:</td>
<td>[ ] Employed by Firm identified #3 above [ ] Employed by a different Firm [ ] Unemployed</td>
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<tr>
<td>5. Years of Relevant Experience</td>
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<td>6. Description of Relevant Experience:</td>
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<td>7. Certifications/Licenses:</td>
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<tr>
<td>8. Education:</td>
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<tr>
<td>Past Project Experience</td>
<td>Complete below for a maximum of five past projects</td>
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<tr>
<td>9.1 Project Description (include contract number where appropriate):</td>
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<td>9.2 Client Name:</td>
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<td>9.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
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<td>9.4 Description of person’s role and responsibilities during project:</td>
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<td>10.1 Project Description (include contract number where appropriate):</td>
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<td>10.2 Client Name:</td>
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<td>11.1 Project Description (include contract number where appropriate):</td>
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<td>11.2 Client Name:</td>
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</tr>
<tr>
<td>11.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
<td></td>
</tr>
<tr>
<td>11.4 Description of person’s role and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>12.1 Project Description (include contract number where appropriate):</td>
<td></td>
</tr>
<tr>
<td>12.2 Client Name:</td>
<td></td>
</tr>
<tr>
<td>12.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
<td></td>
</tr>
<tr>
<td>12.4 Description of person’s role and responsibilities during project:</td>
<td></td>
</tr>
<tr>
<td>13.1 Project Description (include contract number where appropriate):</td>
<td></td>
</tr>
<tr>
<td>13.2 Client Name:</td>
<td></td>
</tr>
<tr>
<td>13.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
<td></td>
</tr>
<tr>
<td>13.4 Description of person’s role and responsibilities during project:</td>
<td></td>
</tr>
</tbody>
</table>
8.9. ATTACHMENT 8: FIRM PROFILE AND REFERENCES

Firm Profile:

<table>
<thead>
<tr>
<th>Experience with Commercial Installations</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Years in Operation</td>
<td></td>
</tr>
<tr>
<td>Total Number of Installations for company in past 12 months</td>
<td></td>
</tr>
<tr>
<td># of customer owned systems sold</td>
<td></td>
</tr>
<tr>
<td># of lease or PPA systems</td>
<td></td>
</tr>
</tbody>
</table>

**Employee Information**

| Number of Full Time Employees |       |
| Number of Part Time Employees  |       |

**Certifications**

| Number of Employees Certified and Type of Certification |       |

**Licensure/Bonding**

| NY State License #(s) |       |
| Bonding/Financial Backing |       |

**Workload/Capacity (assume standard installations)**

| Evaluation capacity per week |       |
| Installation capacity per week |       |

**Geographic Coverage**

<table>
<thead>
<tr>
<th>Office/Warehouse Locations in:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Western NY Bundle</td>
<td></td>
</tr>
<tr>
<td>Capital/Mohawk Bundle</td>
<td></td>
</tr>
<tr>
<td>Hudson Valley Bundle</td>
<td></td>
</tr>
<tr>
<td>Downstate/NYC Bundle</td>
<td></td>
</tr>
<tr>
<td>Long Island Bundle</td>
<td></td>
</tr>
</tbody>
</table>
Installation Phase References

Reference 1

Reference Name: 
Reference Main Line of Business: 
Reference Contact Information

<table>
<thead>
<tr>
<th>Primary Contact Person's Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td></td>
</tr>
<tr>
<td>Affiliation/Company employed by</td>
<td></td>
</tr>
<tr>
<td>Mailing Address:</td>
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<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
</tbody>
</table>

Provide a brief description of a recent project for which they are serving to reference.

Project Name: 
Project Description: 
Size of the System: 
Date of Completion: 
Role played by Provider:
Installation Phase References

Reference 2

<table>
<thead>
<tr>
<th>Reference Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mailing Address:</th>
</tr>
</thead>
<tbody>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E-mail:</th>
</tr>
</thead>
<tbody>
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</tr>
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Provide a brief description of a recent project for which they are serving to reference.

Project Name:

Project Description:

Size of the System:

Date of Completion:

Role played by Provider:
## Installation Phase References

**Reference 3**

<table>
<thead>
<tr>
<th>Reference Name:</th>
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<tbody>
<tr>
<td>Reference Main Line of Business:</td>
<td></td>
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</tbody>
</table>

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<tr>
<td>Phone:</td>
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</tr>
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<td>E-mail:</td>
<td></td>
</tr>
</tbody>
</table>

*Provide a brief description of a recent project for which they are serving to reference.*

Project Name:

Project Description:

Size of the System:

Date of Completion:

Role played by Provider:
## Installation Phase References

**Reference 4**

<table>
<thead>
<tr>
<th>Reference Name:</th>
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<tr>
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<td>Reference Contact Information</td>
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</tr>
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<td>Phone:</td>
<td></td>
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<tr>
<td>E-mail:</td>
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</tr>
</tbody>
</table>

*Provide a brief description of a recent project for which they are serving to reference.*

Project Name:

Project Description:

Size of the System:

Date of Completion:

Role played by Provider:
**Installation Phase References**

**Reference 5**

<table>
<thead>
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<th>Reference Name:</th>
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<tbody>
<tr>
<td>Reference Main Line of Business:</td>
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</tr>
<tr>
<td>Reference Contact Information</td>
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</tr>
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<td>Phone:</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
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*Provide a brief description of a recent project for which they are serving to reference.*

Project Name:

Project Description:

Size of the System:

Date of Completion:

Role played by Provider:
Operation and Maintenance Phase References

Reference 1

<table>
<thead>
<tr>
<th>Reference Name:</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Phone:</td>
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<td>E-mail:</td>
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</table>

Project Name: 

Project Description:

Reference 2

<table>
<thead>
<tr>
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</tr>
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<tbody>
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<td>Reference Main Line of Business:</td>
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<td>E-mail:</td>
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</table>

Project Name: 

Project Description:
### Operation and Maintenance Phase References

#### Reference 3

<table>
<thead>
<tr>
<th>Reference Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference Main Line of Business:</td>
<td></td>
</tr>
</tbody>
</table>

**Reference Contact Information**

- **Primary Contact Person’s Name:**  
- **Title:**  
- **Affiliation/Company employed by:**  
- **Mailing Address:**  
- **Phone:**  
- **E-mail:**  

**Project Name:**  

**Project Description:**  

#### Reference 4

<table>
<thead>
<tr>
<th>Reference Name:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Reference Main Line of Business:</td>
<td></td>
</tr>
</tbody>
</table>

**Reference Contact Information**

- **Primary Contact Person’s Name:**  
- **Title:**  
- **Affiliation/Company employed by:**  
- **Mailing Address:**  
- **Phone:**  
- **E-mail:**  

**Project Name:**  

**Project Description:**
Operation and Maintenance Phase References

**Reference 5**

<table>
<thead>
<tr>
<th>Reference Name:</th>
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</tr>
<tr>
<td>Reference Contact Information</td>
<td></td>
</tr>
<tr>
<td>Primary Contact Person’s Name:</td>
<td></td>
</tr>
<tr>
<td>Title:</td>
<td></td>
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<tr>
<td>Affiliation/Company employed by</td>
<td></td>
</tr>
<tr>
<td>Mailing Address:</td>
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<tr>
<td>Phone:</td>
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<tr>
<td>E-mail:</td>
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<tr>
<td>Project Name:</td>
<td></td>
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<tr>
<td>Project Description:</td>
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</table>
### ATTACHMENT 9: STANDARD EQUIPMENT SPECIFICATIONS

<table>
<thead>
<tr>
<th>Standard PV System Equipment Offerings</th>
<th>Description</th>
<th>Units*</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Module Brand</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Module Wattage</td>
<td>W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Module Dimensions (H x W x D)</td>
<td>INCHES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Module Efficiency</td>
<td>%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Module Production Warranty</td>
<td>YEARS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Module Equipment Warranty</td>
<td>YEARS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mounting System Brand and Type</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Inverter Brand</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inverter Wattage</td>
<td>W</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inverter Voltage</td>
<td>V</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inverter Warranty</td>
<td>YEARS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data Acquisition System</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Please change units in this column if needed. If providing more than one type of standard equipment with the base pricing, please add additional rows as needed.
8.11. ATTACHMENT 10: BUNDLE PREFERENCE FORM

Any firm bidding on more than three (3) Bundles, must indicate their order of preference below. This information will be used in the situation where the bidding firm has the top-ranked proposal in more than three Bundles, in which case the firm will be awarded Bundles using the preference order below.

<table>
<thead>
<tr>
<th>Bundle Number</th>
<th>Order Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
</tbody>
</table>
8.12. ATTACHMENT 11: PERMIT FORMS

All permits obtained under this Solar Highway Initiative Services, RFP C031426, shall be in accordance with all applicable Terms and Conditions of the Contract documents. Permit Forms are subject to change at any time during the life of this contract. The Provider will be required to use the actual Permit Form in effect when applying.

8.12.1. NYSDOT Use and Occupancy Permit – PERM 32
<Insert https://www.dot.ny.gov/divisions/operating/oom/transportation-systems/repository/PERM%2032%20Rev%20121515%20-%20FINAL.pdf>

8.12.2. NYSDOT Highway Work Permit
<Insert https://www.dot.ny.gov/divisions/operating/oom/transportation-systems/traffic-operations-section/highway-permits>

8.12.3. NYSTA Occupancy Permit (“The Use & Occupancy Permit”)
<http://www.thruway.ny.gov/business/realproperty/index.html#permits>

8.12.4. NYSTA Work Permit (the “Highway Work Permit”)

8.12.5. NYSTA Annual Work Permit
8.13. ATTACHMENT 12: COST WORKSHEET

Cost Worksheet available for downloading at the project web site at https://www.dot.ny.gov/business click on “Consulting Services” and then “Opportunities”.

9. APPENDICES

Go to NYSDSOT web site to download the following documents at the project web site at https://www.dot.ny.gov/business click on “Consulting Services” and then “Opportunities”.

9.1. APPENDIX 1: SITE SPECIFIC PORTFOLIO BUNDLES

9.2. APPENDIX 2: SAMPLE SOLAR FACILITY