



**RENEWABLE PORTFOLIO STANDARD
CUSTOMER-SITED TIER
ANAEROBIC DIGESTER GAS-to-ELECTRICITY PROGRAM**

Program Opportunity Notice (PON) 1146

Revised June 10, 2009

Summary of Revisions

The following changes have been made to PON 1146, “Renewable Portfolio Standard Customer-Sited Tier Anaerobic Digester Gas-to-Electricity Program”:

On page 1, the following has been deleted “*Total Program Funding up to \$11 million*”.

On page 1, the following has been deleted “*\$11 million is available for financial incentives to support the installation and operation of anaerobic digester gas (ADG)-to-electricity systems in New York State, with up to \$1 million available per ADG System.*” The statement has been replaced by the following: “*A total of \$20.1 million has been allocated to PON 1146 for financial incentives to support the installation and operation of anaerobic digester gas (ADG)-to-electricity systems in New York State, with up to \$1 million available per ADG System. Approximately \$4 million remains.*”

On page 1, and thereafter, the following has been deleted “*Applications will be accepted until May 30, 2009*”, and the following has been inserted, “*Applications will be accepted until September 30, 2009*”.

On page 1, and thereafter, “*Roseanne Viscusi*” has been replaced by “*Kathleen O’Connor*”.

On page 1, “*or Sarah Osgood, ext. 3301, sjo@nyserda.org*” has been deleted.

On page 1, the following has been deleted “*Diane Vogel, ext. 3299, drv@nyserda.org*”, and the following has been inserted, “*Nancy Marucci, ext. 3335, nsm@nyserda.org*”.

On page 2, the following has been deleted “*Up to \$11 million remains...*”, and the following has been inserted, “*Approximately \$4 million is available...*”

On page 3, under “*Calculating Incentives*”, the following has been deleted “*(a) the eligibility capacity limit in the Net Energy Metering Law, which currently caps farm waste electric generating equipment at 400 kW*”, and the following has been inserted, “*(a) the eligibility capacity limit in the Net Energy Metering Law, which currently caps farm waste electric generating equipment at **500 kW***”, to reflect recent changes to the Net Energy Metering Law.

On page 8, the following has been deleted “*Six (6) hard copies of all Project Application materials...*”, and the following has been inserted, “*Four (4) hard copies of all Project Application materials...*”

On page 12, under “*Other Opportunities*”, information on NYSERDA’s past Technical Assistance Program Opportunity Notice (PON) 1047 has been replaced with information on the current Technical Assistance Program Opportunity Notice (PON 1197).



**RENEWABLE PORTFOLIO STANDARD
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ANAEROBIC DIGESTER GAS-to-ELECTRICITY PROGRAM**

Program Opportunity Notice (PON) 1146

A total of \$20.1 million has been allocated to PON 1146 for financial incentives to support the installation and operation of anaerobic digester gas (ADG)-to-electricity systems in New York State, with up to \$1 million available per ADG System. Approximately \$4 million remains. Funding is on a first-come, first-served basis. Application Packages will be accepted until September 30, 2009 at 5:00 PM Eastern Daylight Time, or until all funding has been fully committed, whichever comes first.

The New York State Energy Research and Development Authority (NYSERDA), administrator of the New York State Renewable Portfolio Standard (RPS) program, is accepting applications to receive financial incentives to support the purchase, installation, and operation of Anaerobic Digester Gas (ADG)-to-Electricity Systems in New York State. Both capacity and performance-based electricity production incentives are available, subject to the limitations described in this Program Opportunity Notice (PON). Generally, only customers that pay the RPS Surcharge are eligible to receive funding through this program.

In order to participate in this program, Applicants must comply with all program rules, procedures, and eligibility requirements, submit all required forms and supplemental documentation, and enter into a Standard Performance Contract Agreement with NYSERDA. Applicants must also adhere to measurement and verification requirements throughout the term of the Agreement.

Application Submission: Applications must be clearly labeled, contain an original signature, and be mailed to:

**Kathleen O'Connor, PON 1146
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

All Program Questions should be directed to: Kathleen O'Connor, ext. 3422, kmo@nyserda.org or Tom Fiesinger, ext. 3218, twf@nyserda.org.

All Contractual Questions should be directed to: *Nancy Marucci, ext. 3335, nsm@nyserda.org.*

Late or unsigned applications will be returned. Faxed or e-mailed applications will not be accepted. Applications will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's website at www.nyserda.org.

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I. INTRODUCTION

The ADG-to-Electricity Program is issued under the Customer-Sited Tier (“CST”) portion of the New York State Renewable Portfolio Standard (“RPS”) program and seeks to support the purchase, installation, and operation of ADG-fueled Electric Power Generation Equipment in New York State. The CST, commonly described as “behind the meter” generation, refers to smaller-sized electric generation that is sited and the energy created by which is used primarily at the electric customer’s location.

Approximately \$4 million remains under this first-come, first-served program, with a maximum of \$1 million in financial incentives available per ADG System. Both Capacity and performance-based electricity production incentives (herein referred to as “Performance Incentives”) are available, subject to the limitations described in this PON.

In order to participate in this program, Applicants must comply with all program rules, procedures, and eligibility requirements, submit all required forms and supplemental documentation, and enter into a Standard Performance Contract Agreement (“Agreement”) with NYSERDA. Applicants must also adhere to measurement and verification requirements throughout the term of the Agreement.

Applicants should refer to Section IX for the exact definitions of terminology used throughout this PON.

II. INCENTIVES

Under this program, a maximum of \$1 million in financial incentives is available per ADG System. These incentives may consist of a combination of Capacity and Performance Incentives, as described below.

CAPACITY INCENTIVE

A **\$500 per kilowatt (kW)** Capacity Incentive is offered to cover a portion of the total purchase and installation costs of New ADG-fueled Electric Power Generation Equipment (New Equipment), including: controls, meters, biogas clean-up equipment, emissions control equipment, and interconnection equipment; and costs associated with engineering services. New Equipment is defined as ADG-fueled Electric Power Generation Equipment purchased for, or installed at, the Host Site on or after 2/12/07, which results in an incremental increase in the ADG-fueled electricity generated at the Host Site compared to the Baseline ADG-fueled Electricity Generation (“Baseline Generation”), if any, existing at the Host Site as of 2/11/07.

The Capacity Incentive will be established based on the ADG-rated Capacity of the New Equipment (rather than the nameplate capacity of the New Equipment), as verified by NYSERDA. If New Equipment is

installed to replace existing equipment (i.e., the existing equipment is removed from service), only that portion of the New Equipment that represents an incremental increase in ADG-fueled electric power generation capacity is eligible for the Capacity Incentive.

The maximum Capacity Incentive *shall not exceed* the lesser of \$350,000 or 50% of the total purchase, engineering services, and installation costs of the New Equipment. If any previous funding from NYSERDA has been received by the Host Site under a contract that included the purchase and/or installation of the ADG-fueled Electric Power Generation Equipment associated with the Application Package, then that equipment will not be eligible for a Capacity Incentive through the ADG-to-Electricity Program.

PERFORMANCE INCENTIVES

Performance Incentive payments are offered through this program for verified ADG-fueled electricity generation, and may be provided for up to three years. Two types of Performance Incentives are offered:

- A Performance Incentive for electricity generated by New Equipment at **\$0.10 per kilowatt-hour (kWh)**; and
- A Performance Incentive for electricity generated by Eligible Existing ADG-fueled Electric Power Generation Equipment (“Eligible Existing Equipment”), herein referred to as “Maintenance Incentives”, at **\$0.02 per kWh**. Eligible Existing Equipment is defined as ADG-fueled Electric Power Generation Equipment purchased for or installed at the Host Site on or after 1/1/03, but before 2/12/07; or equipment that has been Substantially Upgraded since 1/1/03. Substantially Upgraded is defined as a major system upgrade that: 1) increases the capacity/electricity production of the existing ADG-fueled Electric Power Generation Equipment, 2) improves the functioning of the existing ADG-fueled Electric Power Generation Equipment such that it can resume operation at a Capacity Factor of 80%, and/or 3) improves the functioning of the existing ADG-fueled Electric Power Generation Equipment such that it can continue operation by being brought into compliance with relevant State and Federal emissions standards. The Maintenance Incentive has been established to partially offset the costs of operating and maintaining Eligible Existing Equipment, so that the existing equipment continues to produce electricity.

In no case will an Applicant receive a Performance Incentive of more than \$0.10 per kWh, through this Program, for electricity produced by an individual piece of generation equipment. However, the Applicant may be eligible for additional incentives through other programs (see Section VIII).

CALCULATING INCENTIVES

Generally, incentives may be provided as large as necessary to meet the approximate Peak Connected Load at the Customer’s meter. However, where there are recognized public benefits, or where practical considerations suggest, incentives may be approved for projects that are sized larger than the Customer’s Peak Connected Load.

To encourage the use of anaerobic digestion systems treating farm wastes and the resulting public benefits, incentives may be provided based on (a) the eligibility capacity limit in the Net Energy Metering Law which currently caps farm waste electric generating equipment at 500 kW, or (b) the Customer’s approximate Peak Connected Load, whichever is greater.

Because of physical requirements, ADG-to-Electricity Systems may be slightly larger than the Customer’s Peak Connected Load if an exact match is not practicable. The physical requirements may include the incremental size of the electric power generation and ancillary equipment currently available and the

system size necessary to effectively use the biogas produced from the anaerobic digestion of the Customer's waste Feedstock(s).

INCENTIVE ESTIMATION TOOL

NYSERDA has developed an Incentive Estimation Tool to help the Applicant estimate the maximum Total Incentive they may be eligible to receive through the ADG-to-Electricity Program. The Tool assumes that installed systems will operate at an annual Capacity Factor of 80%. The Tool is included as *Section C* of the *Application Form*, which may be downloaded from NYSERDA's website <http://www.nyserdera.org/funding/funding.asp>, under the PON 1146 header, requested from NYSERDA toll-free at 1-866-NYSERDA, or requested via e-mail at info@nyserdera.org. A hard copy of the tool is included in Appendix B2.

The Applicant should use the Tool to develop their Total Incentive estimate and Annual Electricity Generated estimate, which will serve as the basis for their request for funding from NYSERDA. NYSERDA will use these estimates, as well as the other information provided within the Application Package, to develop the Total Contracted Project Incentive (*see below*). If an unanticipated scenario is proposed by the Applicant, which does not fit into the constraints of the Incentive Estimation Tool, but which NYSERDA determines to meet the requirements of the Program, NYSERDA may consider alternative methods of estimating the Total Contracted Project Incentive on a case by case basis.

Examples of how to use the Tool for the following scenarios are provided in *Appendix A*:

- Scenario 1: The Host Site has no Eligible Existing Equipment. The Applicant is installing New Equipment at the Host Site.
- Scenario 2: The Applicant is currently applying only for Maintenance Incentives for Eligible Existing Equipment located at the Host Site.
- Scenario 3: The Host Site has Eligible Existing Equipment, which it will continue to operate. The Applicant is installing New Equipment at the Host Site. If a Customer is eligible to receive Performance Incentives for both New and Eligible Existing Equipment, *both* pieces of equipment must be metered separately (but *the electricity produced by each* can have a single interconnection point with the grid). Additionally, separate Standard Performance Contract Agreements must be entered in to for both pieces of equipment. *This will provide the Applicant with the ability to begin receiving the Maintenance Incentive on the Eligible Existing Equipment before the New Equipment is Installed and Commissioned.*
- Scenario 4: The Applicant is replacing existing ADG-fueled Electric Power Generation Equipment at the Host Site with New Equipment. *If Eligible Existing Equipment is removed from service and replaced with New Equipment, the Applicant must provide NYSERDA with information on the Baseline Generation of the Eligible Existing Equipment. A Performance Incentive of \$0.10 per kWh will be paid on electricity produced above and beyond the existing system's Baseline Generation, while the maintenance incentive of \$0.02 per kWh will be paid on the remaining electricity generated.*

If non-eligible existing equipment is removed from service and replaced with New Equipment, the Applicant must also provide NYSERDA with information on the Baseline Generation of the existing equipment. A Performance Incentive of \$0.10 per kWh will be paid on electricity produced above and beyond the existing system's Baseline Generation. However, no maintenance incentive will be paid on the remaining electricity generated.

TOTAL CONTRACTED PROJECT INCENTIVE

The Total Contracted Project Incentive will be used by NYSERDA as the basis for the offer made to the Applicant through the Agreement. The Total Contracted Project Incentive is the sum of all incentives (Capacity and Performance) that will be offered to the Applicant, and is capped at \$1 million per ADG System. NYSERDA will develop the Total Contracted Project Incentive based on the information provided in the Application Package, and using the assumption that installed equipment will operate at a Capacity Factor of 80%. Any previous NYSERDA funding received by the Host Site for the ADG System associated with an Application Package will reduce the \$1 million cap by the amount previously received. NYSERDA *will not* make payments to the Applicant, through the Agreement, *in excess* of the Total Contracted Project Incentive.

III. ELIGIBILITY

Applicants must meet the “RPS Eligibility” requirements set forth in the Public Service Commission’s “Order on Customer-sited Tier Implementation” issued and effective June 28, 2006. The Order may be accessed through the following web address:

[http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/59800CDF0A43451285257199005402E4/\\$File/380_03e0188_06_28_06.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/59800CDF0A43451285257199005402E4/$File/380_03e0188_06_28_06.pdf?OpenElement)

Generally, to participate in PON 1146, the following criteria must be met:

- Host Sites must be located in New York State;
- ADG-fueled Electric Power Generation Equipment must be located at Host Sites owned or operated by Customers who currently pay the NYS RPS Surcharge;
- ADG-fueled electricity must be generated and used primarily by the Host Sites at which the utility meter that is interconnected with the grid is located. Applicants are strongly encouraged to install generators that are capable of synchronous operation independent of the electricity grid;
- ADG Systems must consist of Commercially Available Technologies;
- ADG-fueled Electric Power Generation Equipment must have been, or will be, placed in service (i.e., producing electricity), or Substantially Upgraded, on or after January 1, 2003;
- Eligible Biomass Feedstocks include manure, agricultural residues and biomass, industrial organic wastes (e.g., food wastes), and municipal wastewater. [Note: Electricity generated by landfill biogas is not eligible for the ADG-to-Electricity Program.]
- Applicants (and Host Sites, if different) must comply with all applicable:
 - Federal, State and Local codes and regulations;
 - Federal, State and Local permitting requirements;
 - Federal, State and Local emissions limits; and
 - Concentrated Animal Feeding Operation (CAFO) requirements.

Eligibility Note 1: An ADG System with multiple Customers, each located at a distinct Host Site, will be considered separate projects, each potentially eligible for \$1 million of financial incentives, if the number of anaerobic digesters substantially contributing ADG to the ADG System is equal to or greater than the number of Customer/Host Site pairings.

Eligibility Note 2: Third party ownership of an ADG-to-Electricity System is permitted under this Program contingent upon: the System being located at a Host Site owned or operated by a Customer who currently

pays the RPS Program Surcharge, and a contractual relationship existing between the Customer and the third party clearly indicating that the entire incentive payment is being passed on to the Customer.

IV. PROGRAM PARTICIPATION STEPS

This section describes the program steps for participation in the ADG-to-Electricity Program. Under certain circumstances (i.e., the Applicant is seeking only Maintenance Incentives), it may not be necessary for an Applicant to complete one or more of the Program Participation Steps. Please direct any Program Questions you may have concerning the applicability of a Step to your Application Package to one of the individuals listed on the first page of this PON.

1. Submit Application Package

The Applicant's first step is to submit a completed Application Package to NYSERDA. Procedures for submitting the Application Package are described in Section V. NYSERDA or its Technical Consultant may request additional information and may conduct a site inspection to verify the accuracy of the information in the Application Package.

2. Sign Standard Performance Contract Agreement

Upon acceptance and approval of a completed Application Package, NYSERDA will forward the Applicant an Agreement conformed to the information provided in the Application Package. The Agreement will specify the Total Contracted Project Incentive. Funds for a project will not be encumbered prior to NYSERDA's receipt of the Agreement signed by the Applicant. The Applicant will be required to demonstrate compliance with Tax Law Section 5-a (see *General Conditions, Section VII*). A fully executed copy, including the Effective Date of the Agreement, will be returned to the Applicant. The Effective Date is the date appearing in the first paragraph of the Agreement. A sample Agreement is included as Appendix E.

3. Develop Measurement and Verification Plan

The Applicant must develop a Measurement & Verification (M&V) Plan (as described in *Appendix C*) in conjunction with NYSERDA's Technical Consultant. The M&V Plan must be received and approved by NYSERDA prior to submittal (or payment) of any invoices.

4. Procurement

Procurement of major equipment must be completed, and sufficient documentation of Procurement must be provided to NYSERDA, within eight (8) months of the Effective Date. Major equipment includes the ADG-fueled engine, generator, engine/generator controls, biogas clean-up system, as well as major equipment associated with the anaerobic digester, if applicable. Sufficient documentation of Procurement may include invoices, Bills of Lading, etc. If Procurement can not be completed, or notification of Procurement cannot be provided to NYSERDA, within eight (8) months of the Effective Date, the Applicant must request an extension, in writing, from NYSERDA for continued reservation of the incentive funding. The request for extension must describe the reasons for the delay and the expected timeframe to complete Procurement. Extensions may be granted or denied at NYSERDA's sole discretion. NYSERDA will notify the Applicant in writing whether or not an extension has been granted. NYSERDA may terminate the Agreement upon the failure of the Applicant to conform to these requirements.

5. Request First Capacity Incentive Payment

Upon demonstration of Procurement of major equipment and after acquisition of necessary permits, interconnection approval, and M&V Plan approval, the Applicant may request a payment of the lesser of 50% of the demonstrated purchase and installation expenditures or 50% of the total Capacity Incentive

stipulated in the Total Contracted Project Incentive. Sufficient documentation of interconnection approval and the acquisition of necessary permits, in addition to demonstration of Procurement, must be presented to NYSERDA when the request for the Capacity Incentive payment is made.

6. Installation and Commissioning

Installation and Commissioning is defined as the completion of construction of the ADG-to-Electricity System, interconnection of the System with the utility grid, if applicable, at least one month of satisfactory operation of the system according to its design intent with a minimum 80% Capacity Factor, and demonstration of the ability to upload information to NYSERDA's CHP Data Integration Website ("CHP Website").

7. Submit Project Installation Report

The Project Installation Report, which must be completed and submitted within 14 months of the Effective Date, documents that Installation and Commissioning has been completed. The Project Installation Report must include As-Built Diagrams of the commissioned ADG system. Details on the requirements for the Project Installation Report are located in Appendix D. NYSERDA's approval of the Report will depend on the results of a Post-Installation Site Inspection, which will verify the information provided in the Project Installation Report. NYSERDA will provide notice of approval of the Project Installation Report or will request additional information within 60 days of receipt of the Report.

If the Project Installation Report is not completed and submitted within 14 months of the Effective Date, the Applicant must request an extension, in writing, from NYSERDA for continued reservation of the incentive funding. The request for an extension must describe the reasons for the delay and the expected timeframe to complete Procurement. Extensions may be granted or denied at NYSERDA's sole discretion. NYSERDA will notify the Applicant in writing whether or not the extension has been granted. NYSERDA may terminate the Agreement upon the failure of the Applicant to conform to these requirements.

8. Request Second Capacity Incentive Payment

Once the Project Installation Report is approved the Applicant may request payment of any remaining portion of the total Capacity Incentive stipulated in the Total Contracted Project Incentive. NYSERDA will not pay Capacity Incentives in excess of 50% of the demonstrated purchase and installation expenditures.

9. Annual M&V Reporting

Within one (1) month of NYSERDA's approval of the Project Installation Report, the Applicant must begin providing M&V data for upload to NYSERDA's CHP Website. The first year's (consecutive 12 months) M&V period will commence on the date upon which the Applicant begins providing such data.

Within 60 days from the end of the first year's M&V period, the Applicant must submit an Annual M&V Report to NYSERDA, which will become the basis for the first Performance Incentive payment. Details on annual M&V reporting requirements are located in *Appendix C*. M&V data may be downloaded from the NYSERDA CHP Website. Annual M&V Reports must also be submitted to NYSERDA within sixty (60) days from the end of the second and third year M&V periods. *The Applicant is responsible for ensuring that data provided in the Annual M&V Reports accurately represent the operation of the ADG-to-Electricity System.*

10. Requesting Performance Incentive Payments

Based on the information provided in the three required Annual M&V Reports, the Applicant will be eligible for three annual Performance Incentive payments for the verified electricity generated. These payments will be made after each Annual M&V Report has been approved by NYSERDA, and an invoice

has been submitted to NYSERDA for payment, along with an RPS Attribute Transfer Certificate (*Exhibit E of the Standard Performance Contract Agreement*). If a sufficient quantity of electricity generation is verified, a first payment of up to 40% of the total Performance Incentive stipulated in the Total Contracted Project Incentive may be made after approval of the first year's M&V Report. A second payment may be requested of up to 75% of the total Performance Incentive stipulated in the Total Contracted Project Incentive (inclusive of any first payment), after approval of the second year's M&V Report. A third payment may be requested of up to 100% of the total Performance Incentive stipulated in the Total Contracted Project Incentive (inclusive of any previous Performance Incentives paid), after approval of the third year's M&V Report.

V. APPLYING FOR THE PROGRAM

APPLICATION PACKAGE

Detailed Application Package requirements are included in *Appendix B*. In general, the Application Package consists of the following:

- Application Form;
- Site Plan;
- Economic Evaluation;
- Project Schedule;
- Description of Permitting Requirements;
- Environmental Assessment Form; and
- Supplemental Information.

A hard copy of the Application Form is included in *Appendix B2*. The Application Form may also be downloaded from NYSERDA's website <http://www.nyserda.org/funding/funding.asp>, under the PON 1146 header, requested from NYSERDA toll-free at 1-866-NYSERDA, or requested via e-mail at info@nyserda.org. The Application Form should be completed electronically and subsequently printed, signed, and submitted with the other Application Package materials. An electronic copy of the Application Form must also be submitted as part of the Application Package.

Four (4) hard copies of all Project Application materials and one (1) electronic copy of the Application Form and any calculation worksheets that support the Economic Evaluation must be sent to the following address:

Kathleen O'Connor, PON 1146
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Application Packages that are not signed by the Applicant will be returned.

NYSERDA will date-stamp and log all program materials as they are received. NYSERDA recommends that all program materials be sent via delivery service, certified or registered mail. It is the sole responsibility of the Applicant to ensure that NYSERDA receives applicable program materials at the designated address by close of business on or before the applicable due date. Applicants should retain proof of delivery (such as a return receipt for certified, registered, or overnight mail) for all program materials submitted. NYSERDA will accept application packages until May 30, 2009 at 5:00 PM Eastern Daylight Time, or until all funding has been fully committed, whichever comes first.

APPLICATION PACKAGE REVIEW

Upon receiving all completed Application Package materials, NYSERDA and its Technical Consultant will review the materials to ensure that the following requirements are met:

- The project meets the ADG-to-Electricity Program and Eligibility requirements;
- The Application Package is complete and accurate; and
- The Total Incentive and Annual Electricity Generated estimates (*from Section D of the Application Form*) and related assumptions and projections are reasonable and supportable, and the supporting data, equations and calculations are correct.

NYSERDA and/or its Technical Consultant may request further information and/or conduct a site inspection to verify the accuracy of the information in the Application Package.

APPLICATION PACKAGE APPROVAL AND NOTIFICATION OF PROJECT AWARD

After reviewing the completed Application Package, NYSERDA will either approve it as submitted, request clarification or additional information, or reject it. NYSERDA may reject an application that it determines does not meet the eligibility requirements, the requirements listed above under “Application Package Review”, or any other requirements of this PON. NYSERDA may work with the Applicant to make revisions to the package that NYSERDA deems necessary.

VI. ADDITIONAL INFORMATION AND REQUIREMENTS

RENEWABLE ENERGY CREDITS AND ENVIRONMENTAL ATTRIBUTES (“RPS ATTRIBUTES”)

NYSERDA will own the rights, and any and all claims, to RPS Attributes associated with the kilowatt-hours generated by the ADG-to-Electricity System installed with CST funding, as specified below.

- a) If the Standard Performance Contract Agreement provides any Capacity Incentive payments for New Equipment (i.e., \$500/kW), NYSERDA’s ownership will extend to all RPS Attributes associated with the kilowatt-hours produced by the Total Contracted Capacity (*Exhibit A of the Agreement*), assuming an 80% Capacity Factor, for a period of three years. (These kilowatt-hours are shown as the *Total Contracted Generation of Exhibit A*.) Due to the Total Capacity Incentive cap of \$350,000, NYSERDA’s ownership will only extend to the first 700 kW of any System.
- b) If the Standard Performance Contract Agreement provides only Performance Incentive payments for New Equipment (i.e., \$0.10/kWh), NYSERDA’s ownership will extend to all RPS Attributes associated with the kilowatt-hours produced by the Total Contracted Capacity (*Exhibit A of the Agreement*), assuming an 80% Capacity, for a period of three years. These kilowatt-hours (shown as the *Total Contracted Generation of Exhibit A*) cannot exceed 10,000,000 kWh over 3 years.
- c) If the Standard Performance Contract Agreement provides only Maintenance Incentive payments for Eligible Existing Equipment (i.e., \$0.02/kWh), no RPS Attributes will be owned by NYSERDA.
- d) The environmental attributes associated with ADG methane destruction are considered to be separate from electric power-based RPS Attributes and will be retained by the Applicant (or Host Site, as appropriate).

To provide flexibility and to foster voluntary green energy markets, NYSERDA will allow Applicants who receive only Performance Incentives (i.e., \$/kWh only) to terminate these incentives on condition that the

RPS Attributes are sold into a voluntary green energy market *in New York State*. However, the Applicant will be required to demonstrate such sale and to fulfill their obligation to provide NYSERDA with the prerequisite three years of annual M&V reporting.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

NYSERDA is required under SEQRA to consider the environmental implications of all funded projects. All proposals must include a completed SEQRA Environmental Assessment Form along with supporting documentation.

If any local governmental entity has discretionary permitting authority, the Applicant must complete the appropriate SEQR Environmental Assessment Form and submit it to *that local governmental entity*. Attach a copy of the completed and signed Environmental Assessment Form to the Application Package.

SEQR forms are available from: <http://www.dec.ny.gov/permits/6191.html>

EMISSION STANDARDS FOR BIOGAS-FUELED DISTRIBUTED GENERATION SYSTEMS

The U.S. Environmental Protection Agency has proposed emission standards for new biogas-fueled spark ignition engines ("Proposed Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; Proposed Rule June 12, 2006" and Corrections of June 26, 2006). The proposed standards are 3 g NO_x per brake-horsepower-hour (bhp-h) by 1/1/08; 2 g NO_x /bhp-h by 1/1/11; 5 g CO/bhp-h by 1/1/08; and 1 g non-methane hydrocarbon (NMHC)/bhp-h by 1/1/08. More information about these standards may be found on the following websites:

Proposed Rule Document 06-4919: www.epa.gov/ttn/atw/rice/fr12jn06.pdf

Corrections of June 26, 2006: www.epa.gov/ttn/atw/rice/fr26jn06.pdf

All new internal combustion engines must be capable of achieving these standards, except where installation is not economically feasible or the engine is not commercially-available at the capacity required by the Host Site.

VII. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your Application Package. Review should include whether it is critical for evaluating the Application Package, and whether general, non-confidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501

www.nyserda.org/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

Empire State Development
Division For Small Business
30 South Pearl Street
Albany, NY 12245

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

Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See*, ST-220-TD (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Contract Award – Application Packages will be processed on a first-come, first-served basis and will be accepted until 5:00 p.m., Eastern Daylight Time, on September 30, 2009, or until funds are committed, whichever comes first. NYSERDA may request additional data or material to support Application Packages including, but not limited to supporting invoices. NYSERDA may elect to inspect any and all projects prior to final approval. NYSERDA expects to notify Applicants in approximately four weeks from the date of receipt of a completed application whether an application has been selected to receive an incentive.

Limitation - This solicitation does not commit NYSERDA to award any contract, pay any costs incurred in preparing an Application Package, or to procure or contract for services or supplies. NYSERDA reserves the right, in its sole discretion to accept or reject any or all Application Packages received, to negotiate with all qualified sources, or to modify or cancel PON 1146 in part or in its entirety at any time.

Disclosure Requirement - The Applicant shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or

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

VIII. OTHER OPPORTUNITIES

NYSERDA PON 1197

NYSERDA will cost share up to \$1,000,000 for Combined Heat and Power (CHP) and Renewable Generation Technical Assistance as described in Program Opportunity Notice (PON) 1197. CHP and Renewable Generation Technical Assistance can include:

- Combined Heat & Power studies that investigate the site-specific technical and economic feasibility of installing CHP.
- Renewable Generation studies that investigate the site-specific technical and economic feasibility of installing electricity generation capacity utilizing renewable resources.

PON 1197 applications will be accepted by NYSERDA through November 30, 2009. Subsequent releases of a similar-type PONs may be offered at a later date. Information can be found on NYSERDA's website at www.nyserdera.org, by e-mailing info@nyserdera.org or by telephoning toll free at 1-866-NYSERDA.

Potential non-NYSERDA Opportunities

The web address for the New York State Department of Agriculture and Markets' Current Funding Opportunities website is: <http://www.agmkt.state.ny.us/RFPS.html>

The web address for the USDA's Renewable Energy and Energy Efficiency Program's website is: <http://www.rurdev.usda.gov/rbs/farbill/index.html>

IX. DEFINITIONS

ADG-fueled Electric Power Generation Equipment: The ADG-fueled engine and generator and related equipment used for such functions as engine/generator control, biogas handling, biogas clean-up, emissions control, interconnection, and performance monitoring.

ADG-rated Capacity: Real power production at design fuel input of ADG.

ADG System: A system used for the anaerobic digestion of Eligible Biomass Feedstock(s), and generation of electricity with the resulting ADG, and which includes at least one of **each** of the following:

- Anaerobic Digester;
- ADG-fueled Electric Power Generation Equipment; and
- Customer utility meter located at a Host Site.

ADG-to-Electricity Program: The program described by NYSERDA Program Opportunity Notice (PON) 1146.

ADG-to-Electricity System: The ADG-fueled Electric Power Generation Equipment and procedures associated with using ADG to produce electricity for use at a Host Site.

Anaerobic Digester Gas (ADG): Biogas produced by the anaerobic processing of manure, agricultural residues and biomass, industrial organic wastes (i.e., food wastes), and municipal wastewater.

Annual M&V Report: A report submitted annually to NYSERDA for a period of three years. The report provides data that should demonstrate clearly to NYSERDA whether or not an installed project is generating the amount of electricity projected in the Standard Performance Contract Agreement.

Applicant: The Customer or third party who is submitting the Application Package.

Application Package: The Applicant's submission to NYSERDA containing the items listed in Section V of this PON requesting incentives through a Standard Performance Contract Agreement .

As-Built Diagrams: The final Site Plan, which is comprised of the Process Flow and Plan View Diagrams, showing the installed and commissioned system. The As-Built Diagrams must be included in the Project Installation Report.

Baseline ADG-fueled Electricity Generation (Baseline Generation): The average amount of electricity generated by the Host Site from ADG as demonstrated by historical data or by other methods deemed acceptable to NYSERDA.

Bill of Lading: A document listing and acknowledging receipt of goods onsite.

Capacity Factor: The ratio of the gross electricity generated, for the period of time considered, to the energy that could have been generated at continuous full-power operation at the ADG-gas rated capacity during the same period.

Commercially Available Technologies: With respect to ADG Systems participating in the ADG-to-Electricity Program, technologies that have operated satisfactorily for a minimum of one year, at similar scale, with similar inputs, and with similar output as described in the Application Package, or which can otherwise demonstrate to NYSERDA's satisfaction to have a proven operating history specific to the ADG System design described in the Application Package.

Customer: The owner or tenant of a Host Site and who, generally, pays the RPS Program Surcharge.

Effective Date: The date appearing in the first paragraph of the Standard Performance Contract Agreement.

Eligible Biomass Feedstocks: Manure, agricultural residues and biomass, industrial organic wastes (i.e., food wastes), and municipal wastewater. [Landfill biogas is not eligible for this Program.]

Eligible Existing ADG-fueled Electric Power Generation Equipment (Eligible Existing Equipment): ADG-fueled Electric Power Generation Equipment purchased for, or installed at, the Host Site on or after 1/1/03, but before 2/12/07; or equipment that has been Substantially Upgraded since 1/1/03.

Engine: For the purpose of PON 1146, a device that converts thermal energy to mechanical work (e.g., internal combustion engine, microturbine).

Facility: The ADG-fueled Electric Power Generation Equipment.

Host Site: The site at which the ADG-to-Electricity System is located, ADG-fueled electricity is generated and used, and where the utility meter, which is generally interconnected with the grid, is located.

Installation and Commissioning: The completion of construction of the ADG-to-Electricity System, interconnection of the System with the utility grid, if applicable, at least one month of satisfactory operation of the system according to its design intent with a minimum 80% Capacity Factor, and demonstration of the ability to upload information to NYSERDA's CHP Website.

kW: One kilowatt of electrical power.

kWh: One kilowatt-hour of electrical energy (or electricity).

Maintenance Incentives: Performance Incentives for verified electric power produced by Eligible Existing ADG-fueled Electric Power Generation Equipment, which will be provided at \$0.02 per kWh.

Measurement and Verification (M&V): The process of monitoring, measuring, and verifying the electrical energy generated by the ADG-to-Electricity System, upon commencement of the Performance Phase of the Project.

Net Energy Metering Law: Law applicable to farm waste electric generating equipment contained in Article 4, section 66J of the New York State Public Service Law. Applicants are responsible for identifying and determining the applicability, operation and limitations of net metering tariffs in their

service territories; references to net metering in this PON are general and should not be taken as stating or interpreting any particular tariff or its applicability.

New ADG-fueled Electric Power Generation Equipment (New Equipment): ADG-fueled Electric Power Generation Equipment purchased for, or installed at, the Host Site on or after 2/12/07, which results in an incremental increase in the ADG-fueled electricity generated at the Host Site compared to the Baseline Generation, if any, existing at the Host Site on 2/11/07.

Peak Connected Load: Demonstrated peak kW load at the Host Site based on past utility bills, utility service rating (i.e., amps multiplied by volts) of the Host Site, planned load of equipment to be connected at the Host Site, or by other methods deemed acceptable to NYSERDA.

Post-installation Site Inspection: NYSERDA or its Technical Consultant will conduct a Post-Installation Site Inspection to verify that the system specified in the approved Application Package has been installed properly and is operating according to its design intent.

Procurement: Ordering and securing delivery of all major equipment associated with the ADG-to-Electricity System.

Project: The ADG-to-Electricity System.

Project Installation Report: The detailed description of the installed and commissioned ADG-to-Electricity System. The Project Installation Report includes updates to the information provided in the Application Package, which subsequently were used to develop the Standard Performance Contract Agreement, to reflect the installed System, including As-built Diagrams of the ADG-fueled Electric Power Generation Equipment.

Renewable Portfolio Standard (RPS) Program: A program established by the New York State Public Service Commission to increase the proportion of renewable electricity used by New York Consumers to at least 25% by 2013.

RPS Attributes: All environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of energy by the Facility through the use of eligible biogas. RPS Attributes include but are not limited to: (i) any direct emissions of pollutants to the air, soil or water; (ii) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter and other pollutants; (iii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iv) all set-aside allowances and/or allocations made unnecessary for compliance under emissions trading programs, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (v) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above.

RPS Attributes Transfer Certificate: The instrument by which title to RPS Attributes will be transferred to NYSERDA. See Exhibit E to the Standard Performance Contract Agreement.

RPS Surcharge: One of the delivery charges levied by National Grid, NYSEG, Rochester Gas and Electric, Orange and Rockland, Central Hudson Gas and Electric, and Consolidated Edison. The RPS Surcharge permits these companies to recover costs associated with providing financial incentives for the development of renewable resources in New York State. NYSERDA is the administrator of the RPS program.

Substantially Upgraded: A major system upgrade that: 1) increases the capacity/electricity production of the existing ADG-fueled Electric Power Generation Equipment, 2) improves the functioning of the existing ADG-fueled Electric Power Generation Equipment such that it can resume operation at a Capacity Factor of 80%, and/or 3) improves the functioning of the existing ADG-fueled Electric Power Generation Equipment such that it can continue operation by being brought into compliance with relevant State and Federal emissions standards.

Total Contracted Project Incentive: The dollar amount listed in *Exhibit A* of the Standard Performance Contract Agreement. It is the not-to-exceed amount that the Applicant can receive through the Agreement for delivering the Project.

X. APPENDICES

Appendix A: Using the Incentive Estimation Tool

Appendix B1: Application Package Requirements

Appendix B2: Application Form

Appendix C: Measurement and Verification Requirements

Appendix D: Project Installation Report Requirements

Appendix E: Sample Standard Performance Contract Agreement

APPENDIX A: USING THE INCENTIVE ESTIMATION TOOL

This Appendix provides the Applicant with guidance on using the Incentive Estimation Tool (*Section C* of the *Application Form*). The Applicant should use the Tool to develop their Total Incentive estimate and Annual Electricity Generated estimate, which will serve as the basis for their request for funding from NYSERDA. [Note: The Tool assumes that installed systems will operate at an annual Capacity Factor of 80%.]

It is anticipated that projects can generally be described by one of four scenarios. Examples of using the Incentive Estimation Tool to develop a Total Incentive estimate for each of these four scenarios are included in this Appendix. The four scenarios are described as follows:

- 1) The Host Site has no Eligible Existing Equipment. The Applicant is installing New Equipment at the Host Site;
- 2) The Applicant is currently applying only for Maintenance Incentives for Eligible Existing Equipment located at the Host Site;
- 3) The Host Site has Eligible Existing Equipment, which it will continue to operate. The Applicant is installing New Equipment at the Host Site;
- 4) The Applicant is replacing existing ADG-fueled Electric Power Generation Equipment at the Host Site with New Equipment.

EXAMPLES

Category 1 – The Host Site has no Eligible Existing Equipment. The Applicant is installing New Equipment at the Host Site. *Two examples will be shown here; in Example 1a, no previous funding from NYSERDA was received for the ADG System associated with the Application Package; in Example 1b, the facility has received such funding.*

Example 1a: A new 250 kW internal combustion (IC) engine-generator set will be installed. When fueled with ADG, the engine-generator set is rated at 220 kW. No eligible existing equipment is associated with the facility. Additionally, no previous funding from NYSERDA was received for the ADG System.

▪ Capacity Incentive:	220kW x \$500/kW	= \$110,000
▪ Performance Incentive:	220 kW x 8760 hr/year x 3 years x 80% x \$0.10/kWh	= \$462,528
Total Incentive Requested by Applicant:		= \$572,528

Section C: Incentive Estimation



Project Name	0
Applicant Name	0

This section is meant to provide an estimate of the Total Incentives that could be provided under the ADG-to-Electricity Program and will help NYSERDA form the basis of the Total Contracted Project Incentive.

Capacity Incentives	NYSERDA will provide Capacity Incentives for New Equipment installed at the rate of \$500/kW, up to a maximum of 50% of eligible capital expenses or \$350,000, whichever is less.
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Capacity Incentive Rate: \$500 per kW

Please provide an estimate of the identified capital expenses in the table below. **Only New Equipment that was not included under a previous NYSERDA award for which any money has been received is eligible.**

Capital Expenses for New Equipment (installed after 2/11/07)	Materials	Installation	Associated Eng. Services	Total
Engine	\$200,000	\$25,000	\$5,000	\$230,000
Generator	\$100,000	\$7,000	\$2,000	\$109,000
Controls	\$0	\$0	\$0	\$0
Biogas Clean-up Equipment	\$50,000	\$5,000	\$5,000	\$60,000
Interconnection Equipment	\$10,000	\$1,000	\$2,000	\$13,000
Monitoring Equipment	\$4,000	\$500	\$1,000	\$5,500
				\$417,500

NYSERDA Cost-Share Limit: \$208,750 based on 50% limit on total capital expenses

Host Site Approximate Peak Connected Load: 450 kW

New Equipment (If Applicable)

New generator nameplate capacity	250 kW
ADG-rated Capacity	220 kW
Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760 kWh

Eligible Existing Equipment That Will Remain In Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	kW (ADG-rated)
Annual existing electricity generation production based on annual Capacity Factor of 80%	0 kWh

Equipment That Will Be Removed From Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	- kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0 kWh
Existing biogas generation (installed or substantially upgraded prior to 1/1/03)	- kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0 kWh

Maximum Capacity Incentive: **\$110,000**

Performance Incentives	NYSERDA will provide Performance Incentives for electricity production from New Equipment (installed after 2/11/2007) as well as Maintenance Incentives for Eligible Existing Equipment (installed between 1/1/2003 and 2/11/2007).
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Performance Incentive Rate: \$0.10 per kWh from New Equipment
 Maintenance Incentive Rate: \$0.02 per kWh from Eligible Existing Equipment

Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760 kWh
Estimated annual performance incentive	\$154,176 per year
Estimated three year performance incentive	\$462,528
Annual existing electricity generation production from eligible existing equipment	0 kWh
Estimated annual maintenance incentive	\$0 per year
Estimated three year maintenance incentive	\$0

Maximum Performance Incentives: **\$462,528**

Total Incentive	NYSERDA assistance will be capped at \$1,000,000 per ADG System, including previous NYSERDA awards associated with the ADG System.
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Has NYSERDA funding been received under a contract for the ADG System associated with this Application Package?	NO
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Maximum Total Incentive without NYSERDA funding limits: \$572,528
 Maximum Total Incentive with NYSERDA funding limits: \$572,528

Capacity Incentive:	\$110,000
Performance Incentive:	\$462,528

Category 1 (continued) – The Host Site has no Eligible Existing Equipment. The Applicant is installing New Equipment at the Host Site.

Example 1b: A new 250 kW IC engine-generator set will be installed. When fueled with ADG, the engine-generator set is rated at 220 kW. No eligible existing equipment is associated with the facility. Previous funding from NYSERDA *has been received* in conjunction with the ADG System associated with this Application Package.

- Capacity Incentive: N/A
 - Performance Incentive: $220 \text{ kW} \times 8760 \text{ hr/year} \times 3 \text{ years} \times 80\% \times \$0.10/\text{kWh}$
= \$462,528
- Total Incentive Requested by Applicant:** **= \$462,528**

Section C: Incentive Estimation



Project Name	0
Applicant Name	0

This section is meant to provide an estimate of the Total Incentives that could be provided under the ADG-to-Electricity Program and will help NYSERDA form the basis of the Total Contracted Project Incentive.

Capacity Incentives NYSERDA will provide Capacity Incentives for New Equipment installed at the rate of \$500/kW, up to a maximum of 50% of eligible capital expenses or \$350,000, whichever is less.

Capacity Incentive Rate: \$500 per kW
 Please provide an estimate of the identified capital expenses in the table below. **Only New Equipment that was not included under a previous NYSERDA award for which any money has been received is eligible.**

Equipment (installed after 2/11/07)	Materials	Installation	Associated Eng. Services	Total
Engine				\$0
Generator				\$0
Controls				\$0
Biogas Clean-up Equipment				\$0
Interconnection Equipment				\$0
Monitoring Equipment				\$0
				\$0

NYSERDA Cost-Share Limit: \$0 based on 50% limit on total capital expenses

Host Site Approximate Peak Connected Load: 450 kW

New Equipment (If Applicable)

New generator nameplate capacity	250	kW
ADG-rated Capacity	220	kW
Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760	kWh

Eligible Existing Equipment That Will Remain In Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)		kW (ADG-rated)
Annual existing electricity generation production based on annual Capacity Factor of 80%	0	kWh

Equipment That Will Be Removed From Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	-	kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0	kWh
Existing biogas generation (installed or substantially upgraded prior to 1/1/03)	-	kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0	kWh

Maximum Capacity Incentive: \$0

Performance Incentives NYSERDA will provide Performance Incentives for electricity production from New Equipment (installed after 2/11/2007) as well as Maintenance Incentives for Eligible Existing Equipment (installed between 1/1/2003 and 2/11/2007).

Performance Incentive Rate: \$0.10 per kWh from New Equipment
 Maintenance Incentive Rate: \$0.02 per kWh from Eligible Existing Equipment

Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760	kWh
Estimated annual performance incentive	\$154,176	per year
Estimated three year performance incentive	\$462,528	
Annual existing electricity generation production from eligible existing equipment	0	kWh
Estimated annual maintenance incentive	\$0	per year
Estimated three year maintenance incentive	\$0	

Maximum Performance Incentives: \$462,528

Total Incentive NYSERDA assistance will be capped at \$1,000,000 per ADG System, including previous NYSERDA awards associated with the ADG System.

Has NYSERDA funding been received under a contract for the ADG System associated with this Application Package? NO

Maximum Total Incentive without NYSERDA funding limits: \$462,528
 Maximum Total Incentive with NYSERDA funding limits: \$462,528

Capacity Incentive:	\$0
Performance Incentive:	\$462,528

Category 2 – The Applicant is currently applying only for Maintenance Incentives for Eligible Existing Equipment located at the Host Site.

Example 2: The facility has an existing 250 kW IC engine, which is rated at 220 kW when fueled with ADG. The engine-generator set was commissioned on 6/6/2003.

- Capacity Incentive: N/A
 - Maintenance Incentive: $220 \text{ kW} \times 8760 \text{ hr/year} \times 3 \text{ years} \times 80\% \times \$0.02/\text{kWh}$
= \$92,506
- Total Incentive Requested by Applicant:*** **= \$92,506**

Section C: Incentive Estimation



Project Name	0
Applicant Name	0

This section is meant to provide an estimate of the Total Incentives that could be provided under the ADG-to-Electricity Program and will help NYSERDA form the basis of the Total Contracted Project Incentive.

Capacity Incentives	NYSERDA will provide Capacity Incentives for New Equipment installed at the rate of \$500/kW, up to a maximum of 50% of eligible capital expenses or \$350,000, whichever is less.
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Capacity Incentive Rate: \$500 per kW

Please provide an estimate of the identified capital expenses in the table below. **Only New Equipment that was not included under a previous NYSERDA award for which any money has been received is eligible.**

Capital Expenses for New Equipment (installed after 2/11/07)	Materials	Installation	Associated Eng. Services	Total
Engine				\$0
Generator				\$0
Controls				\$0
Biogas Clean-up Equipment				\$0
Interconnection Equipment				\$0
Monitoring Equipment				\$0
				\$0

NYSERDA Cost-Share Limit: \$0 based on 50% limit on total capital expenses

Host Site Approximate Peak Connected Load: 450 kW

New Equipment (If Applicable)

New generator nameplate capacity		kW
ADG-rated Capacity		kW
Annual new electricity generation production based on annual Capacity Factor of 80%	0	kWh

Eligible Existing Equipment That Will Remain In Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	220	kW (ADG-rated)
Annual existing electricity generation production based on annual Capacity Factor of 80%	1,541,760	kWh

Equipment That Will Be Removed From Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	-	kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0	kWh
Existing biogas generation (installed or substantially upgraded prior to 1/1/03)	-	kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0	kWh

Maximum Capacity Incentive: \$0

Performance Incentives	NYSERDA will provide Performance Incentives for electricity production from New Equipment (installed after 2/11/2007) as well as Maintenance Incentives for Eligible Existing Equipment (installed between 1/1/2003 and 2/11/2007).
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Performance Incentive Rate: \$0.10 per kWh from New Equipment
 Maintenance Incentive Rate: \$0.02 per kWh from Eligible Existing Equipment

Annual new electricity generation production based on annual Capacity Factor of 80%	0	kWh
Estimated annual performance incentive	\$0	per year
Estimated three year performance incentive	\$0	

Annual existing electricity generation production from eligible existing equipment	1,541,760	kWh
Estimated annual maintenance incentive	\$30,835	per year
Estimated three year maintenance incentive	\$92,506	

Maximum Performance Incentives: \$92,506

Total Incentive	NYSERDA assistance will be capped at \$1,000,000 per ADG System, including previous NYSERDA awards associated with the ADG System.
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Has NYSERDA funding been received under a contract for the ADG System associated with this Application Package?	NO
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Maximum Total Incentive without NYSERDA funding limits: \$92,506

Maximum Total Incentive with NYSERDA funding limits: \$92,506

Capacity Incentive:	\$0
Performance Incentive:	\$92,506

Category 3 – The Host Site has Eligible Existing Equipment, which it will continue to operate. The Applicant is installing New Equipment at the Host Site.

Example 3: A new 250 kW IC engine-generator set will be installed. When fueled with ADG, the engine-generator set is rated at 220 kW. The facility has a 180 kW ADG-rated IC engine-generator set, which will continue to operate. The existing system was commissioned after 1/1/2003. The facility produces sufficient ADG to fuel both the existing and new generation capacity.

- Capacity Incentive: $220\text{kW} \times \$500/\text{kW} = \$110,000$
- Performance Incentives:
 - New Equipment: $220\text{ kW} \times 8760\text{ hr/year} \times 3\text{ years} \times 80\% \times \$0.10/\text{kWh} = \underline{\$462,528}$

Total Incentive Requested by Applicant for New Equipment (Agreement #1):
 $= \$110,000 + \$462,528$
= \$572,528

- Maintenance Incentives:
 - Existing Equipment: $180\text{ kW} \times 8760\text{ hr/year} \times 3\text{ years} \times 80\% \times \$0.02/\text{kWh} = \underline{\$75,686}$

Total Incentive Requested by Applicant for Eligible Existing Equipment (Agreement #2):
= \$75,686

Total Incentive Requested by Applicant for Customer: = \$648,214

Section C: Incentive Estimation



Project Name	0
Applicant Name	0

This section is meant to provide an estimate of the Total Incentives that could be provided under the ADG-to-Electricity Program and will help NYSERDA form the basis of the Total Contracted Project Incentive.

Capacity Incentives NYSERDA will provide Capacity Incentives for New Equipment installed at the rate of \$500/kW, up to a maximum of 50% of eligible capital expenses or \$350,000, whichever is less.

Capacity Incentive Rate: \$500 per kW

Please provide an estimate of the identified capital expenses in the table below. **Only New Equipment that was not included under a previous NYSERDA award for which any money has been received is eligible.**

Capital Expenses for New Equipment (installed after 2/11/07)	Materials	Installation	Associated Eng. Services	Total
Engine	\$200,000	\$25,000	\$5,000	\$230,000
Generator	\$100,000	\$7,000	\$2,000	\$109,000
Controls	\$0	\$0	\$0	\$0
Biogas Clean-up Equipment	\$50,000	\$5,000	\$5,000	\$60,000
Interconnection Equipment	\$10,000	\$1,000	\$2,000	\$13,000
Monitoring Equipment	\$4,000	\$500	\$1,000	\$5,500
				\$417,500

NYSERDA Cost-Share Limit: \$208,750 based on 50% limit on total capital expenses

Host Site Approximate Peak Connected Load: 450 kW

New Equipment (If Applicable)

New generator nameplate capacity	250 kW
ADG-rated Capacity	220 kW
Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760 kWh

Eligible Existing Equipment That Will Remain In Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	180 kW (ADG-rated)
Annual existing electricity generation production based on annual Capacity Factor of 80%	1,261,440 kWh

Equipment That Will Be Removed From Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	- kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0 kWh
Existing biogas generation (installed or substantially upgraded prior to 1/1/03)	- kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0 kWh

Maximum Capacity Incentive: **\$110,000**

Performance Incentives

NYSERDA will provide Performance Incentives for electricity production from New Equipment (installed after 2/11/2007) as well as Maintenance Incentives for Eligible Existing Equipment (installed between 1/1/2003 and 2/11/2007).

Performance Incentive Rate: \$0.10 per kWh from New Equipment
 Maintenance Incentive Rate: \$0.02 per kWh from Eligible Existing Equipment

Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760 kWh
Estimated annual performance incentive	\$154,176 per year
Estimated three year performance incentive	\$462,528
Annual existing electricity generation production from eligible existing equipment	1,261,440 kWh
Estimated annual maintenance incentive	\$25,229 per year
Estimated three year maintenance incentive	\$75,687

Maximum Performance Incentives: **\$538,215**

Total Incentive

NYSERDA assistance will be capped at \$1,000,000 per ADG System, including previous NYSERDA awards associated with the ADG System.

Has NYSERDA funding been received under a contract for the ADG System associated with this Application Package? **NO**

Maximum Total Incentive without NYSERDA funding limits: \$648,214
 Maximum Total Incentive with NYSERDA funding limits: **\$648,214**

Capacity Incentive:	\$110,000
Performance Incentive:	\$538,214

Category 4 – The Applicant is replacing existing electric power generation equipment at the Host Site with New Equipment. *Two examples will be shown here; in Example 4a, the Applicant is replacing Eligible Existing Equipment with New Equipment; in Example 4b, the Applicant is replacing non-eligible existing equipment with New Equipment.*

Example 4a: A new 250 kW IC engine-generator set will be installed. When fueled with ADG, the engine-generator set is rated at 220 kW. The existing 200 kW IC engine-generator set (as rated when fueled with ADG) is being replaced. This engine-generator set was commissioned in 2004. Based on the previous 3 years of operating data, the existing system has operated at an annual average of 600,000 kWh/year. (The 600,000 kWh/year will be used as the basis for calculating that portion of the electric power production to receive \$0.02/kWh.) The incremental potential of the new generation equipment (above historic levels of production) will be used as the basis for calculating that portion of the production-related TCPI to receive \$0.10/kWh. (The overall performance incentive for this system is the sum of the two incentives.)

- Capacity Incentive: $(220-200) \text{ kW} \times \$500/\text{kW} = \$10,000$
- Performance Incentive: $600,000 \text{ kWh/year} \times 3 \text{ years} \times \$0.02/\text{kWh} = \$36,000$
 $[(220 \text{ kW} \times 8760 \text{ hr/year} \times 80\%) - 600,000 \text{ kWh/year}] \times 3 \text{ years} \times$
 $\$0.10/\text{kWh} = \underline{\underline{\$282,528}}$

Total Incentive Requested by Applicant: **= \$328,528**

Section C: Incentive Estimation



Project Name	0
Applicant Name	0

This section is meant to provide an estimate of the Total Incentives that could be provided under the ADG-to-Electricity Program and will help NYSERDA form the basis of the Total Contracted Project Incentive.

Capacity Incentives	NYSERDA will provide Capacity Incentives for New Equipment installed at the rate of \$500/kW, up to a maximum of 50% of eligible capital expenses or \$350,000, whichever is less.
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Capacity Incentive Rate: \$500 per kW

Please provide an estimate of the identified capital expenses in the table below. **Only New Equipment that was not included under a previous NYSERDA award for which any money has been received is eligible.**

Capital Expenses for New Equipment (installed after 2/11/07)	Materials	Installation	Associated Eng. Services	Total
Engine	\$200,000	\$25,000	\$5,000	\$230,000
Generator	\$100,000	\$7,000	\$2,000	\$109,000
Controls	\$0	\$0	\$0	\$0
Biogas Clean-up Equipment	\$50,000	\$5,000	\$5,000	\$60,000
Interconnection Equipment	\$10,000	\$1,000	\$2,000	\$13,000
Monitoring Equipment	\$4,000	\$500	\$1,000	\$5,500
				\$417,500

NYSERDA Cost-Share Limit: \$208,750 based on 50% limit on total capital expenses

Host Site Approximate Peak Connected Load: 450 kW

New Equipment (If Applicable)

New generator nameplate capacity	250 kW
ADG-rated Capacity	220 kW
Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760 kWh

Eligible Existing Equipment That Will Remain In Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	kW (ADG-rated)
Annual existing electricity generation production based on annual Capacity Factor of 80%	0 kWh

Equipment That Will Be Removed From Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	200 kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	600,000 kWh
Existing biogas generation (installed or substantially upgraded prior to 1/1/03)	- kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0 kWh

Maximum Capacity Incentive: \$10,000

Performance Incentives	NYSERDA will provide Performance Incentives for electricity production from New Equipment (installed after 2/11/2007) as well as Maintenance Incentives for Eligible Existing Equipment (installed between 1/1/2003 and 2/11/2007).
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Performance Incentive Rate: \$0.10 per kWh from New Equipment
 Maintenance Incentive Rate: \$0.02 per kWh from Eligible Existing Equipment

Annual new electricity generation production based on annual Capacity Factor of 80%	941,760 kWh
Estimated annual performance incentive	\$94,176 per year
Estimated three year performance incentive	\$282,528
Annual existing electricity generation production from eligible existing equipment	600,000 kWh
Estimated annual maintenance incentive	\$12,000 per year
Estimated three year maintenance incentive	\$36,000

Maximum Performance Incentives: \$318,528

Total Incentive	NYSERDA assistance will be capped at \$1,000,000 per ADG System, including previous NYSERDA awards associated with the ADG System.
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Has NYSERDA funding been received under a contract for the ADG System associated with this Application Package?	NO
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Maximum Total Incentive without NYSERDA funding limits: \$328,528
 Maximum Total Incentive with NYSERDA funding limits: \$328,528

Capacity Incentive:	\$10,000
Performance Incentive:	\$318,528

Category 4 (continued) – The Applicant is replacing existing electric power generation equipment at the Host Site with New Equipment.

Example 4b: A new 250 kW IC engine-generator set will be installed. When fueled with ADG, the engine-generator set is rated at 220 kW. The existing 200 kW IC engine-generator set (as rated when fueled with ADG) is being replaced. This engine-generator set was commissioned in 2001. Based on the previous 3 years of operating data, the existing system has operated at an annual average of 600,000 kWh/year.

- Capacity Incentive: $(220-200) \text{ kW} \times \$500/\text{kW} = \$10,000$
- Performance Incentives: $[(220 \text{ kW} \times 8760 \text{ hr/year}) \times 80\% - 600,000 \text{ kWh/year}] \times 3 \text{ years} \times \$0.10/\text{kWh} = \underline{\$282,528}$

Total Incentive Requested by Applicant: = \$292,528

Section C: Incentive Estimation



Project Name	0
Applicant Name	0

This section is meant to provide an estimate of the Total Incentives that could be provided under the ADG-to-Electricity Program and will help NYSERDA form the basis of the Total Contracted Project Incentive.

Capacity Incentives	NYSERDA will provide Capacity Incentives for New Equipment installed at the rate of \$500/kW, up to a maximum of 50% of eligible capital expenses or \$350,000, whichever is less.
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Capacity Incentive Rate: \$500 per kW

Please provide an estimate of the identified capital expenses in the table below. **Only New Equipment that was not included under a previous NYSERDA award for which any money has been received is eligible.**

Capital Expenses for New Equipment (installed after 2/11/07)	Materials	Installation	Associated Eng. Services	Total
Engine	\$200,000	\$25,000	\$5,000	\$230,000
Generator	\$100,000	\$7,000	\$2,000	\$109,000
Controls	\$0	\$0	\$0	\$0
Biogas Clean-up Equipment	\$50,000	\$5,000	\$5,000	\$60,000
Interconnection Equipment	\$10,000	\$1,000	\$2,000	\$13,000
Monitoring Equipment	\$4,000	\$500	\$1,000	\$5,500
				\$417,500

NYSERDA Cost-Share Limit: \$208,750 based on 50% limit on total capital expenses

Host Site Approximate Peak Connected Load: 450 kW

New Equipment (If Applicable)

New generator nameplate capacity	250 kW
ADG-rated Capacity	220 kW
Annual new electricity generation production based on annual Capacity Factor of 80%	1,541,760 kWh

Eligible Existing Equipment That Will Remain In Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	kW (ADG-rated)
Annual existing electricity generation production based on annual Capacity Factor of 80%	0 kWh

Equipment That Will Be Removed From Service (If Applicable)

Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)	- kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	0 kWh
Existing biogas generation (installed or substantially upgraded prior to 1/1/03)	200 kW (ADG-rated)
Average Annual baseline electricity generation from equipment being removed	600,000 kWh

Maximum Capacity Incentive: **\$10,000**

Performance Incentives	NYSERDA will provide Performance Incentives for electricity production from New Equipment (installed after 2/11/2007) as well as Maintenance Incentives for Eligible Existing Equipment (installed between 1/1/2003 and 2/11/2007).
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Performance Incentive Rate: \$0.10 per kWh from New Equipment
 Maintenance Incentive Rate: \$0.02 per kWh from Eligible Existing Equipment

Annual new electricity generation production based on annual Capacity Factor of 80%	941,760 kWh
Estimated annual performance incentive	\$94,176 per year
Estimated three year performance incentive	\$282,528
Annual existing electricity generation production from eligible existing equipment	0 kWh
Estimated annual maintenance incentive	\$0 per year
Estimated three year maintenance incentive	\$0

Maximum Performance Incentives: **\$282,528**

Total Incentive	NYSERDA assistance will be capped at \$1,000,000 per ADG System, including previous NYSERDA awards associated with the ADG System.
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Has NYSERDA funding been received under a contract for the ADG System associated with this Application Package?	NO
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Maximum Total Incentive without NYSERDA funding limits: \$292,528
 Maximum Total Incentive with NYSERDA funding limits: \$292,528

Capacity Incentive:	\$10,000
Performance Incentive:	\$282,528

APPENDIX B1: APPLICATION PACKAGE REQUIREMENTS

A completed Application Package will consist of the following:

- Application Form;
- Site Plan;
- Economic Evaluation;
- Project Schedule;
- Description of Permitting Requirements;
- Environmental Assessment Form; and
- Supplemental Information.

APPLICATION FORM

A hard copy of the Application Form is included in *Appendix B2*. The Application Form may also be downloaded from NYSERDA's website <http://www.nyserda.org/funding/funding.asp>, under the PON 1146 header, requested from NYSERDA toll-free at 1-866-NYSERDA, or requested via e-mail at info@nyserda.org. The Application Form should be completed electronically and subsequently printed, signed, and submitted with the other Application Package materials. An electronic copy of the Application Form must also be submitted as part of the Application Package.

The Applicant is required to fill in only the yellow-colored cells. In many cases, these cells are equipped with “pull down” menus. If a cell is equipped with a “pull down” menu, the Applicant must choose an item from the menu. Cells with pull down menus are denoted by the phrase “Please Select:”. The Applicant is NOT required to fill in the green-colored cells. These have been programmed to be automatically populated based on the information entered by the Applicant.

Section A - Contact Information

This section requests information about the Host Site, Applicant (if different from the Host Site) and Engineering Firm/Developer (if applicable).

Section B – ADG System Information

This section requests information about the ADG System, including:

- feedstock sources, existing (if applicable) and proposed (if applicable); feedstock quantities; estimates of biogas from the various feedstock sources; and Btu values for the associated biogas;
- digester facility(ies), existing (if applicable) and proposed (if applicable);
- uses of ADG, existing (if applicable) and proposed (if applicable); and
- ADG-fueled Electric Power Generation Equipment, existing (if applicable) and proposed (if applicable).

The following definitions apply to Section B of the Application Form:

Equipment Status: Whether equipment will be installed upon completion of the project as described in the Application Package; is existing and will remain in service; or is existing but will be taken out of service.

Onsite/Offsite: The location of origin of the feedstock source (i.e., A cheese manufacturing facility would be considered “Offsite” if the Host Site for the ADG-to-Electricity System was a Farm).

Status: Whether the feedstock source is currently being utilized at the Host Site (“Existing”) or if it’s planned to be utilize upon completion of the project as described in the Application Package (“Planned Additional”).

Total After Planned Project: The estimated distribution of biogas (in percent) to various uses (e.g., to engine for power generation, to flare, to boiler for building heat, etc.) upon completion of the project as described in the Application Package.

Section C – Incentive Estimation Tool

This section requests the following information:

- Capital expenses for New Equipment (if applicable);
- The approximate Peak Connected Load of the Host Site;
- The ADG-rated Capacity of the New Equipment (if applicable);
- The ADG-rated Capacity of Eligible Existing Equipment that will remain in service (if applicable);
- The ADG-rated Capacity of Eligible Existing Equipment that will be removed from service (if applicable) and it's associated Baseline Generation, and the ADG-rated Capacity of **non-eligible** Existing ADG-fueled Electric Power Generation Equipment that will be removed from service (if applicable) and it's associated Baseline Generation; and
- Whether or not the Host Site has received previous NYSERDA funding for the ADG System associated with this Application Package, the associated NYSERDA contract number, and the total amount of the award.

Section D - Site Control Letter

This form letter must be completed and signed by the Applicant and a representative of the Host Site (if different):

- To demonstrate that the Applicant intends to commission a project at the Host Site;
- To acknowledge that NYSERDA will require access to the Host Site to inspect relevant equipment and conduct M&V activities;
- To acknowledge that Program incentive payments will be made to the Applicant only if the Host Site pays the RPS Surcharge; and
- To acknowledge that a contractual relationship exists between the Applicant and Host Site (if different) clearly indicating that the entire incentive payment is being passed on to the Customer paying the RPS Program Surcharge.

Section E - Applicant Short-Form Agreement

The Short-Form Agreement must be completed and signed by the Applicant to demonstrate to NYSERDA that they acknowledge and understand the key requirements for participating in the Program.

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

SITE PLAN

A preliminary Process Flow Diagram showing the projected material and energy balances, and a Plan View Diagram showing the locations of the major pieces of equipment (existing and new), trenching, utility poles, and utility connection points, must be provided.

As-built Diagrams must be submitted with the Project Installation Report.

ECONOMIC EVALUATION

An economic evaluation of the project must be performed, which assesses the costs (capital, operation & maintenance) and benefits of the ADG System.

- Capital costs include any costs associated with system design (i.e., engineering), procurement, or installation and commissioning; costs associated with interconnection with the utility; potential tariff impacts; costs associated with electrical distribution system changes; and costs associated with permitting.
- Operation and maintenance costs should be included for all relevant tasks associated with efficient and effective long-term operation of the system (e.g., oil changes, annual maintenance, major overhaul of prime mover, etc.); all relevant personnel associated with performing each of these tasks; and estimated downtime that may occur due to these tasks.
- Benefits include revenues, cost savings associated with reduced electricity purchases, and other avoided costs. As applicable, the evaluation must also address whether or not the Host Site participates in net metering, and if so, the implication on the economics of the project.

Projects located at existing or planned dairy facilities may want to perform their preliminary economic analysis using FarmWare 3.1, which is scheduled for release in August 2007 and can be downloaded from the U.S. EPA's AgSTAR website: www.epa.gov/agstar/resources/handbook.html.

PROJECT SCHEDULE

A project schedule that includes time frames and durations for engineering design, procurement, utility coordination and review, permitting (environmental and construction), construction, installation and commissioning must be provided.

DESCRIPTION OF PERMITTING REQUIREMENTS

A brief description of the required environmental and building permits must be provided.

If required to have a State Pollutant Discharge Elimination System (SPDES) permit by NYSDEC regulations, a Concentrated Animal Feeding Operation (CAFO) providing the manure must have and be in compliance with its current Agricultural Waste Management Plan (AWMP) developed by a duly qualified Agricultural Environmental Management (AEM) Planner and must be operating in compliance with any applicable SPDES permit. If not required to have a SPDES permit, the CAFO must be operating in compliance with the best management practices for a facility of its size set forth in the *Principles and Water Quality Protection Standards* specified in the *Agricultural Environmental Management (AEM) Framework & Resources Guide* developed by the NYS Department of Agriculture and Markets and the NYS Soil and Water Conservation Committee. Further information about the SPDES Program is available at: <http://www.dec.ny.gov/permits/6302.html>

ENVIRONMENTAL ASSESSMENT FORM

NYSERDA is required under SEQRA to consider the environmental implications of all funded projects. All proposals must include a completed SEQRA environmental assessment form along with supporting documentation.

If any local governmental entity has discretionary permitting authority, the Applicant must complete the appropriate SEQR Environmental Assessment Form and submit it to *that local governmental entity*. Attach a copy of the completed and signed Environmental Assessment Form to the Application Package.

SEQR forms are available from: <http://www.dec.ny.gov/websites/dcs/seqr/forms/>

SUPPLEMENTAL INFORMATION

The following supplemental information must also be provided:

- A copy of the Host Site's past 12 months of utility bills;
- Engine/generator manufacturer's specifications, including available information on ADG-rated capacity and emissions characteristics of the engine/gen set.

APPENDIX B2: APPLICATION FORM

Section A: Contact Information



Instructions: Enter information in the yellow cells only.

Project Name	
Applicant Name	

Host Site			
Host Site Name:		Facility Type:	Please Select:
Parent Company (Legal Contractual Name):			
Corporate Parent Federal Tax ID Number:			
Contact Name:		Title:	
Contact Address:		Phone Number:	
		Fax Number:	
		E-mail Address:	

Applicant			
Applicant Name (Legal Contractual Name):			
Parent Company (Legal Contractual Name):			
Corporate Parent Federal Tax ID Number:			
Contact Name:		Title:	
Contact Address:		Phone Number:	
		Fax Number:	
		E-mail Address:	

Engineering Firm/Developer (if applicable)			
Firm Name (Legal Contractual Name):			
Parent Company (Legal Contractual Name):			
Corporate Parent Federal Tax ID Number:			
Contact Name:		Title:	
Contact Address:		Phone Number:	
		Fax Number:	
		E-mail Address:	

Attached Forms:

- _____ Application Form Form (Sections A-E)
- _____ Site Plan
- _____ Economic Evaluation
- _____ Project Schedule
- _____ Description of Permitting Requirements
- _____ Environmental Assessment Form
- _____ Supplemental Information

Section C: Incentive Estimation



Project Name	0
Applicant Name	0

This section is meant to provide an estimate of the Total Incentives that could be provided under the ADG-to-Electricity Program and will help NYSERDA form the basis of the Total Contracted Project Incentive.

Capacity Incentives		NYSERDA will provide Capacity Incentives for New Equipment installed at the rate of \$500/kW, up to a maximum of 50% of eligible capital expenses or \$350,000, whichever is less.		
Capacity Incentive Rate:		\$500 per kW		
Please provide an estimate of the identified capital expenses in the table below. Only New Equipment that was not included under a previous NYSERDA award for which any money has been received is eligible.				
Capital Expenses for New Equipment (installed after 2/11/07)	Materials	Installation	Associated Eng. Services	Total
Engine	\$0	\$0	\$0	\$0
Generator	\$0	\$0	\$0	\$0
Controls	\$0	\$0	\$0	\$0
Biogas Clean-up Equipment	\$0	\$0	\$0	\$0
Interconnection Equipment	\$0	\$0	\$0	\$0
Monitoring Equipment	\$0	\$0	\$0	\$0
				\$0
NYSERDA Cost-Share Limit	\$0	based on 50% limit on total capital expenses		
Host Site Approximate Peak Connected Load			kW	
New Equipment (If Applicable)				
New generator nameplate capacity			kW	
ADG-rated Capacity			kW	
Annual new electricity generation production based on annual Capacity Factor of 80%		0	kWh	
Eligible Existing Equipment That Will Remain In Service (If Applicable)				
Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)			kW (ADG-rated)	
Annual existing electricity generation production based on annual Capacity Factor of 80%		0	kWh	
Equipment That Will Be Removed From Service (If Applicable)				
Eligible Existing biogas generation (installed or substantially upgraded after 1/1/03)			kW (ADG-rated)	
Average Annual baseline electricity generation from equipment being removed			kWh	
Existing biogas generation (installed or substantially upgraded prior to 1/1/03)			kW (ADG-rated)	
Average Annual baseline electricity generation from equipment being removed			kWh	
		Maximum Capacity Incentive:		\$0

Performance Incentives	NYSERDA will provide Performance Incentives for electricity production from New Equipment (installed after 2/11/2007) as well as Maintenance Incentives for Eligible Existing Equipment (installed between 1/1/2003 and 2/11/2007).
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Performance Incentive Rate:	\$0.10 per kWh	from New Equipment
Maintenance Incentive Rate:	\$0.02 per kWh	from Eligible Existing Equipment
Annual new electricity generation production based on annual Capacity Factor of 80%	0	kWh
Estimated annual performance incentive	\$0	per year
Estimated three year performance incentive	\$0	
Annual existing electricity generation production from eligible existing equipment	0	kWh
Estimated annual maintenance incentive	\$0	per year
Estimated three year maintenance incentive	\$0	
Maximum Performance Incentives:		\$0

Total Incentive	NYSERDA assistance will be capped at \$1,000,000 per ADG System, including previous NYSERDA awards associated with the ADG System.
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Has NYSERDA funding been received under a contract for the ADG System associated with this Application Package?	<i>Select</i>

Maximum Total Incentive without NYSERDA funding limits:	\$0
Maximum Total Incentive with NYSERDA funding limits:	\$0

	Capacity Incentive:	\$0	
	Performance Incentive:	\$0	

Section D: Site Control letter



Project Name	0
Applicant Name	0

, the undersigned Host, certifies that the Applicant, , is authorized to install the ADG-to-Electricity System at the facility located at the address indicated below.

0
0
0

(Facility Address)

The ADG-to-Electricity project is expected to achieve the following:

Total Equipment Capital Expense	Annual Electricity Generated (kWh)
\$0	0
Capacity Incentive	Performance Incentive
\$0	\$0
Total Incentive	
\$0	

The Host Site

- A. I hereby release NYSERDA, its officers, directors, members, agents, and employees from any and all claims, demands, losses, judgments, penalties, causes of action, damages, costs, and expenses (including, without limitation, attorneys' fees and expenses), and legal liability arising out of or in any way connected with, directly or indirectly, either the acceptance of the project for participation in the ADG-to-Electricity Program or the installation of the project, or both, including but not limited to those in any way related to or arising from: (1) injury or death of persons; (2) injury to natural resources; (3) violation of any local, State, or federal law or regulation, including, but not limited to, environmental laws or regulations; (4) strict liability imposed by any law or regulation; (5) equipment malfunctions; or (6) energy savings shortfalls arising out of, or related to, or in any way connected with the project, or any actions or omissions by the Applicant related to the project, regardless of any strict liability or negligence of NYSERDA, its officers, directors, agents, or employees, whether active or passive. The obligations under this paragraph shall survive any expiration or termination of any SPC Agreement that may be executed in connection with this site.
- B. I understand that NYSERDA, its officers, directors, members, agents, and employees have made no warranty or representation regarding the qualifications of the Applicant. I understand that the Host Site is solely responsible for the selection of the Applicant to implement the project.
- C. I will provide project site access for inspections and oversight of M&V for the ADG-to-Electricity System to the Applicant, equipment installers, NYSERDA, and its Technical Consultant during the term of the SPC Agreement related to the project.

- D. I agree that NYSERDA, its officers, directors, members, agents, and employees will have no role in resolving any disputes between the Host Site, equipment installer and the Applicant.
- E. I certify that the new biogas-fueled electric generation equipment included in this application was not purchased or installed prior to February 12, 2007.
- F. I understand that all NYSERDA incentives provided under this PON for the ADG System described in this Application will be paid to the Applicant, but must be disclosed to the Host.
- G. I guarantee that I have authority to contract, on behalf of the legal owners of the project site for installation of the ADG-to-Electricity system, under my contract with the Applicant or
- H. I certify that the electricity charges for the facility(ies) in the Application include the Renewable Portfolio Standard (RPS) Surcharge. Copies of recent electric distribution bill payment of the RPS or documentation from the distribution utility must be attached. I hereby grant NYSERDA permission to request, and the distribution utility and electric supplier to release, information about the account(s).
- I. Publicity: NYSERDA may publicize the Host Site's participation in the program, the results, the amount of incentives paid to the Applicant and any other information that reasonably relates to the Applicant's participation, including photographs of the funded ADG-to-Electricity System.



Host Site Representative Signature



Date

Sworn to before me this _____ day of _____, 200__.



Notary Public Signature



Stamp of Notary Public

APPENDIX C: MEASUREMENT AND VERIFICATION REQUIREMENTS

The purpose of Measurement & Verification (M&V) is to quantify the electricity generated by the ADG-to-Electricity System.

Following approval of the Project Installation Report, the Applicant has one (1) month to begin providing M&V data for upload to NYSERDA's CHP Data Integration Website (CHP Website), and to initiate the first year's (consecutive twelve (12) months) M&V period.

The Applicant is responsible for the purchase of necessary sensors and meters as described within. Additionally, the Applicant shall provide the necessary communications for remote data collection including a phone line, internet access or other means acceptable to NYSERDA. Connection of sensors and meters to the remote data collection system will be the responsibility of NYSERDA's Technical Consultant.

On a periodic basis, NYSERDA will download the M&V data to their CHP Website. The Applicant may use the CHP Website to support preparation of the Annual M&V Reports. Overview and summary information regarding the project will also be made publicly available on NYSERDA's CHP Website.

Annual M&V Reports must be submitted to NYSERDA for three years. The data contained in the Report must demonstrate clearly whether or not the installed project is generating the amount of energy projected in the Standard Performance Contract Agreement.

SUMMARY OF PROJECT RESPONSIBILITIES

The Applicant will:

- Work with NYSERDA's Technical Consultant to develop the M&V Plan, which must be submitted to NYSERDA prior to the submittal of any invoices;
- Purchase and install the necessary instrumentation (meters and sensors) and communications to monitor the ADG-to-Electricity System. Communications can be provided as a phone line or broadband connection or other medium selected in agreement with NYSERDA;
- Provide unrestricted access to the installed system and collected data to NYSERDA and its contractors; and
- Be willing to participate in evaluating their anaerobic digesters using the National Protocol for Digester Evaluation, if their Application Package included treating farm wastes. This Protocol ("A Protocol for Quantifying and Reporting the Performance of Anaerobic Digestion Systems for Livestock Manures") was developed by the Association of State Energy Research and Technology Transfer Institutions (ASERTTI) and the USEPA AgSTAR program, and can be found at the following web addresses:

<http://www.asertti.org>

<http://www.epa.gov/agstar>

The Applicant is responsible for ensuring that all information provided to NYSERDA accurately represents the operation of the ADG-to-Electricity System.

NYSERDA and its Technical Contractor will:

- Work with the Applicant to develop the M&V Plan;
- Confirm the necessary data instrumentation is installed correctly and install any additional data collection systems (hardware and software) required to transfer data to NYSERDA's CHP website;
- Verify sensor readings, document sensor locations, and develop a system description (schematics, specifications, and narrative) to document that collected data meet program goals;
- Validate the monitored data and load it into NYSERDA's CHP website;
- Integrate the site documentation to the NYSERDA's CHP website; and
- For systems treating farm wastes, provide for additional measurement equipment, digester input and output testing, and technical consultant services, as needed, for the completion of the National Protocol for Digester Evaluation.

M&V PLAN

The M&V plan will include specifications for:

- Procuring and installing the required monitoring instrumentation;
- Verifying monitoring instrumentation during the Installation and Commissioning process;
- Loading and verifying the collected data into NYSERDA's CHP Website; and
- Determining performance based on the measured output.

The M&V Plan will be posted on the NYSERDA CHP Website as part of the project documentation.

Procuring and Installing Instrumentation

The M&V Plan will specify the monitoring instrumentation to be installed, and the installation locations for the instrumentation. Provisional instrumentation requirements are provided in *Table 1*. Example instrumentation specifications are provided in *Table 2*.

Table 1. Provisional Instrumentation Requirements

<p>This table defines the instrumentation requirements for the site. If the instrumentation is used by the on-site control system, provisions must be made to also provide additional outputs from each sensor as agreed to with NYSERDA. The following basic instrumentation shall be supplied by the Applicant:</p> <ul style="list-style-type: none">• A power meter with an accuracy of 0.5% that is capable of supplying either a kWh pulse output, 4-20 mA kW output, or other output as agreed to by NYSERDA or its TC for measuring generator output.• A fuel meter with accuracy of $\pm 1\%$ to measure generator fuel (ADG) consumption. The meter should be temperature and pressure compensated (if located outdoors or in an unconditioned space). Uncompensated meters may be permissible if located in conditioned space and if gas pressure is less than 1 psig.

Table 2. Example Instrumentation Specifications

This table lists recommended metering specifications as outlined in the ASERTTI Field Validation Protocol.				
Measurement	Example Instrument Make / Model	Recommended Accuracy	Instrument Output	Supplied by
Power generation	Wattnode WNA-3Y-480-P meter with CTS-1250-400A	0.5 % reading + 0.05% full scale through 25 th harmonic	Solid state pulse output	Site
Fuel flow rate	Roots Series B3 8C175	± 1 % reading	Solid state pulse output	Site

Verifying the Monitoring System

The M&V Plan will document the procedures to be used by NYSERDA’s Technical Consultant to confirm that the instrumentation is installed correctly.

Loading and Verifying the collected data into the NYSERDA CHP Website

The M&V Plan will document how data will be loaded into the NYSERDA CHP website and verified. For the data being collected for M&V (e.g., volume of biogas generated, kWh produced by the ADG-to-Electricity System), the general procedures and monitoring requirements in NYSERDA’s Monitoring and Data Collection Standard for DG/CHP Systems and the ASERTTI DG/CHP Long Term Monitoring Protocol will be followed. These include, but are not limited to, the following:

- The system will log or record data at 15-minute intervals, averaging or integrating readings as required providing accurate and meaningful readings;
- The system shall have on-board storage sufficient to retain a minimum of 14 days of data in the event that communications or site power is lost; and
- The system will automatically transfer data to the NYSERDA’s CHP Website at least once per day.

Automatic error checking and screening procedures will also be established to gauge the data quality. Automated procedures (such as automated emails) will be established to notify appropriate project team members if a sensor failure or other abnormality occurs at a site.

Determining Performance Based on the Measured Output

The M&V Plan will document how measurements will be made and will provide calculation procedures for determining output from the ADG-to-Electricity System.

PROCEDURE TO ACCOUNT FOR LOSS OF MEASURED PERFORMANCE DATA

In some cases, a sensor or monitoring system failure or other problem at the site may result in data being lost or failing to pass the data validation process for part of the performance period. If data loss occurs, the **output** for the missing period will be determined by taking the average output measured from similar length periods just prior and just after the outage (or other method acceptable to NYSERDA). This procedure will be used for up to two outages for up to 36 hours each per 12 month period. If more than two outages occur per 12-month period, then the site shall be required to provide independent cumulative meter readings or other documentation to demonstrate the system power output during outages. Otherwise, the generator output will be assumed to equal zero for the outage period.

ANNUAL M&V REPORTING

Submitting the Annual M&V Report

The Applicant must submit an Annual M&V Report for three years. The data contained in the Report should demonstrate clearly to NYSERDA whether or not an installed project is actually generating the amount of energy projected in the Standard Performance Contract Agreement. Upon approval of the Annual M&V Report, the Applicant may submit an invoice for the Performance Incentive payment associated with that Report. The Applicant must submit their Annual M&V Reports within 60 days after the annual performance period ends.

Annual M&V Report Approval or Rejection

NYSERDA will notify the Applicant in writing, within 30 days after receiving an Annual M&V Report, whether or not the Report has been approved. As part of the review process, NYSERDA may request clarification or additional information and may choose to conduct an inspection of a project site. NYSERDA will review the contents of the Annual M&V Report to ensure the following criteria are met:

- The Applicant has adhered to the M&V Plan;
- All required monitoring data are provided;
- The verified electricity generated is properly calculated from the monitoring data; and
- The installed equipment is operating as per the approved Application Package.

M&V INSPECTIONS

Periodically, NYSERDA may choose to visit a project site to verify that the information provided in the Annual M&V Report is accurate with regard to project equipment, site conditions, and monitoring configurations. These inspections may occur at any time after project installation, both prior to and after the submittal of an Annual M&V Report. If the M&V activities are found to be different from those represented in the M&V Plan or the Annual M&V Report, NYSERDA may refuse any further Performance Incentive payments. If NYSERDA deems an inspection necessary, an Annual M&V Report that is under review will not be approved until the inspection has been completed.

RESOLVING DISAGREEMENTS OVER M&V

The following approach will be used to resolve any disagreements between NYSERDA and an Applicant concerning the adequacy of an Annual M&V Report or the adequacy and interpretation of M&V data:

1. If an Annual M&V Report is rejected by NYSERDA, NYSERDA will provide a written explanation of the rejection with suggestions for changes that would make the submittal acceptable.
2. If the Applicant disagrees with the rejection, it must provide a written explanation (with references and any required additional documentation) to NYSERDA.
3. Upon receipt of the Applicant's written explanation, the Applicant and NYSERDA representatives will meet and attempt to resolve the disagreement.
4. The Applicant must submit a new submittal in a manner that complies with any resolution agreed to concerning the original submittal's rejection.

If either party believes the disagreement cannot be resolved by the above approach, the parties will use the dispute resolution mechanism defined in their Standard Performance Contract Agreement.

APPENDIX D: PROJECT INSTALLATION REPORT REQUIREMENTS

The Project Installation Report reflects the Installed and Commissioned conditions of the project. Any deviations from the proposed design in the Application Package must be explained in the Project Installation Report. As-Built Diagrams of the system must also be included in the Report. The Project Installation Report must be completed and submitted to NYSERDA within 14 months of the Effective Date.

If the Project Installation Report is not completed and submitted within 14 months of the Effective Date, the Applicant must request an extension, in writing, from NYSERDA for continued reservation of the incentive funding. The request for extension must describe the reasons for the delay and the expected timeframe to complete Procurement. Extensions may be granted or denied at NYSERDA's sole discretion. NYSERDA will notify the Applicant in writing whether or not the extension has been granted.

APPROVAL NOTIFICATION SCHEDULE

The Project Installation Report must be approved before the Applicant can begin providing NYSERDA with M&V data for upload to the CHP website. Within 60 days after its receipt of the Project Installation Report, NYSERDA will notify the Applicant in writing as to whether or not it has been approved. Approval of the Project Installation Report is contingent upon the Applicant scheduling, and NYSERDA's Technical Consultant conducting, a post-installation inspection of the project site within the time frames specified in the following section.

POST-INSTALLATION SITE INSPECTION

The purpose of the Post-Installation Site Inspection is to confirm the information provided in the Project Installation Report is accurate, and that the system specified in the approved Application Package has been properly installed and successfully commissioned (i.e., operating for at least one month according to its design intent with a minimum 80% capacity factor, and demonstrating the ability to upload information to NYSERDA's CHP Website). NYSERDA's Technical Consultant will contact the Applicant to schedule the Post-Installation Site Inspection, which should be completed within 30 days of NYSERDA's receipt of the Project Installation Report. If the inspection is not completed within this timeframe, the Project Installation Report review process will be suspended until the inspection is performed. The Applicant or a representative must be present during the inspection.

PROJECT INSTALLATION REPORT APPROVAL OR REJECTION

NYSERDA will review the Project Installation Report and determine whether to approve it as submitted, approve it with minor revisions, or reject it. NYSERDA will review the Report to ensure the following:

- The project meets all of the ADG-to-Electricity Program requirements.
- The Project Installation Report contains complete and accurate information.
- The equipment listed in the Application Package has been installed or the Applicant has explained any variance.

NYSERDA will work with the Applicant on making minor revisions to the Project Installation Report as necessary. If NYSERDA finds the Project Installation Report to be complete, but the Total Contracted Project Incentive to be incorrect based on the installed conditions, NYSERDA may make an adjustment to the Capital and/or Performance Incentive payment estimates and will notify the Applicant of those changes in writing.

APPENDIX E: SAMPLE STANDARD PERFORMANCE CONTRACT AGREEMENT

**Renewable Portfolio Standard – Customer-Sited Tier
ADG-to-Electricity Program (PON 1146)**

**STANDARD PERFORMANCE CONTRACT
AGREEMENT**

BETWEEN

*NEW YORK STATE RESEARCH AND DEVELOPMENT
AUTHORITY*

AND

*[CONTRACTOR]
Agreement #*

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LIST OF ATTACHMENTS

Exhibit A	Total Contracted Project Incentive
Exhibit B	Standard Terms and Conditions for All NYSERDA Agreements
Exhibit C	Prompt Payment Policy Statement
Exhibit D	Final completed Application Form, and Appendices C and D of NYSERDA PON 1146
Exhibit E	RPS Attributes Transfer Certificate

AGREEMENT

This Standard Performance Contract Agreement (hereinafter referred to as the "Agreement"), dated and effective as of the ___ day of _____, 200_ ("Effective Date") by and between the New York State Energy Research and Development Authority (hereinafter referred to as "NYSERDA") with its principal office located at 17 Columbia Circle, Albany, New York, 12203-6399, and _____ [Contractor], (hereinafter "Contractor") with offices located at _____. NYSERDA and the Contractor may be individually referred herein as a "Party" and collectively as the "Parties."

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

ARTICLE 1: DEFINITIONS

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

ADG-fueled Electric Power Generation Equipment: The ADG-fueled engine and generator and related equipment used for such functions as engine/generator control, biogas handling, biogas clean-up, emissions control, interconnection, and performance monitoring.

ADG-rated Capacity: Real power production at design fuel input of ADG.

ADG System: A system used for the anaerobic digestion of Eligible Biomass Feedstock(s), and generation of electricity with the resulting ADG, and which includes at least one of each of the following: Anaerobic Digester; ADG-fueled Electric Power Generation Equipment; and Customer utility meter located at a Host Site.

ADG-to-Electricity Program: The program described by NYSERDA Program Opportunity Notice (PON) 1146.

ADG-to-Electricity System: The ADG-fueled Electric Power Generation Equipment and procedures associated with using ADG to produce electricity for use at a Host Site.

Agreement: This Standard Performance Contract Agreement, including Exhibits A (Total Contracted Project Incentive), B (Standard Terms and Conditions), C (Prompt Payment Policy Statement), D (final completed Application Form, and Appendices C and D of NYSERDA PON 1146), and E (RPS Attributes Transfer Certificate), and NYSERDA PON 1146 as published by NYSERDA on August 17, 2007, which is incorporated herein and made part hereof as though herein set forth in full.

Anaerobic Digester Gas (ADG): Biogas produced by the anaerobic processing of manure, agricultural residues and biomass, industrial organic wastes (i.e., food wastes), and municipal wastewater.

Annual M&V Report: A report submitted annually to NYSERDA for a period of three years. The report provides data that should demonstrate clearly to NYSERDA whether or not an installed project is generating the amount of electricity projected in this Agreement.

Application Package: The Contractor's submission to NYSERDA containing the items listed in Section V of PON 1146 requesting incentives through a Standard Performance Contract Agreement.

As-Built Diagrams: The final Site Plan, which is comprised of the Process Flow and Plan View Diagrams, showing the installed and commissioned system. The As-Built Diagrams must be included in the Project Installation Report.

Baseline ADG-fueled Electricity Generation (Baseline Generation): The average amount of electricity generated by the Host Site from ADG as demonstrated by historical data or by other methods deemed acceptable to NYSERDA.

Bill of Lading: A document listing and acknowledging receipt of goods onsite.

Capacity Factor: The ratio of the gross electricity generated, for the period of time considered, to the energy that could have been generated at continuous full-power operation at the ADG-gas rated capacity during the same period.

Commercially Available Technologies: With respect to ADG Systems participating in the ADG-to-Electricity Program, technologies that have operated satisfactorily for a minimum of one year, at similar scale, with similar inputs, and with similar output as described in the Application Package, or which can otherwise demonstrate to NYSERDA's satisfaction to have a proven operating history specific to the ADG System design described in the Application Package.

Contractor: The Customer or third party who is submitting the Application Package and a party to this Agreement.

Customer: The owner or tenant of a Host Site and who, generally, pays the RPS Program Surcharge.

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

Eligible Biomass Feedstocks: Manure, agricultural residues and biomass, industrial organic wastes (i.e., food wastes), and municipal wastewater. Landfill biogas is not an Eligible Biomass Feedstock.

Eligible Existing ADG-fueled Electric Power Generation Equipment (Eligible Existing Equipment): ADG-fueled Electric Power Generation Equipment purchased for, or installed at, the Host Site on or after 1/1/03, but before 2/12/07; or equipment that has been Substantially Upgraded since 1/1/03.

Engine: For purposes of this Agreement, a device that converts thermal energy to mechanical work (e.g., internal combustion engine, microturbine).

Facility: The ADG-fueled Electric Power Generation Equipment.

Host Site: The site at which the ADG-to-Electricity System is located, ADG-fueled electricity is generated and used, and where the utility meter, which is generally interconnected with the grid, is located.

Installation and Commissioning: The completion of construction of the ADG-to-Electricity System, interconnection of the System with the utility grid, if applicable, at least one month of satisfactory operation of the system according to its design intent with a minimum 80% Capacity Factor, and demonstration of the ability to upload information to NYSERDA's CHP Website.

Installation Phase: The phase of the Standard Performance Contract that includes Procurement, developing the M&V Plan, Installation and Commissioning, and submitting the Project Installation Report.

kW: One kilowatt of electrical power.

kWh: One kilowatt-hour of electrical energy (or electricity).

Maintenance Incentives: Performance Incentives for verified electric power produced by Eligible Existing ADG-fueled Electric Power Generation Equipment, which will be provided at \$0.02 per kWh.

Measurement and Verification (M&V): The process of monitoring, measuring, and verifying the electrical energy generated by the ADG-to-Electricity System, upon commencement of the Performance Phase of the Project.

Net Energy Metering Law: Law applicable to farm waste electric generating equipment contained in Article 4, section 66J of the New York State Public Service Law. Contractors are responsible for identifying and determining the applicability, operation and limitations of net metering tariffs in their service territories; references to net metering in PON 1146 are general and should not be taken as stating or interpreting any particular tariff or its applicability.

New ADG-fueled Electric Power Generation Equipment (New Equipment): ADG-fueled Electric Power Generation Equipment purchased for, or installed at, the Host Site on or after 2/12/07, which results in an incremental increase in the ADG-fueled electricity generated at the Host Site compared to the Baseline Generation, if any, existing at the Host Site on 2/11/07.

Performance Phase. The final phase of this Agreement that commences on the date upon which the Contractor begins providing M&V data for upload to NYSERDA's CHP website, and continues for a minimum of three full years from that date.

Peak Connected Load: Demonstrated peak kW load at the Host Site based on past utility bills, utility service rating (i.e., amps multiplied by volts) of the Host Site, planned load of equipment to be connected at the Host Site, or by other methods deemed acceptable to NYSERDA.

Post-installation Site Inspection: NYSERDA or its Technical Consultant will conduct a Post-Installation Site Inspection to verify that the system specified in the approved Application Package has been installed properly and is operating according to its design intent.

Procurement: Ordering and securing delivery of all major equipment associated with the ADG-to-Electricity System.

Project: The ADG-to-Electricity System.

Project Installation Report: The detailed description of the installed and commissioned ADG-to-Electricity System. The Project Installation Report includes updates to the information provided in the Application Package, which subsequently were used to develop the Standard Performance Contract Agreement, to reflect the installed System, including As-built Diagrams of the ADG-fueled Electric Power Generation Equipment.

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

Renewable Portfolio Standard (RPS) Program: A program established by the New York State Public Service Commission to increase the proportion of renewable electricity used by New York consumers to at least 25% by 2013.

RPS Attributes: All environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of energy by the Facility through the use of eligible biogas. RPS Attributes include but are not limited to: (i) any direct emissions of pollutants to the air, soil or water; (ii) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), particulate matter and other pollutants; (iii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iv) all set-aside allowances and/or allocations made unnecessary for compliance under emissions trading programs, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (v) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above.

RPS Attributes Transfer Certificate: The instrument by which title to RPS Attributes will be transferred to NYSERDA. See Exhibit E.

RPS Surcharge: One of the delivery charges levied by National Grid, NYSEG, Rochester Gas and Electric, Orange and Rockland, Central Hudson Gas and Electric, and Consolidated Edison. The RPS Surcharge permits these companies to recover costs associated with providing financial incentives for the development of renewable resources in New York State. NYSERDA is the administrator of the RPS program.

Substantially Upgraded: A major system upgrade that: 1) increases the capacity/electricity production of the existing ADG-fueled Electric Power Generation Equipment, 2) improves the functioning of the existing ADG-fueled Electric Power Generation Equipment such that it can resume operation at a Capacity Factor of 80%, and/or 3) improves the functioning of the existing ADG-fueled Electric Power Generation Equipment such that it can continue operation by being brought into compliance with relevant State and Federal emissions standards.

Total Contracted Project Incentive: The dollar amount listed in Exhibit A of this Agreement, representing the maximum amount payable under this Agreement.

ARTICLE 2: PROJECT ORGANIZATION

§2.1. Project Organization. The Project contemplated herein shall be implemented in accordance with the Agreement and in two phases: Installation and Performance. The Installation Phase shall begin with the Effective Date and will include the Procurement, Installation and Commissioning of the ADG-to-Electricity System set forth in the approved Application Package, and preparation of the Project Installation Report. The Performance Phase shall begin upon approval by NYSERDA of the Project Installation Report and will include and continue through completion of the M&V activities required by the approved M&V Plan.

§2.2. Project Term. The term of this Agreement shall begin on the Effective Date and continue until approval of the third Annual M&V Report, unless extended or terminated under the terms hereof.

§2.3. Extensions of Time. The Project Term or other deadlines for submittal of documentation to NYSERDA, including those described under Article 3 hereto, may be extended for good cause at NYSERDA's discretion. As used herein, "good cause" means an unanticipated circumstance or event, which despite the due diligence of the Contractor, renders compliance with project term or other deadline impracticable. A request for an extension must be submitted in writing to NYSERDA no less than 30 calendar days prior to the expiration of the applicable deadline. Extensions may be granted or denied at NYSERDA's sole discretion. Any such extension shall be communicated in writing. NYSERDA may terminate this Agreement upon the failure of the Contractor to conform to these requirements.

§2.4. Manner of Performance. The Contractor shall perform its responsibilities under this Agreement in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform all responsibilities in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in this Agreement. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform its responsibilities in accordance with this Agreement. Operation of the Facility must conform to the eligibility requirements imposed by the RPS Program with regard to the Customer-Sited Tier.

ARTICLE 3: PROCUREMENT; INSTALLATION

§3.1. Procurement. Procurement of major equipment must be completed, and sufficient documentation of Procurement must be provided to NYSERDA, within eight (8) months of the Effective Date. Major equipment includes the ADG-fueled engine, generator, engine/generator controls, biogas clean-up system, as well as major equipment associated with the anaerobic digester, if applicable. Sufficient documentation of Procurement may include but may not be limited to invoices, Bills of Lading, etc.

§3.2. Installation and Commissioning. The Contractor shall be responsible for Installation and Commissioning of the ADG-to-Electricity System, which shall include interconnection of the System with the utility grid, if applicable, at least one month of satisfactory operation of the system according to its design intent with a minimum 80% Capacity Factor, and demonstration of the ability to upload information to NYSERDA's CHP Data Integration Website.

§3.3. Project Installation Report. A Project Installation Report must be completed and submitted to NYSERDA within 14 months of the Effective Date; such Report must be prepared in accordance with the requirements of Exhibit D to PON 1146, and must sufficiently document that Installation and Commissioning has been completed. The Project Installation Report must include As-Built Diagrams of the commissioned ADG system. NYSERDA's approval of the Project Installation Report will depend on the results of a Post-Installation Site Inspection, which will verify the information provided in the Project Installation Report. NYSERDA will provide notice of approval of the Project Installation Report or will request additional information within 60 days of receipt. NYSERDA will review the Project Installation Report, inspect the system and either approve the Project Installation Report as submitted, approve it with minor revisions, or reject it. If the Project Installation Report is rejected, the Contractor will be provided with a period of 60 calendar days from the date of rejection to provide necessary information and resolve all outstanding issues with NYSERDA.

§3.4. Permits. Contractor shall be responsible for the acquisition and maintenance, at its own cost, of any and all permits, approvals, licenses, easements, waivers and permissions of every nature necessary to perform the Project.

ARTICLE 4: MEASUREMENT AND VERIFICATION

§4.1. **Measurement and Verification Plan.** The Contractor must develop a Measurement and Verification (M&V) Plan (in accordance with Appendix C to PON 1146) in conjunction with NYSERDA's Technical Consultant (TC). The M&V Plan must be received and approved by NYSERDA prior to submittal (or payment) of any invoices. Contractor shall be responsible to provide the instrumentation (sensors and meters) and communications capability specified within the approved M&V Plan; all M&V activities shall be conducted in accordance with the approved M&V Plan.

§4.2. **Annual Measurement and Verification Reports.** Within one (1) month of NYSERDA's approval of the Project Installation Report, the Contractor must begin providing M&V data for upload to NYSERDA's CHP Website. The first year's (consecutive 12 months) M&V period will commence on the date upon which the Contractor begins providing such data. Within 60 days from the end of the first year's M&V period, the Contractor must submit an Annual M&V Report to NYSERDA, which will become the basis for the first Performance Incentive payment. Annual M&V reporting shall be in accordance with Appendix C to PON 1146. Annual M&V Reports must also be submitted to NYSERDA within 60 days from the end of the second and third year M&V periods. The Contractor shall be responsible for ensuring that data provided in the Annual M&V Reports accurately represents the operation of the ADG-to-Electricity System.

§4.3. **Prior Notice.** NYSERDA or its TC may choose to visit a project site to verify that the information provided in the Annual M&V Report is accurate with regard to project equipment, site conditions, and monitoring configurations. These inspections may occur at any time after project installation. Should NYSERDA decide to inspect a site, NYSERDA, or its TC may or may not contact the Contractor to schedule the inspection. In other words, an inspection may occur without advance notice given to the Contractor. If the M&V activities are found to be different from those represented in either the M&V plan or the Annual M&V Report, NYSERDA may refuse any further incentive payments. If NYSERDA deems an inspection necessary, an Annual M&V Report that is under review will not be approved until the inspection has been completed.

ARTICLE 5: PAYMENTS

§5.1. **Invoicing.** Payments may be requested by the Contractor by submitting an invoice to NYSERDA. Invoices must be accompanied by all additional required information and documentation. NYSERDA shall make payments to the Contractor in accordance with terms of this Agreement and subject to its Prompt Payment Policy Statement, which is attached hereto as Exhibit C. No invoice may be submitted and no payment will become payable unless and until NYSERDA has approved Contractor's M&V Plan. No invoices will be accepted nor paid if received more than 90 days after the expiration of the Project Term.

§5.2. **RPS Attributes.** The assignment and transfer of RPS Attributes to NYSERDA shall be accomplished through their inclusion on the Certification and Assignment of Rights Form, which must accompany each invoice.

§5.3. **Initial Capacity Payment.** Upon demonstration of Procurement of major equipment and following the acquisition of necessary permits and, interconnection approval, and M&V Plan approval, the Contractor may request a payment of the lesser of 50% of the demonstrated Procurement purchase and installation expenditures or 50% of the total Capacity Incentive stipulated in the Total Contracted Project Incentive. Sufficient documentation of Procurement expenditures, interconnection approval and the

acquisition of necessary permits must be presented to NYSERDA when the request for the Capacity Incentive payment is made.

§5.4. Second Capacity Payment. Following approval by NYSERDA of the Project Installation Report, Contractor may request payment of any remaining portion of the total Capacity Incentive stipulated in the Total Contracted Project Incentive. In total, NYSERDA will not pay Capacity Incentives in excess of 50% of the demonstrated purchase and installation expenditures or \$350,000, whichever is less.

§5.5. Performance Incentive Payments. Performance incentive payments will become payable upon approval by NYSERDA of each of the three required Annual M&V Reports, at the rate of [ten cents per kWh][two cents per kWh]. Performance incentive payments will be calculated based on the verified electric energy generated by the System. Performance incentive payments shall not, in the aggregate, exceed the Total Performance Incentive component of the Total Contracted Project Incentive. The maximum allowable payment amount for the first performance incentive payment invoice shall be forty percent (40%) of the Total Performance Incentive component as detailed in the Total Contracted Project Incentive; the maximum allowable payment amount for the second performance incentive payment invoice is for up to seventy-five percent (75%) of the Total Performance Incentive (inclusive of any first payment); the maximum allowable payment amount for the third performance incentive payment invoice is up to the balance of the Total Performance Incentive.

ARTICLE 6: FORCE MAJEURE

§6.1. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, or strikes or the delay or failure to perform by any subcontractor by reason of any cause or circumstance beyond the reasonable control of such subcontractor. Variability in the frequency or force of the wind, of rainfall, or of water levels will in no event constitute force majeure events. Failure by Seller to obtain or secure any permit or approval or delay in obtaining any permit or approval of any sort with regard to Seller's performance under the Agreement shall not constitute a force majeure event.

ARTICLE 7: TERMINATION

§7.1. This Agreement shall remain in effect for the term defined in Section 2.2, unless there is an event of default and the Agreement is terminated in accordance with this Article. Events of default include either Party's breach of any provision of this Agreement, including provisions incorporated by reference, and including, but not limited to, the following:

- a. failure of the Contractor to perform its responsibilities in a timely manner, including, but not limited to, failure to provide the required submittals within the required time frames, including responses to requests for clarification or additional information, or failure complete the required inspections within the time limits and manner set forth in PON 1146;
- b. failure of the Contractor to provide NYSERDA or its contractors sufficient access to the Host Site's facility for inspection and/or observation of the Contractor's field M&V activities;

- c. failure of the Contractor to cure any deficiency in a material term or cure any material breach of this Agreement within 30 calendar days after written notice;
- d. failure of the Contractor to acquire or maintain any necessary permit, license or failure to maintain Insurance as required under this Agreement;
- e. assignment or subcontracting of all or part of the Contractor's obligations required under this Agreement without NYSERDA's prior written permission, except that the Contractor shall not be required to obtain NYSERDA approval to subcontract all or part of the work;
- f. submittal by the Contractor of false, misleading or incorrect information; and
- g. failure by NYSERDA to make payments due pursuant to the terms of this Agreement to the Contractor within the time limits set forth in this Agreement.

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

§7.3. Notwithstanding the provisions of this Article, NYSERDA may terminate this Agreement on notice, and without providing an opportunity for cure, for Contractor's failure to fulfill, adhere to, or comply with the provisions of Article 3.

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

§7.5. Seller may, at its option, and upon sufficient notice to NYSERDA, terminate its obligation to deliver RPS Attributes to NYSERDA, in whole or in part, if such RPS Attributes are sold into the New York State voluntary market or pursuant to a New York State Executive Order 111 or other mandated New York State governmental procurement.

ARTICLE 8: RPS ATTRIBUTES

§8.1. NYSERDA will own the rights, and any and all claims, to RPS Attributes associated with the kilowatt-hours generated by the ADG-to-Electricity System installed with CST funding, as specified below.

- a) If this Agreement provides any Capacity Incentive payments for New Equipment, NYSERDA's ownership will extend to all RPS Attributes associated with the kilowatt-hours produced by the Total Contracted Capacity (Exhibit A), assuming an 80% Capacity Factor, during the Performance Phase. (These kilowatt-hours are shown as the Total Contracted Generation of Exhibit A.) Due to the Total Capacity Incentive cap of \$350,000, NYSERDA's ownership will only extend to the first 700 kW of any System.

- b) If this Agreement provides only Performance Incentive payments for New Equipment, NYSERDA's ownership will extend to all RPS Attributes associated with the kilowatt-hours produced by the Total Contracted Capacity (Exhibit A), assuming an 80% Capacity, during the Performance Phase. These kilowatt-hours (shown as the Total Contracted Generation of Exhibit A) cannot exceed 10,000,000 kWh over 3 years.
- c) If this Agreement provides only Maintenance Incentive payments for Eligible Existing Equipment, no RPS Attributes will be owned by NYSERDA.
- d) The environmental attributes associated with ADG methane destruction are considered to be separate from electric power-based RPS Attributes and will be retained by the Contractor (or Host Site, as appropriate).

ARTICLE 9: INDEMNIFICATION

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

ARTICLE 10: INSURANCE.

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

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

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

- a. Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster.
- b. Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the subcontractors for bodily injury liability, including death and property

damage, incurred in connection with the performance of this Agreement, with minimum limits of \$500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in any one accident or disaster.

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

ARTICLE 11: WARRANTIES AND GUARANTEES

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

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

§11.2. The Contractor also warrants and guarantees that:

- a. it is financially and technically qualified to perform the Project;
- b. it is familiar with and will comply with all general and special federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;
- c. the design, supervision and workmanship furnished with respect to performance of the Project shall be in accordance with sound and currently accepted engineering practices;
- d. neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent, copyright or trademark issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Project

or any part thereof infringes any patent, copyright, or trademark or otherwise interferes with any other right of any individual, corporation, association or partnership, organization, business or a government or political subdivision thereof, or any governmental agency or instrumentality;

- e. it has no actual knowledge that there are existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Project or NYSERDA's rights hereunder;
- f. it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Project;
- g. it has no, and shall not obtain during the course of this Agreement any, interest, financial or otherwise, direct or indirect, nor is it engaged in any business or transaction or professional activity, nor has it incurred any obligation of any nature, which is in substantial conflict with the rendering of services under this Agreement; and
- h. it shall exercise reasonable care to achieve commercial standards of fitness for the Customer's use of the equipment that is installed in connection with the Project.

ARTICLE 12: COMPLIANCE WITH CERTAIN LAWS

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

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

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

§12.4. Equipment Requirements. All Equipment required for the ADG-to-Electricity system described in the Project Application and subsequent As-built Drawings shall be consistent with the New York State Uniform Fire Prevention and Building Code, or the applicable local, State or Federal codes.

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

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

ARTICLE 13: PUBLICITY

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

§13.2. It is recognized that during the course of the Project under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit funding participation in the Project to the **New York State Renewable Portfolio Standard Customer-Sited Tier** program, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York."

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

ARTICLE 14: MISCELLANEOUS

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

§14.2. Record Retention. The Contractor and subcontractors shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three (3) years after the expiration or early termination of this Agreement, accurate records of the Project work which is performed hereunder. NYSERDA or its designated representative shall at reasonable times have access to inspect such records.

§14.3. NYSERDA'S Right to Inspect. NYSERDA, and its designated representatives, may observe and inspect all Project work in any of the Customer's facilities.

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

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

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

§14.7. Assignment. The assignment, transfer, conveyance, or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

§14.8. Notices. All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be deemed to have been sufficiently given for all purposes hereunder when delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, (i) if to NYSERDA, at 17 Columbia Circle, Albany, New York 12203-6399, or at such other address as NYSERDA shall have furnished to the Contractor in writing, and (ii) if to the Contractor, at the address noted in the first paragraph of Page 1 of this Agreement, or such other address as the Contractor shall have furnished to it in writing.

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

§14.10. Independent Contractor. The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

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

included therein which are found by NYSEERDA on the basis of any audit of the Contractor by an agency of the United States, the State of New York or NYSEERDA not to constitute a properly invoiced amount.

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

§14.13. Requirement to Pay the RPS. The Host Site must be paying the RPS Surcharge at the time of application submittal to NYSEERDA

ARTICLE 15: FREEDOM OF INFORMATION

§15.1. Freedom of Information Law. Contractor acknowledges that NYSEERDA is subject to and must comply with the requirements of New York’s Freedom of Information Law (“FOIL;” see Public Officers’ Law Article 6).

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

§15.3. Trade Secrets/Commercial Information. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” If NYSEERDA receives a request from a third party for information or a document received from Contractor and which has been marked “Confidential” or “Proprietary,” NYSEERDA will process such request under the procedures provided by NYSEERDA’s FOIL regulations (see www.nyserda.org/About/NYSEERDA.Regulations.pdf).

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

[Contractor]

**NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY**

By _____

By

Jeffrey J. Pitkin
Treasurer

Name _____

Title _____

STATE OF)
) SS.:
COUNTY OF)

On this _____ day of _____, 200_ before me personally came
, to me known, who, by me duly sworn, did depose and say that deponent resides in
; that deponent is the _____ of _____, the
corporation described in and which executed the foregoing instrument; and that (s)he executed the same by
the authority of the Board of Directors or By-Laws of said corporation.

Notary Public

EXHIBIT A

STANDARD PERFORMANCE CONTRACT AGREEMENT

Total Contracted Project Incentive

Contractor Name:

Agreement Number:

Project Name:

Total Contracted Generation ^{1,2} (kWh/3 years)	Total Contracted Capacity ³ (kW)	Total Capacity Incentive ⁴ (\$)	Total Performance Incentive ⁵ (\$)	Total Contracted Project Incentive ⁶ (\$)

Notes:

- 1) The Total Contracted Generation will be calculated by multiplying the Total Contracted Capacity by 8760 hours/year by 3 years by an 80% Capacity Factor.
- 2) If the Standard Performance Contract Agreement provides only Performance Incentives, the Total Contracted Generation cannot exceed 10,000,000 kWh/3 years.
- 3) If the Standard Performance Contract Agreement provides a Capacity Incentive, the Total Contracted Capacity cannot exceed 700 kW.
- 4) The Total Capacity Incentive is capped at \$350,000 per ADG System.
- 5) The Total Performance Incentive is capped at \$1 million minus the Total Capacity Incentive.
- 6) The Total Contracted Project Incentive is capped at \$1,000,000 per ADG System.

EXHIBIT B

REVISED 6/98

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts)

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

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

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

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

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

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

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

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

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

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

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

is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

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

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

EXHIBIT C

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability.

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

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

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

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

- (a) "NYSERDA" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between NYSERDA and a contractor.
- (c) "Contractor" means any person, partnership, private corporation, or association:
 - (1) selling materials, equipment or supplies or leasing property or equipment to NYSERDA pursuant to a contract;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, NYSERDA pursuant to a contract; or
 - (3) rendering or providing services to NYSERDA pursuant to a contract.

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

(e) "Designated payment office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203-6399.

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

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

(h) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for NYSERDA not to be liable for interest pursuant to Section 506.

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

(j) "Receipt of an invoice" means:

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

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

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

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

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

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

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

Section 504.4 Payment procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by NYSERDA pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, New York 12203-6399. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

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

Section 504.11 Court action or other legal processes.

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

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

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

EXHIBIT E

RPS ATTRIBUTES TRANSFER CERTIFICATE

NYSERDA Agreement No. _____

Contractor: _____

Facility: _____

Contractor hereby sells, assigns, conveys and delivers to NYSERDA all right, title and interest in the RPS Attributes, such RPS Attributes having been created during the period beginning on _____, 200_, and ending on _____, 200_. Such right, title and interest shall include perpetual and exclusive rights to such RPS Attributes, including but not limited to the exclusive rights to claim, consistent with New York State Environmental Disclosure rules: (i) that the energy associated with these RPS Attributes was generated by the Facility; and (ii) that New York State and or the RPS Program is responsible for the reductions in emissions and/or other pollution resulting from the generation of that portion of the Facility's energy that is associated with such RPS Attributes.

Contractor further certifies and guarantees that all of the information provided on the attached invoice requesting payment from NYSERDA under the terms of NYSERDA Agreement No. _____ is true and accurate; that the Facility named above was at all times relevant and is now an eligible facility under the rules of the NYS Renewable Portfolio Standard for the Customer-Sited Tier; that the RPS Attributes to which all right, title and interest is transferred to NYSERDA by this instrument are free and clear of all liens, judgments, encumbrances and restrictions, and have not have otherwise been, nor will be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction.

Date: _____

By: _____
Contractor