

Attachment F

**PON 2149 – SOLAR THERMAL PROGRAM
ELIGIBLE INSTALLER AGREEMENT (SAMPLE)**

ELIGIBLE INSTALLER AGREEMENT No. _____

This Eligible Installer Agreement (“Agreement”), including Exhibits A and B hereto (attached), and incorporating by reference the Solar Thermal Program Manual (Attachment G to PON 2149), is entered into by and between the New York State Energy Research and Development Authority (“NYSERDA”), having its principal place of business at 17 Columbia Circle, Albany, New York 12203-6399; the “Eligible Installer” and the “Affiliated Entity” (the Eligible Installer and Affiliated Entity hereinafter referred to, collectively, as “the Parties”), to govern the rights and responsibilities of the Parties with respect to the procurement, construction and installation (“Installation”) of Solar Thermal Systems approved under and through NYSERDA’s Solar Thermal Program Opportunity Notice (PON) 2149 (“Solar Thermal Program”), and to otherwise effectuate the purposes of the Solar Thermal Program. The terms, conditions and provisions of the Solar Thermal Program are incorporated herein and made part hereof by reference.

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

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

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

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

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

Article 1: Eligible Customers

RPS-funded incentives are available to electricity distribution customers of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation who contribute to the Renewable Portfolio Standard/System Benefits Charge (sometimes referred to as 'RPS'/'SBC' on utility electric bills). Non-RPS funded incentives are available to all residents of NY State. Customers may not receive incentives from both the RPS and non-RPS funded programs for the same system.

Article 2: Participation in the SOLAR THERMAL Program

Section 1: The Eligible Installer is authorized to submit Incentive Application(s) to the Solar Thermal Program on behalf of the Affiliated Entity and their Customer(s). The Eligible Installer will be responsible for all Solar Thermal System Installations for which an Incentive Application is submitted under this Agreement, regardless of whether the Installation was performed partially or completely by others. The Eligible Installer may have employees or subcontractors of the Affiliated Entity working under his/her supervision, but remains responsible for ensuring that all persons performing work under this Agreement are qualified, and comply with requirements of the Solar Thermal Program and with this Agreement.

Section 2: Solar Thermal System installations must comply with the "Solar Thermal Program Manual - Attachment G to PON 2149" (Program Manual) in effect at the time of NYSERDA's acceptance of the Incentive Application, and must conform to the corresponding NYSERDA-approved Incentive Application. The Program Manual identifies the current Incentives, rules for participation, submission requirements, Solar Thermal System requirements, technical review processes, site visit protocols, and the procedures for securing Incentive payment. The Solar Thermal Program and Program Manual may be changed by NYSERDA at any time, and changes will be applicable to all Solar Thermal Systems not yet approved by NYSERDA. Notice of all such changes will be provided to the Parties via their designated E-Mail Addresses, as identified on the signature page of this Agreement. Notice of all such changes will also be posted on NYSERDA's website.

Section 3: The Parties and their employees and subcontractors shall treat Customers fairly and in good faith, and shall deliver promised services in a timely, responsible, professional, and competent manner. The Parties shall fairly represent NYSERDA's Solar Thermal Program and their relationship to NYSERDA to Customers and the public. If it is determined that the Parties are not fairly representing NYSERDA's Program and/or their relationship for NYSERDA to customers and the public, an Eligible Installer's status within the Solar Thermal Program may be affected. Eligible Installer performance may be evaluated through planned and random system inspections. Written complaints received by NYSERDA from Solar Thermal System Customers

will be documented and investigated by NYSERDA or its representatives, and shared with the Eligible Installer.

Section 4: The Parties shall not subcontract to, employ, nor hire any individual to perform work related to an Incentive Application whose participation in PON 716, PON 1050, PON 2112, or PON 2149 (the SOLAR THERMAL Program), or any other NYSERDA program has been suspended or terminated, without NYSERDA's prior written permission.

Article 3: Solar Thermal Program Incentives and Payments

Section 1: The amounts, limitations, and availability of Incentives are as defined in the Program Manual in effect at the time that NYSERDA accepts the Incentive Application.

Section 2: NYSERDA reserves the right to change the Solar Thermal Program Incentives in accordance with the "Customer-sited Tier Program Goals and Funding Plan (2010-2015), dated June 29th, 2010" and approved by the Department of Public Service on June 30th, 2010. Notice of all such changes will be provided to the Parties via their Designated E-Mail Address as identified on the signature page of this Agreement. Notice of all such changes will also be posted on NYSERDA's website. Any change in Incentive levels will not affect Incentive Applications previously approved by NYSERDA. Incentive Applications not yet accepted by NYSERDA will be adjusted to the then-current Incentive level.

Section 3: Incentive payments which result from this Eligible Installer Agreement will be paid to the Affiliated Entity listed in this Eligible Installer Agreement. Acceptance by the Affiliated Entity of final payment shall release NYSERDA from all claims and liability of the Eligible Installer, the Affiliated Entity, representatives, and assigns to this Agreement. The Affiliated Entity is required to pass the entire approved Incentive to the Customer in a timely manner.

Section 4: NYSERDA reserves the right to withhold approval of Incentive Applications at any time, for any reason. NYSERDA will not process an Incentive Application submitted by an Eligible Installer whose status designation is Probationary, or if their Agreement has been terminated, or where the non-customer party to the Customer Purchase Agreement is the non-customer party where such Solar Thermal Systems are the subject of unresolved application, installation, performance or customer dissatisfaction issues.

Section 5: NYSERDA may charge the Parties for any additional costs incurred if more than two design reviews or two site visits are necessary for any given Incentive Application, due to the failure by the Eligible Installer to respond to, make corrections, or complete modifications requested by NYSERDA.

Section 6: Notwithstanding any other provision of this Agreement, NYSERDA reserves the right to deny or alter payment of an Incentive, to exercise its Set-Off rights, or to seek reimbursement of incentives paid if, at any time, it learns that the approved Solar Thermal system was not actually installed, was not installed by or under the supervision of the Eligible

Installer, was not installed as required under the Solar Thermal Program or this Agreement, was not installed according to the approved system design, or if a system was partially or completely installed prior to NYSERDA approval of the Incentive Application. NYSERDA may: (a) elect to not pay the incentive; (b) require changes before making any payments; (c) require reimbursement of incentives already paid unless the requested changes are made; or (d) withhold approval of Incentive Applications for other Solar Thermal Systems.

Section 7: Incentive payments will be made pursuant to NYSERDA's Prompt Payment Policy as outlined in Exhibit B of this Agreement, subject to NYSERDA's Standard Terms and Conditions as described in Exhibit A of this Agreement.

Article 4: Obligations between the Parties and Eligible Customers

Section 1: The Parties shall execute a Customer Purchase Agreement with the Customer for each unique Solar Thermal System. Each Customer Purchase Agreement shall meet the requirements identified in Section 5.10 of the Solar Thermal Manual, inclusive of a full warranty to the Customer. The "Addendum to Customer Purchase Agreement - Attachment D of PON 2149" must also be executed between the Parties and the Customer, and must be incorporated into the Customer Purchase Agreement. An executed copy of the Customer Purchase Agreement and Addendum must accompany the Eligible Installer's Incentive Application submission. NYSERDA may reject an Incentive Application received by NYSERDA more than (30) days from the Customer's execution of the Customer Purchase Agreement.

Section 2: The Parties agree that NYSERDA may, at NYSERDA's discretion, communicate by voice and/or written format with any Solar Thermal System Customer with respect to any matter relevant to a proposed or installed Solar Thermal System. Such communications may be in reply to an inquiry from a Customer or at NYSERDA's initiation.

Article 5: Renewable Attributes

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

Article 6: Eligible Installer Status Designation

Section 1: Eligible Installers are assigned one of the Eligible Installer status designations (Designation): Full, Provisional, Probationary, or Terminated. Each Designation shall be subject to the limitations or requirements associated with that Designation, as detailed below.

NYSERDA reserves the right to modify the definitions, limitations, and requirements of these Designations at any time. NYSERDA retains sole discretion for determining the Eligible Installer's progression into and through each Designation. If NYSERDA determines that a remedy is required, the Eligible Installer's promptness in response will be considered when evaluating any change in status Designation. In all cases, NYSERDA's written decision is final.

Notification of any change in status Designation will be provided via letter from NYSERDA Program staff. This letter will provide:

- Identification of the new Eligible Installer Status Designation
- Explanation of the what caused the Designation change
- Limitations, if any, associated with the newly assigned Designation
- Identification of specific corrective actions that must be taken, and applicable timelines

Failures or violations that may result in a loss of applicable Incentives and possible termination of this Agreement include, but are not limited to:

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

Section 2: Eligible Installers not previously assigned any other Designation who have met all requirements of the Solar Thermal Program, have and continue to demonstrate their ability to provide quality services utilizing industry standards and best practices, and abide by all other terms and conditions of this Agreement, shall be assigned the status of **Full** Eligible Installer.

- a. After June 30, 2012, **Full** Eligible Installers are required to be NABCEP-certified Solar Thermal Installers (North American Board of Certified Energy Practitioners).

Failure to satisfy this Solar Thermal Program requirement by June 30, 2012 will result in automatic Designation to **Provisional status**.

- b. **Full** Eligible Installers shall submit a copy of their NABCEP Solar Thermal Installer certificate or re-certification to NYSERDA, as needed to confirm this certification has been acquired or maintained.

Section 3: Eligible Installers shall be assigned the status of **Provisional** Eligible Installer until they have satisfied all requirements to achieve **Full** status, including demonstration to NYSERDA of their ability to provide quality services utilizing industry standards and best practices. A **Provisional** Eligible Installer who fails to meet all requirements of the Solar Thermal Program, and abide by all other terms and conditions of this Agreement, may be assigned **Probationary** status.

- a. **Provisional** Eligible Installers are not listed on NYSERDA's website
- b. **Provisional** Eligible Installers are limited to submission of one (1) Incentive Application at a given time. Additional Incentive Application(s) shall not be submitted to and will not be accepted by NYSERDA until the previous Solar Thermal System Installation has been satisfactorily completed by the Installer, and notification has been provided to the Eligible Installer that NYSERDA has completed a site inspection of the Solar Thermal System to confirm compliance with all Solar Thermal Program requirements. Following achievement of this milestone, **Provisional** Eligible Installers may then request NYSERDA evaluate their status designation.
- c. After June 30, 2012, **Provisional** Eligible Installers must be NABCEP-certified Solar Thermal Installers for NYSERDA to consider a change in status to **Full** Eligible Installer
- d. **Provisional** Eligible Installers, including Journeymen Plumbers, are required to maintain their Solar Thermal System Installation skills by either successfully completing one SOLAR THERMAL System a year, or by attending at minimum (15) hours of Solar Thermal System training per year.

Section 4: Assigning the status of **Probationary** to an Eligible Installer will be based on his or her consistent failure to satisfy requirements of the Solar Thermal Program, including failure to abide by the terms and conditions of this Agreement.

- a. **Probationary** Eligible Installers are not listed on NYSERDA's website
- b. **Probationary** Eligible Installers are not allowed to submit Incentive Applications
- c. **Probationary** Eligible Installers are only permitted to complete Solar Thermal System Installations associated with previously submitted and approved Incentive Applications
- d. **Probationary** Eligible Installers shall complete Solar Thermal System Installations associated with Incentive applications previously approved by NYSERDA in a manner which meets all Solar Thermal Program requirements, to NYSERDA's satisfaction.
- e. **Probationary** Eligible Installers status designation is retained until such time as NYSERDA determines a change in status is in the best interests of the Solar Thermal Program.

Section 5: NYSERDA may, in its sole discretion, **terminate** the Eligible Installer Agreement. **Termination** revokes the Eligible Installer Agreement and ends the Eligible Installer's on-going relationship with the Solar Thermal Program. **Terminated** Eligible Installers shall not represent themselves as Eligible Installers nor are they allowed to submit new Incentive Applications. The Eligible Installer's name will be permanently removed from the list of Eligible Installers posted on NYSERDA's website. Grounds for **termination** include, but are not limited to, the following:

- a. The **Probationary** Eligible Installer has either been unresponsive to, or failed to adequately fulfill, expectations required for their **Probationary** status to be upgraded;
- b. An Eligible Installer of any status misrepresents the Solar Thermal Program, its relationship to the Solar Thermal Program or information about the Solar Thermal Program to potential or existing Customers;
- c. An Eligible Installer of any status falsifies documents (i.e. falsifying signatures and/or documents);
- d. An Eligible Installer of any status misrepresents the status of or information regarding a project to Solar Thermal Program staff.

Article 7: Insurance Requirements

Section 1: The Affiliated Entity, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts of this Agreement. All such insurance shall be evidenced by insurance policies, each of which shall: (1) reference this Agreement number and name or be endorsed to cover the Eligible Installer and the Affiliated Entity as the insured, and NYSERDA and the State of New York as additional insured, and reference all work to be performed under the Solar Thermal Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; (3) indicate that insurance covers NYSERDA's Solar Thermal Program, including PON 716, PON 1050, PON 2112, and PON 2149 for installing end-use Solar Thermal Systems; and (4) be reasonably satisfactory to NYSERDA in all other respects. NYSERDA reserves the right to request insurance documentation and copies of subcontractor agreements for any subcontractor, and to request the identity of all individuals participating in the Solar Thermal System installation.

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

out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in anyone accident or disaster.

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

Section 4: 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 Eligible Installer or the Affiliated Entity shall deliver to NYSERDA a certified copy of each policy upon request.

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

Article 8: Indemnification

The Eligible Installer and the Affiliated Entity shall protect, indemnify, and hold harmless NYSERDA and the State of New York from, and against, all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, experts' and/or attorney's fees and expenses) imposed upon, or incurred by, or asserted against, NYSERDA or the State of New York resulting from, arising out of or relating to the Eligible Installer's or the Affiliated Entity's performance of this Agreement. The obligations of the Eligible Installer and the Affiliated Entity under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article 9: Miscellaneous

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

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

Section 3: This Agreement is the entire Agreement between NYSERDA, the Eligible Installer, and the Affiliated Entity and supersedes all other communications and representations. If either NYSERDA or the Parties desire to modify this Agreement, the modification must be in writing and signed by an authorized representative of the party against which enforcement of the modification is sought.

Section 4. The status of the Eligible Installer and the Affiliated Entity under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Eligible Installer, the Affiliated Entity's subcontractors, the Affiliated Entity and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Section 5: The Parties shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning Solar Thermal Systems installed under the Solar Thermal Program. In addition the Eligible Installer or Affiliated Entity shall notify NYSERDA's Director of Communications regarding any media interview involving Solar Thermal Systems installed under the Solar Thermal Program.

Section 6: Commercial promotional materials, advertisements, informational brochures, and web site content produced by the Eligible Installer, the Affiliated Entity, or customer shall credit NYSERDA and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. Such content may be approved in advance by NYSERDA, and, after initial approval, such content may be used in subsequent promotional materials or advertisements without additional approvals. In the event that NYSERDA determines that the Eligible Installer or Affiliated Entity is presenting or publishing incorrect or misleading information regarding the Solar Thermal Program or Eligible Installer's status in the Solar Thermal Program the Eligible Installer or Affiliated Entity agrees to make appropriate modifications promptly upon notification by NYSERDA. If a website maintained by or for the Eligible Installer or Affiliated Entity includes references to NYSERDA and/or the Solar Thermal Program, the website must include the following link: <http://www.nyserda.org>.

Section 7: This Agreement does not commit NYSERDA to approve an Incentive Application, pay any costs incurred in preparing an Incentive Application, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all Incentive Applications received, to negotiate with all qualified sources, or to cancel in part or in its entirety PON 2149 when it is in NYSERDA's best interest.

Section 8: This Agreement may be terminated by NYSERDA at any time upon notice to the Eligible Installer. If the Eligible Installer wishes to cancel or terminate this Agreement, NYSERDA may seek reimbursement of any incentives provided by NYSERDA regarding Solar Thermal Systems that have not been completely installed, interconnected, and commissioned or that have not submitted three full years of Solar Thermal System data readings as required in this Agreement.

Section 9: Eligible Installer agrees and consents to receive notices at the Designated E-Mail Addresses provided on the Signature Form of this Agreement.

Section 10: The Eligible Installer 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. This disclosure requirement extends to the Affiliated Entity 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 execution of this Agreement, NYSERDA may exercise its stop-work right pending further investigation, or terminate the Agreement; the Eligible Installer and/or Affiliated Entity may be subject to penalties for violation of any law which may apply in the particular circumstances. The Eligible Installer and/or Affiliated Entity 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.

Attachment F
PON 2149 – SOLAR THERMAL PROGRAM
ELIGIBLE INSTALLER AGREEMENT No. _____
SIGNATURE FORM

The Eligible Installer and Affiliated Entity certify that all of the information provided in the Solar Thermal Program Installer Eligibility Application, including any attachments, is true and accurate, to the best of their knowledge. The Eligible Installer and Affiliated Entity have read and understand this Solar Thermal Program Eligible Installer Agreement and agree to abide by all terms and conditions; agree that all Solar Thermal Systems will be designed and installed in accordance with PON 2149 and the Program Manual and in compliance with all applicable codes, accepted industry standards and best practices. The Eligible Installer and the Affiliated Entity acknowledge that failure to adhere to the terms and conditions of participation in the Solar Thermal Program or to otherwise fail to follow Solar Thermal Program requirements and procedures may result in a change to their status designation, including termination of this Eligible Installer Agreement. NYSERDA reserves the right to modify the provisions of this Agreement at any time during the term of this Agreement.

This Agreement shall become effective and binding when executed by the Eligible Installer, the Affiliated Entity and NYSERDA. A newly signed Signature Form shall be submitted to NYSERDA on or before June 30th of each year following initial execution of this Agreement for the Eligible Installer to retain **Full** or **Provisional** status. If a **Probationary** Eligible Installer's Agreement is not executed by NYSERDA on or before July 1st of any given year, their Eligible Installer status is automatically changed to **Terminated**. The obligation of the Eligible Installer and Affiliated Entity with respect to approved applications shall survive any expiration or termination of this Agreement. Execution of this Signature Form by NYSERDA will continue the Eligible Installer Agreement under the terms and conditions outlined in this Agreement and its attachments.

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

Eligible Installer Name (print name): _____
Eligible Installer Signature: _____ Date: _____
Designated E-Mail Address: _____

Affiliated Entity – Company name: _____
Legal signatory name and title: _____
Signature of Representative: _____ Date: _____
Designated E-Mail Address: _____

NYSERDA Authorized Representative:
Signature: _____ Date: _____

Name and Title: _____

EXHIBIT A

REVISED 9/06

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. FREEDOM OF INFORMATION. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the contractor wishes to have treated as proprietary, and confidential trade secret information should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to accept it from disclosure, including a written statement of the reasons why the information should be excerpted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted. Careful consideration should be given before confidential information is submitted to NYSERDA. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

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

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

EXHIBIT B

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.4 Payment procedures.

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

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

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

- (2) any defects in the invoice; and
- (3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.11 Court action or other legal processes.

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

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

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