

Eligible Installer Agreement
PON 2439 - On-Site Wind Turbine Incentive Program

Attachment G

This Agreement provides the terms and conditions under which an Eligible Installer may participate in NYSERDA's On-Site Wind Turbine Incentive Program. It is completely voluntary and can be terminated at any time for any reason by either NYSERDA or the Eligible Installer.

1. Incentives

(a) Incentive availability - Subject to these terms & conditions, the New York State Energy Research and Development Authority ("NYSERDA") will pay incentives to Eligible Installers who install approved, new, grid-connected wind energy systems for Eligible Customers. Incentive levels are outlined in Section II of Program Opportunity Notice (PON) 2439. Incentives are only available to Eligible Installers and Eligible Installers are required to pass the full incentive amount to the customer in a timely manner, consistent with project milestones.

(b) Eligible Customers - Eligible Customers are New York electricity distribution customers of: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation who pay into the Renewable Portfolio Standard (sometimes referred to as 'RPS' on utility electric bills).

(c) Incentive reservation expiration - It is NYSERDA's goal to see wind energy systems installed in a timely manner, in general, all the wind energy system components should be delivered to the customer's site within 120 days of the NYSERDA Purchase Order date. If this is not possible, NYSERDA must be contacted to establish a reasonable schedule. Otherwise, the reservation will become void 120 days after the NYSERDA Purchase Order date.

(d) Initial payment procedure - NYSERDA will pay 65% of the approved incentive for an approved system, upon receiving proof that all major approved system components and equipment have been delivered to a customer's site. Major approved system components and equipment include, at a minimum, the complete wind turbine, tower, inverter, and batteries if applicable. A packing slip verifying delivery of all wind energy system components, signed by the customer is required for proof for payment.

(e) Installation schedule - The Installer should complete the installation of the wind energy system and request all necessary inspections within 120 days of Installer's receipt of the first incentive payment from NYSERDA. If this is not possible, NYSERDA must be contacted to establish a reasonable schedule. Otherwise, if the system is not installed within 120 days of Installer's receipt of the first incentive payment from NYSERDA, the Parties recognize that the Installer will be required to return any and all incentive payments to NYSERDA.

(f) Final payment procedure - The remaining 35% shall be paid once the wind energy system is operating, has been connected to the utility grid, inspected by all Authorities Having Jurisdiction (AHJ), and/or after a NYSERDA system inspection to verify that the system installation was consistent with the NYSERDA application. Documentation for all applicable utility, state, city, town, and other inspections and approvals must be attached to Attachment F. Final incentive payments may be contingent on NYSERDA inspecting an installed system. Inspections will be made within a reasonable time after a system is installed and are not intended to significantly delay a final incentive payment if all program requirements have been met.

(g) Post-installation verification - If NYSERDA determines that the wind energy system is not installed in a manner that is consistent with this program, the manufacturers' instructions, or generally accepted good practices; NYSERDA may require changes before making any payments, elect to not pay the incentive, or elect not to approve future incentives until changes have been made. NYSERDA will provide a written report to the customer and/or the installer summarizing the results of the post-installation inspection.

(h) Right to deny payment - Notwithstanding any other provision of this Agreement, NYSERDA reserves the right to deny payment of an incentive or seek a refund for incentives paid if, at any time, it learns that the approved wind energy system was not actually installed, not installed by, or under the supervision of an Eligible Installer, not installed as required under this PON (No. 2439) or this Agreement, or if a system was partially or completely installed prior to NYSERDA approval of an incentive application. It is the Eligible Installer's responsibility to ensure that the terms and conditions of this Agreement are followed in good faith.

(i) Incentive Application Approval:

(1) Right to stop approving incentives - NYSERDA reserves the right, for any reason, to refrain from approving Incentive Application Forms for an individual installer or for all installers at any time without notice.

(2) Right to reduce incentives - NYSERDA reserves the right, for any reason, to reduce the incentives for systems being offered under the program, at any time, through written notice to Eligible Installers. Any reduction in incentive levels will not affect incentives or incentive reservations already approved by NYSERDA.

2. Installer Responsibility

(a) Business practices - The Eligible Installer and employees and subcontractors of the Installation Company shall treat customers fairly and in good faith, and deliver promised services in a timely, responsible, professional, and competent manner. The Eligible Installer shall properly represent NYSERDA's program and its relationship to NYSERDA, to customers, and the public.

(b) Capability to conduct business successfully - The Installation Company must have the financial resources to conduct business successfully. NYSERDA may request information to validate that the company has such resources.

(c) Responsible party - The Eligible Installer is required to meet all program terms and conditions and is responsible for systems installed partially or completely by other members of the Installation Company, subcontractors, or any other party designated by the installer to install the system.

(d) Employees and subcontractors - The Eligible Installer is required to ensure that all of the Installation Company's employees, assistants, or subcontractors meet the program requirements and Standard Terms and Conditions for the program. Additionally, any person performing work under this project must be qualified to do the work they perform, and must meet all applicable terms and conditions including, but not limited to, insurance requirements in Section 10 and NYSERDA's publicity clause in Section 12. Persons who assist the Installer and perform more than \$2,000 worth of work or who climb the tower shall be considered subcontractors for the purposes of this Agreement. If the Installation Company uses a subcontractor to perform the installation, the Installation Company must have a written agreement with the subcontractor and submit that agreement, with insurance documentation for the subcontractor, to NYSERDA, along with the incentive application. NYSERDA reserves the right to request insurance documentation and subcontractor agreements for any subcontractor. The Eligible Installer is responsible for identifying all individuals who will participate in the installation of the wind energy system. On projects receiving incentives under this program, the Installation Company shall not employ or hire any individual or firm that has been suspended or terminated from this program or any other NYSERDA program without NYSERDA's prior written permission.

e) Supervision responsibilities - The Eligible Installer must be present on site for or ensure that another Eligible Installer is present for a minimum of the assembling and erecting of the wind turbine and tower, and the wind energy system commissioning.

(f) Pre-installation verification - The Eligible Installer is responsible for performing a proper site evaluation to ensure that the site meets the requirements of NYSERDA's program and to determine the feasibility of installing an on-site wind energy system.

(g) Sound installation practices - The Eligible Installer agrees that all systems are to be designed and installed in accordance with sound and currently accepted industry standards and practices.

(h) Maintenance - The Eligible Installer and the Installation Company are responsible for repairs, inspections, and maintenance of the wind energy systems, during the warranty period.

(i) Wind energy system data readings - Meter readings must be conducted by the Eligible Installer or Customer at least once per month in monthly intervals for two years and the cumulative energy production data submitted to NYSERDA two times per year for two years for each installed system. This provision for meter readings and submission of data is included in the Addendum to the Customer Purchase Agreement.

(j) Permitting – It is the Eligible Installer's responsibility to insure that all necessary permits, approvals, certificates, etc. from any applicable AHJ are obtained for all installed systems. Copies of all necessary permits, approvals, certificates, etc must be attached to the Incentive Application Form, Permitting and SEQR Information (Attachment B). An application will not be approved unless the necessary permits, approvals, certificates, etc. are attached.

(k) State Environmental Quality Review Act (SEQR) - The Eligible Installer is responsible for ensuring that each project complies with the requirements of SEQR. Under the provisions of SEQR, NYSERDA must determine if the funding of any action may have a significant impact on the environment, regardless of any other authority's determination. SEQR review should begin with an application to the Town board, zoning, land-use or other local approval-granting body. A SEQR negative declaration or other determination by a local authority will be considered by NYSERDA in its determination. NYSERDA will not commit to providing incentives on any project until NYSERDA has made a determination under SEQR. NYSERDA does not consider the installation of a wind turbine to be a Type II Action.

Please review the SEQR requirements for each project early in the developmental stage, and before entering a contract with a customer that reflects NYSERDA participation. Contact NYSERDA if you have any questions regarding these requirements. For a more comprehensive description of the SEQR process visit <http://www.dec.ny.gov/permits/357.html>.

(j) Other Permits and Approvals - The Eligible Installer is responsible for insuring that all other required permits, approvals, certificates, etc. for the project are identified and obtained. The Eligible Installer must submit to NYSERDA copies of any permits and approvals, certificates, etc. from all AHJ. If a building permit is not required, the installer must submit evidence that no such permit is required, including a contact name and number for verification by the AHJ.

3. Installer Eligibility

(a) Application does not Entitle Eligible Installer to Participate - Submission of a completed Installer Eligibility Application Form or Incentive Application Form does not entitle the Eligible Installer to incentives under this program. If approved, an Incentive Application Form completed and submitted by an Eligible Installer will form a binding agreement between NYSERDA and the Eligible Installer.

(b) Compliance with program terms and conditions - The Eligible Installer acknowledges that failure to follow program requirements and procedures will result in a loss of applicable incentives and possible termination of this Agreement. This Agreement will be terminated if an Eligible Installer, its employees, or subcontractors do not meet all program terms and conditions or program requirements. NYSERDA may suspend, revoke, or refuse to accept incentive applications until the issue or violation is remedied by the installer. NYSERDA may suspend or terminate the Eligible Installer's participation in the program for any reason. Actions taken by NYSERDA will reflect the severity of the issue or violation that caused the actions to be taken. The number and frequency of issues or violations will also be considered by NYSERDA when determining the resulting action. If NYSERDA requests that an issue or violation be remedied, the effectiveness and promptness of the remedy will be considered when determining the resulting action. NYSERDA is solely responsible for determining the action that will be taken in response to an issue or violation of this PON or these Terms and Conditions. In all cases involving an Eligible Installer's status, or denial of program incentives, NYSERDA's written decision is final.

Issues or violations that may result in disciplinary action as described above, include, but are not limited to:

- Violating the provisions of this PON or this Agreement.
- Failure to maintain adequate financial resources and credit score necessary for performing under this Agreement.
- Failure to act professionally, fairly, and in good faith with the customer, NYSEERDA, or NYSEERDA's representatives.
- Inability to follow the program guidelines, requirements, and procedures.
- Failing to adequately inform customers of all program milestones, schedules, and requirements.
- Being unresponsive to NYSEERDA or NYSEERDA's representatives.
- Being unresponsive to customers' installation or service needs.
- Providing false or misleading information verbally or in writing to NYSEERDA, NYSEERDA's representatives, or to customers.
- Providing false or misleading information on NYSEERDA's program or the installer's role in the program.
- Installing systems that violate NYSEERDA's requirements, the National Electric Code, or other codes, equipment manufacturers' installation requirements, or generally accepted good installation practices.
- Failing to adequately and promptly address system problems as identified by NYSEERDA or the customer or failure to adequately perform inspections and preventative maintenance.
- Repetitive errors in system design or performance calculations.
- Substantiated written complaints received by NYSEERDA from customers that are significant or repetitive.
- Failing to honor the full system warranty required under this or previous programs.
- Failing to complete installations within a reasonable time period, considering the circumstances of each installation.
- Having eligibility revoked in NYSEERDA's PV program.
- Failing to pass the incentives to the customer in a timely manner, consistent with project milestones.
- Charging customers rates that are not fair and equitable, competitive and consistent.
- Charging the customer more than the cost of analysis and a site visit without adequate reason if an application is not approved or withdrawn.
- Failing to meet all reporting needs in a timely manner, including submission of performance data for each installed system for two years.

(c) Maintaining installation skills - Eligible Installers are required to maintain their wind energy system installation skills. For an installer to remain on the Eligible Installer list, the installer must show proof that they have had a significant role in a wind turbine installation, attended at least one in-depth wind installation training course, or attended an in-depth wind site assessor course at least once every 12 months. If an Installer is attending training for the sole reason of maintaining their NYSEERDA eligibility, NYSEERDA should be contacted first to verify the course will qualify. NABCEP Certified Small Wind Installers are exempt from this initiative. In addition, each installer must submit a letter

from a manufacturer stating the installer is authorized to install the specified turbine and that the manufacturer will honor the NYSERDA warranty in the event of a default by the installer. Installers who fail to meet these requirements will have their eligibility status revoked.

(d) Maintaining insurance - NYSERDA may suspend the eligibility of an Eligible Installer if the Installation Company's insurance certificate filed with NYSERDA lapses. NYSERDA may reinstate the installer's eligibility once an updated insurance certificate has been filed. Incentive applications will not be accepted and incentive payments will not be made if the insurance certificate filed with NYSERDA lapses.

(e) Appeal process - If an installer wishes to have NYSERDA reconsider a decision regarding termination of this Agreement as described in Section 3(b), the installer must submit a request for reconsideration in writing within 30 days of receipt of NYSERDA's Notice or determination. The request shall be addressed to:

Director of Contracts–PON 2439
NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

The request shall include reasons and any relevant documentation explaining why the installer believes NYSERDA should reconsider. NYSERDA will consider the request and issue a final decision.

4. Customer Purchase Agreement

Incentive Applications must include a Customer Purchase Agreement acceptable to NYSERDA that is signed by the Eligible Installer and the customer. A Customer Purchase Agreement must include, at a minimum the following:

- System information, including: installation location, installation schedule, a description of the system being purchased and an outline of system specifications, the make and model of major system components, estimate of annual energy output, data collection responsibilities, warranty provisions, identification and location of easy-to-read meter, references to UL listing, etc.
- A realistic installation and interconnection schedule that takes into account NYSERDA and utility review requirements. For example, incentive applications should not have an expected installation date that does not include adequate time for NYSERDA to receive, review, and notify the Eligible Installer regarding the status or approval of an application (about 30 - 45 days depending on the level and type of SEQR review required).
- A system output analysis which shall include an estimate of annual energy output of the system with a description of the methodology used to determine the output estimate. The annual energy output estimate shall consider obstructions and include a range of energy outputs that reasonably reflect the uncertainty involved in forecasting the wind resource. This estimate shall be included as part of an Incentive Application Form (Attachment A).

- An economic analysis, including: total system and itemized costs, applicable incentives, payment schedule, routine maintenance, and a cost-effectiveness analysis.
- A routine maintenance schedule including information on scope, timing, and cost of these maintenance items. (Include cost only if the Installer charges separately for this activity.)
- Attachment C of this program, 'Addendum to the Customer Purchase Agreement'.

5. Approved Systems

(a) Siting considerations -

Under the provisions of the State Environmental Quality Review Act (SEQR), NYSERDA must determine if the funding of any action may have a significant impact on the environment. Attachment B, Permitting and SEQR Information, provides a list of the steps and supporting documents that are necessary for approval of NYSERDA funding. All wind installations must meet the requirements of the local zoning ordinances.

In addition, the following general criteria will apply:

- The minimum work zone distance between the tower base, and a property line or power line is the height of the wind energy system, above ground level, including the blades, plus 10%. (i.e., 1.1 times the total height of the wind energy system)
 - o Customers may apply for an exemption with written permission from the neighbor and an indication from the neighbor that the use of land in the vicinity is consistent with the proposed wind energy system. There is no exemption for power lines.
- The minimum setback distance between the tower base and a human-occupied building is five times the rotor diameter.
 - o Customers may apply in writing for an exemption from this minimum distance requirement for buildings they own; however, the installer must demonstrate that they explained the possible problems of locating the wind energy system less than the required distance from the building.
 - o For non-customer owned buildings, Customers may apply for an exemption with written permission from the neighbor, as long as the Customer has demonstrated that they explained the possible problems of locating the wind energy system less than the required distance from the building.
- For building-mounted applications, if the local municipality has an ordinance that stipulates the criteria for building-mounted wind turbines, then building-mounted wind turbines may be eligible for funding under this program, provided all other program requirements are met. If the local municipality does not have an ordinance that stipulates the criteria for building-mounted wind turbines, then a building-mounted wind turbine is not eligible for funding under this program.
- If multiple turbines are proposed for a site, there must be a distance of at least ten times the rotor diameter between the tower bases.
- The bottom of rotor must be at least 30 feet above any obstacle, in any direction, within 500' of the turbine

(b) Installation timing - Incentives are only available for wind energy systems that have not been installed (partially or completely) prior to NYSERDA approval of an incentive application submitted in

accordance with the terms and conditions of PON 2439. Construction or partial construction of the foundation is considered partial installation of the wind energy system and shall not occur prior to NYSERDA's approval of an incentive application.

(c) Approved system design - Wind energy systems must be installed in accordance with the design submitted to and approved by NYSERDA. Any change in system design from the approved application must be approved in writing by NYSERDA prior to installing the wind energy system. Incentives will be revoked for systems that are installed prior to receiving approval from NYSERDA and for systems that are not installed according to the application approved by NYSERDA.

(d) New equipment - All system components installed under this program must be new. Incentives are not available for used or refurbished equipment.

(e) Grid connection - All wind energy systems eligible for an incentive must be grid-connected, on-site applications. On-site wind energy systems are connected on the customer's side of the electric meter and electricity generated by the wind energy system offsets the customer's electricity purchases.

(f) Compliance with laws and codes - All approved systems, system components, and installations must comply with any and all manufacturers installation requirements, applicable laws, regulations, codes, licensing and permit requirements, including but not limited to, the New York State Building Code, the National Electric Code, and New York State's Standard Interconnection Requirements and all applicable state, city, town, or local ordinances or permit requirements.

(g) Eligible wind turbines - Only Eligible Wind Turbines may be installed under this program. Information on the list of Eligible Wind Turbines is available at <http://nyserda.ny.gov/en/Page-Sections/Renewables/Small-Wind/Eligible-Wind-Turbines.aspx>.

(h) Inverters and interconnection - Inverters and interconnection devices must be listed on the New York State Department of Public Service's list of Certified Interconnection Equipment ([http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/DCF68EFCa391AD6085257687006F396B/\\$FILE/SIRDevices.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/DCF68EFCa391AD6085257687006F396B/$FILE/SIRDevices.pdf)) or the interconnection must be in agreement with the most current version of the Public Service Commission's Standardized Interconnection Requirements. All wind energy systems must have an appropriate interconnection agreement with the utility and the wind energy system must be installed in compliance with that agreement.

(i) Other electrical components - All other electrical components of the systems such as charge controllers, batteries, wiring, and metering equipment must be certified as meeting the requirements of any relevant national and New York State codes and standards.

(j) Monitoring equipment - Each wind energy system must include, at a minimum, a cyclometer register kilowatt-hour meter (or a meter that can be read numerically by a customer or an "easy read meter") to read total energy output. The energy metering data must be automatically stored independently of the inverter display. In lieu of a meter, a data acquisition system (DAS) capable of transmitting and storing data off-site may be used. The meter must have an accuracy of within $\pm 5\%$ and include a certificate of compliance from the manufacturer. Energy production (including the date of the meter reading) must be collected by the installer or customer at least once per month and the

installer must submit this data to NYSERDA twice per year for two years following interconnection of the wind energy system. A DAS does not alleviate the installer's responsibility to submit timely data to NYSERDA. At NYSERDA's cost, NYSERDA may require that additional monitoring equipment be installed.

(k) Cost of equipment - NYSERDA may request any reasonable documentation or verification of the cost to the customer of purchasing and installing an approved wind energy system.

(l) Title to equipment - Title to all of the equipment purchased under this Agreement shall vest with the customer purchasing the wind energy system.

6. Installation Site Visit / Inspections

(a) NYSERDA reserves the right to make a reasonable number of visits to the customer site, before, during, and after the installation of the wind energy system, up to 24 months following the completion date of the project. Such visit(s) will be at a time convenient to the customer and made will be made with advance notice to the customer by NYSERDA.

(b) The purpose of the site visit(s) is to provide NYSERDA with an opportunity to evaluate the information presented in the application, to evaluate the installed wind energy system in order to determine the actual kW production for program evaluation purposes, or to verify program compliance.

(c) NYSERDA may provide a written report summarizing the results of the approved system inspection to the customer and/or the installer.

7. Changes in the Program

The program and these Terms and Conditions may be changed by NYSERDA at any time. An Eligible Installer will be notified of changes via the e-mail address provided in Paragraph 13 below and through NYSERDA's web site. Approved applications, however, will be processed to completion under the Terms and Conditions in effect at the time the incentive application is approved by NYSERDA.

8. Warranties, Indemnification and Liabilities

(a) Wind energy system warranty - For turbines with a nameplate rating of less than 100 kW, the Contractor/Eligible Installer will provide a full warranty to the purchaser of the wind energy system installed under this Agreement for a period of 5-years after installation. This warranty covers all components of the system against defects, failures, breakdowns, or excessive degradation in electrical output. This warranty covers the full costs, including labor, for the repair or replacement of defective components or systems. If a battery back-up is installed under this Agreement, Contractor/Eligible Installer offers a full warranty to the purchaser for the battery system for a period of 2-years after installation. This warranty covers the battery system against defects, failures, and breakdowns, and covers the full costs, including labor, for the repair or replacement of the battery. For turbines with a nameplate rating of 100 kW and larger, the warranty period shall be two years with all the other

requirements as stated above. The Eligible Installer is responsible for providing warranty coverage in a timely manner regardless of the level of support from the equipment manufacturer.

(b) The system warranty required in this Agreement survives the term of this agreement.

(c) NYSERDA does not endorse, guarantee, or warrant any particular manufacturer, products or installer, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Eligible Installer's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, vendors, manufacturers, etc.

(d) Scope of NYSERDA review - The Eligible Installer acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering and construction of the project or installation of the wind energy systems are proper or comply 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 the wind energy systems or the adequacy or safety of such measures. The scope of review by NYSERDA of the installation of the wind energy systems is limited solely to determining whether program terms, conditions, and requirements have been met. It does not include any type of safety review.

(d) Indemnification - The Eligible Installer and the Installation Company 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, 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 performance of this Agreement. The obligations of the Eligible Installer and the Installation Company 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.

(e) Release by the Applicant - The acceptance by the Installation Company of final payment shall release NYSERDA from all claims and liability by the Installation Company, its representatives, and assigns might otherwise have relating to this Agreement.

9. Miscellaneous

(a) This Agreement is the entire Agreement between the parties and supersedes all other communications and representations.

(b) If either NYSERDA or the Applicant desires to modify this Agreement, the modification must be in writing and signed by an authorized representative of the party against which enforcement of the modification is sought.

10. Insurance

(a) The Eligible Installer, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in Section 10(b) of this Agreement. All such insurance shall be evidenced by insurance policies, each of which shall: (1) name or be endorsed to cover the Eligible Installer as the insured, and NYSERDA and the State of New York as additional insureds; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; (3) indicate that insurance covers NYSERDA PON 2439, or installing end-use wind energy systems; and (4) be reasonably satisfactory to NYSERDA in all other respects.

(b) The types and amounts of insurance required to be maintained under this Article 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 Installation Company 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.

(c) Prior to commencing the Work, the Eligible Installer shall deliver to NYSERDA certificates of insurance issued by the respective insurers, evidencing the insurance required in Section 10(b) and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Agreement will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Eligible Installer, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Eligible Installer shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Eligible Installer shall deliver to NYSERDA a certified copy of each policy.

11. Termination

This Agreement may be terminated by NYSERDA at any time with notice to the Eligible Installer as provided in Paragraph 13 below. In such event, compensation shall be paid to the Eligible Installer for Work performed and expenses incurred for approved installations prior to the effective date of termination. Upon receipt of any such notice of termination, the Eligible Installer shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar

as possible the amount of outstanding commitments. Compliance with the terms and conditions in the Customer Purchase Agreement and the requirement to submit wind energy system data readings survive termination of this Agreement.

12. Publicity

(a) Eligible Installers shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning wind energy systems installed in this program or any NYSERDA program information. In addition the Installation Company shall notify NYSERDA's Director of Communications regarding any media interview in which wind energy systems installed in this program or any NYSERDA program information are referred to or discussed.

(b) Commercial promotional materials, advertisements, informational brochures, and web site content produced by the Installation Company shall credit NYSERDA and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Installation Company within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Installation Company within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Installation Company do not agree on the wording of such credit in connection with such materials, the Installation Company may use such materials, but agrees not to include such credit.

(c) An Eligible Installer may post the information about NYSERDA's Wind Incentive Program on their website. The website must provide a link to one of the NYSERDA wind program web-pages. For example: <http://www.nyserda.ny.gov/Energy-Efficiency-and-Renewable-Programs/Renewables/Small-Wind.aspx>.

13. Notices

By signing this Agreement, the Installer and Installation Company agree to participation in accordance with these terms and conditions. Installer consents to receive notices via electronic mail at the e-mail address listed below.

14. Certification

Eligible Installer: I certify that all information provided in this application, including any attachments, is true and correct to the best of my knowledge. I have reviewed the eligibility criteria and I understand that I will be required to provide additional information to NYSERDA and to verify individual system eligibility. I have read and understand the above Terms and Conditions which are part of this application and agree to abide by them.

Installer Signature _____ Date _____

Print Name and Title _____

E-Mail Address for Notices as called for in Paragraph 13:

Installation Company: The Eligible Installer may submit Applications for Incentives for Wind energy systems on behalf of the Installation Company. The Customer Purchase Agreement shall be executed by the Installation Company and the Installation Company shall maintain the required insurance for the term of this Agreement. All Incentive payments by NYSERDA, under this Agreement, are to be made be made payable to the Installation Company named below:

Company Name _____

Signature of authorized company official _____ Date _____

Print Name _____

Print Title _____

NYSERDA Authorized Staff Signature

_____ Date _____

EXHIBIT B

REVISED 5/12

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

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the

Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and

plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDAREgulations.ashx>).

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development

Division for Small Business

30 South Pearl St -- 7th Floor

Albany, New York 12245

Telephone: 518-292-5220

Fax: 518-292-5884

<http://www.esd.ny.gov>

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

NYS Department of Economic Development

Division of Minority and Women's Business Development

30 South Pearl St -- 2nd Floor

Albany, New York 12245

Telephone: 518-292-5250

Fax: 518-292-5803

<http://www.empire.state.ny.us>

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

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

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

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

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

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

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

EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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

(g)(1) "Receipt of an Invoice" means:

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

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

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

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

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

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

504.4. Payment Procedures.

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

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

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

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

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

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

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

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

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

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be

extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

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

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

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

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

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

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

regulation.

504.11. Court Action or Other Legal Processes.

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

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