**Attachment A**

**EXHIBIT A**
**INDUSTRIAL AND PROCESS EFFICIENCY PROGRAM TERMS & CONDITIONS**

**1. Approval**
Incentives are not payable unless NYSERDA has approved the Engineering Analysis, conducted site visits, and approved the other activities and documentation provided by the Applicant.

**2. Amounts Payable**
The Purchase Order is an upset amount, based on the applicant's estimate of savings. The final payment will be based on the approved savings, Project cost, and M&V results, when required. NYSERDA also reserves the right to seek a refund for incentives paid if, at any time, it learns that the Project was not actually and properly installed or has subsequently been disconnected.

**3. Inspections, Follow-up Visits and On-Site Monitoring**
(a) NYSERDA reserves the right to make a reasonable number of pre- and post-installation visits to the facility. Such visit(s) will be at a time convenient to the applicant and made with at least one week advance notice to the applicant by NYSERDA. (b) Generally, the purpose of the follow-up visit(s) is to evaluate the installed Project in order to determine the actual kW reduction and energy savings for program evaluation purposes, which may occur well after the project is completed. (c) The scope of review by NYSERDA of the design and installation of the Project is limited to solely determining the energy savings and whether program conditions have been met. It does not include any kind of safety, quality or other review.

**4. Cost and Invoice Documentation**
Upon completion of the post-installation inspection, and at any other time upon NYSERDA's request, the Applicant shall provide NYSERDA copies of all invoices (including all materials, labor, and equipment discounts) reflecting the costs of purchasing and installing the Project. The invoices shall include a breakdown of all equipment purchased for installation under this Agreement (the application and these Terms and Conditions). In addition, NYSERDA may request any other reasonable documentation or verification of the cost to the Applicant of purchasing and installing the equipment.

**5. Incentive Payments**
NYSERDA shall pay the incentive in accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy upon the applicants' meeting the requirements of the Industrial and Process Efficiency Program. This includes, but is not limited to; (1) installation of the Project in the identified building is completed, (2) all necessary documentation is provided, and (3) NYSERDA has verified installation costs and satisfactory installation of the Project, all in accordance with the specifications.

**6. Post-Installation Verification**
NYSERDA is not bound to pay any incentives until it has performed a satisfactory post-installation verification of the installation. If NYSERDA determines that the equipment was not installed in a manner that is consistent with the purpose of achieving energy savings, or if the installation was not consistent with generally accepted good engineering practices, NYSERDA may require changes before making any payments.

**7. Changes in the Program**
Notwithstanding paragraph 21 (b), the program and these Terms & Conditions may be changed by NYSERDA at any time without notice. Approved applications, however, will be processed to completion under the Terms & Conditions in effect at the time of application to NYSERDA.

**8. Indemnification**
The Applicant shall protect, indemnify, and hold harmless NYSERDA, its members, officers and employees, and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA, its members, officers or employees, or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Applicant under this section shall survive any expiration or termination of this Agreement.

**9. No Warranties**
(a) NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The applicant's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, vendors, etc. (b) The Applicant acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering and construction of the Project is proper or complies

with any particular laws (including patent laws), codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the Project or the adequacy or safety of such measures.

**10. Limit of Incentive Payments**
NYSERDA reserves the right, for any reason, to stop approving incentive applications at any time without notice.

**11. Release by the Applicant**
The acceptance by the Applicant of final payment shall release NYSERDA from any and all claims and liability the applicant, its representatives, and assigns might otherwise have relating to this award.

**12. Title to equipment**
Title to all of the equipment purchased under this Agreement shall vest with the Facility.

**13 Vendor Selection**
NYSERDA has the right not to allow a vendor or contractor to participate in this program.

**14. Removal of Equipment**
The Applicant agrees, as a condition of participation in the program, to remove and dispose of the equipment being replaced by the Project in accordance with all laws, rules, and regulations.

**15. Review of Specifications Submittals and Drawings**
For New Construction projects, the applicant will provide NYSERDA with a copy of the specifications for the construction of the building projects that will be provided to the construction contractors. Such specifications must include the equipment. NYSERDA may refuse to pay incentives if the specifications do not provide for installation of the equipment consistent with good engineering and energy-efficient design practices. Applicant will, upon request by NYSERDA, provide a copy of the as-built drawings and equipment submittals for the facility. NYSERDA may refuse to pay incentives if the final submittals and drawings do not substantially reflect the installation of the equipment consistent with the original design intent as identified on the applicant application and worksheets.

**16. Miscellaneous**
(a) This Agreement (the application and these Terms and Conditions) 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.

**17. Audit**
The Applicant shall keep, maintain, and preserve for a period of five years after receipt of the incentives, full and detailed books, accounts, and records pertaining to the performance of this Agreement.

NYSERDA shall have the right from time to time and at all reasonable times during this period to inspect and audit any and all books, accounts and records at the office or offices of the Applicant where they are then being kept, maintained and preserved. Any payment made under this Agreement shall be subject to retroactive reduction for amounts included therein that are found by NYSERDA on the basis of any audit of the Applicant by an agency of the United States, State of New York or NYSERDA not to constitute an allowable change or cost hereafter.

**EXHIBIT B**
**PART 504 PROMPT PAYMENT POLICY STATEMENT**
**1. 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.

**2. 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 that may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor that 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 or submitted electronically to invoices@nyserda.ny.gov.
**(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.
**(J)(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.

**3.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.

**4.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 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 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.

**5.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.

**6. 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.

**7. 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.

**8. 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.

**9. 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 that 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.

**10. 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.

**11. 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.

**12. 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.

**EXHIBIT C**
**GENERAL CONDITIONS**
**Proprietary Information**
Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 http://nyserda.ny.gov/~/media/Files/About/Contact/NYSERDARegulations.ashx. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

Information on the availability of New York subcontractors and suppliers is available from:
Empire State Development
Division For Small Business
30 South Pearl Street Albany, NY 12245

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

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