Terms and Conditions Instructions

PARTICIPANT:

1. **Read the Terms and Conditions.**

2. **Determine your legal signatory.** Only a legal signatory for your organization can sign the Terms and Conditions. A legal signatory has the ability to contractually bind your organization.

3. **Sign the Terms and Conditions.** Once you have identified your legal signatory, that person must sign the Terms and Conditions. By signing the Terms and Conditions, you are agreeing to the Program's rules and requirements.

4. **Complete the W-9 form.**

5. **Submit the signed Terms and Conditions and completed W-9 form.**
   Electronic versions are ok!

EXHIBIT A: TERMS AND CONDITIONS

1. **The undersigned Participant acknowledges that these Terms and Conditions are part of an Application being submitted by the Participant (or by a technical service provider on behalf of the Participant) to participate in the Electric Reduction in Master Metered Multifamily Building Program administered by the New York State Energy Research and Development Authority (NYSERDA).**

2. **Eligibility:**
   In order to be eligible for incentives through this program:
   (a) The property must be located in New York State and be an electric distribution customer that pays a System Benefits Charge to an investor-owned New York State utility company.
   (b) The property must have at least five (5) units to be considered a multifamily building.
   (c) The building(s) must be master-metered, i.e., no mechanical system exists in the building to facilitate the provision of an individually-metered electric bill for any apartment in the building subject to this application.
   (d) The application must be filled out completely and submitted to NYSERDA.
   (e) An applicant cannot receive incentives for appliances only. An advanced submetering system must be installed in every participating building.
   (f) If existing refrigerators found in the participating building(s) at the date of application to the program greater than 10 years old, the "owner" of the building(s) is required to replace all refrigerators that are greater than 10 years old with similarly sized ENERGY STAR® refrigerators at no cost to the tenants of the apartments in question.
   (g) If residential appliances (refrigerators, air conditioners, and washing machines) are replaced, the replacement appliances must be ENERGY STAR labeled. In the case of replacement of lighting fixtures or systems, replacement of these measures must be ENERGY STAR compliant. In the case of replacing commercial clothes washers in common areas, clothes washers must be ENERGY STAR and WATERSENSE® labeled
   (h) All measures (refrigerators, lighting, air conditioners, and washing machines) that are replaced must be recycled and properly decommissioned. These appliances cannot be resold.
   (i) Only market rate buildings are eligible; no buildings containing any affordable housing units are allowed to participate in this program.

   The Below table depicts a list of proxies that can be used to define "affordable housing" for purposes of the program. Resident income can also be used to define affordability if 25% of the families living in the building have incomes at or below 80% of State Median Income.

Eligibility Proxy	Details
1. HUD-Regulated Affordable Housing	Properties that receive one of the following subsidies from HUD are defined as low-income: • Section 8 Contract • Section 236 • Section 202 • Section 811 • Public Housing Authorities
2. DHCR-Regulated Affordable Housing	Buildings with subsidized mortgages or contracts that place them under the regulatory control of DHCR may be defined as low-income.
3. Low Income Housing Tax Credits	Properties that receive tax credits for at least 50% of its units are defined as low-income.
4. HPD-Regulated Affordable Housing (or other local housing agency)	Properties with loans, mortgages, or deeds of purchase (HDFC incorporation) from HPD or other local housing agencies may be defined as low-income.
5. SONYMA mortgage insurance	Properties subsidized for low- to moderate-income multi-family residents with SONYMA subsidized financing through the HFA are defined as low-income.
6. Participation in the Weatherization Assistance Program	Properties that have fulfilled the eligibility requirements for the Weatherization Assistance Program are defined as low-income.
7. Participation in HFA's 80/20 Program	Properties that have been accepted into the Housing Finance Agency's 80/20 Program are defined as low-income.
8. Participation in HDC's 80/20 or Mixed Income Programs	Properties that have been accepted into the New York City Housing Development Corporation's 80/20 Program or Mixed Income Program are defined as low-income.

3. **Application Does Not Entitle Participant to Participate:**
   Submission of a completed application does not entitle the Participant to program participation.

4. **Approval of Required Documentation:**
NYSERDA is not bound to pay any incentive unless NYSERDA approves the documentation required to be submitted as a condition of each trigger event. NYSERDA reserves complete discretion to approve or disapprove this documentation.

5. **Participant Obligations:**
Under these Terms and Conditions, the Participant agrees to:

(a) Submit documentation of compliance with the requirements of the Department of Public Service submetering regulations, Title 16, Part 96 of the New York Codes, Rules and Regulations, i.e., a copy of the PSC Order approving submetering in participating building(s), or, in the case of coops or condos where there are no rental units, evidence that a majority of the shareholders participating in a canvass, voted in favor of submetering.
(b) accurately and truthfully complete an Application Form for the Electric Reduction in Master-Metered Multifamily Buildings (ERMMB) Program, and submit that Application Form to NYSERDA for approval;
(c) not begin installation of any part of project-related scope of work until this application is approved by NYSERDA and a NYSERDA-executed incentive award letter is issued to the participant;
(d) contact and enable NYSERDA or its designees to schedule and perform a pre-construction site inspection prior to NYSERDA's approval of this Application, and prior to any installation of equipment included in said Application. This inspection will serve to validate existing site conditions and other information contained in this Application;
(e) install all energy efficiency measures indicated in this Application. Installation must be documented through the compilation and submission of project-specific and site-specific photographs, invoices, contracts pertaining to the work performed hereunder;
(f) ensure that all measures installed pursuant to this Application comply with all required performance specifications set forth in this Application;
(g) contact and enable NYSERDA or its designees to schedule and perform a post-construction site inspection. This inspection will serve to validate the proper installation and function of all energy efficiency measures included in this Application;
(h) not increase or seek an increase in rent for project work to the extent that such project work is performed with Program Funds.

6. **Incentive Payments:**
Subject to these Terms and Conditions, the New York State Energy Research and Development Authority (NYSERDA) will pay incentives to eligible Participants for the installation of advanced electric metering equipment and energy efficient appliances. In order to qualify for an incentive from NYSERDA, all installed equipment must comply with specifications and requirements contained in the ERMM Application Overview.

Once an incentive amount is pre-approved, NYSERDA will pay no more than the cost to the Participant of purchasing and installing the measures or the pre-approved incentive amount, whichever is less. NYSERDA reserves the right to lower the

incentive amount if the quantity and/or cost of the measures actually installed by the Participant differ from the pre-approved amounts. Notwithstanding any other provision of these Terms and Conditions, NYSERDA reserves the right to seek a refund for incentives paid if, at any time, it learns that the project was not built as proposed, has been altered in a manner that reduces the installed equipment's ability to produce energy savings or demand reductions, or if the Participant is unable or unwilling to provide NYSERDA with direct access to the building or buildings to obtain energy usage data.

See below table for specific incentive amounts under this application.

Measures	Incentive
Advanced sub-meters	The lesser of 50% of installed cost or $250, whichever is less
Master meter(s)	$1,500
Refrigerator, ENERGY STAR®	$18
Air conditioner, ENERGY STAR®, window unit	$16
Air conditioner, ENERGY STAR®, through the wall	$19
Commercial Clothes Washer, ENERGY STAR®, WATERSENSE®	$369
Common area lighting, in unit lighting (permanent fixtures)	$15

7. **Technical Standards**
   Submetering systems must be of a make and model described in **the Application Overview** annexed hereto.

   All appliances (refrigerators, air conditioners and washing machines) to be installed must be listed as ENERGY STAR® labeled appliances by the US Environmental Protection Agency and US Department of Energy web site: **http://www.energystar.gov/.** In the case of commercial clothes washers in common areas, appliances must be ENERGY STAR and WATERSENSE® labeled to be eligible for incentives. All lighting fixtures must be ENERGY STAR® compliant.

8. **Availability of Bulk Purchase Program**
   NYSERDA's Bulk Purchase Program is available to facilitate the purchase of ENERGY STAR® refrigerators, air conditioners and lighting. Participants in the ERMMB Program are encouraged to avail themselves of this opportunity.

9. Project Approval

Upon approval of the Participant's application, NYSERDA will issue written notification of its intent to grant incentives, subject to the Terms and Conditions contained in this document. NYSERDA reserves complete discretion to approve or disapprove any proposed projects.

10. Inspections and Monitoring

Participant agrees to provide access to NYSERDA and/or its contractor to:

(a) Pre-inspect the Participant's facilities prior to approving the Application.

(b) Perform a satisfactory post-installation verification and operability testing. If NYSERDA determines that the project was not installed in a manner that is consistent with the requirements of the Program, NYSERDA may require changes before making any payments. NYSERDA will not pay incentives until it has been verified that the Participant has received, as appropriate, the final drawings, operation and maintenance manuals, and operator and resident training.

11. Installation Cost

(a) Prior to NYSERDA's verification of the Participant's installation and at any other time upon NYSERDA's request, the Participant shall give NYSERDA reasonable documentation or verification of the cost to the Participant of purchasing and installing the measures.

(b) NYSERDA will recognize installation costs only to the extent that they are reasonable and actually incurred by the Participant. NYSERDA may ask for verification, including paid invoices and cancelled checks.

12. Installation Schedule Requirements

(a) Unless the Participant has submitted a specific installation schedule, prior to approval of the application, which must be approved by NYSERDA, the project must be completed within 365 days of the date of approval (the 'sunset' period).

(b) Any Participant who anticipates that they will be unable to complete installation within the sunset period, must submit an installation schedule prior to project approval and provide reasons why the installation cannot be completed within the sunset period. If the Participant provides a reasonable basis for not being able to install the measures within the applicable sunset period, NYSERDA, in its reasonable judgment, may accept the schedule. If NYSERDA is not reasonably satisfied with the reasons given, however, NYSERDA reserves the right to reject the application or require installation at an earlier date.

(c) If the Participant is unable to complete an installation within the sunset period, the Participant must notify NYSERDA immediately upon learning that the installation will be delayed and provide the reasons why. NYSERDA may, in its sole discretion, extend the sunset period or cancel the application and terminate the contract.

13. System Operability

Prior to payment of incentives, NYSERDA requires evidence that submetering bills are being rendered to residents for payment.

14. Payment Schedule

NYSERDA shall pay pursuant to the terms of its Prompt Payment Policy, annexed as Exhibit B.

15. Publicity

NYSERDA may publicize the Participant's participation in the Program, the results, the amount of incentives paid to the Participant, and any other information that reasonably relates to the Participant's participation. The Contractor shall collaborate with NYSERDA's Manager of Technical Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Manager of Technical Communications regarding any media interview in which the Work is referred to or discussed.

16. Ownership

The Participant shall retain ownership of all meters and associated equipment installed under the ERMMB Program, and will be solely responsible for meter reading, maintenance, repairs, occupant billing, and bill dispute resolution (subject to applicable laws and regulations).

17. Limited Scope of Review

The scope of review by NYSERDA of the design and installation of the project is limited solely to determining whether program conditions have been met. It does not include any kind of safety review or any implied warranty by NYSERDA as to the quality of the design, workmanship, or any other aspect of the project.

18. Termination:

This Agreement may be terminated by NYSERDA at any time with or without cause, upon 30 days prior written notice to Participant. In such event, compensation shall be paid to the Participant for all work performed and expenses incurred for approved work prior to the effective date of the termination. Upon receipt of any such notice of termination, the Participant shall make no further commitments with respect to the project that is the subject of this Application and shall reduce, insofar as possible, the amount of outstanding commitments.

19. Miscellaneous

(a) These Terms and Conditions and this program application constitute the sole terms and conditions of this program and supersede all other communications and representations. If any court or administrative body having jurisdiction deems any provision of the Terms and Conditions invalid, such ruling shall not invalidate any other provision, and the remaining Terms and Conditions shall remain in full force and effect in accordance with their terms.

(b) This Agreement (including all documents in the Application Packet) is the entire agreement between the parties and supersedes all other communications and representations.

(c) If either NYSERDA or the Participant 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.

20. Release by the Participant

The acceptance by the Participant of final payment shall release NYSERDA from all claims and liability the Participant, its representatives, and assigns might otherwise have relating to this award.

21. Application Does Not Entitle Participant to Participate

Submission of a completed application does not entitle the Participant to program participation. Only NYSERDA's approval of the Application authorizes a Participant to participate in the Program.

22. Post-Construction Analysis and Follow-up Visits:

(a) The Participant agrees to provide NYSERDA copies of all utility bills showing consumption and cost for electricity, fuel, and water, or provide access to such information using the Program's Fuel Release Form, for no less than three (3) years following the date of completion of the installation of measures described herein. Electric bills shall be from all installed Master Meters. Upon request, participant agrees to provide NYSERDA with blinded, apartment-level consumption.

(b) The Participant agrees to provide access to NYSERDA and/or its contractor for a reasonable number of pre- and post-construction follow-up visits to the project during the implementation of the project and up to 36 months following the date of receipt of Certificate of Occupancy. Such visit(s) will be scheduled with the owner with at least one (1) week advance notice by NYSERDA.

(c) The purpose of the follow-up visit(s) is to provide NYSERDA with an opportunity to inspect the site and evaluate the installed energy reduction measures in order to determine the actual demand reduction and energy savings for program evaluation purposes.

22. Time of the Essence:

Failure to act within the time required constitutes a breach of the contract. Time is of the essence with respect to all provisions of this Agreement and any and all exhibits and attachments hereto that specify a time for performance.

23. Proprietary Information:

It is anticipated that NYSERDA will retain a copy of all materials or reports completed in accordance with these Terms and Conditions. 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 Participant 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 exclude it from disclosure, including a written statement of the reasons why the information should be excluded. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

Unless identified as confidential or proprietary by the Participant, information contained in these materials or reports may be used for the purpose of promoting awareness and adoption of energy efficiency strategies, practices, and technologies.

24. Tax Liability :
NYSERDA is not responsible for the payment of any taxes assessed by federal, state, or local governments on benefits conferred on the Participant by NYSERDA

25. Indemnification:
The Participant 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 Participant under this section shall survive any expiration or termination of this Agreement.

26. 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 Participant's reliance on warranties is limited to any warranties that may arise from, or be provided by, contractors, vendors, etc.
(b) The Participant acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering, and construction of the Building or installation of the measures installed is proper or complies with any particular laws (including patent laws), codes, or industry standards.

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

28. Release by the Participant:
The acceptance by the Participant of final payment shall release NYSERDA from all claims and liability the Participant, its representatives, and assigns might otherwise have relating to this award.

29. Conflicting Terms:
In the event of a conflict between the terms set forth in the body of these Terms and Conditions and the terms set forth in the balance of the Agreement, the terms set forth in the body of these Terms and Conditions shall control.

30. Notices:
(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

i. via certified or registered United States mail, return receipt requested;

ii. by facsimile transmission;
iii. by personal delivery;
iv. by expedited delivery service; or
v. by e-mail.

Such notices shall be addressed to NYSERDA at:

New York State Energy Research and Development Authority
Attn: Electric Reduction in Master Metered Buildings Program
485 7th Avenue, Suite 1006
New York, NY 10018
Fax: (212) 971-5349
Email: MultifamilyPrograms@nyserda.org

Notices addressed to Participant shall be addressed to Participant at the address supplied in the Program Application.

(b) Notices shall be deemed given on the date delivered or date of attempted delivery, if service is refused. The addresses provided by the Participant are subject to change at any time during the term of this Agreement provided that the Party changing the address furnished written notification of the new address in accordance with this section.

31. Modification; Waiver:
This Agreement cannot be amended or waived except by an agreement in writing signed by authorized representatives of both parties and specifically referring to this Agreement. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement, the failure of either party to object to or to take affirmative action with respect to any conduct of the other party which is in violation of the terms hereof shall not be construed as a waiver thereof, nor of any subsequent breach or wrongful conduct. The rights and remedies set forth herein are intended to be cumulative, and the exercise of any right or remedy by either party shall not preclude or waive its exercise of any other rights or remedies hereunder or pursuant to law or equity.

32. Section Headings; Counterparts:
The section headings set forth herein are for convenience only and do not constitute a substantive part of this Agreement. This Agreement may be executed in counterparts and by facsimile signature, all of which together shall be considered one and the same original document.

33. Severability:
If any provision of this Agreement is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this Agreement shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent, unless the ineffectiveness of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

34. Independent Contractors:
The Parties shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between the parties. All Parties acknowledge and agree that they have not nor will give the appearance or impression of having any legal authority to bind or commit the other Party (Parties) in any way.

35. Assignment:
A Party shall not assign its rights and/or obligations or delegate its duties under this Agreement without the prior written approval of the other Party (Parties) and any attempted assignment or delegation without such approval shall be void and constitute a material breach. This Agreement and all of the terms and provisions hereof will be binding upon, and will inure to the benefit of, the Parties hereto, and their respective successors and approved assigns.

36. Audit:
NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and for three (3) years thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Participant where they are then being kept, maintained and preserved.

37. Audit Adjustment:
Any payment made hereunder shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Participant by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

38. Executory Clause:
It is understood by and between the parties hereto that this agreement shall be deemed executory only to the extent of the monies available to NYSERDA, and no liability on account thereof shall be incurred by NYSERDA beyond monies available for the purpose hereto.

39. Governing Law:
This Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, without regard to its choice of law principles**.**

40. Laws of the State of New York:
The Participant shall comply with the Standard Clauses for New York State Contracts set forth below:

(a) NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Participant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

(b) 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.

(c) SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Participant hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Participant's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Participant 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. Participant will have thirty (30) calendar days after service hereunder is complete in which to respond.

(d) CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Participant or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Participant'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 Participant 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 Participant knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Participant and its principals. The Participant or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Participant 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.

41. Entire Agreement:

These Terms and Conditions, including Exhibits, constitutes the final, complete and exclusive understanding between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, letters of intent, understandings, negotiations, and discussions of the parties, whether oral or in writing. The Parties have not relied upon any promises, warranties or undertakings other than those expressly set forth in this Agreement.

42. All Legal Provisions Deemed Included:

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

43. Other Legal Requirements:
The references to particular laws of the State of New York in these terms and conditions are not intended to be exclusive and nothing contained in such terms and conditions shall be deemed to modify the obligations of the Participant to comply with all legal requirements

44. Participant Agreement to Terms and Conditions:
Participant understands that this application may not be approved if the requirements of the Program are not met and understands that incentive payments will be contingent upon meeting all terms and conditions of the Program. The undersigned certifies that he or she is, or is authorized to act on behalf of the Participant, and certifies that all information provided in this application, including any attachments, is true and correct to the best of his or her knowledge. The undersigned has read and understands the above Terms and Conditions which are part of this application and agrees on behalf of the Participant to abide by them.

_____
Project Name

_____
Participant/ Company Name

_____
Property Owner / Participant Signature

_____
PRINT Property Owner / Participant Title Date

Section 504.1 Purpose and applicability.

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

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

(1) under the Eminent Domain Procedure Law;

(2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;

(3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or

(5) if other State or Federal law or rule or regulation specifically requires otherwise.

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

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

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

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

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

(2) As of July 7, 1999

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.4 Payment procedures.

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

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

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

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

(d) If the Authority fails to notify a contractor of a defect or impropriety within the fifteen calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the contractor. If the

Authority fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

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

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

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

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

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

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

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

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

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all

payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

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

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

Section 504.11 Court action or other legal processes.

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

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

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