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. **Send the signed Terms and Conditions and completed W-9 form to your Partner:** Electronic versions are ok!

PARTNER:

1. **Review the Participant's documentation for completeness.** Check the Terms and Conditions and W-9 for completeness and accuracy.

2. **Upload the Terms and Conditions and W-9.** Submit the signed Terms and Conditions and completed W-9 with the electronic application.

3. **Refer to the Application Instructions** for more information on how to submit an electronic application.

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 Multifamily Performance Partner on behalf of the Participant) to participate in the Multifamily Performance Program administered by the New York State Energy Research and Development Authority (NYSERDA).**

2. **Eligibility:**
   The project must be a multifamily, residential building(s) with five (5) or more units. Projects must be located within the service territory of one of New York State's six investor-owned utilities companies and must anticipate paying the System Benefits Charge upon receipt of an electric or gas energy bill. Participants must certify their eligibility on their application. Projects larger than 500 units require pre-approval from NYSERDA. Projects designated as "affordable housing" must meet documentation requirements and certify that they are affordable projects.

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. **Under these Terms and Conditions, the Participant agrees to:**
   (a) hire a Multifamily Performance Partner that has signed a Partnership Agreement with NYSERDA and integrate them into the Participant's Design Team to ensure that the design of the project conforms to the requirements of this Program and, based on the Compliance Path indicated in this Application, will follow either:
      1. the Prescriptive Path, as described in the Program Guidelines; or
      2. the Performance Path, which requires a modeled performance target of at least 15% better than a reference building based on ASHRAE Standard 90.1-2007 Appendix G and NYSERDA's Simulation Guidelines.

   (b) work with the project's Multifamily Performance Partner to finalize a set of designs that conform to the Program's Minimum Performance Standards and, based on the Compliance Path indicated in this Application, will incorporate the recommended measures outlined by either:
      1. the Prescriptive Path, as described in the Program Guidelines; or
      2. the Performance Path, which requires inclusion of all recommended measures that contribute to the achievement of the minimum 15% performance target over ASHRAE 90.1-2007.

(c) for Performance Path projects, submit a completed Proposed Energy Reduction Plan within 30 days of the project's Department of Buildings' final new building approval of architectural and MEP plans.

(d) construct its project as described by the Proposed Energy Reduction Plan for Performance Path projects or the Prescriptive Path Calculator for Prescriptive Path projects and commit to make no changes during construction that would cause the as-built project to fail to comply with the Program's Minimum Performance Standards, or, based on the Compliance Path indicated in this Application, to fail to comply with either:

1. the Prescriptive Path, as described in the Program Guidelines; or
2. the Performance Path, i.e. to allow the modeled consumption of the as-built project to fall below the 15% performance target over ASHRAE 90.1-2007.

(e) provide NYSERDA or its designees the electricity, fuel, and water consumption data for the entire common area and a sample of the units for at least three (3) years following the buildings(s)' receipt of a Certificate of Occupancy.

(f) implement the requirements set forth in the Exhibit C to the Terms and Conditions.

(g) for a project pursuing the affordable housing incentive, Participant will ensure that the project complies with Affordable Housing eligibility requirements contained in the Program Guidelines; and,

(h) acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

6. Incentive Payments:

NYSERDA will arrange to provide the incentives described below in accordance with prompt payment policy. Note that projects that choose to follow the Prescriptive Path are not eligible for the Modeling Payment.

Incentive Schedule		
	AFFORDABLE HOUSING	**MARKET-RATE HOUSING**
MODELING PAYMENT		
Performance Path	$20,000	$15,000
Prescriptive Path	N/A	N/A
Is payable upon approval of the Proposed Energy Reduction Plan and associated documents. The list of required documents and additional information is located in Program Guidelines Sections 2 and 3. *Modeling Payment is available for Performance Path projects only.*		
OPEN-WALL PAYMENT	$1.00/ghsf*	
Is payable upon approval of a successful Program inspection. The list of required documents and additional information is located in Program Guidelines Sections 2 and 3.		
AS-BUILT PAYMENT	$0.50/ghsf* minus 10% retainage	
Is payable upon approval of the As-Built Energy Reduction Plan *(Performance path projects only)* and a successful Program inspection. The list of required documents and additional information is located in Program Guidelines Sections 2 and 3.		
DATA RELEASE PAYMENT	10% retainage held from As-Built Payment	
Is payable upon receipt of the Fuel Release Forms as detailed in the Application. The list of required documents and additional information is located in Program Guidelines Sections 2 and 3.		

*ghsf – Gross heated square footage of residentially associated space based on the Proposed Energy Reduction Plan or as revised in the As-Built Energy Reduction Plan.

7. 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 Data Release Authorization Form, for no less than three (3) years following the date of completion of the As-Built Energy Reduction Plan. Such bills shall cover all common areas of the building and a sample of apartments. The apartment sample shall consist of at least 10% of the apartments with no fewer than five (5) apartments. Of the 10% sample, each type of apartment must be represented. . In addition, a list of all the apartments and their type (e.g., studio, large 1 bedroom) shall be provided. The Participant shall include a Data Release Authorization Form with the lease provided to each new lessee and require that all new lessees execute the form and submit it to NYSERDA.

(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 Energy Reduction Plan 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.

8. 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.

9. Changes in the Program:

These Terms & Conditions may be changed by NYSERDA at any time without notice subject to availability of funds. Approved applications, however, will be processed to completion under the Terms & Conditions in effect at the time of the approval by NYSERDA.

10. Energy Reduction Plan Development and Construction Requirements:

For Performance Path projects only, if the Participant has not submitted, or has not caused the Partner to submit, a completed Proposed Energy Reduction Plan based on completed construction documents within 30 days following the project's Department of Buildings' final new building approval of architectural and MEP plans, this Agreement may be terminated in accordance with Section 18.

11. 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. NYSERDA does not provide any endorsement

of any Multifamily Performance Partner's capabilities to provide services outside of the Scope of Work to be conducted pursuant to this Program.

12. 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

13. 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.

14. 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 recommendations made by the Multifamily Performance Partner 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 recommendations made by the Multifamily Performance Partner or the adequacy or safety of such measures.

15. Limit of Incentive Payments:

NYSERDA reserves the right, for any reason, to stop approving incentive applications at any time without notice.

16. 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.

17. 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.

18. Termination:

Subject to paragraph 9, this Agreement may be terminated by either party at any time with or without cause, upon 30 days prior written notice.

19. 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: Multifamily Performance 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 by the Partner in the Comprehensive Residential Information System.

(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.

20. 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. All amendments to this contract, including the Exhibit C, must be returned to NYSERDA within 30 days

21. 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.

22. Severability; Survival:

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. The provisions of Sections 12, 24-32 shall survive the expiration or earlier termination of this Agreement.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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**.**

29. 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.

30. 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.

31. 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.

32. 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

33. 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.