

ATTACHMENT D – TERMS & CONDITIONS

Exhibit A – Terms & Conditions

1. **Changes in the Program**

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.

2. **Indemnification**

The applicant 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, attorneys' 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 applicant under this section shall survive any expiration or termination of this Agreement.

3. **Limit of Incentive Payments**

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

4. **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.

5. **Miscellaneous**

This Agreement (the application and these Terms and Conditions) is the entire agreement between the parties and supersedes all other communications and representations.

6. **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 this application. 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 application 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.

7. **Independent Contractor**

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