



Commercial Implementation  
Assistance Program  
Program Opportunity Notice (PON) 3261  
**\$11 Million Available in Incentives**

## SUMMARY OF REVISIONS

The following changes have been made to PON 3261, Commercial Implementation Assistance Program:

- Due date extended to June 30, 2017
- Project Eligibility Expanded, including the following changes under *Eligible Measure Categories*:
  - Advanced Lighting: other commercial space types are eligible to apply.
  - Deep Energy Retrofit Projects: removed only office and retail spaces eligible to apply.
  - Advanced Controls and Monitoring Systems: removed only office and retail spaces eligible to apply; and removed the existing Building Management System constraint.



## Commercial Implementation Assistance Program Program Opportunity Notice (PON) 3261 \$11 Million Available in Incentives

Eligible Applications will be accepted on a first-come, first-served basis until June 30, 2017  
or until funds are exhausted, whichever comes first  
\*\* Updated January 3, 2017 \*\*

The Commercial Implementation Assistance Program (Program) seeks to offer cost-sharing to eligible energy-efficiency projects. Applicants are not eligible to receive incentives from another NYSERDA or utility program for the same measure. Eligible measure categories include:

- Advanced Lighting.
- Deep Energy Retrofit Projects.
- Advanced Monitoring and Control Systems.
- Oil Space Heating Efficiency Upgrades.
- Advanced Technologies that are submitted with a Utility Referral requesting that NYSERDA consider funding the measure(s).

The Program offers cost-sharing, up to 50% of the eligible costs of eligible measures. Minimum project cost to be eligible is \$50,000 and the incentive is capped at the lesser of \$150,000 per project or at \$10/MMBtu for measures deemed by NYSERDA to primarily reduce fossil fuel consumption. Only those measures listed above or submitted to NYSERDA via a utility referral and meeting all Program requirements contained herein will be eligible for financial support.

**Application Submission:** Applicants should visit the [NYSERDA Consolidated Funding Application \(CFA\)](#) page to complete the CFA online form. If you have questions about completing the CFA, please email [cfa@nyserda.ny.gov](mailto:cfa@nyserda.ny.gov).

Additional Documents:

1. Applicants must submit the following within 30 days of CFA submission:
  - ✓ W-9 tax form: Applicants should only submit Federal Tax ID electronically. If an Applicant is submitting the W-9 using an individual's Social Security Number, then the W9 should be mailed to NYSERDA at 17 Columbia Circle Albany, NY 12203, Attn: Commercial Implementation Assistance Program).
  - ✓ A copy of a current and complete electric utility bill for the site receiving the benefits provided by the Program to verify SBC payment and eligibility.
  - ✓ Proposed Scope of Work Form (Attachment A-1).

NYSERDA evaluates the Project based on the submitted documentation. NYSERDA may request additional information and may coordinate projects with the Applicant's electric utility provider, including but not limited to sharing scopes of work, measure savings and project cost information. If Applicants are unresponsive or do not provide sufficient documentation at any point in the project, NYSERDA reserves the right to cancel the Application at its sole discretion.

All Program questions should be directed to:

Peter Hoffman  
866-NYSERDA ext. 3585  
[commercialprograms@nyserda.ny.gov](mailto:commercialprograms@nyserda.ny.gov)

All Contractual questions should be directed to:

Venice Forbes  
866-NYSERDA ext. 3507  
[Venice.Forbes@nyserda.ny.gov](mailto:Venice.Forbes@nyserda.ny.gov)

**\*\* If changes are made to this solicitation, notification will be posted on NYSERDA's website at**

## INTRODUCTION

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This solicitation is divided into the following components:

- Section II: Eligibility
- Section III: Participation Process
- Section IV: Project Payment
- Section V: General Conditions
- Section V: Attachments

All eligible Applications will be reviewed on a first-come, first-served basis dependent on funding availability.

## II. ELIGIBILITY

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**Commercial Spaces:** Eligible end-use customer space building types include commercial facilities located in New York State that include, but are not limited to: office buildings, retail, colleges and universities, health care facilities, state and local governments, not-for-profit and private institutions, and public and private K-12 schools. Some measure categories have additional restrictions. Commercial spaces not specifically listed above should contact NYSERDA regarding potential eligibility. Please note that some eligible measure categories are only offered for certain space use types and may have size restrictions.

**System Benefits Charge (SBC):** The site that is installing the measures being funded by the Program must be located in New York State in one of the six (6) investor owned utility territories listed below. Applicants must provide proof of payment into the SBC at the site receiving the benefit from the Program. A current and complete copy of a utility bill will be required to verify the Facility's SBC contribution. The six investor owned utilities are:

- Central Hudson Gas & Electric Corporation
- Consolidated Edison Company of New York, Inc.
- National Grid Generation d/b/a National Grid
- New York State Electric & Gas Corporation
- Orange and Rockland Utilities, Inc.
- Rochester Gas and Electric Corporation

**Eligible Measure Categories:** The following measures categories are eligible for funding in the Program:

- Advanced Lighting:
  - Commercial office space is eligible to apply to the Advanced Lighting measure category. Other commercial space types may contact NYSERDA to determine if these lighting measures would be appropriate in their space types. NYSERDA, at its sole discretion, may allow other space types to be eligible for this category on a case-by-case basis.
  - Only two measures are eligible:
    - Full replacement of interior fluorescent fixtures with all new interior LED lighting fixtures. Entire fixture must be new and be listed by the Design Lights Consortium (DLC). Each individual fixture must have integrated daylight and occupancy sensors. Fixtures with retro-fit kits or LED replacement bulbs are not eligible.
    - A networked interior lighting controls system. The networked control system shall be listed by the DLC. Each project shall control a minimum of 25,000 sq. ft. of office space. The networked control system must control 150 or more lighting interior and exterior fixtures. The retrofit baseline to be used shall be IECC 2012 as modified by ECCCNY 2014 for lighting and controls. Energy usage reports generated from the networked control system shall be supplied to verify savings. The fixtures being controlled must be dimmable LED fixtures. Control of fixtures that had LED bulb replacement only are not eligible. Control of non-LED fixtures are not eligible.

- Deep Energy Retrofit Projects:
  - Total building size must be less than 200,000 square feet.
  - Projects must be designed to achieve at least 40% or more annual energy savings (Source Btus/square foot) from current annual energy consumption as a baseline. At a minimum, savings must be achieved in at least two of the following measure categories, and no single measure category can achieve 75% or more of the total project savings:
    - Lighting and Lighting Controls,
    - HVAC and HVAC controls,
    - Building Envelope,
    - Building Management System,
    - Kitchen Equipment,
    - Domestic Hot Water, and
    - Green/Cool Roofs.

Note: See list below for measures that are not eligible for funding. Ineligible measures cannot contribute to the 40% savings reduction goal or receive funding from this Program, but shall be included in the baseline calculations.

- Advanced Controls and Monitoring Systems:
  - Total building size must be less than 100,000 square feet.
  - Eligible systems must enable remote, real-time control of primary HVAC equipment and lighting at a minimum. Systems should be able to link controls to occupancy schedules, or occupancy indicators (such as but not limited to demand control ventilation or electronic access cards). Additional building systems, and peak load reduction capabilities is strongly encouraged. Additional building control features can include, but are not limited: to refrigeration systems, or allowing customers to respond to demand response signals or price responsive controls for Time of Use rate classes. The integrated monitoring system must at a minimum break out all primary building system consumption in 15 minute intervals and include a dashboard that is capable of trending and comparison reporting. Savings calculations must be provided and must include specific expected condition changes, such as but not limited to:
    - Improved shut down for evenings, weekends and holidays;
    - Ability to manage individual equipment due to occupancy; or
    - Ability to reduce load (e.g. lighting levels or modify temperature set points) in response to price or demand signals.
- Oil Space Heating Efficiency Upgrades:
  - Upgrades must be primary oil heating components or control systems for primary oil heating systems.
  - Building envelope improvements are not eligible as part of this measure category.
- Measures that are submitted with a Utility Referral requesting that NYSERDA consider funding the measure:
  - Individual measures cannot be co-funded with utilities.
  - Each measure must have less than a 14-year simple payback with an expected measure life that exceeds the simple payback in years.
  - The Utility must indicate in their referral that they have interest in evaluating the measure category for future program or rate models under the Reforming the Energy Vision (REV), or other reason for referral.
  - Minimum code compliant measures are not eligible.
  - If the utility has a program available to fund the measure, the measure cannot be referred to NYSERDA on the basis that the NYSERDA incentive would be greater than the utility incentive.

**Cost Share and Incentive Caps:** The Program offers cost-sharing, up to 50% of the eligible costs of eligible measures. Minimum project cost to be eligible is \$50,000 and the incentive is capped at the lesser of \$150,000 per project or at \$10/MMBtu for measures deemed by NYSERDA to primarily

reduce fossil fuel consumption. Only those measures listed above or submitted to NYSERDA via a utility referral and meeting all Program requirements contained herein will be eligible for financial support.

**Measurement and Verification:** NYSERDA may require the development and execution of a Measurement & Verification (M&V) plan for:

- Deep Energy Retrofit Projects, Advanced Lighting Projects and Advanced Monitoring and Controls Projects.
- Electric efficiency projects saving more than 500,000 kWh annually.
- Fossil fuel efficiency projects saving more than 10,000 MMBtu annually.
- At NYSERDA's discretion, M&V may be required or waived for any project.
  - If required, NYSERDA's Technical Reviewer will develop an M&V plan in collaboration with the Applicant. NYSERDA will pay up to 60% of the incentive upon installation. The balance, up to 100% of the PO, will be issued after NYSERDA receives and approves the final M&V report and verifies project costs.

**Ineligible Measures:**

- The following measures are not eligible for funding under this program offering:
  - On-site and renewable generation. Please visit <http://www.nysERDA.ny.gov/> for information on potential funding.
  - Steam Trap replacements.
  - Operations and Maintenance measures.
  - Behavioral change measures.
  - Power quality, and power factor improvements.
  - Plug load measures.
  - Non-regulated load measures.
  - Industrial and process measures.
  - Data center measures.
  - Liquid additives.

**Additional Eligibility Requirements and Limitations:**

- Applicants are not eligible to receive incentives from another NYSERDA program or a utility program for the same measure.
- Eligible measures must have a simple payback period that is greater than or equal to four years, AND less than or equal to fourteen years, as documented in the Scope of Work Form (Attachment 1). NYSERDA incentives may not be included in the payback period. Please see the equation below for your reference:

$SPB = \frac{PC}{ACS}$
<ul style="list-style-type: none"><li>● <b>SPB</b> = Simple Payback</li><li>● <b>PC</b> = Project Cost</li><li>● <b>ACS</b> = Annual Cost Savings (energy only)</li></ul>

- Applicants may select their own third party/service provider to perform the energy savings calculations and installation or complete the calculations and installations themselves. In-kind costs are not eligible for reimbursement.
- The entirety of the customer's portion of the cost-share must be a cash contribution. In-kind contributions of any type are not allowed as matching funds. The total NYSERDA cost-share is capped

at the lesser of either \$150,000 or fifty percent (50%) of the project cost. Measures related to fossil fuel savings shall have an additional funding cap not to exceed \$10/MMBtu. Project cost may include: demolition, equipment, external labor, and engineering or other design expenses. Facility in-kind labor costs are not an eligible project cost. If multiple measures are being applied for, costs must be broken out at the measure level.

- Only one site is allowed per Application. Master-metered campuses will be reviewed for possible eligibility on a case-by-case basis.
- No single entity (e.g. Applicant, service provider, building owner, etc.) can apply for more than \$1,000,000 in available incentives.
- Applicants are encouraged to wait to commence work until after NYSERDA has issued a Purchase Order (PO). Commencement of projects prior to the issuance of a PO is at their own risk and may effect Program eligibility.
- NYSERDA is not committed to any cost-shared amount until a PO is issued.
- New facilities, those that have undergone substantial renovations, or change of use, must be occupied for more than one year in its current use to be eligible for this Program. Major renovation projects eligible under the New Construction Program should apply for funding under the New Construction Program: [New Construction Program - NYSERDA](#).
- Fuel switching is not eligible.
- If a measure is replacing a piece of equipment that is past its expected useful life, energy savings will be calculated from a baseline New York State Energy Conservation Construction Code requirements, not current energy consumption.
- Measures that minimally comply with New York Energy Conservation Construction Code are not eligible.
- Measures must be commercially available.
- Applicants must submit a construction schedule with their Application and show progress within 3 months of receipt of PO issuance. Projects must have all construction and final customer acceptance of all measures completed within 4 years of PO issuance. The Applicant's inability to complete projects in a timely manner or according to project schedules may result in NYSERDA limiting the number of new applications by the Applicant accepted into the Program and may result in termination of a project by NYSERDA.

### III. PARTICIPATION PROCESS

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1. Customer or Third Party Service Provider submits:
  - a. Consolidated Funding Application (CFA): [NYSERDA Consolidated Funding Application \(CFA\)](#)
2. Applicants must complete the following within 30 days of CFA submission:
  - a. Submit a W-9 tax form (only submit Federal Tax ID electronically; any Individual's Social Security Number on a W9 should be mailed to NYSERDA at 17 Columbia Circle Albany, NY 12203, Attn: Commercial Implementation Assistance Program);
  - b. A copy of a current and complete electric utility bill verifying SBC payment;
  - c. Proposed Scope of Work Form (Attachment 1)
2. NYSERDA reviews the project documentation to verify it meets the requirements of this solicitation and places an introductory phone call to the customer verifying Program interest and contact information.

3. NYSERDA may review the Application with the appropriate utility company representatives.
4. If the project is determined to meet all program requirements at the time of Application, NYSERDA assigns a Project Manager for continued review and final acceptance/rejection to the Program.
  - a. A pre-site inspection may be requested at this time and additional information may be required.
5. The Applicant must submit revised or additional project information as requested within 30 days to [commercialprograms@nyserdera.ny.gov](mailto:commercialprograms@nyserdera.ny.gov) and their assigned NYSERDA Project Manager, if requested.
  - a. Failure to submit all required documentation in this timeframe may result in Application cancellation.
6. A NYSERDA Technical Reviewer, under contract to NYSERDA, will then be assigned to review all documentation and confirm final project eligibility.
7. NYSERDA issues approval of the project and a Purchase Order for the project. \* *Cost-share amounts are not set-aside until a Purchase Order is issued.*
8. The Applicant must submit deliverables according to the project schedule.
9. NYSERDA Reviews the deliverables and will issue comments or request additional information within 30 days.
  - a. The NYSERDA Technical Reviewer, will assist with review and comments. A post-site inspection may be requested at this time.
10. After installation, the Applicant submits final documentation and notifies NYSERDA of project completion.
11. The NYSERDA Technical Reviewer will confirm installation of all measures, energy savings, and proof of payment by the facility. Additional documentation may be required.
12. NYSERDA issues approval of the project and payment.
  - a. Note: Projects that require M&V may require additional site visits and multiple payments.

## IV. PROJECT PAYMENT

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Upon approval of all required deliverables, NYSERDA will provide payment (full payment for Projects not requiring M&V and partial payment for Projects requiring M&V). Projects requiring M&V must complete M&V in accordance with the M&V plan in the approved Engineering Analysis. When the M&V is completed, NYSERDA will review the results and release any remaining funds (which may be adjusted, based upon the M&V results). Incentive payment may be reduced if final projects costs are less than estimated at the time of issuance of the Purchase Order. NYSERDA is not responsible for scope expansions, or cost overruns during construction.

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.

## VI. GENERAL CONDITIONS

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### PROPRIETARY INFORMATION

**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 except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.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  
625 Broadway  
Albany, NY 12207

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

Empire State Development  
Minority and Women's Business Development Division  
625 Broadway  
Albany, NY 12207

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain new procurement lobbying requirements which can be found at

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See*, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

**Disclosure Requirement** - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

## **CONTRACT AWARDS**

NYSERDA may request additional data or material to support before issuing a Purchase Order. Each application should be submitted using the most favorable cost and technical terms. NYSERDA will use the Terms and Conditions found in the Commercial Facilities Program Terms and Conditions, Attachment 2, to contract successful applications. A sample Purchase Order is available on request. NYSERDA expects to notify customers in approximately three (3) weeks from the receipt of a complete project package whether the submission has been selected to receive an award.

## **VII. ATTACHMENTS**

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- Attachment 1: Proposed Scope of Work Form
- Attachment 2: Terms and Conditions

# NYSERDA Commercial Implementation Assistance Program

## Proposed Scope of Work – Attachment 1

**Application Details:**

Consolidated Funding Application (CFA) Number	
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**Project Timeline Details:**

Expected Start Date	
Expected Completion Date	

*Please note that your project may be subject to pre- and/or post-installation measurement and verification requirements, subject to NYSERDA's discretion*

**Project Cost Estimates:**

Materials Cost	
Labor Cost	
Other Cost:	
Other Cost:	

*Please note that Commercial Implementation Assistance Program incentives are capped at 50% of the project cost, or \$150,000, whichever is less. Project costs are verified through collection and review of invoices, transactional records, and project documents.*

**Energy Saving Estimates:**

Annual kWh Savings	
Peak kW Reduction*	
Annual MMBTU Savings**	
Simple Payback (SPB)	

*\*Peak hours are defined as Monday-Friday, 2-6 pm, June 1 through September 30*

*\*\*If converting from therms to MMBTU, multiply therms by a factor of 10*

- Please see the equation below for your reference:

$$SPB = \frac{PC}{ACS}$$

- **SPB** = Simple Payback
- **PC** = Project Cost
- **ACS** = Annual Cost Savings (energy only)

**Proposed Energy Efficiency Measures:**

*Please summarize your planned project and the measures that will be implemented including what portions of the project have been submitted to the utility and which need additional support) and expected Project Timeline (ordering of equipment, equipment removal/demolition, installation, commissioning, etc.)*

**Existing Conditions:**

*Please describe the existing conditions at the site for each proposed measure*

## Attachment 2: Terms and Conditions

### EXHIBIT A

#### TERMS & CONDITIONS

##### 1. Approval

Incentives are not payable unless NYSERDA has approved the application, anticipated energy savings, conducted site visits if required, and approved the other activities and documentation provided by the Applicant.

##### 2. Amounts Payable

The Purchase Order is a not-to-exceed amount, based on the Applicant's estimated project costs, and, if applicable, Applicant's estimate of savings. The final payment will be based on receipt, review and approval of copies of invoice(s) for the project indicating the total installed cost. 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, and M&V results, when required. 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. Invoices, as applicable, should be broken out by non-labor and labor costs, individuals, titles, hourly rates, dates and hours worked. In addition, if applicable, NYSERDA may also require a copy of the Applicant's canceled check(s) paying the total cost of the invoice(s). Should this amount be lower than the original not-to-exceed Purchase Order amount, then NYSERDA will lower the incentive accordingly. Should this amount be above the not-to-exceed Purchase Order amount, NYSERDA may, at its own discretion, modify the Purchase Order pending availability of funds. 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 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. 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 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.

##### 5. Post Installation Verification (if required)

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.

##### 6. 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.

## 7. 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 Applicant's or its subcontractors' performance of this Agreement. The obligations of the Applicant under this

Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

## 8. Insurance

(a) Maintenance of Insurance; Policy Provisions. The Applicant, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

(1) except policies in evidence of insurance required under Section B(2) below, name or be endorsed to cover NYSERDA, the State of New York and the Applicant as additional insureds;

(2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and

(3) be reasonably satisfactory to NYSERDA in all other respects.

(b) Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

(1) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

(2) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

(c) Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Applicant shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Section hereof. In the event any policy furnished or carried pursuant to this Section will expire on a date prior to completion of all required Work, the Applicant, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Applicant shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Applicant shall deliver to NYSERDA a certified copy of each policy.

## 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 and limit or stop making incentive

payments 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 Applicant.

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. 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 both parties.

16. Audit

The Applicant shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Applicant's performance under 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 related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Applicant where they are then being kept, maintained and preserved. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Applicant by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

17. Stop Work Order

(a) NYSERDA may at any time, by written Order to the Applicant, require the Applicant to stop all or any part of the Work

called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Applicant, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order

issued pursuant to this Section. Upon receipt of such an Order, the Applicant shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage

consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Applicant, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

(i) by written notice to the Applicant, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Applicant, or

(ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Applicant shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

(i) the Stop Work Order results in an increase in the time required for, or in the Applicant's cost properly allocable to, the performance of any part of this Agreement, and

(ii) the Applicant asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section, the maximum amount payable by NYSERDA to the Applicant pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.

## 18. Termination

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Applicant. In such event, payment shall be paid to the Applicant for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled

Incentive Payment and in reimbursement of any amounts required to be paid by the Applicant pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Applicant shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Applicant in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Applicant in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

(c) Nothing in this Article shall preclude the Applicant from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Applicant so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Applicant for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

## 19. Suspension or Termination for Non-Responsibility

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the Responsibility of the Applicant. In the event of such suspension, the Applicant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Applicant must comply with the terms of the suspension order. Contract activity may resume at such time as NYSERDA issues a

written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Applicant, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Applicant's expense where the Applicant is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

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.

## 20. Independent Contractor

(a) 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 subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, 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, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Applicant to perform the Work shall be Applicant's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Applicant, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Applicant expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Applicant and/or Applicant's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Applicant expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

EXHIBIT B REVISED 5/12

## STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

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

1. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Applicant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed

within the State of New York, Applicant agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Applicant agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Applicant is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. **WAGE AND HOURS PROVISIONS.** If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Applicant's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Applicant and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Applicant understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. **PROPRIETARY INFORMATION.** Notwithstanding any provisions to the contrary in the Agreement, Applicant and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Applicant should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Applicant considers a proprietary and/or confidential trade secret, Applicant shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Applicant represents that the information has actual or potential specific commercial or competitive value to the competitors of Applicant. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA's Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>).

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER

IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA's obligation to pay any invoices submitted by Applicant pursuant to this Agreement, Applicant shall provide to NYSERDA its Federal

employer identification number or Federal social security number, or both such numbers when the Applicant has both such

numbers. Where the Applicant does not have such number or numbers, the Applicant must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

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

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

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Applicant certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law

Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSEDA.

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

Information on the availability of New York State subcontractors and suppliers is available from: NYS Department of Economic Development

Division for Small Business

30 South Pearl St -- 7th Floor Albany, New York 12245 Telephone: 518-292-5220

Fax: 518-292-5884

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

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

NYS Department of Economic Development

Division of Minority and Women's Business Development 30 South Pearl St -- 2nd Floor

Albany, New York 12245 Telephone: 518-292-5250

Fax: 518-292-5803

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

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

- (a) The Applicant has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Applicant has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Applicant agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Applicant agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Applicant acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Applicant shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

a) Before such agreement can take effect, the Applicant must have on file with the New York State Department of Taxation and Finance an Applicant Certification form (ST-220-TD).

b) Prior to entering into such an agreement, the Applicant is required to provide NYSERDA with a completed Applicant Certification to Covered Agency form (Form ST-220-CA).

c) Prior to any renewal period (if applicable) under the agreement, the Applicant is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

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

EXHIBIT C

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>1</sup>

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

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

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

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

(c) "Payment" means payment properly due and owing to Applicant pursuant to Exhibit A of this Agreement.

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

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

(f) "Proper Invoice" means a written request for Payment that is submitted by an Applicant 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 NYSEDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSEDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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

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

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

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

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

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Applicant has invoiced NYSEDA for the portion working, completed or delivered, NYSEDA 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.

(h) "Set-off" means the reduction by NYSERDA of a payment due an Applicant by an amount equal to the amount of

1 This is only a summary; the full text of Part 504 can be accessed at:

http://www.nysesda.ny.gov/en/About/~media/Files/About/Contract/NYSERDARegulations.ashx)

an unpaid legally enforceable debt owed by the Applicant to NYSERDA.

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

504.4. Payment Procedures.

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

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

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

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

504.11. Court Action or Other Legal Processes.

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

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