



Charge NY Drive Clean Rebate Program

Dealer Agreement

1. Participation in the Charge NY Drive Clean Rebate (“Program”).

Upon execution of this Agreement, the Dealer is authorized to market the Program to eligible Vehicle Purchasers and submit applications for reimbursement for rebates provided to Vehicle Purchasers in accordance with the requirements of the Rebate Program as described in the Implementation Manual (“Manual”) and this Agreement.

The Dealer hereby acknowledges that it has read and agrees to the terms and conditions in the Manual. Furthermore, the Dealer agrees that its participation in the Program is at all times bound by and subject to the then-current terms of the Manual, which may be amended from time to time without notice, at NYSERDA’s sole discretion. Approved rebate applications, however, will be processed to completion under the Terms & Conditions in effect at the time of rebate application to NYSERDA.

2. Approval

Rebates are not payable unless NYSERDA has approved the rebate application, the required documentation listed in the Manual, and any other required activities or documentation provided by the Dealer.

3. Rebate Payments

NYSERDA will pay the Rebate upon the Dealers’ meeting the requirements of the Program as described in the Manual. This includes, but is not limited to; (1) Becoming familiar with all Program requirements, (2) Ensuring Vehicle Purchasers are aware of and understand their responsibilities under the Program as outlined in the Vehicle Purchaser Terms and Conditions, (3) Ensuring that the vehicle purchase price is reduced by the approved Rebate amount as part of the sale of the vehicle, and (4) Providing accurate and complete documentation of the vehicle purchase to NYSERDA, all in accordance with the requirements of the Program as described in the Manual.

Dealers shall have sixty (60) calendar days from the date of the vehicle transaction to submit a rebate application. Applications received more than sixty (60) calendar days after the date shown on the Buyer’s Order will be rejected. Vehicles purchased or leased prior to the Program’s effective date are not eligible for a rebate. For the purposes of the Program, the date of the vehicle transaction is the date that the vehicle is delivered and the sale is completed, as memorialized by the date on the New York State Department of Motor Vehicles (DMV) MV-50 form.

Dealers shall submit rebate applications through NYSERDA’s Dealer web portal (nyserda-portal.force.com). Once an application has been started and the Dealer has indicated which qualifying vehicle has been purchased, NYSERDA will reserve program funds for the Dealer. Dealers shall have ten (10) calendar days to submit the required documents outlined in this Manual. Any applications for which documents not submitted within ten (10) calendar days will be cancelled and the reserved funds will be released. The Dealer will be notified of the cancellation via email.

The Program administrator shall have ten (10) calendar days to review submitted rebate applications. Submitted applications that have no issues with their information and/or required documents will be approved.



If an application or its required documents are determined to be incomplete, illegible, or missing required information, the Dealer will be notified of the error via email and shall have five (5) calendar days from the date of notification to correct any errors. If the errors are not corrected within five (5) calendar days, the application will be cancelled and the reserved funds will be released. If an application is submitted but determined to be ineligible, it will be cancelled, the reserved funds will be released, and the Dealer will be notified via email.

If a rebate application is cancelled, Dealers can reapply for a rebate for that vehicle within sixty (60) calendar days of the vehicle transaction.

4. Indemnification

The Dealer 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 Dealer's participation in the Program, including, without limitation, Dealer's sales of vehicles in association therewith. The obligations of the Dealer under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

5. Insurance Requirements – *Intentionally Blank*

6. 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 Dealer's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, Dealers, etc.

b) The Dealer acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that vehicles purchased as part of this Program are proper or comply with any particular laws, codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the Program or the adequacy or safety of such measures.

7. Limit of Rebate Payments

It is understood that the Program has limited funds and that rebate reservations are made contingent upon availability of Program funding. Program funding availability is shown on the rebate application website. NYSERDA will take reasonable steps to update Dealer about funding availability via the rebate application website and to stop accepting applications when funding is exhausted, but NYSERDA reserves the right to stop accepting rebate applications at any time. NYSERDA will make its best efforts to notify Dealer with reasonable advance notice, seven days where practicable, of any changes in the availability of funding for rebates.

8. Termination.

This Agreement is completely voluntary and may be terminated with written notice at any time or for any reason by either NYSERDA or the Dealer. Sections 4, 6, 9, 11, 12, 13 shall survive termination of this Agreement.



9. Release by the Dealer

The acceptance by the Dealer of payment for each rebate shall release NYSERDA from any and all claims and liability the Dealer, its representatives, and assigns might otherwise have relating to the rebate.

10. Dealer Approval

NYSERDA has the right not to allow a Dealer to participate in the Program or to ban any Dealer from future participation in the Program for failure to meet these terms and conditions or other applicable requirements of the Program in addition to any other legal remedies available under law.

11. Audit

The Dealer shall keep, maintain, and preserve written records of the vehicle purchase for a period of three years after receipt of the Rebate and provide NYSERDA or its designee with the records within ten days of its request. These records include but are not limited to the vehicle invoice, proof of purchase, New York State Department of Motor Vehicle records, vehicle payment information and related bank records, and purchaser fleet information. 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 Dealer where they are then being kept, maintained and preserved. Any payment made under this Agreement shall be subject to retroactive reduction for amounts included therein that are found by NYSERDA on the basis of any audit of the Dealer by the State of New York or NYSERDA not to constitute an allowable change or cost hereafter.

12. Additional Provisions for Dealer Employees

a) **Relationship of the Parties.** It is understood and agreed that the personnel furnished by the Dealer to perform the services stipulated in this Agreement, shall be Dealer'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 the Dealer, except to the extent required by section 414(n) of the Internal Revenue Code.

The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and the Dealer for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.

b) **Notification of Claims/Events.** Dealer 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, Dealer and/or Dealer's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Dealer expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to allegations of harassment and/or discrimination immediately upon Dealer'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.



13. Publicity

- a) The Dealer shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning work related to the Program. In addition the Dealer shall notify NYSERDA's Director of Communications regarding any media interview in which work related to this Program is referred to or discussed. The Dealer shall NOT speak to any media about the Program before the Program's effective date.
- b) The Dealer shall collaborate with NYSERDA by participating in surveys and other research efforts that support Program goals.
- c) The Dealer shall not use NYSERDA's corporate name, logo, identity, any affiliation, or any related logo, without NYSERDA's prior written consent.

14. Taxes

NYSERDA will be issuing a 1099 for the reimbursement of the vehicle rebates paid to car dealerships. Reimbursements may be considered taxable income by the U.S. Internal Revenue Service and the New York State Department of Taxation and Finance. It shall be the sole responsibility of the Dealer to seek professional advice and determine the tax consequences of the reimbursement of this rebate.

15. Conflicting Terms

This Agreement may not include all the terms and conditions as set forth in the Manual. The Dealer acknowledges in the event of a conflict between the terms of this Agreement and the terms of the Manual, the Manual shall supersede.

The Dealer hereby indicates its acceptance of and agreement to the foregoing by causing its duly authorized representatives to execute this Agreement in the space provided below.

Signature _____ Date _____

Name and Title _____



Charge NY



EXHIBIT A

GENERAL CONDITIONS

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

1. EXECUTORY CLAUSE. NYSERDA shall have no liability under this Agreement to the Dealer or to anyone else beyond funds appropriated or otherwise available for this Agreement.

2. 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 Dealer 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, Dealer 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, Dealer 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. Dealer 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.

3. 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 Dealer'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, Dealer 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 Dealer 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.

4. 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, Dealer warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Dealer further warrants that, at the time Dealer submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Applicant's behalf.

5. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Dealer agrees, as a material condition of the Agreement, that neither the Dealer 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 Dealer, or any of the aforesaid affiliates of Dealer, 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 Dealer 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).

6. 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 Dealer 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.

7. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Dealer 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, Dealer 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 Dealer considers a proprietary and/or confidential trade secret, Dealer shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Dealer represents that the information has actual or potential specific commercial or competitive value to the competitors of Dealer. 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.ny.gov/about/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>).

8. 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 Dealer pursuant to this Agreement, Dealer shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Dealer has both such numbers. Where the Dealer does not have such number or numbers, the Dealer 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 Dealer 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.

9. 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 A, the terms of this Exhibit A shall control.

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

11. 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.

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

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



circumstances. For a Dealer that 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.

14. PERMITS. It is the responsibility of the Dealer 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.

15. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Dealer 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 NYSERDA.

16. 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, Dealers certify that whenever the total amount is greater than \$1 million:

(a) The Dealer 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 Dealer has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Dealer 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 Dealer agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Dealer 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.

17. 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 Dealers, 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.

18. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Dealer 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).

19. 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 Dealer 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 Dealer in accordance with the terms of the agreement.

20. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Dealers 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 Dealer must have on file with the New York State Department of Taxation and Finance a Dealer Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Dealer is required to provide NYSERDA with a completed Dealer Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Dealer 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 Dealer in accordance with Tax Law Section 5-a was false when made.

21. 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).

22. DISCLOSURE REQUIREMENT. The Dealer 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 Dealer 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 terminate the agreement; the Dealer may be subject to penalties for violation of any law, which may apply in the particular circumstances. Dealers 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.

EXHIBIT B

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. This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA 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 NYSERDA 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 NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B 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 NYSERDA 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 NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for 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 NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA'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, NYSERDA 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 Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA 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 a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor 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 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 NYSERDA.

(b) NYSERDA shall notify the Contractor 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 a Contractor 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 Contractor. 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 Contractor 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 Contractor 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. Contractor 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 Exhibit B to 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 Contractor 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 a Contractor 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.