

ATTACHMENT A – PARTICIPATION AGREEMENT

Affordable Multifamily Program Upstate



ACKNOWLEDGMENT OF PARTICIPATION AGREEMENT

The Participant acknowledges that their application may not be approved if the requirements of the Program are not met and that incentive payments will be contingent upon meeting all terms and conditions of the Program. The undersigned certifies that he or she is authorized to act on behalf of the Participant, and that all information provided in their application, including any attachments, is true and correct to the best of their knowledge. The undersigned agrees to refrain from increasing or seeking an increase in rent for project work to the extent that such project work is performed with NYSERDA Funds. The undersigned has read and understands the Affordable Multifamily Program Upstate Terms and Conditions, which are found in this Participation Agreement, Program Opportunity Notice 6088, the Affordable Multifamily Program Upstate Program Manual, and the Resilience Enhancements Addendum and by applying their signature below, commits to meeting the obligations set forth therein.

Project Name _____ Participant Company Name _____

Signature of Authorized Representative of the Participant _____ Date _____

Print Name of Authorized Representative of the Participant _____ Title of Authorized Representative _____
(in reference to company listed above)

Optional: To Allocate Incentive Payments to Participant

Under this Program, all incentives are paid to the Participating Contractor unless the Participant elects to execute this allocation of incentive payment section. I understand that by signing below, I, as Participant, am directing that technical assistance and end-use incentive payments be paid directly to the Participant and NOT to the Participating Contractor. Concierge and Floodproofing Design Assistance incentives will not be allocated to the Participant and will continue to be allocated to the Participating Contractor. If payments are intended to be made to the Authorized Representative of the Participant, both the Participant and the Authorized Representative must sign below.

Participant Company Name *(when payment is being made to the Participant, this must match what is listed on the W-9)* _____

Signature of Authorized Representative in the Participant Company _____ Date _____

Print Name _____

By the Authorized Representative signing below, incentive payments will be issued to the Authorized Representative.

Authorized Representative Company Name *(when payment is being made to the Authorized Representative, this name must match what is listed on the W-9)* _____

Signature of Authorized Representative _____ Date _____

Print Name _____

By signing below, the Participating Contractor accepts the allocation of incentives as indicated above to the Participant. The Participating Contractor acknowledges and confirms that execution of this allocation of incentives does not relieve the Participating Contractor from performance of its duties and obligations under the AMP Up Program Manual as well as the AMP Up Terms and Conditions outlined in PON 6088.

Signature of Authorized Representative of the Participating Contractor _____ Date _____

Print Name of Authorized Representative *(in reference to company listed above)* _____ Title of Authorized Representative _____

1. The signatory Participant acknowledges that this Participation Agreement is part of an application being submitted to participate in the Affordable Multifamily Program Upstate. This program is administered by the New York State Energy Research and Development Authority (NYSERDA), and, upon Applicant's signature on the acknowledgment of this Participation Agreement and NYSERDA's incentive offer letter indicating approval of the Application, become a binding agreement between the Participant and NYSERDA ("Agreement").

2. Eligibility:

The project identified on the Application is a multifamily, residential building(s) and meets all eligibility requirements as defined by Affordable Multifamily Program Upstate (PON) 6088, Program Manual, and the Resilience Enhancements Addendum. Participants must certify their eligibility on their applications.

3. Application Does Not Entitle Participant to participate:

Submission of a completed application does not entitle the Participant to program participation or incentive payments.

4. Glossary of Terms:

Participating Contractor: Contractor who works with the Participant to guide the project through the program. The Participating Contractor may be selected by the Participant from NYSERDA's vetted and approved list from the Multifamily Contractor Network, or a qualified Concierge Contractor may be assigned by NYSERDA to the project. The Participating Contractor is the entity responsible for submitting all documentation to the Program and confirming all program minimum requirements are met.

Participant: The building owner or representative for the building owner. The representative must be authorized to make decisions on behalf of the building owner. This may include a developer or management company. If a project is using a building representative for the building owner, a Property Owner Authorization Form must be submitted with the application.

Energy Assessment and Scoping Tool (EAST): The EAST is an Excel-based tool developed by the Program to summarize the project work and demonstrate compliance with the Program requirements. The EAST is prepared by the Participating Contractor as part of the Pre-construction, Partial Installation, and Construction Complete milestones for the project. Submission by the Participating Contractor of the EAST indicates the Participant has approved what is contained therein and represents the improvements that the Participant is implementing as part of the Program.

Clarity Compass Modeling Tool: The Tool is a simulation modeling software developed by Performance Systems Development (PSD). The tool utilizes PSD's Clarity Compass software to provide a streamlined approach by implementing a standardized data model to simulate the performance of low-rise multifamily buildings (1-3 stories, up to 20 units) implementing building electrification or deep energy retrofit measures.

Concierge Service: A complimentary¹ service provided to the Participant by Participating Contractors. The goal of this service is to streamline the customer experience and provide the needed technical assistance for the project. Scope of services include program applications, planning and scoping support, project deliverables, construction bidding and monitoring, project closeout, and capital funding guidance.

Program Documents: Inclusive of all program documentation (PON 6088, Program Manual, Simulation Guidelines, etc.) which outline the program process and detail the steps to operate within the program. The primary purpose is to provide guidance for the project's Participating Contractor and Participant.

Low to Moderate Income (LMI): A building with a minimum of 25% of dwelling units at or below 80% of the Area Median Income or State Median Income, whichever is higher.

Tenant Protection:

For Low to Moderate Income (LMI) dwelling units occupied by renters, for at least two years following the receipt of the final incentive, Participant agrees:

- To rent the dwelling unit to an LMI tenant(s) as required by Program minimum thresholds referenced in Program Manual.
- To not increase the rent of any tenant of the building as a direct result of the energy improvements for two years. Increases to recover actual increases in property taxes are not covered by this restriction.
- To not shift potential utility cost increases associated with energy upgrades to tenants.
- To not shift utility costs to tenants due to changes in space heating and cooling configurations and/or metering.
- That if the property is sold within two years of receipt of the final incentive, the aforementioned conditions apply to the new owner and must be part of the purchase agreement.
- In the event the Participant does not comply, the Participant must repay the incentive.

¹Complimentary services are detailed in the Program Manual.

5. Approval of Required Documentation:

NYSERDA is not bound to pay any incentive unless NYSEDA approves the documentation required to be submitted as a condition of each trigger event. NYSEDA reserves complete discretion to approve or reject any documentation. Projects that proceed with EAST development prior to receipt of NYSEDA's approval or proceed with the installation of the project work prior to receipt of NYSEDA's approval do so at their own risk. Projects that fail to comply with these requirements may forfeit any program incentives and/or risk termination of this agreement.

6. Under this participation agreement, the Participant agrees to:

- (a) hire an approved and current Participating Contractor to provide services necessary to meet all Program requirements as indicated in the Program Documents.
- (b) provide access to the project's building staff, tenants and/or shareholders, and others as necessary to develop a set of improvements that would fulfill program requirements.
- (c) provide the project's Participating Contractor with the information needed to baseline the project's energy performance, as needed. Any discrepancies, intentional or otherwise, between the project's actual consumption and that submitted to the program may be subject to immediate cancellation of this Agreement and/or repayment of any NYSEDA incentives.
- (d) work with the project's Participating Contractor to finalize a set of recommended measures and/or strategies that are intended to fulfill program requirements and timelines in accordance with the various policies and guidelines as described in the Program Documents. Extensions will only be considered if the Participating Contractor requests an extension from NYSEDA in writing or by email. NYSEDA may grant extensions at its discretion. The extension is only effective when NYSEDA has approved it through writing or email.
- (e) substantially complete the improvements detailed in the approved EAST within (2) years from the application approval notification from NYSEDA. Substantial completion means that all the energy improvements are installed and functional (or capable of functioning) to the intent of the measures described in the EAST. An improvement is considered installed when it adheres to the American Institute of Architects (AIA) definition of substantial completion. All measures must be installed per program requirements, including the Minimum Performance Standards, and as outlined by the approved EAST. Failure to substantially complete the improvements detailed in the EAST within this time frame may result in termination of this agreement and/or loss of any or all NYSEDA incentives. Extensions will only be considered if the Participating Contractor requests an extension from NYSEDA in writing or by email. NYSEDA may grant extensions at its discretion. The extension is only effective when NYSEDA has approved it through writing or email.
- (f) acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.
- (g) authorize NYSEDA sharing the Participant's information and/or project level information with New York State Department of Public Service Staff and appropriate local utility, including its agents or authorized representatives. (For clarity, the term project level includes the information based on the scope of the project, including, but not limited to, aggregated and anonymized whole building, building portions or subsets of the project.)
- (h) authorize their utility's sharing of the Participant's information and/or project-level information with New York State Department of Public Service Staff and NYSEDA, including its agents or authorized representatives, consistent with NYSEDA's New York State Public Service Commission and statutorily authorized responsibilities, including, but not limited to supporting market development initiatives, and other evaluation and measurement activities. (For clarity, the term project level includes the information based on the scope of the project, including, but not limited to, aggregated and anonymized whole building, building portions or subsets of the project.)

7. Incentive Payments:

NYSEDA will arrange to provide incentives as set forth in the fully executed incentive offer letter in accordance with the attached Prompt Payment Policy (Exhibit B). Information about the current available incentives is available in the Program Documents. The fully executed incentive offer letter will establish the Incentive Payment Schedule that the project is eligible for.

- (a) **Incentive** – The project's incentives shall be calculated according to the Incentive Payment Schedule in effect when the completed application is submitted.

Upon approval of the completed application, including review of this participation agreement, NYSEDA will issue a fully executed incentive offer letter specifying the Incentive Payment Schedule for which the Project is eligible. A completed application must be submitted by the Participating Contractor before NYSEDA can assign the appropriate Incentive Payment Schedule. The fully executed incentive offer letter is the final determination of the Project's Incentive Payment Schedule.
- (b) **Maximum Incentive** – A project's maximum incentive may not exceed the amounts set forth in the executed incentive offer letter or the caps detailed in the Program Manual. Eligible project costs include the cost of the recommended improvements as delineated in the NYSEDA-approved EAST and defined in the Program Manual.
- (c) **Coordination with other Energy Efficiency Programs** – Energy efficiency programs at the federal level and in New York State are regularly updated. Detailed information on program interactivity can be referenced in the Program Manual. While the information presented in the Program Manual is current per the release date of the Manual, please contact multifamilyprograms@nyserda.ny.gov if you have a question about how this program coordinates with other energy efficiency or clean energy programs.

- (d) **Incentive Amounts** – The fully executed incentive offer letter states the incentive amount that projects are eligible to receive. The basis for determining the Incentive Payment Schedule assigned to a project is set forth in the Program Manual and may be subject to change. NYSEERDA's determination of total incentive amounts is final.

8. Program Changes

NYSEERDA reserves the right to change, modify, or terminate this program at any time without advance notice or any liability except as expressly stated herein. Approved project applications, however, will be processed to completion under the participation agreement in effect at the time of application to NYSEERDA.

9. Utility Data Analysis and Site Visits:

- (a) The Participant agrees to provide NYSEERDA copies of all utility bills showing consumption and cost for electricity, fuel, and water, and provide access to such information using the program's Data Release Authorization Form (DRAF). Such bills shall cover all common areas of the building and a sample of apartments. In addition, a list of all the apartments and their type (e.g. studio, one bedroom) shall be provided. Reference the Sampling Guidelines located on the program page for required sample based on building size. Each layout of apartments must be represented in the sample. The DRAF authorizes NYSEERDA to receive data for ten (10) years following execution of the DRAF.
- (b) The Participant agrees to provide access to NYSEERDA and/or its contractors the ability to make a reasonable number of pre and post-installation site visits to the project or request for information from the project during the implementation of the EAST and up to 60 months following the date of the project's completion. Such visit(s) will be scheduled with the owner with at least one (1) week advance notice to the Participant by NYSEERDA.

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

10. Time is of the Essence:

Participant's failure to act within the timeframe requirements outlined in the Program Manual constitutes a breach of the contract. Time is of the essence with respect to all provisions of this agreement and any and all exhibits and attachments hereto that specify a time for performance.

11. Proprietary Information:

It is anticipated that NYSEERDA will retain a copy of all materials or reports completed in accordance with this participation agreement. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSEERDA 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 NYSEERDA that the Participant wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exclude it from disclosure, including a written statement of the reasons why the information should be excluded. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501. However, NYSEERDA cannot guarantee the confidentiality of any information submitted.

12. Use of Project Data:

Unless identified as confidential or proprietary by the Participant, information contained in these materials or reports shall be the property of NYSEERDA. NYSEERDA may use this information for purposes including, but not limited to, promoting awareness and adoption of energy efficiency strategies, developing case studies, and supporting adoption of energy efficient practices and technologies. Contractor may use the information for its own private purposes. NYSEERDA reserves the right to seek additional information and input from Participants for purposes including, but not limited to, evaluation, education and awareness.

13. Endorsement:

NYSEERDA does not provide any endorsement of any Participating Contractors' capabilities to provide services outside of the Scope of Work to be conducted pursuant to this Program.

14. Tax Liability:

NYSEERDA is not responsible for the payment of any taxes assessed by federal, state, or local governments on benefits conferred on the Participant by NYSEERDA.

15. Indemnification:

The Participant shall protect, indemnify, and hold harmless NYSEERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorney's fees and expenses) imposed upon or incurred by or asserted against NYSEERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Participant under this section shall survive any expiration or termination of this Agreement.

16. Insurance:

The project, at no additional 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 this Section. NYSERDA reserves the right to request insurance documentation and copies of Subcontractor agreements for any Subcontractor, and to request the identity of all participating individuals.

Projects are required to hold commercial general liability or 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 \$2,000,000 aggregate for general liability; \$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. NYSERDA and the State of New York must be listed as certificate holders. This insurance could be provided by the General Contractor, Installer, or Participant provided that the insurance covers the full scope of work. The Participating Contractor is responsible for collecting and submitting this Certificate of Insurance to NYSERDA.

Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Participant shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Participant shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not make payments for projects completed under this Agreement without current insurance certificates.

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, the Participant shall deliver to NYSERDA a certified copy of each policy upon request.

Within five working days, or contemporaneously with the requirements of each insurance policy, the Participant shall notify NYSERDA in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Participant, any non-Customer party to this Agreement or NYSERDA.

17. No Warranties:

- (a) NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Participant's reliance on warranties is limited to any warranties that may arise from, or be provided by, contractors, vendors, etc.
- (b) The Participant acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering, and construction of the building or installation of the recommendations made by the Participating Contractor is proper or complies with any particular laws (including patent laws), codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the recommendations made by the Participating Contractor or the adequacy or safety of such measures.
- (c) NYSERDA and the State of New York make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA and the State of New York make no representation that the use of any product, apparatus, process, method, or other information will not infringe on privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

18. Limit of Incentive Payments:

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

19. Release by the Participant:

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

20. Termination and Recapture:

This agreement may be terminated by either party at any time with or without cause, upon 10 days prior written notice. Participants who terminate an agreement prior to the final milestone may be subject to recapture ("claw back") of part or all of previously paid incentives.

21. Notices:

All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this agreement shall be in writing and shall be transmitted by any of the following:

- via certified or registered United States mail, return receipt requested
- by personal delivery
- by expedited delivery service
- by facsimile transmission
- by e-mail

Such notices shall be addressed to NYSERDA at:

New York State Energy Research and Development Authority

Attn: Affordable Multifamily Program Upstate

1359 Broadway, 19th Floor

New York, NY 10018

Fax: 212-971-5349

Email: Multifamilyprograms@nyseda.ny.gov

Notices addressed to Participant shall be addressed to Participant at the address supplied by the Participating Contractor in the electronic application.

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

22. Modification; Waiver:

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

23. Section Headings; Counterparts:

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

24. Severability; Survival:

If any provision of this agreement is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this agreement shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent, unless the ineffectiveness of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable. The provisions of Sections 12, 24-32 shall survive the expiration or earlier termination of this agreement.

25. Independent Contractors:

Relationship of the Parties: It is understood and agreed that the personnel furnished by Participating Contractors to perform the services stipulated in this agreement, including personnel who may perform such services at NYSERDA's offices, shall be the Participating Contractor'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 Participating Contractor, 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 Participating Contractor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, 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.

No Benefits: The Participating Contractor agrees that if the personnel furnished by Participating Contractor are determined to be "leased employees" within the meaning of Section 414(n) of the Internal Revenue Code, the Participating Contractor acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. The Participating Contractor agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in Section 414(n)(5)(B) of the Internal Revenue Code.

Notification of Claims/Events: The Participating Contractor 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, the Participating Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, The Participating Contractor 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 the Participating 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.

26. Assignment:

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

Projects participating in eligible federal, state and local programs, as defined in the Program Manual may elect to execute an assignment Addendum to this agreement for the purpose of providing an advance of the NYSERDA incentives directly to the eligible agency's escrow account established for the project under their participation.

27. Audit:

NYSERDA shall have the right from time to time and at all reasonable times during the term of the agreement and for three (3) years after project completion to inspect and audit any and all books, accounts and records at the office or offices of the Participant where they are then being kept, maintained and preserved. 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 Participant by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

28. Audit Adjustment:

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

29. Executory Clause:

It is understood by and between the parties hereto that this agreement shall be deemed executory only to the extent of the monies available to NYSERDA for the purpose of paying incentives under this Agreement, and no liability on account thereof shall be incurred by NYSERDA beyond funds available for such purpose. This agreement shall be deemed in effect until terminated by either party.

30. Code of Conduct:

The Participating Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors (available at <https://www.nyserda.ny.gov/About/Board-Governance>) with respect to the performance of this Agreement, including, but not limited to, the provisions that ensure the appropriate use of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA. In addition, the Participating Contractor must follow the policies and procedures found on the Doing Business with NYSERDA webpage at <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.

EXHIBIT A: 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 to the extent applicable:

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 Contractor 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, Contractor 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, Contractor 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. Contractor 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 an agreement for a public work covered by Article 8 of the Labor Law or a building service covered by Article 9 thereof, neither Contractor'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, if this is an agreement for a public work or a building service as covered above, or a covered project as defined in Labor Law section 224-a, Contractor 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 Contractor 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 NYSEDA of any NYSEDA-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, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSEDA a non-collusive bidding certification on Contractor's behalf.
4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor 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 Contractor, or any of the aforesaid affiliates of Contractor, 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 Contractor shall so notify NYSEDA 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. NYSEDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSEDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSEDA 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 NYSEDA 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, Contractor and NYSEDA acknowledge and agree that all information, in any format, submitted to NYSEDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSEDA 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, Contractor should submit information to NYSEDA in a non-confidential, non-proprietary format. FOIL does provide that NYSEDA 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 Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. 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 NYSEDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSEDA'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, NYSEDA 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 (<https://opengovernment.ny.gov>) and NYSEDA's Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>.
7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.
- (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSEDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSEDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor 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 Contractor 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"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor 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. Contractor 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 Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor'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 Contractor 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 Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor 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 Contractor 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 Contractor 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.
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

625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
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

625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<https://www.esd.ny.gov>

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

- (a) The Contractor 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 Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor 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 Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor 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. Contractor 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 Contractor 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 Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors 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 Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- (b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- (c) Prior to any renewal period (if applicable) under the agreement, the Contractor 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 Contractor 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 <https://ogs.ny.gov/iran-divestment-act-2012>).

21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 ("DERA"), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology ("BART"). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: <https://www.dec.ny.gov/regs/2492.html>.

22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

23. Stop Work Order

- (a) NYSEDA may at any time, by written Order to the Participant, require the Participant 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 Participant, 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 Participant 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 Participant, or within any extension of that period to which the parties shall have agreed, NYSEDA shall either:
- (i) by written notice to the Participant, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Participant, 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 Participant 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 Participant's cost properly allocable to, the performance of any part of this Agreement, and
 - (ii) the Participant asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSEDA decides the facts justify such action, NYSEDA 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 NYSEDA to the Participant pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.

EXHIBIT B: PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability.

- (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSEDA's regulations, which consists of NYSEDA's policy for making payment promptly on amounts properly due and owing by NYSEDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.²
- (b) This Exhibit applies generally to payments due and owing by the NYSEDA to the Contractor 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 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 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 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 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.

² 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>

(1) "Receipt of an Invoice" means:

- i. if the Payment is one for which an invoice is required, the later of:
- ii. the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or
- iii. 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.
- iv. 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.

(g) "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:
 - i. any defects in the delivered goods, property or services;
 - ii. any defects in the invoice; or
 - iii. suspected improprieties of any kind.
 - iv. 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.
- (c) 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.
- (d) 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.

