



INSTRUCTIONS

APPLICANT:

- 1. Read the Terms and Conditions.**
- 2. Determine your authorized signatory.** Only an authorized signatory for your organization can sign the Terms and Conditions. An authorized signatory has the authority to contractually bind your organization.
- 3. Sign the Terms and Conditions.** Once you have identified your authorized signatory, that person must sign the Terms and Conditions. By signing the Terms and Conditions, you are executing a legally binding agreement with NYSERDA and agreeing to all requirements stated within said Terms and Conditions.
- 4. Upload the Complete Terms and Conditions and associated Application documents.** Submit the signed Terms and Conditions and completed Project Application Form and other Application documents with the electronic application. See Application Submittal Checklist for details.
- 5. Maintain the original, signed Terms and Conditions** on behalf of the Owner for a minimum of seven (7) years.
- 6. Refer to the RetrofitNY Gap-funding PON 4026 Summary** for more information on how to submit an electronic application.

TERMS AND CONDITIONS

1. The undersigned Applicant acknowledges that these Terms and Conditions are part of an Application being submitted to participate in the RetrofitNY Program administered by the New York State Energy Research and Development Authority (NYSERDA).

2. Eligibility:

The Project Work identified below must be performed on a multifamily, residential building(s) with five (5) or more dwelling units per building. To be eligible for participation in RetrofitNY Gap-funding PON 4026, an Applicant must be, or be capable of and intend to be, a New York State electricity distribution customer of a participating utility company that pays into the System Benefits Charge.

Prior to NYSERDA gap funding being released, the following requirements must be satisfied:

- Applicant is the legal building owner for one of the three projects awarded under RetrofitNY RFP 3750 which is located outside the five boroughs of New York City and is a low-rise structure not more than 2-stories in height
- Applicant confirms that following completion of renovation, the building will still qualify as affordable housing as defined in RFP 3750 for a period commensurate with regulatory agreements executed with affordable housing agencies, and that capital improvements funded by NYSERDA's incentives under this PON will not result in rent increases
- The total final project budget for the Retrofit Solution requires gap funding based on financing/funding sources currently available after completing the template provided by NYSERDA
- Applicant has applied to lenders in an attempt to underwrite potential savings
- Applicant has submitted a written commitment to abide by a construction schedule that demonstrates the Retrofit Solution will be installed within a reasonable period of time and not in excess of 24 months from qualification of applications. If more time is required due to particular project requirements, this must be approved by NYSERDA.
- Applicant has signed a Data Release Authorization Forms (DRAF) permitting NYSERDA to collect utility data for a period of occupancy up to 10 years, and committed in writing to allow NYSERDA or its agents to perform Measurement and Verification on the buildings for up to ten years after completion of Retrofit Solution installation and to use the data accrued as NYSERDA sees fit
- If other than a master metered building for either gas or electric use, at least two-thirds of residents have signed Data Release Authorization Forms (DRAFs) permitting NYSERDA to collect utility data for a period of occupancy up to 10 years
- Applicant and applicant's financing partners have agreed in writing to proceed with work once NYSERDA funds are committed to the project
- Applicant and Applicant's financing partners have agreed in writing to include NYSERDA in the requisition process required by applicant's lenders and to provide regular project reporting to demonstrate project status, allocation of funds, any change orders (adds or deducts), cost or time overruns or underruns consistent with that provided to the project's other lenders
- Applicant has provided written permission for NYSERDA to study, promote, publish, and generally distribute information about the project publicly for at least ten years and will make it a requirement of any sale agreement transferring control of ownership that new owner abides by this agreement
- Applicant has provided an executed contract to procure the Retrofit Solution from the Solution Provider Team that designed and developed that solution under RFP 3750, or received written approval from NYSERDA for any requested changes to the Solution Provider Team members
- Applicant has provided final construction documents that incorporate the Retrofit Solution as designed under RFP 3750 or received written approval from NYSERDA for any requested changes to the Retrofit Solution, and a construction schedule detailing dates for the procurement, production and installation of the Retrofit Solution
- Applicant has provided a persuasive resident management plan that suggests the likely acceptance by the residents of the Retrofit Solution and that includes a Building Operations and

Maintenance Manual and Plan, a Resident Manual that explains the intent, benefits, use and maintenance of the building's high performance energy features and practices, and ongoing training of residents in systems' operation and best practices

- Applicant has provided a persuasive maintenance plan to ensure successful operation and maintenance of all systems long term and that includes initial and ongoing training of maintenance personnel in systems' operation and best practices as well as all available maintenance agreements, warranties and commitments by systems' manufacturers and solution providers
- Applicant has provided a variance or a letter of intent to issue such variance from the relevant agency for any aspect of the Retrofit Solution that does not conform with applicable building codes or other codes

If demonstrated gap funding need exceeds \$56,000, certain projects may be eligible for up to an additional \$10,000 per dwelling unit if they employ a prefabricated panel system or innovative integration of mechanical systems as defined in Section II of PON 4026. Projects employing a panelized system, an integrated mechanical systems, or both, must demonstrate additional incremental cost for these measures in the application workbook submitted with the Application, and will receive additional funding commensurate with said cost up to \$10,000 per dwelling unit total. Should the additional cost for employing either or both of these measures, alone or in combination, exceed this additional amount, regardless the maximum additional award a project shall receive will remain \$10,000 per dwelling unit total. Designs, material specifications and performance specifications for these items must also be clearly defined in the construction drawings submitted prior to NYSERDA issuing its final Incentive Letter.

In addition, prior to an Incentive Letter being awarded and funds being released, NYSERDA must have received and approved from the Solution Provider Team the Retrofit Solution final report and deliverables as defined under RPF 3750 in a format ready for publication as open source documents with the team agreeing in writing to release of all materials for open source publication. The retrofit solution design must:

- utilize heat pump-based technology for space heating and cooling
- utilize energy or heat recovery ventilation technology
- demonstrate it will not exceed a site Energy Use Intensity (EUI) of 27 kBtu/ft²/year and an air tightness of 2.0 ACH₅₀

Funds will only be released after the financial closing with all those providing project financing. As proof of this, applicant must provide NYSERDA with (a) a firm commitment on all project financing from all financing partners for the amounts indicated in the capitalization plan, (b) an executed contract between the building owner and the Solution Provider Team procuring the Retrofit Solution from that team and (c) construction drawings that demonstrate the Retrofit Solution designed through RFP 3750 and approved by NYSERDA is incorporated in the project. If any changes to the high-performance Retrofit Solution are proposed or requested by Applicant at any time prior to the start of the construction phase up until completion of construction and commissioning, these changes must be reviewed and approved by NYSERDA in order to be eligible for funding.

Payment terms will be based on construction progress and standard requisitions with disbursements proportionate to those released by other project lenders provided the Retrofit Solution and its various components are integrated with all other work as per the construction schedule provided prior to project mobilizing. If, however, the Retrofit Solution and its various components are not procured, produced or installed until the later stages of the project, NYSERDA may elect to withhold funds and only make

disbursements proportions to Retrofit Solution procurement costs, production costs and installation costs as these are requisitioned.

NOTE: Buildings that qualify for funding under this Program Opportunity Notice (PON) will not be eligible for additional funding from the NYSERDA Multifamily Performance Program, but may still be eligible for funding from other NYSERDA programs.

3. Application Does Not Entitle Applicant to Participate:

Submission of an Application does not entitle the Applicant to RetrofitNY participation or incentives.

4. Glossary of Terms:

Any capitalized terms used but not defined in these Terms and Conditions shall have the meanings set forth in PON 4026.

Applicant is the legal owner of the building or buildings for which a Retrofit Solution was designed through NYSERDA's RetrofitNY RFP 3750, which is located outside the five boroughs of New York City and is a low-rise structure.

Parties are the Applicant and NYSERDA only. There shall be no other Parties to this Agreement.

Project Work is the entire renovation scope of work to be performed at the property location which includes the Retrofit Solution scope designed through RFP 3750 as well as any other conventional work required at the site as part of this renovation.

Retrofit Solution is the high-performance retrofit solution designed by the Solution Provider Team for the Applicant's building or buildings through NYSERDA RFP 3750 exactly as defined in the final set of schematic design deliverables furnished by the Team at the conclusion of the six-month design phase commissioned by RFP 3750. Any requested changes to the Retrofit Solution must be submitted to NYSERDA in writing and approved by NYSERDA in writing for the Applicant to remain eligible for funding under this PON.

Solution Provider Team (or simply Team) is the design build team that designed the Retrofit Solution for the Applicant's building or buildings through NYSERDA RFP 3750. Any requested changes to the members of this team must be submitted to NYSERDA in writing and approved by NYSERDA in writing for the Applicant to remain eligible for funding under this PON. All members of the team, individual firms participating on that team, employees of said firms, or outside agents contracted by the team, shall be collectively referred to as the Team.

5. Approval of Required Documentation:

NYSERDA is not bound to pay any incentive unless NYSERDA approves the documentation required to be submitted as a condition of each submittal stage. NYSERDA reserves complete discretion to approve or reject any documentation. Project Work that proceeds prior to receipt of NYSERDA's "Incentive Letter" does so at the Applicant's own risk. Project Work that fails to comply with these requirements may forfeit any NYSERDA funding and risk termination of this Agreement.

6. Under these Terms and Conditions, the Applicant agrees to:

- (a) hire the Solution Provider Team that designed the Retrofit Solution through NYSERDA's Request for Proposal (RFP) 3750. The Team hired by the Applicant must lead the project or, in the event of work being performed as part of the project not pertaining to the Retrofit Solution, be integrated into the team performing that other work to ensure that the Retrofit Solution meets RetrofitNY requirements.
- (b) work with the project's Team to finalize a set of construction drawings that incorporates in full the

Retrofit Solution designed through RFP 3750. This construction drawing set will be submitted to local building department for permit approval and to project lenders at closing. Applicant must submit approved permits and approval by lenders to receive NYSERDA funds.

- (c) within 30 days of the financial closing for the Project Work, the Applicant will issue a final construction schedule to NYSERDA that generally conforms with construction schedule submitted by the Team with its Retrofit Solution final deliverables package for RFP 3750. NYSERDA must be apprised of any proposed changes to this schedule in writing as the project proceeds, and must approve said changes in writing for funds to be released.
 - (d) construct the Project Work according to the construction drawing set approved by the building department, project lenders and NYSERDA. Any proposed changes to this drawing set affecting the Retrofit Solution or its performance must be submitted to NYSERDA and approved by NYSERDA in writing.
 - (e) abide by Payment Terms as defined in Section 7 (d) below
 - (f) allow NYSERDA or its designees to perform measure and verification on the building for a period of up to 10 years following completion of Project Work and provide utility data for said period of time as defined in Section 8 below
 - (g) ensure that the project complies with Low-to-Moderate Income (LMI) eligibility requirements after completion of construction as defined in RFP 3750 and required by any affordable housing agencies involved in the project; and,
 - (h) acquire and maintain, at its own cost, all permits, licenses, easements, and permissions of every nature necessary to perform and maintain the work.
- 7. Incentive Payments:** NYSERDA will arrange to provide incentives as set forth in the fully executed Incentive Letter in accordance with the attached Prompt Payment Policy (Exhibit B).

- (a) **Upon approval of the completed application, including these Terms and Conditions:** NYSERDA will issue an Incentive Letter specifying the incentives for which the project may be eligible to receive. The executed Incentive Letter is the final determination of the project's potential incentive payments.
- (b) **Maximum Incentives** – A project's maximum incentive may not exceed the amount set forth in the executed Incentive Letter. To receive the full incentive amount, projects must meet all Terms and Conditions specified herein.

The Applicant must also certify that, following construction, the project still meets the requirements for an LMI project in accordance with RFP 3750 for a period commensurate with regulatory agreements executed with affordable housing agencies, and that capital improvements funded by NYSERDA's incentives under this PON will not result in rent increases.

- (c) **Incentive Amounts** –The executed Incentive Letter states the maximum incentives the project will be eligible to receive. The basis for determining the incentive payment amount for a project is as detailed in the RetrofitNY Gap-funding PON 4026 and may be subject to change. NYSERDA's determination on total incentive amounts and the payment schedules are final. If an Applicant elects to change the construction drawings that in any way affect the Retrofit Solution design or the overall project cost, the Applicant shall notify NYSERDA in writing or via email. To remain eligible for NYSERDA funding, the Applicant must receive express written approval from NYSERDA for said changes.
- (d) **Payment Terms** – Throughout the Project Work construction phase, the Applicant shall forward AIA G702/G703 requisition requests for the Project Work on a monthly basis to NYSERDA and other project lenders for review by lenders and approval by NYSERDA and primary lender's construction inspector. Upon approval of requisition requests, NYSERDA will either i) provide payments proportionate to disbursements by other project lenders if the Retrofit Solution is fully integrated into the other construction work, or ii) provide payments commensurate with the portion of the Retrofit

Solution scope of work completed if said scope of work is substantially isolated from other work being performed. The determination of which method of payment will be used will be at NYSERDA's sole discretion. Regardless, NYSERDA will withhold retainage equal to 10% of NYSERDA's total funding commitment until completion of the Project Work, issuance of a Certificate of Occupancy for the Project Work, and receipt of as-built drawings as defined in Section 10 (b) below

8. Post-Construction Analysis and Follow-Up Visits for Measurement and Verification:

- (a) The Applicant agrees to, for up to 10 years following the date of Project Work completion and for two years prior to the date of this application, provide NYSERDA copies of all utility bills for the building showing consumption and cost for electricity, all fuels, and water, including both supply and transportation, as well as electric demand, and provide access to such information by signing a Data Release Authorization Form. The Applicant also agrees to enable NYSERDA to perform monitoring and verification by providing continuous access to all necessary and available data points for both common areas and tenant spaces, at or near real-time frequency, including, but not limited to, total electricity usage, space heating energy usage, circuit/appliance-level electricity usage, domestic hot water energy usage, domestic hot water flow rate, domestic hot water temperature, solar thermal hot water production, solar photovoltaic electricity production, cooking energy usage, clothes washer energy usage, clothes dryer energy usage, monitoring equipment electricity usage, indoor space temperature, indoor relative humidity, outdoor air temperature, kitchen and bathroom ventilation rates, energy or heat recovery ventilation system supply temperature, indoor air quality, CO₂ measurements, occupancy, ambient noise measurements, domestic water consumption, domestic water riser leaks, domestic water heater cold water intake consumption, outdoor water leaks, laundry room leaks, etc. If access to apartment-level data requires, the Applicant agrees to sign and endeavor to cause tenants to sign data release authorization forms.
- (b) If other than a master metered building for either gas or electric use, the Applicant agrees to collect and provide to NYSERDA DRAFs signed by residents permitting NYSERDA to collect utility data for a period of occupancy up to 10 years for at least two-thirds of the dwelling units. In the event of resident turnover during the construction period and for up to 10 years following the date of Project Work completion, the Applicant agrees to collect and provide to NYSERDA updated DRAFs signed by the new residents. For the same period of time, the Applicant also agrees to maintain and, at NYSERDA's request, provide to NYSERDA a detailed and accurate record of vacancies, move-in dates and move-out dates for each dwelling unit to enable detailed energy analysis.
- (c) The Applicant agrees to provide access to NYSERDA and its agents to make a reasonable number of pre- and post-installation follow-up visits to the building during the implementation of the Project Work and up to 10 years following the date of its completion. Such visit(s) will be scheduled with the owner with at least one (1) week notice to the Applicant by NYSERDA. If access to a residential unit is required, the Applicant will endeavor to obtain resident consent if so required under the lease's terms.
- (d) The purpose of the follow-up visit(s) is to provide NYSERDA with an opportunity to evaluate the installed Project Work and to determine the actual demand reduction and energy savings, along with scope related non-energy benefits to tenants and levels of satisfaction.
- (e) In the event the building is sold before 10 years has elapsed since the completion of Project Work, the Applicant shall include provision for NYSERDA and/or its contractors to access the building as described in this section a condition of the terms of sale and a binding requirement that survives transfer of ownership.

9. Time of the Essence:

Time is of the essence with respect to all provisions of this Agreement, and all exhibits and attachments hereto that specify a time for performance. Applicant's failure to act within the times required may constitute a breach of the contract. NYSERDA may, at its sole discretion, terminate a project for failing to progress with the construction of the project as indicated in the construction schedule required in Section 6(c) or with the submittals required in Section 10 of this document. Such termination does not

necessarily preclude the building from reapplying to RetrofitNY once the issues preventing progress have been resolved, but approval of such reapplication shall be at NYSERDA's discretion.

10. Construction Requirements:

- (a) If the Applicant has not submitted to NYSERDA the final construction drawing set for which permits were issued and/or which other lenders have approved within 30 days of project closing, or if said construction drawing set does not include the Retrofit Solution as designed through RFP 3750, this Agreement may be terminated in accordance with Section 17.
- (b) The project's as-built document set must be completed and submitted to the project's NYSERDA-designated liaison for review within 6 months of receipt of the Temporary Certificate of Occupancy. Extensions will only be considered if the Applicant requests an extension from NYSERDA in writing or by email to the project's NYSERDA-designated liaison. NYSERDA may grant extensions at its sole discretion. The extension is only effective when NYSERDA has approved it in writing or by email.

11. Proprietary Information:

It is anticipated that NYSERDA will retain a copy of all materials or reports completed in accordance with the PON or these Terms and Conditions. The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the Applicant wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exclude it from disclosure, including a written statement of the reasons why the information should be excluded. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501. However, NYSERDA cannot guarantee the confidentiality of any information submitted. No information shall be considered proprietary that is submitted by the Team as part of its final deliverables under RFP 3750 and, under the terms of that RFP, is intended for publication as open source documents. NYSERDA may also publish any subsequent materials provided by the Applicant pertaining to the Retrofit Solution as open source documents.

If the dwelling units in the building(s) earn the EPA ENERGY STAR label, project specific information may be shared with the EPA for the purposes of complying with its program requirements. Unless identified as confidential or proprietary by the Applicant, information contained in these materials or reports may be used to promote awareness and adoption of energy efficiency strategies, practices, and technologies. NYSERDA does not provide any endorsement of any Team, Team member or other provider's capabilities to provide services outside of the Scope of Work to be conducted pursuant to this Program.

12. Tax Liability:

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

13. Insurance:

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

- (a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;

- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

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

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

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

14. Indemnification:

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

15. No Warranties:

- (a) NYSERDA does not endorse, guarantee, or warrant any manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Applicant's reliance on warranties is limited to any warranties that may arise from, or be provided by, contractors, vendors, etc.
- (b) The Applicant acknowledges that neither NYSERDA nor any of its consultants or deliverables reviewers are responsible for assuring that the design, engineering, and construction of the Retrofit Solution or installation of the recommendations made by the Team is proper or complies with any 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 Retrofit Solutions or any of the recommendations made by the Team or the adequacy or safety of the Retrofit Solution or any actions performed in relation to its design, procurement, production, installation, ongoing performance or maintenance.

16. Release by the Applicant:

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

17. Termination:

This Agreement may be terminated by either Party at any time with or without cause, upon 30 days prior written notice.

In the event Applicant terminates the Agreement, Applicant shall be liable for liquidated damages to NYSEERDA commensurate with funding provided by NYSEERDA toward the Retrofit Solution if this portion of the Project Work remains incomplete at time of termination.

18. Notices:

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either Party to the other under this Agreement shall be in writing and shall be transmitted either:

- i. via certified or registered United States mail, return receipt requested;
- ii. by facsimile transmission;
- iii. by personal delivery;
- iv. by expedited delivery service; or
- v. by e-mail.

Such notices shall be addressed to NYSEERDA at:

New York State Energy Research and Development Authority
Attn: Multifamily RetrofitNY Program
17 Columbia Circle
Albany, NY 12203

Fax: 518-862-1091

Email: RetrofitNY@nyserda.ny.gov

Notices addressed to Applicant shall be addressed to Applicant at the address supplied in the electronic application.

(b) Notices shall be deemed given on the date delivered or date of attempted delivery if service is refused. The addresses provided by the Applicant 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.

19. 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.

20. 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 or electronic signature, all of which together shall be considered one and the same original document.

21. 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 11, 23-30 shall survive the expiration or earlier termination of this Agreement.

22. Independent Contractors:

Relationship of the Parties. It is understood and agreed that this Agreement is exclusively between the Applicant and NYSERDA. As part of this Agreement, the Applicant agrees to contract with the Solution Provider Team that designed the Retrofit Solution under RFP 3750. However, the personnel furnished by the Team to perform the services contracted by the Applicant shall be the Team'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 Team, except to the extent required by section 414(n) of the Internal Revenue Code.

23. Assignment:

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

24. Audit:

NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and for three (3) years thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Applicant where they are then being kept, maintained and preserved.

25. 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 Applicant by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

26. 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 monies available for such purpose.

27. Governing Law:

This Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, without regard to its choice of law principles.

28. Laws of the State of New York:

The Applicant shall comply with the Exhibit A, Standard Terms and Conditions.

29. Entire Agreement; Incorporation by Reference:

These Terms and Conditions, including Exhibits A and B, taken together with the Incentive Letter, constitutes the final, complete and exclusive understanding between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, letters of intent,

understandings, negotiations, and discussions of the Parties, whether oral or in writing. The Parties have not relied upon any promises, warranties or undertakings other than those expressly set forth in this Agreement. All of the terms and conditions set forth in Exhibits A and B are incorporated into this Agreement by reference, as though set forth in full herein.

30. All Legal Provisions Deemed Included:

It is the intent and understanding of the Applicant and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Applicant, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

31. Other Legal Requirements:

The references to particular laws of the State of New York in these Terms and Conditions are not intended to be exclusive and nothing contained in any section of or Exhibit to this Agreement shall be deemed to modify the obligations of the Applicant to comply with all legal requirements

32. Applicant Agreement to Terms and Conditions:

Applicant acknowledges that incentive payments will be contingent upon meeting all terms and conditions of RetrofitNY set forth in this Agreement or otherwise stipulated in PON 4026 or RFP 3750. The undersigned certifies that he or she is authorized to act on behalf of the Applicant, and that all information provided in this Application, including any attachments, is true and correct to the best of his or her knowledge. The undersigned has read and understands the above Terms and Conditions which are part of this Application and agrees on behalf of the Applicant to abide by them.

Project Name:

Applicant Company Name (must exactly match legal name associated with the Federal ID number; must be the owner of the subject property):

Signature of Authorized Representative of the Applicant

Date

PRINT Name of Authorized Representative

Title of Authorized Representative (in reference to Company listed above)

Exhibit A

REVISED 5/2

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the 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 a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement 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, 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 NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids,

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 NYSERDA 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 NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor 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, Contractor 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 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 NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information

submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA's Regulations, Part 501 (<http://www.nyserda.ny.gov/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 NYSERDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA 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 A, the terms of this Exhibit A 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
<https://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://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 www.ogs.ny.gov/about/regis/ida.asp).

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 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.¹
- (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 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 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.
- (g)(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.

¹ This is only a summary; the full text of Part 504 can be accessed at: <https://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>

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 this 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 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.