

DEALER (CONTRACTOR*) PARTICIPATION AGREEMENT

New York School Bus Incentive Program (NYSBIP)



School Bus
Incentive Program

**In this document, the Dealer, an authorized seller of Eligible Vehicles, is referred to as the Contractor.*

1. Participation in the New York School Bus Incentive Program (“Program”)

Upon execution of this Agreement, the Contractor is authorized to market the Program to Fleets¹ and submit Voucher Applications in accordance with the requirements of the New York School Bus Incentive Program (NYSBIP), the NYSBIP Implementation Manual, and this Agreement. The terms, conditions, and provisions of the NYSBIP are incorporated herein and made a part hereof by reference.

The Contractor hereby acknowledges that they have read and agree to the terms and conditions in the Implementation Manual.

The Contractor hereby acknowledges the mileage and in-service requirements for new ESBs and scrap buses (if applicable).

Mileage requirement for new ESB	In-service requirement for new ESB	Mileage requirement for scrap bus(es)	In-service requirement for scrap bus(es)
5,000 miles per year for 5 years	Must be registered and part of the active fleet for 5 years	Achieve greater than or equal to 2,500 miles of service in the last year	Must be actively registered at time of scrap event for at least 24 of the previous 27 months

Furthermore, the Contractor agrees that its participation in the Program is at all times bound by and subject to the then-current terms of the Implementation Manual, which may be amended from time to time without notice, at NYSEDA’s sole discretion. Approved Voucher Applications, however, will be processed to completion under the Terms & Conditions in effect at the time of voucher submission to NYSEDA.

Contractor further acknowledges and agrees that it is responsible for obtaining all documentation required for Voucher Redemption from the Purchaser. If the Contractor cannot provide the documentation required for Voucher Redemption, even if such documentation is unavailable through no fault of the Contractor, NYSEDA will not make a payment on the voucher. Contractor should be mindful of this when they execute a purchase agreement with the Purchaser and take all appropriate precautions.

2. Approval

Voucher payments (also referred to herein as “incentives”) are not payable unless the Contractor has completed the Voucher Redemption process including submitting all required documentation to satisfy the Voucher Redemption requirements listed in the Implementation Manual, and any other required activities (e.g., vehicle scrappage, if applicable) or documentation has been submitted by the Contractor and approved by NYSEDA.

3. Incentive Payments

NYSEDA shall pay the incentive upon the Contractor’s meeting the requirements of the Program as described in the Implementation Manual. This includes, but is not limited to: (1) becoming familiar with all Program requirements; (2) participating in any required Contractor training and registration; (3)

¹ Specifically, owners of school buses in operation for public schools in New York State, include public school districts and/or third-party contractors who operate buses through a service agreement with public school district(s).

providing accurate information regarding the Program to Purchasers and Operators and ensuring that all vehicle and/or equipment information and vehicle and/or equipment purchase information is complete and accurate; (4) obtaining a signed Purchaser Participation Agreement, indicating that Purchasers and Operators are aware of and understand their responsibilities under the Program as outlined in the Purchaser Participation Agreement, including the requirement (if applicable) to scrap one internal combustion engine (ICE) vehicle for each vehicle purchased using a NYSBIP voucher, in accordance with the terms set out in the Implementation Manual and the Purchaser Participation Agreement (5) providing accurate documentation pertaining to Vehicle Eligibility Applications; (6) reducing the full approved voucher amount from the purchase price at the time the Contractor sells the vehicle or equipment to a Purchaser; (7) providing accurate and complete documentation of the purchase and corresponding vehicle scrappage (if applicable) to NYSERDA and the Voucher Help Center (VHC); (8) providing updated information for the Purchaser, Operator, and/or vehicles and/or equipment which are the subject of a NYSBIP voucher, among other information to NYSERDA or its designee, as may be required or requested; (9) obtaining NYSERDA approval of Voucher Applications, in accordance with the requirements of the Program as described in the Implementation Manual; and (10) making Program-related records available for review during the first five years after purchase.

Contractors will be contacted about Voucher Applications that are incomplete or missing required documentation and will be required to submit proper documentation prior to voucher approval. The Contractor may reapply to the Program if a Voucher Application is rejected because it is incomplete or missing required documentation (if the purchased vehicle(s) still meet all eligibility rules for the Program). In no case will a vehicle that has already been purchased and delivered to the fleet prior to receiving approval of a complete Voucher Application be eligible for a voucher incentive. A voucher application does not hold funds for a purchase. Only voucher approval reserves incentive funds for the purchase.

4. Indemnification

The Contractor shall protect, indemnify, and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the Contractor's or its subcontractor's participation in the Program, including, without limitation, Contractor's sales of vehicles in association therewith. The obligations of the Contractor under this section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

5. 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 Contractor's reliance on warranties is limited to any warranties that may arise from, or be provided by other vendors or contractors etc.

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

6. Limit of Incentive Payments

It is understood that the Program has limited funds, and that voucher approval is contingent upon availability of Program funding. Only a voucher approval reserves Program funding for a purchase. NYSEDA reserves the right to stop approving Voucher Applications for any reason, at any time, without notice.

7. Termination of Agreement

This Agreement is completely voluntary and may be terminated with written notice at any time or for any reason by either NYSEDA or the Contractor. Sections 4, 5, 8, 10, 11, 12 shall survive termination of this Agreement.

8. Release by the Contractor

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

9. Contractor Approval

NYSEDA has the right not to allow a Contractor to participate in the Program or to ban any Contractor from future participation in the Program for failure to meet any of the terms and conditions in this agreement, the requirements of the NYBIP Implementation Manual, or other applicable requirements of the Program, in addition to any other legal remedies available under law.

10. Audit

The Contractor shall keep, maintain, and preserve written records of any and all vehicle and equipment purchase(s) under this Program for a period of five years after receipt of the incentives for such purchase and provide NYSEDA or its designee with the records within ten days of its request. These records include but are not limited to the vehicle or equipment invoice, proof of purchase, New York State Department of Motor Vehicle records, vehicle or equipment payment information and related bank records, purchaser fleet information, and copies of sale for eligible vehicle sales. NYSEDA shall have the right from time to time and at all reasonable times during this period to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved. Any payment made under this Agreement shall be subject to retroactive reduction for amounts included therein that are found by NYSEDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSEDA not to constitute an allowable change or cost hereafter.

11. Additional Provisions for Contractor Employees

a) **Relationship of the Parties.** It is understood and agreed that the personnel furnished by the Contractor to perform the services stipulated in this Agreement, shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSEDA's employee(s) or agent(s), and shall remain the employees of the 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 NYSEDA and the Contractor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement,

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vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power, or authority to obligate or bind the other in any manner not specified in this Agreement.

b) **No Benefits.** Contractor agrees that if the personnel furnished by the Contractor are determined to be “leased employees” within the meaning of section 414(n) of the Internal Revenue Code, 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. 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.

c) **Notification of Claims/Events.** 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, Contractor and/or Contractor’s personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, 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 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.

12. Publicity

a) The Contractor shall collaborate with NYSERDA's Director of Communications, at least 10 business days in advance, to prepare any press release and to plan for any news conference concerning work related to the Program. In addition, the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which work related to this Program, including media regarding the vehicles for which the purchase was facilitated using vouchers, is referred to or discussed.

b) The Contractor shall not use NYSERDA’s corporate name, logo, identity, any affiliation, or any related logo, without NYSERDA’s prior written consent.

13. Taxes

NYSERDA will be issuing a 1099 for the voucher incentives paid to Contractor. Incentives may be considered taxable income by the U.S. Internal Revenue Service and the New York State Department of Taxation and Finance. It shall be the sole responsibility of the Contractor to seek professional advice and determine the tax consequences of the reimbursement of this incentive.

14. Conflicting Terms

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

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



15. Termination from the Program

A Contractor may be terminated from the Program for reasons including, but not limited to, if they:

- Submit falsified documents or unauthorized signatures to the Program.
- Are in violation of Program rules or the Contractor Agreement.
- Commit illegal actions, or has principal who commits illegal actions, while participating in the Program.

Contractors in terminated status are prohibited from participation in this or other NYSEDA programs. NYSEDA may, if appropriate, notify the New York State Attorney General, the New York State Department of Labor, the Better Business Bureau, or others, of the decision to terminate the Contractor from the program. Nothing in this process relieves the Contractor of the responsibility to fulfill any remaining obligation to the Program or its customers, as specified by NYSEDA.

EXHIBIT A

GENERAL CONDITIONS

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

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

2. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the 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.

3. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither 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 NYSEDA of any NYSEDA-approved sums due and owing for work done upon the project.

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

5. 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).

6. 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.

7. 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

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.ny.gov/about/foil2.html> and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>).

8. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA’s obligation to pay any invoices submitted by 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.

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

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

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

12. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules (“CPLR”), 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.

13. 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.

14. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and

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all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

15. 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 NYSEKDA.

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

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
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
<http://www.empire.state.ny.us>

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.

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

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

19. PROCUREMENT LOBBYING. To the extent this Agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the 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, NYSEKDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

20. 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 NYSEKDA 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 NYSEKDA with a completed Form ST-220-CA.

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

NYSEDA 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.

21. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of [section 165-a of the State Finance Law](https://ogs.ny.gov/iran-divestment-act-2012) (See <https://ogs.ny.gov/iran-divestment-act-2012>).

22. DISCLOSURE REQUIREMENT. The Contractor shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a Contractor is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSEDA after the execution of this Agreement, NYSEDA may terminate this Agreement; the Contractor may be subject to penalties for violation of any law, which may apply in the particular circumstances. Contractors must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

23. 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.

EXHIBIT B

PART 504

PROMPT PAYMENT POLICY STATEMENT

Section 504. Purpose and applicability.

(a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:

- (1) under the Eminent Domain Procedure Law;
- (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
- (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
- (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
- (5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section 504.2 Definitions. As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Authority" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between the Authority and a Contractor.

(c) "Contractor" means any person, partnership, private corporation, or association:

(1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

(2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or

(3) rendering or providing services to the Authority pursuant to a contract.

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

(e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a Contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the

Contractor which have not been properly discharged, waived or released.

(g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.

(h) "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 Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.

(i) "Proper invoice" means a written request for a contract 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 the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(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, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

(ii) if a contract 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 contract 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 the Authority for the portion working, completed or delivered, the Authority 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.

(k) "Set-off" means the reduction by the Authority of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4

and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504. Payment procedures.

(a) Unless otherwise specified by a contract provision, 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 the Authority.

(b) The Authority shall notify the Contractor within 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; and
- (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 the Authority fails to notify a Contractor of a defect or impropriety within the fifteen 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 the Authority 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, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

Section 504.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

(a) If the case of a payment which a contract provides 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 the contract or other State or Federal mandate has not been submitted to the Authority 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 the Authority

and the date when the Authority 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 the contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority 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, the Authority 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 the Authority 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 the Authority, 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 the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to an Contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. 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.

Section 504.7 Sources of funds to pay interest. Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing

pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a Contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. 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 address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that the Authority'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 30 working days.

Section 504.10 Judicial Review. Any determination made by the Authority pursuant to this Part which 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 Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a Contractor pursuant to this Part 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 the Authority 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.

Section 504.12 Amendments. These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.