



**NYSERDA**

# **Cooperative Advertising and Training for Clean Heating and Cooling Partners (PON 3694) Program Manual**

**Version 2.0**

## **NYSERDA's Promise to New Yorkers:**

NYSERDA provides resources, expertise, and objective information so New Yorkers can make confident, informed energy decisions.

### **Mission Statement:**

Advance innovative energy solutions in ways that improve New York's economy and environment.

### **Vision Statement:**

Serve as a catalyst – advancing energy innovation, technology, and investment; transforming New York's economy; and empowering people to choose clean and efficient energy as part of their everyday lives.

# **Cooperative Advertising and Training for Clean Heating and Cooling Partners (PON 3694) Program Manual**

*Version 2.0*

Prepared by:

**New York State Energy and Research Development Authority**

Albany, NY

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# **1 Program Summary**

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NYSERDA's Cooperative Advertising and Training for Clean Heating and Cooling Partners provides cost-sharing incentives to promote eligible Clean Heating and Cooling technologies including cold-climate air-source heat pumps (ASHPs), ground-source heat pumps (GSHPs), and high-efficiency low-emission wood heating systems. The cooperative advertising and training (co-op) funds can also be used to promote industry focused sales, design and/or installation training. This program is intended to raise awareness and promote the availability and adoption of Clean Heating and Cooling equipment.

NYSERDA is seeking effective educational and marketing efforts that are both impactful and cost-effective. NYSERDA will review each application to ensure that the educational, marketing, or sales, design and/or installation training activities complement the intentions of the program.

All applications must demonstrate the ability to influence and educate the market on the benefits of Clean Heating and Cooling technologies, while eligible trainings must focus on sales, design, and/or proper installation of Clean Heating and Cooling technologies. NYSERDA will evaluate applications based on cost-effectiveness, reach/impact, and the overall quality of the content.

## **1.1 Incentive Information, Caps, and Limitations**

NYSERDA will pay up to 50 percent of the total cost of any approved co-op activities with an annual maximum incentive cap of \$50,000 per participant. The annual incentive cap is initiated each calendar year (January 1<sup>st</sup>) and any unused/remaining incentives cannot be carried over from the previous year. Incentives are available on a first-come, first-served basis through December 31, 2020 or until funds are expended, whichever comes first.

The annual incentive cap is tied to the Clean Heating and Cooling partner's business or company. It is not based on number of stores/locations owned by that partner. For instance, if a Clean Heating and Cooling distributor owns one store and another owns 20, the annual incentive cap for both distributors is \$50,000.

NYSERDA may opt to fund co-op applications at a level below 50 percent of the total cost of the activity or reject the application entirely based on limited funding remaining. NYSERDA also reserves the right to provide less than 50 percent of cost-share incentive based on the impact, cost effectiveness, reach, and educational content of the proposed co-op activity. For example, if an applicant applies for co-op incentives to develop and distribute a 10-page circular and only one page is dedicated to ASHP content, NYSERDA will only pay for the portion of the circular that addresses ASHP technology.

NYSERDA will not provide co-op incentives for any activities that do not specifically address eligible Clean Heating and Cooling technologies. NYSERDA will not provide any cost-share funds for activities that include among others:

- Alcohol
- Staff bonuses or awards
- Sweepstakes/contests/giveaways
- Talent fees
- Product Catalogs
- Website redesign, revisions, maintenance, or hosting fees.

NYSERDA reserves the right to reject any co-op activity for any reason, including, but not limited to:

- Failure to meet the eligibility requirements listed in Section 2
- Insufficient educational and benefit messaging of eligible technology
- Insufficient back-up documentation, such as billing estimate, statement, invoice, sample creative, or ad copy.

## 2 Eligibility and Requirements

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### 2.1 Eligible participants

In order to apply, Program participants must be: (1) distributors or vendors of eligible Clean Heating and Cooling equipment<sup>1</sup> who demonstrate that they sell eligible Clean Heating and Cooling technologies in New York State or (2) Clean Heating and Cooling contractors who have an executed partnership agreement through the Air-Source Heat Pump Program (PON 3653) , Ground-Source Heat Pump Rebate (PON 3620), and/or Renewable Heat New York and are Participating Installers in good standing within the aforementioned program(s). Clean Heating and Cooling technology manufacturers can only apply for related sales, design and/or installation training. Clean Heating and Cooling manufacturers must demonstrate they sell NYSEERDA program-qualified ASHP GSHP, or high-efficiency low-emission wood heating systems to participate.

For Clean Heating and Cooling contractors or other parties interested in becoming a Participating Installer in the above referenced programs, please visit the following pages:

- Air-Source Heat Pump Program ([www.nyserda.ny.gov/ashp](http://www.nyserda.ny.gov/ashp))
- Ground-Source Heat Pump Rebate Program Installer ([nyserda.ny.gov/All-Programs/Programs/Become-a-Contractor/Renewable-Heating-and-Cooling/Ground-Source-Heat-Pump-Installers](http://nyserda.ny.gov/All-Programs/Programs/Become-a-Contractor/Renewable-Heating-and-Cooling/Ground-Source-Heat-Pump-Installers))
- Renewable Heat New York ([nyserda.ny.gov/All-Programs/Programs/Renewable-Heat-NY](http://nyserda.ny.gov/All-Programs/Programs/Renewable-Heat-NY))

Participants must have read and agree to be bound by the terms of this Co-op Advertising and Training Program Manual (Program Manual), including the Terms and Conditions attached hereto.

### 2.2 Geographic requirements

Eligible co-op activities must take place in the System Benefits Charge (SBC) service territory of New York State. SBC service territory covers customers of New York's six investor-owned utilities: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc (ConEd), Orange

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<sup>1</sup> Companies with the demonstrated capability to deliver bulk premium wood pellets will be considered as eligible participants. Providers of bagged wood pellets will not be considered as eligible participants. Premium wood pellets are 100% wood composition with no construction or demolition debris such as pressure treated or painted wood (which may contain heavy metals such as copper, chromium, arsenic, lead and cadmium) or plastic binders or fillers. Pellets must have a calorific value of no less than 8000 Btu/lb, low ash content (<1%), low moisture content (<8%), chlorides less than 300 ppm and no other additives (0%).

& Rockland Utilities, Inc., National Grid, Rochester Gas and Electric Corporation, and New York State Electric & Gas (NYSEG) Corporation.

NYSERDA will not provide cooperative advertising and promotion funds for participants located outside a SBC-service territory, such as Long Island, unless the participant can demonstrate that the co-op activity occurs in a SBC territory. Clean Heating and Cooling participants with anticipated activities in Long Island are encouraged to check with PSEG Long Island for similar offerings.

## **2.3 Eligible technology**

Only co-op activities advertising and promoting technologies that are eligible under the Air-Source Heat Pump Program (PON 3653) Ground Source Heat Pump Rebate (PON 3620) program, and Renewable Heat New York.

Additional Clean Heating and Cooling technologies may be added to the program in the future.

## **2.4 Requirements for advertising and promotion**

The following advertising and promotion activities are eligible for the co-op incentive:

- Print advertising (Newspapers, Tabloids, and Magazines)
  - Quarter page or larger
  - Newspaper or magazine insert
- Collateral materials (flyers, brochures, and posters)
- Direct mail
- Circulars or Inserts
- Outdoor Advertising (billboard/outdoor advertising and sponsorship signage)
- Radio and podcast advertising
- Television advertising
- Online advertising
  - Pay-per-click search and social media advertisements, i.e. Facebook ads
  - Banner and pop-up advertising
- Email blast marketing (i.e. purchasing targeted e-mail lists)
- Industry trade shows and conferences in CEF/SBC service territory (includes mobile demonstrations or showroom displays)
  - In-store or community events in CEF/SBC service territory
- Sales, design and/or installation training



Below are the minimum requirements for each type of activity eligible for cooperative advertising and promotion incentives.

| Activity  | Minimum Requirements   |
|---|--|
| Newspapers, Tabloids, and Magazines   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Publication circulation greater than 5,000, except for industry newsletters and trade magazines</li> <li><input type="checkbox"/> ¼" x 5 ½" – minimum advertisement size (NYSERDA will not pay for multiple advertisements placed by the same partner in the same issue of the publication)</li> <li><input type="checkbox"/> Provide a copy or mock-up of the advertisement and feature at least one eligible product(s)</li> <li><input type="checkbox"/> Newspaper or magazine ad must contain educational information on the eligible product(s), i.e. energy savings, comfort, convenience</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing material, including creative, labor, and printing costs</li> <li><input type="checkbox"/> Comply with logo requirements in Section 5, if using NYSERDA logo</li> </ul> |
| Collateral Material ( <b>brochures, flyers, fact sheets, case studies, and posters*</b> )<br><br>*Does not include product catalogs | <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide an overview of how and where the material will be used</li> <li><input type="checkbox"/> Provide a copy or mock-up of the material and must feature at least one eligible product with the model number included in the description</li> <li><input type="checkbox"/> Contain educational information on the eligible product(s), i.e. energy savings, comfort, convenience</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing material costs, including creative, labor, and printing costs</li> <li><input type="checkbox"/> Comply with logo requirements in Section 5, if using NYSERDA logo</li> </ul>   |
| Direct Mail<br>( <b>postcards, letters (8.5" x 11"), flyers, pamphlets, and brochures</b> )   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide an overview of how and where the material will be used</li> <li><input type="checkbox"/> Minimum distribution of at least 200 pieces</li> <li><input type="checkbox"/> 3" x 5" minimum postcards size</li> <li><input type="checkbox"/> Provide a copy or mock-up of the direct mail piece</li> <li><input type="checkbox"/> Direct mail must contain educational information on the eligible product(s) and the model number(s) in the description</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing the cost of acquiring targeted addresses, material costs, including the creative, labor, and printing costs</li> <li><input type="checkbox"/> Comply with logo requirements in Section 5, if using NYSERDA logo</li> </ul>   |
| Circulars or Inserts  | <ul style="list-style-type: none"> <li><input type="checkbox"/> Minimum quantity 1,000</li> <li><input type="checkbox"/> Provide a copy or mock-up of the advertisement/insert/circular and feature at least one eligible product</li> <li><input type="checkbox"/> Contain educational information on eligible product(s)</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing material costs, including the creative, labor, and printing costs</li> <li><input type="checkbox"/> Comply with logo requirements in Section 5, if using NYSERDA logo</li> </ul>  |

|   |   |
|---|---|
| <p>Outdoor Advertising (billboards, storefront signs, banners, and bulk wood pellet storage bins)</p> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Copy of the advertisement must include at least one eligible product</li> <li><input type="checkbox"/> Contain educational information, benefits or promotional offer of an eligible product(s)</li> <li><input type="checkbox"/> If NYSERDA logo is used, it must include "Supported by NYSERDA" logo (logo should be 10-15% of overall sq. footage) in blue or black and white only (and must contrast sufficiently with background)</li> <li><input type="checkbox"/> Identify display location and length of time</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing costs for creative, printing, and placement.</li> </ul>   |
| <p>Radio (terrestrial, satellite, and podcasts)</p>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Submit radio script or spot for pre-approval. You will be notified of approval or of necessary changes required to receive approval within ten business days of receipt of application</li> <li><input type="checkbox"/> 30-second spot minimum length</li> <li><input type="checkbox"/> Identify station list and timing of spots</li> <li><input type="checkbox"/> Identify reach and total impressions</li> <li><input type="checkbox"/> Contain educational information, benefits or promotional offer on eligible product(s)</li> <li><input type="checkbox"/> Feature 12 seconds of eligible product(s) educational information in 30-second spots</li> <li><input type="checkbox"/> Feature 24 seconds of eligible product(s) educational information in 60-second spots</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing costs, including the cost of the creative and airtime</li> </ul>  |
| <p>Television</p>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Submit for pre-approval at least 60 days before commercial production</li> <li><input type="checkbox"/> Submit script, storyboard, at the time of application submission</li> <li><input type="checkbox"/> Identify station list and timing of spots</li> <li><input type="checkbox"/> Identify reach and total impressions</li> <li><input type="checkbox"/> <b>Feature, on screen, an eligible product(s)</b></li> <li><input type="checkbox"/> Contain educational information, benefits or promotional offer on eligible product(s)</li> <li><input type="checkbox"/> If you use the NYSERDA logo, for 30-second spot logo size must be clearly visible and legible for minimum 10-second duration</li> <li><input type="checkbox"/> If you use the NYSERDA logo, for 60-second spot, the logo size must be clearly visible and legible for minimum 20-second duration</li> <li><input type="checkbox"/> Feature 12 seconds of educational information in 30-second spots</li> <li><input type="checkbox"/> Feature 24 seconds of educational information in 60-second spots</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing material costs, including the creative and airtime.</li> </ul> |

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|---|---|
| <b>Online Advertising</b> (paid searches, pay per click, online ads such as banners, pop-ups, etc.),                                      | <ul style="list-style-type: none"> <li><input type="checkbox"/> Submit creative elements for banner advertisements</li> <li><input type="checkbox"/> Drive click-through traffic to eligible educational or promotional web content</li> <li><input type="checkbox"/> Include description of the activity and anticipated reach impressions</li> <li><input type="checkbox"/> Comply with logo requirements in Section 5, if using NYSERDA logo</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing costs for creative and placement</li> </ul>   |
| <b>Email Blasts</b> (purchase of email lists)   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Focus email content on eligible product(s) benefits, offers, or promotions</li> <li><input type="checkbox"/> Target minimum of 50 e-mail addresses</li> <li><input type="checkbox"/> Provide a draft copy of the email that will be sent</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing costs for email blast, including the cost of acquiring the e-mail list, labor, and any creative featured in the e-mail. (NYSERDA will not pay for e-mail blasts unless the participant demonstrates there is a cost for acquiring an email list)</li> <li><input type="checkbox"/> Comply with logo requirements in Section 5, if using NYSERDA logo</li> </ul>  |
| <b>Event</b> (industry trade shows, conferences, in-store and/or community events, as well as mobile demonstrations or showroom displays) | <ul style="list-style-type: none"> <li><input type="checkbox"/> Submit overview of the event, including anticipated attendance or foot traffic, and description of how eligible product(s) will be promoted</li> <li><input type="checkbox"/> Display educational materials related to eligible product(s)</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing costs associated with the event</li> </ul>   |
| <b>Sales, design and/or Installation Training</b>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide a brief overview of the training including goals and objectives, location, date, promotion plan and anticipated attendance</li> <li><input type="checkbox"/> Include content on NYSERDA's eligible product(s) offerings</li> <li><input type="checkbox"/> Must solely focus on eligible product(s), whether training covers sales, design, or installation of eligible product(s)</li> <li><input type="checkbox"/> Provide a copy of the training's agenda, including presentations and/or curriculum overview</li> <li><input type="checkbox"/> Back-up documentation detailing and itemizing costs associated with the training, including promotion, food, classroom materials, and/or training curriculum</li> </ul> |

## 2.5 Eligible sales, design and installation training activities

Eligible sales, design and installation training activities include:

- Sales training for eligible product(s) (implemented by manufacturer or distributor)
- Design training for eligible product(s) (implemented by manufacturer or distributor)
- Installation training for eligible product(s) (implemented by manufacturer or distributor)
- Online training, including webinars that share best practices, latest research, and/or industry-accepted tools and resources for eligible product(s)
- Mobile or portable training units (this includes equipment that provides hands-on training related to ASHPs, GSHPs, and/or high-efficiency low-emission wood heating systems installation)

- Construction of training facilities (incentive only available space/work areas specific to Clean Heating and Cooling technologies training)
- Other eligible training costs that are eligible include: food/catering at the training site, participant lodging, instructor fees/lodging, classroom space, and training materials.

On-site trainings must include at least four or more attendees to be considered for co-op incentives. NYSERDA will not pay for one-on-one trainings or for classes with less than four attendees.

Clean Heating and Cooling technology manufacturers are only eligible to apply for cost-share of related sales, design and/or installation training.

## **2.6 Education Requirements**

Education about eligible technologies and their related benefits is an important requirement. To be eligible for co-op activity incentives, all advertisements and promotions must include educational information about eligible products. The goal of this program is to promote the use of Clean Heating and Cooling technologies, so the messaging should promote the benefits, such as energy savings, cost-savings, environmental benefits, comfort, and/or convenience.

The educational content will be verified and/or revised by NYSERDA. Any proposed sales and installation training activities must focus on an eligible Clean Heating and Cooling technology and must include a general overview of NYSERDA's Air-Source Heat Pump Program, Ground-Source Heat Pump Rebate and/or Renewable Heat New York. Participants must demonstrate their qualifications to perform any training, credentials and experience with Clean Heating and Cooling technologies and installation.

### 3 Submitting Your Application

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Submit all co-op advertising, promotions, and/or training activities<sup>2</sup> through the Cooperative Advertising and Training Application ([nyserda.seamlessdocs.com/f/coop\\_project](https://nyserda.seamlessdocs.com/f/coop_project)). After NYSERDA approval, the proposed activity must be implemented within 60 days of the NYSERDA approval date to qualify for reimbursement.

All applications must include an overview of the proposed co-op activity and include educational messaging regarding the benefits of Clean Heating and Cooling technology. The overview should describe how the co-op activity will be executed and how it will increase awareness and adoption of Clean Heating and Cooling technology. Additionally, applications should include sufficient back-up documentation for each cooperative advertising and promotion activity for NYSERDA to determine cost-effectiveness, reach/impact, and educational content. Applicants will not receive reimbursement for marketing and education activities that are not pre-approved by NYSERDA (see sections 2.4 through 2.6).

NYSERDA will review each submission as they are received and will alert the partner whether the proposed activity is approved or rejected. NYSERDA may reject any application for any reason. Generally, NYSERDA will provide feedback within 10 business days on the weaknesses. If those applicants can rectify or improve the proposal, they will be encouraged to revise and re-submit within 10 business days.

NYSERDA will assign a tracking number for participants to reference when submitting for reimbursement. NYSERDA will use the tracking number for all communications related to the co-op activity including resubmissions and other documentations.

Applicants must submit further documentation once the cooperative advertising and promotion activity is successfully completed. NYSERDA reserves the right to withhold the reimbursement until all requested documents are received.

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<sup>2</sup> Participants with multiple co-op activities can submit under a single application as long as the activities are the same (example: A single ad placed in a number of newspapers across New York State). Contact [products@nyserda.ny.gov](mailto:products@nyserda.ny.gov) for guidance on how to submit for multiple activities.

Any Cooperative Advertising and Promotion Application submitted to the program after a funding change will be processed at the new funding level. If the funding level changes between when an applicant submits a co-op application and requests payment, the payment will align with the previous funding level. Applicants are prohibited from cancelling submitted applications and re-applying if the new funding structure would result in a higher amount.

## 4 Invoicing and Reimbursement

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Once the Cooperative Advertising and Promotion Application is approved by NYSERDA, the participant will receive a Payment Request Form ([https://nyserda.seamlessdocs.com/f/coop\\_payment](https://nyserda.seamlessdocs.com/f/coop_payment)) from NYSERDA. Once the co-op activity is successfully completed, the participant must submit the Payment Request Form, invoice and back-up documentation within 60 days of the date of the close of the advertising, promotion, and/or training detailing the date and cost of the activity. Failure to comply with this requirement may result in ineligibility of costs for reimbursements. Participants must meet the eligibility requirements

(Section 2) prior to the advertisement, promotion, or training to be eligible for reimbursement.

Once the advertisement, promotion or training is completed, submit the Payment Request Form (including Tracking Number) with the required documents below for reimbursement.

|   |  |
|---|--|
| <b>Print media</b> (newspaper, magazines, direct mail postcards, inserts, or circulars) | <ul style="list-style-type: none"><li><input type="checkbox"/> 1 copy of the original invoice</li><li><input type="checkbox"/> 1 original tear sheet (or original postcard, calendar, circular, etc.) or entire publication in which the advertisement appears</li><li><input type="checkbox"/> 1 document from the publication that provides the circulation and number of impressions</li></ul>  |
| <b>Signs, Billboards, and Banners</b>   | <ul style="list-style-type: none"><li><input type="checkbox"/> 1 copy of the original invoice</li><li><input type="checkbox"/> 1 photograph of the posted sign, billboard, banner</li></ul>  |
| <b>Radio and Television</b>   | <ul style="list-style-type: none"><li><input type="checkbox"/> 1 copy of the original invoice and the affidavit of airing</li><li><input type="checkbox"/> 1 copy of advertisement (submitted electronically)</li><li><input type="checkbox"/> 1 document from the radio or TV station that provides the viewership, gross impressions and gross rating points</li></ul>   |
| <b>All other advertising or promotions</b>  | <ul style="list-style-type: none"><li><input type="checkbox"/> 1 copy of the original invoice(s) and an itemized breakdown of the costs associated with the activity</li><li><input type="checkbox"/> 2 copies of any collateral material and/or photos of the display or event</li><li><input type="checkbox"/> Documentation of promotion/event outcome including impressions or numbers of viewers or participants and any other relevant information</li><li><input type="checkbox"/> Other documentation that may have been requested in your approval letter</li></ul> |
| <b>Training</b>   | <ul style="list-style-type: none"><li><input type="checkbox"/> 1 copy of invoice that itemizes the cost of the training, including food, training materials, and any other incurred costs</li><li><input type="checkbox"/> 1 copy of the registration list</li></ul>   |

## 5 Logo Requirements and Specifications

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Including the NYSERDA logo in proposed co-op activities is optional and the logo version chosen must correspond with the Clean Heating and Cooling participant's contractual relationship with NYSERDA. If Clean Heating and Cooling participants are interested in co-branding, the participant must follow NYSERDA's logo requirements and specifications. For proposed co-op activities, the participant should indicate where and how the NYSERDA logo will be used. Regardless of whether the advertisement or promotion will be submitted for reimbursement, participants must comply with logo usage requirements. E-mail [products@nyserda.ny.gov](mailto:products@nyserda.ny.gov) to receive EPS or PNG versions of the appropriate NYSERDA Clean Heating and Cooling attribution logo, which is approved for cooperative and promotional activities under this PON. The EPS version is intended for use on print materials, and the PNG may be used with both Microsoft Office and web applications.

Supported Distributors, Manufacturers, and Contractors are participants in the Clean Heating and Cooling Programs, not NYSERDA employees, contractors, partners, or representatives. Participating Distributors, Manufacturers and Contractors, and their employees must, therefore, identify themselves as representatives of their respective company, not as representatives or employees of NYSERDA. Participating Distributors, Manufacturers, and Contractors may use the Attribution logo only under the following terms:

- Only approved Participating Distributors, Manufacturers, and Contractors who have a current, executed Participation Agreement with NYSERDA are authorized to use the Attribution logo.
- Participating Distributors, Manufacturers, and Contractors can only identify themselves with the appropriate Clean Heating and Cooling Programs Attribution Logo on marketing and promotional materials related to NYSERDA's Clean Heating and Cooling Programs, such as agendas, newsletters, and event-related materials.

### Approved Clean Heating and Cooling Programs Logo Specifications



- The NYSERDA logo may not be manipulated, stretched, or skewed in any manner; The proportions must be maintained at all times. The EPS version is a 4-color build vector file. If printing is done by a commercial printer and a spot-color logo file is required, contact NYSERDA's Marketing Department to request that version. The Pantone color of the logo is PMS 307.



- If an alternate version of the logo is required, include specific information about the layout space in your request, to receive the appropriate version. There are two alternate versions of the NYSERDA logo: white-reversed and one-color black. NYSERDA does not allow other agencies to create alternate versions of our logo.
- NYSERDA requires that the Attribution logo be a minimum of 2.25" wide in order to ensure readability. If space requirements do not allow the logo to be 2.25", contact Diane Welch at (518) 862-1090, extension 3276 to discuss options.
- The Attribution logo may be used on the Participating Distributor, Manufacturer or Contractor's website, but only on pages that speak specifically to NYSERDA's Clean Heating and Cooling programs. It cannot be used in the overarching website shell.
- Participating Distributors, Manufacturers and Contractors cannot use the Attribution logo on business cards, self-identifying items (e.g., shirts, pins), or for TV.

## **5.1 Logo Placement**

NYSERDA requires a clear space around the logo in all applications. The clear space is equal to the height of the first letter of the State name (N), in the size the logo is used. This clear space can be white space, background color, or paper color. Text, images, or other logos must not come closer to NYSERDA's logo.

## **5.2 Review and Approval**

If your application is successful and you choose to use the NYSERDA logo, we will review and approve any material containing the Attribution logo prior to publication including print, web, or other media. Contact Scott Smith at (518) 862-1090, extension 3344 or [products@nyserda.ny.gov](mailto:products@nyserda.ny.gov) to arrange alternate means of review.

## **6 Changes to This Solicitation**

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NYSERDA also reserves the right to make changes to the cooperative advertising incentive rate at any time. These changes will be posted on NYSERDA's Cooperative Advertising and Training for Clean Heating and Cooling Partners page. Participants will also be informed of any changes via email. Any Cooperative Advertising and Training Applications submitted to the Program after a funding change will be processed at the new funding level. Applicants are prohibited from cancelling submitted applications and re-applying if the new funding structure would result in a higher amount.

## **7 General Terms and Conditions**

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### **Terms and Conditions**

The participant (Participant) as identified on the Cooperative Advertising and Promotion Application (Application) hereby agrees to be bound by the terms of this Cooperative Advertising and Training for Clean Heating and Cooling Participants Agreement (“Agreement”), including Exhibits A and B attached hereto, and incorporating herein by reference PON 3694 and the Cooperative Advertising and Training for Clean Heating and Cooling Partners Manual (“Manual”), as they may be revised from time to time.

### **Article 1: Participation in the Cooperative Advertising and Training for Clean Heating and Cooling Partners**

Section 1: The Participant agrees that by the act of submitting an application(s) to the Cooperative Advertising and Training for Clean Heating and Cooling Partners Program (Program), the Participant confirms and agrees: (1) that the Participant has read and understands this Agreement and accepts and agrees to abide by the terms and conditions contained herein; (2) that the Participant acknowledges and agrees that the act of submitting an Application(s) signals such agreement that the terms and conditions are binding on the Participant in the same manner, force, and effect as if the Participant had executed this Agreement by signature; (3) that all of the information provided in any Application submitted by the Participant, including any attachments, will be true and accurate, to the best of its knowledge; (4) that any activities for which an Application is submitted by the Participant under the Program shall comply with the requirements of the Program, the applicable Manual, the terms and conditions of this Agreement, and with all accepted industry standards, and best practices. This Agreement does not obligate NYSERDA to make any payment to the Participant.

### **Article 2: Incentive Payments**

Section 1: The amounts, limitations, and availability of incentive funds as defined in the Manual are those that are in effect at the time that NYSERDA receives a complete Application.

Section 2: NYSERDA reserves the right to change the funding amounts or incentive levels as needed. Notice of all such changes will be provided to the Participant via the e-mail address as identified on the Application. Notice of all such changes will also be posted on NYSERDA’s website.

Section 3: NYSERDA will pay up to 50 percent of the cost of approved advertising, marketing, or training activities with an annual maximum cap of \$50,000 for each eligible Participant.

Section 4: Notwithstanding any other provision of this Agreement, NYSERDA reserves the right to deny or alter payment of an incentive, to exercise its Set-Off rights, or to seek reimbursement of incentives paid if, at any time, it learns that the approved promotional activities were not actually performed, were not performed as required under the Program or this Agreement, or were not performed according to the NYSERDA-approved application. NYSERDA may: (a) elect to not pay the incentive; (b) require changes before making any payments; (c) require reimbursement of incentives already paid unless the requested changes are made; (d) withhold approval of Applications for other promotional activities; or (e) exercise its Set-Off rights.

Section 5: Incentive payments payable under this Agreement will be made pursuant to NYSERDA's Prompt Payment Policy as outlined in Exhibit B of this Agreement.

### **Article 3: Insurance Requirements**

Section 1: The Participant, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in this Article. All such insurance shall be evidenced by insurance policies, each of which shall: (1) reference this Agreement; name or be endorsed to cover the Participant as the insured, and NYSERDA and the State of New York as additional insured; and reference all work to be performed under the Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and (3) be reasonably satisfactory to NYSERDA in all other respects.

Section 2: The types and amounts of insurance required to be maintained under this Section are as follows: (1) commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury, sickness, or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster, and (2) Workers Compensation coverage as required by New York State.

Section 3: Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Participant shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Participant shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not accept Applications or make payments under this Agreement without current insurance certificates.

Section 4: In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, the Participant shall deliver to NYSERDA a certified copy of each policy upon request.

Section 5: Within five working days, or contemporaneously with the requirements of each insurance policy, the Participant shall notify NYSERDA in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Participant, any non-customer party to the applicable customer agreement or NYSERDA.

## **Article 4: Indemnification**

The Participant 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, experts' and/or attorneys' fees and expenses) imposed upon, incurred by, or asserted against, NYSERDA or the State of New York resulting from, arising out of or relating to the Participants or Participant's subcontractors' performance of this Agreement. The obligations of the Participant's 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.

## **Article 5: Miscellaneous**

Section 1: NYSERDA does not endorse, guarantee, or warrant any particular manufacturer, product, or the Participant, and NYSERDA disavows and provides no warranties, expressed or implied, for any product or services that may be rendered hereunder. The Participant reliance on warranties is limited to any warranties that may arise from, or be provided by, contractors, vendors, manufacturers, etc.

Section 2. The status of the Participant under this Agreement shall be that of an independent contractor and not that of an agent. In accordance with such status, the Participant and its respective officers, agents, employees, subcontractors, representatives, and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status. By reason of this Agreement, the Participant shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives, or servants of NYSERDA nor make any claim, demand, or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and the Participant for any reason, including but not limited to unemployment, workers' compensation, employee benefits, vicarious liability, professional liability coverage or indemnification. No party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement. The Participant expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, the Participant, subcontractors, vendors and/or the Participant personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, the Participant 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 if this Agreement should terminate for any reason.

Section 3: The Participant shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning Program activities.

Section 4: This Agreement does not commit NYSERDA to approve any Application, pay any costs incurred in preparing an Application, or procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all Applications received, to negotiate with all qualified sources, or to cancel, in part or in its entirety, the Program when it is in NYSERDA's best interest.

Section 5: NYSERDA shall have no liability under this Agreement to the Participant or to anyone else beyond the funds actually paid to NYSERDA by third parties, which would fund this Agreement.

# Exhibit A

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## 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.ny.gov/about/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  
<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.

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:

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).

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).

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/regs/ida.asp](http://www.ogs.ny.gov/about/regs/ida.asp)).

# Exhibit B

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## NYSERDA PROMPT PAYMENT POLICY STATEMENT

### **504.1. Purpose and Applicability.**

- (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>3</sup>
- (b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

### **504.2. Definitions.**

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

- (a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.
- (b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.
- (c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.
- (d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

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<sup>3</sup>

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

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

(f) “Proper Invoice” means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA’s Controller, marked “Attention: Accounts Payable,” at the Designated Payment Office.

(g)(1) “Receipt of an Invoice” means:

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

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

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

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

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) “Set-off” means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

### **504.3. Prompt Payment Schedule.**

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

### **504.4. Payment Procedures.**

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

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

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

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

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

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



## **504.5. Exceptions and Extension of Payment Due Date.**

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

- (a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.
- (b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.
- (c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.
- (d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

#### **504.6. Interest Eligibility and Computation.**

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

#### **504.7. Sources of Funds to Pay Interest.**

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

#### **504.8. Incorporation of Prompt Payment Policy Statement into Contracts.**

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

#### **504.9. Notice of Objection.**

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

#### **504.10. Judicial Review.**

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

#### **504.11. Court Action or Other Legal Processes.**

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

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



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**New York State  
Energy Research and  
Development Authority**

17 Columbia Circle  
Albany, NY 12203-6399

**toll free:** 866-NYSERDA  
**local:** 518-862-1090  
**fax:** 518-862-1091

[info@nyserda.ny.gov](mailto:info@nyserda.ny.gov)  
[nyserda.ny.gov](http://nyserda.ny.gov)



**NYSERDA**

**State of New York**

Andrew M. Cuomo, Governor

**New York State Energy Research and Development Authority**

Richard L. Kauffman, Chair | Alicia Barton, President and CEO