

**Terms and Conditions**

Program Opportunity Notice (PON) 3717

TERMS AND CONDITIONS

New York State Energy Research and Development Authority's (NYSERDA) Low-rise Residential New Construction Program (LR NCP) incorporates support for the achievement of increased levels of energy performance, up to and inclusive of homes or dwelling units that are designed and constructed to achieve net zero energy performance.

This Terms and Conditions Agreement ("Agreement") establishes the requirements for Applicants to participate in LR NCP. The Applicant must secure and maintain the services of an Environmental Protection Agency (EPA)-approved ENERGY STAR Builder and a RESNET-certified Home Energy Rater (Rater). Additionally, the Applicant (or its designee) may also be required to secure the services of a qualified HVAC contractor per EPA ENERGY STAR requirements. The Applicant, the ENERGY STAR Builder and their chosen Rater must verify LR NCP requirements are met for any project where LR NCP incentives are sought. Requirements for accessing LR NCP incentives are detailed in Program Opportunity Notice (PON) 3717 Program Summary.

The Applicant will be responsible for ensuring that each dwelling unit receiving incentives will be constructed and in compliance with the current EPA ENERGY STAR Partnership Agreement, RESNET Standards, and all LR NCP requirements.

1. The Applicant acknowledges that these Terms and Conditions are part of a project application being submitted by the Applicant to participate in the Low-rise Residential New Construction Program (LR NCP) administered by NYSERDA.

2. Eligibility:

For the purposes of the LR NCP, low-rise residential new construction is defined as the ground-up new construction of residential dwelling unit(s) contained within buildings of not more than three (3) stories in height. Additionally, residential buildings that are more than three (3) stories in height and determined to be eligible to participate in the EPA's ENERGY STAR Certified Homes Program, will be considered for eligibility on a case-by-case basis. Dwelling units within eligible building types which will be "gut-rehabbed" will also be considered by NYSERDA for eligibility on a case-by-case basis. Gut rehab projects which are not able to meet specific aspects of the EPA ENERGY STAR Certified Homes Program requirements may be eligible to participate and receive NYSERDA incentives. Those gut rehab projects would not be designated as EPA ENERGY STAR Certified Homes but may be eligible for the New York Energy \$mart designation. Technical requirements are provided in more detail within the *LR NCP PON 3717*. Buildings which, per the relevant section of the Building Code of New York State, are defined as Institutional, or are R-1 and primarily transient in nature such as hotels or motels, are not eligible to participate. Customers in areas affected by a utility natural gas moratorium may be eligible for enhanced programs in the recently announced Clean Energy Action Plan. This includes Consolidated Edison Company of New York, Inc., ("Con Ed") customers in Southern Westchester and New York State Electric and Gas Corporation ("NYSEG") customers in Lansing, NY. Please use the tool located at <http://www.nyserdera.ny.gov/action-plan> to determine your eligibility. Sole discretion for determination of eligibility to participate resides with NYSERDA.

To be eligible for LR NCP participation, an Applicant must be, or be capable of and intend to be, a New York State electricity distribution customer of a participating utility company that pays into the System Benefits Charge.

3. **Application Does Not Entitle Applicant to Participate:**

Submission of a project application does not entitle the Applicant to LR NCP participation or incentives.

4. **Application Requirements:**

The Applicant must submit a complete project application through the NYSERDA portal in conjunction with this Agreement to be considered for participation (or through hard copy application as described in PON 3717). If approved, Applicants must notify NYSERDA immediately, through the portal, of any changes or updates to the information in the New Construction Project Application.

NYSERDA is not bound to pay any incentive unless NYSERDA approves the documentation required to be submitted as a condition of the LR NCP. NYSERDA reserves complete discretion to approve or disapprove any documentation. Projects that fail to comply with any LR NCP requirement may forfeit any LR NCP incentives and/or risk termination of the project award letter.

5. **Under this Agreement, the Applicant agrees to:**

- (a) obtain, or hire a Builder with, an approved Partnership Agreement in the EPA ENERGY STAR Certified Homes Program and a Rater affiliated with a RESNET-accredited Provider that has been approved as a Primary Energy Consultant through submission to NYSERDA's Request for Proposal (RFP) 3036, or subsequent contractor solicitation. The Builder and Rater must be integrated into the Applicant's design team to ensure that the design of the project meets LR NCP requirements;
- (b) for a project pursuing the LMI incentive, the Applicant will ensure that the project complies with LMI eligibility requirements contained in the *LR NCP PON 3717*; and,
- (c) acquire and maintain, at its own cost, all permits, licenses, easements, and permissions of every nature necessary to perform the work.

6. **Incentive Payments:**

NYSERDA will arrange to provide incentives as set forth in the fully executed incentive award letter in accordance with the attached Prompt Payment Policy (Exhibit A). Information about the current incentives available is on NYSERDA's website. The fully executed incentive award letter issued by NYSERDA will establish the incentive amount the project will be eligible to request.

- (a) **Per-Dwelling Unit Incentives:** The project's incentives shall be calculated per the *LR NCP PON 3717*, based on the project application submitted by the project's Applicant. Projects that have already initiated construction at the time of application must be able to meet all rating and inspection requirements. If an Applicant elects to change the performance tier it is pursuing prior to the submittal of project deliverables, the Applicant shall notify NYSERDA through the portal via email, as described in the *LR NCP PON 3717*. To change to a higher performance tier, the project must receive explicit approval from NYSERDA.

Upon approval of the Applicant's submission of a project application and all required documents, NYSERDA will issue a fully executed incentive award letter specifying the total incentive amount for which the project is eligible. The fully executed award letter is the final determination of the project's incentive payment amount. NYSERDA's determination of the total incentives available to the Applicant is final.

- (b) **Maximum Incentives** – A project's maximum incentive may not exceed the amount set forth in the executed incentive award letter. To receive the full incentive amount, projects must verify that they have achieved the performance targets specified in their approved performance tier and each submittal must be approved by NYSERDA. If the project does not meet the performance target, the Applicant must contact NYSERDA prior to submittal.

To receive the LMI incentives, a project must qualify as "Low- to Moderate-Income housing" by meeting the documentation requirements, and the Applicant must certify that the project meets the requirements for an LMI project in accordance with the *LR NCP PON 3717*.

- (c) **Incentive Requests for Payment** - Only those incentive requests which are complete, accurate, and submitted within the required timeframe will be accepted and processed. Incentive request and submission requirements are provided within the *LR NCP PON 3717*.

7. LR NCP Changes:

NYSERDA reserves the right to change, modify, or terminate the LR NCP at any time without notice or any liability except as expressly stated herein.

8. Post-Construction Analysis and Follow-Up Visits:

- (a) The Applicant agrees to provide NYSERDA copies of all utility bills showing consumption and cost for electricity, fuel, and water, or provide access to such information using the New Construction Program's Data Release Authorization Form (DRAF) as described in the *LR NCP PON 3717*.
- (b) The Applicant agrees to facilitate access to allow NYSERDA and/or NYSERDA's Designee to make a reasonable number of pre- and post-installation follow-up visits to the project during the implementation of the project work and up to five (5) years following the date of its completion. Such visit(s) will be scheduled with the owner with at least one (1) week notice to the Applicant by NYSERDA.
- (c) The follow-up visit(s) are for evaluation purposes, providing NYSERDA with the opportunity to evaluate the installed project work, and to help determine the actual demand reduction and energy savings.
- (d) The Applicant shall not inhibit or discourage homebuyers or tenants from participating in the Program QA/QC processes and, if requested, shall provide project-related information in a timely manner.

9. Time of the Essence:

Applicant's failure to act within the time required constitutes a breach of the contract. Time is of the essence with respect to all provisions of this Agreement and all exhibits and attachments hereto that specify a time for performance. NYSERDA may, at its discretion, terminate a project for failing to meet project completion deadlines.

10. Confirmation of As-Built Conditions and Construction Requirements:

The project's deliverables must be completed and submitted to NYSERDA for review within sixty (60) days of the completion of the Rater's last Confirmed Home Energy Rating as indicated on the Home Energy Rating Certificate, or within sixty days of the Completion Date identified in NYSERDA's award letter to the project, whichever comes first.

11. Proprietary Information:

It is anticipated that NYSERDA will retain a copy of all materials or reports completed in accordance with this Agreement. The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the Applicant wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exclude it from disclosure, including a written statement of the reasons why the information

should be excluded. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

12. Tax Liability:

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

13. Indemnification:

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

14. No Warranties:

- (a) NYSERDA does not endorse, guarantee, or warrant any manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Applicant's reliance on warranties is limited to any warranties that may arise from, or be provided by, contractors, vendors, etc.
- (b) The Applicant acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering, and construction of the Building or installation of the recommendations made by the Rater, Builder, or Provider is proper or complies with any laws (including patent laws), codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the recommendations made by the Rater, Builder or Provider, or the adequacy or safety of such measures.

15. Limit of Incentive Payments:

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

16. Release by the Applicant:

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

17. Termination:

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

18. Notices:

- (a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be submitted through the portal or by email to ResMFNCP@nyserda.ny.gov
- (b) Notices addressed to Applicant shall be addressed to Applicant at the address supplied in the electronic application.
- (c) Notices shall be deemed given on the date delivered or date of attempted delivery if service is refused. The addresses provided by the Applicant are subject to change at any time during the term of this Agreement if the Party changing the address furnished written notification of the new address in accordance with this section.

19. Modification; Waiver:

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

20. Section Headings; Counterparts:

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

21. Severability; Survival:

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

22. Independent Contractors:

Relationship of the Parties. It is understood and agreed that the personnel furnished by Applicant to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be Applicant's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Applicant, except to the extent required by section 414(n) of the Internal Revenue Code.

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

No Benefits. Applicant agrees that if the personnel furnished by Applicant are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, Applicant 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. Applicant agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.

Notification of Claims/Events. Applicant 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, Applicant and/or Applicant's personnel by any act or omission on the part of NYSERDA or its employees. Accordingly, Applicant 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 Applicant'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.

23. Assignment:

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

24. Audit:

NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and for three (3) years thereafter to inspect and audit all books, accounts and records at the office or offices of the Applicant where they are then being kept, maintained and preserved. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA based on any audit of the Applicant by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

25. Audit Adjustment:

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

26. Executory Clause:

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

27. Governing Law:

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

28. Laws of the State of New York:

The Applicant shall comply with the Standard Clauses for New York State Contracts set forth below:

- (a) NON-DISCRIMINATION REQUIREMENTS. In accordance with 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 Applicant will not discriminate against any employee or

participant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

- (b) **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.
- (c) **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Applicant hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Applicant's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Applicant must promptly notify NYSERDA, in writing, of each change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Applicant will have thirty (30) calendar days after service hereunder is complete in which to respond.
- (d) **CRIMINAL ACTIVITY.** If after the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Applicant or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Applicant'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 after the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Applicant 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 Applicant knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Applicant and its principals. The Applicant or its principals may also be subject to penalties for any violation of law which may apply in the circumstances. For an Applicant, 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.

29. Entire Agreement:

These Terms and Conditions, including Exhibits, constitutes the final, complete and exclusive understanding between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, letters of intent, understandings, negotiations, and discussions of the parties, whether oral or in writing. The Parties have not relied upon any promises, warranties or undertakings other than those expressly set forth in this Agreement.

30. All Legal Provisions Deemed Included:

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

31. Other Legal Requirements:

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

32. Certification

Under penalties of perjury, I certify that:

- (a) The number shown on the application is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- (b) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding because of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- (c) I am a U.S. citizen or other U.S. person (defined below); and
- (d) The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

For the full instructions, please see the IRS Instructions for the Requestor of Form W-9, found here: <https://www.irs.gov/instructions/iw9/ar02.html>

I certify that all information provided in the application, including any attachments, is true and correct to the best of my knowledge. I agree to provide any additional materials NYSERDA may ask for during the review process.

33. Applicant Agreement to Terms and Conditions:

Applicant acknowledges that this application may not be approved if the requirements of the LR NCP are not met and that incentive payments will be contingent upon meeting all program requirements of the LR NCP and the above Terms and Conditions. The Applicant certifies that all information provided in this application, including any attachments, is true and correct to the best of his or her knowledge.

Exhibit A

PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability.

- (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.¹
- (b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

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

- (a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.
- (b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.
- (c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.
- (d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.
- (e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.
- (f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.
- (g)(1) "Receipt of an Invoice" means:
 - (i) if the Payment is one for which an invoice is required, the later of:
 - (a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or
 - (b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.
 - (ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.
- (g)(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.
- (h) "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal

¹ This is only a summary; the full text of Part 504 can be accessed at:
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

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.