

New York State Energy Research and Development Authority

Building Owner Participation Agreement

Resilient & Efficient Decarbonization Initiative – Deep Energy Retrofits

REDi: DEEP program

August 2025

BUILDING OWNER INSTRUCTIONS:

- 1. Read the terms and conditions of this Participation Agreement (Agreement).**
- 2. Determine your authorized signatory.** Only an authorized signatory for your organization can sign the Agreement. An authorized signatory is an individual who has the ability to contractually bind your organization.
- 3. Sign the Participation Agreement** Once you have identified your organization's authorized signatory, that person must sign the Participation Agreement. Signature on the Agreement creates a legally binding agreement with NYSERDA and the signatory's organization, agreeing to all requirements stated within the Agreement.
- 4. Complete the W-9 form.** Send the original copy of the signed and completed Participation Agreement along with the completed W-9 form to NYSERDA attention: Brian Cabezas, Multifamily Residential, 1359 Broadway, 19th Floor, New York, New York 10018 redideep@nyserda.ny.gov or such recipient designated by NYSERDA in writing, with a copy to HPD attention: Jen Leone, Chief Sustainability Officer, Office of Policy and Strategy, 100 Gold Street, New York, New York 10038 leonej@hpd.nyc.gov or such other recipient designated by HPD in writing.

TERMS AND CONDITIONS

This signed Participation Agreement serves as the binding agreement between the undersigned and the New York State Energy Research and Development Authority (NYSERDA) for participation in the NYSERDA/New York City Department of Housing Preservation and Development (HPD) REDI: DEEP program (REDi: DEEP program), in accordance with the terms in the document and the federal Department of Energy (DOE) Inflation Reduction Act (IRA) requirements for the Home Efficiency Rebate (HER) program. Under the REDI: DEEP program, NYSERDA and HPD offer incentives and financing for retrofit designs that will utilize heat pump-based technology for domestic hot water (DHW) heating and/or space heating and cooling, building envelope improvements, along with complementary energy performance improvements reviewed and approved by HPD and NYSERDA. HPD and NYSERDA will determine incentive amounts and review project submittals and requisitions. Upon approval of the final scope of work by NYSERDA and HPD, NYSERDA will issue a Preliminary Incentive Offer Letter which will indicate the final incentive amount for the project.

Project Address: _____

Block(s): _____, Lot(s): _____ ("Project")

1. The undersigned certifies that the project identified above is a multifamily, residential building(s) with five (5) or more units that will enter into a regulatory agreement with HPD and that the project meets the federal DOE affordability eligibility requirement by either:
 - (a) Manual verification that at least 50% of households have incomes <80% of Area Median Income (AMI) OR
 - (b) Establishment of [categorical eligibility](#) as approved by the DOE.
2. By signing this Agreement, the undersigned ("Owner") certifies that it:
 - (a) owns the building(s) comprising the Project which, in whole or in part, will participate in the REDI: DEEP program pursuant to this Agreement, or
 - (b) is controlled by or under common control with the entity that will acquire the Project and participate in the REDI: DEEP program, or
 - (c) has entered into a binding agreement to acquire the Project from its current owner and will participate in the REDI: DEEP program.

In the event that with respect to (a) an entity controlled by or under common control with the undersigned, or with respect to (b) the undersigned does not acquire the Project, this Participation Agreement shall be null and void at the option of NYSERDA.

3. Owner acknowledges that DOE IRA HER program requirements ("DOE requirements") are subject to change and NYSERDA shall communicate, to the best of its ability, what program requirements are applicable and when. Updated program requirements will be shared on the HPD REDI and NYSERDA websites when applicable. At minimum, the Owner agrees to review and adhere to the following:
 - (a) [Home Energy Rebate Administrative and Legal Requirement Document](#)
 - (b) [IRA Home Energy Rebates: Data and Tools Requirements Guide](#)
4. Additional project modeling requirements are listed in the REDI: DEEP Term Sheet.

5. Incentive Amounts:

- (a) Estimated Incentive Amount and Preliminary Incentive Offer Letter:

The estimated incentive amount shall be based on the project's demonstrated ability to reduce energy use by at least 35% with respect to existing conditions and include significant envelope work. NYSERDA shall calculate the estimated incentive amount based on documents submitted by the Owner. The Documents (as defined below) shall be subject to review and approval by NYSERDA to establish the preliminary scope ("Preliminary NYSERDA Scope"). Combined project incentives, from all NYSERDA sources, cannot exceed total project cost and NYSERDA incentives cannot exceed 80% of project cost.

If the Project meets the requirements of the REDi: DEEP program and this Agreement, Owner shall receive a Preliminary Incentive Offer Letter ("PIOL") from NYSERDA, noting the **estimated incentive amount** based on the preliminary scope, and which confirms availability and commitment of funds, subject to the terms in such PIOL and this Participation Agreement.

(b) Final Incentive Amount and Final Incentive Offer Letter:

The Documents (as defined below) shall be subject to review and approval by NYSERDA to establish the final REDi: DEEP scope ("Approved NYSERDA Scope"). Prior to closing of the HPD financing for the Project, NYSERDA will issue a Final Incentive Offer Letter with the final incentive amount noting (a) the total costs of the Approved NYSERDA Scope ("Scope Costs") and (b) the final incentive amount encumbered by NYSERDA ("Final Incentive Amount").

6. Incentive Payment Structure:

NYSERDA funds shall be allocated towards construction and completion of the Approved NYSERDA Scope items, as approved by NYSERDA, and HPD and outlined in the Final Incentive Offer Letter.

An additional amount of funding is available to cover up to 75% of the eligible soft costs or up to \$25,000, whichever is less, and will be available upon project closing once the scope of work and modeled energy savings have been approved by NYSERDA.

Owner acknowledges that payment of the NYSERDA incentive will be made upon NYSERDA's approval of the Approved NYSERDA Scope items in requisitions for the construction in accordance with the terms of the Agreement and the DOE requirements. For requisitions not containing Approved NYSERDA Scope items, no funds will be distributed from NYSERDA.

During construction, NYSERDA will track project progress through the Multifamily Residential Energy Pathways Participating Contractor.

Upon issuance of the Temporary Certificate of Occupancy (TCO), the Owner shall submit to NYSERDA an application for disbursement for completed scope items, which application shall include AIA G704 (Certificate of Substantial Completion) and shall be endorsed by both the general contractor and the Owner (each, a "Requisition"). NYSERDA will approve or reject the Approved NYSERDA Scope items on such Requisition and the amount of payment requested in connection therewith. If a Requisition is approved by NYSERDA, NYSERDA will disburse 95% of total funds to Owner. The remaining 5% of funds will be disbursed at the time after all required remaining documents are submitted and upon completion of all punch-list items along with the Project's final retainage payments.

The NYSERDA incentive will be paid in accordance with the Prompt Pay Policy attached as Exhibit A. The NYSERDA incentive may be subject to retainage to the extent disbursements of the HPD loan or a senior loan to the Project are subject to retainage. Owner acknowledges that a Senior Lender may require that the NYSERDA incentive be serviced by Senior Lender or its designee in the same manner as HPD loan funds or Owner's equity investment in the Project, subject to the laws and regulations that govern NYSERDA funds and procedures.

Owner acknowledges that any changes to the Approved NYSERDA Scope must be reviewed and approved by HPD and NYSERDA, and if so approved, NYSERDA may revise the Final Incentive Amount if a portion of the Approved NYSERDA Scope is removed or changed.

7. As part of the program application process leading to a NYSERDA PIOL, the Owner shall submit to NYSERDA the following documents:
- i. Completed W-9 form.
 - ii. Income verification documentation.

- iii. Signed Data Release Authorization Form(s) (DRAFTs) permitting NYSERDA to access and utilize your past, current, and 120-month future energy/resource billing and consumption information/data so that it can effectively track the performance of your building's energy utilization systems to maximize their potential.
 - iv. The Owner agrees to provide NYSERDA copies of utility bills for the past 12 to 24 months showing consumption and cost for electricity, fuel, and water, and provide access to such information using the Program's Data Release Authorization Form (DRAFT). Such bills shall cover all common areas of the building and a sample of apartments. In addition, a list of all the apartments and their type (e.g. studio, large 1 bedroom) shall be provided. The apartment sample shall consist of at least 10% of the apartments with no fewer than seven (7) apartments. Of the 10% sample, each line of apartments must be represented. The DRAFT authorizes NYSERDA to receive data for ten (10) years following execution of the DRAFT.
 - v. Preliminary Proposed Project Scope of Work (SOW) demonstrating intent to meet program requirements, using a NYSERDA-provided Energy Assessment and Scope Tool (EAST).
 - vi. A copy of Owner's contract with a Multifamily Residential Energy Pathways Participating Contractor – Energy Assessor.
- 8. As part of the program application process leading to a NYSERDA Final Incentive Offer Letter, the Owner shall submit to NYSERDA the following documents:
 - i. An Energy Model, demonstrating at least 35% savings compared to existing condition using a modeling protocol approved by NYSERDA
 - ii. A completed [Audit Template](#) that captures the data from an ASHRAE Level II audit that must be performed for a Multifamily Residential Energy Pathways Participating Contractor – Energy Assessor based on ASHRAE/ ACCA Standard 211.
 - iii. A completed Energy Assessment and Scope Tool (EAST) that provides the Project Scope of Work (SOW) for review.
 - iv. HPD Commitment Letter which describes the total funding sources and uses (a draft is sufficient, but a signed copy will need to be provided prior to releasing funds).
 - v. A written commitment (e.g., an HPD Commitment Letter) to abide by a construction schedule that demonstrates that the NYSERDA Approved Scope will be completed within 24 months of construction loan closing, or by the completion date set forth in such commitment, as may be extended by HPD and Senior Lender, if any.
- 9. Prior to NYSERDA disbursement of the NYSERDA incentive, the Owner shall submit to NYSERDA the following documents:
 - (a) Milestone 1: Substantial Completion
 - i. Signed HPD Commitment Letter if not submitted prior to closing
 - ii. An application for disbursement for completed scope items, which application shall include AIA G704 (Certificate of Substantial Completion) and shall be endorsed by both the general contractor and the Owner (each, a "Requisition")
 - iii. Updated SOW to reflect any scope changes during construction (if applicable)
 - iv. Completion of an inspection workbook that details measures installed.
 - v. Updated Cut Sheets for all Approved NYSERDA Scope items
 - vi. Geotagged photos of completed Approved NYSERDA Scope Items using photo template provided by NYSERDA.
 - vii. Proof of commissioning testing on HVAC equipment where HVAC systems are installed.
 - viii. Invoice that shows the specific work performed, the address where the work was performed, the name and contact information for the contractor(s) performing the work, the dates on which the work was performed, the total project cost prior to

the NYSERDA incentives, the NYSERDA incentives and REDi: DEEP financing/funding sources offered by HPD.

- ix. Updated DRAFTs (if applicable)
- x. Additional project documentation, if requested by NYSERDA.

(b) Milestone 2: Final Completion

- i. Final G702/ G703
- ii. Final Passive House Certification (if applicable). Note that failure to achieve final Passive House certification will not forfeit release of remaining funds if every reasonable effort is made to achieve certification and a detailed description of the reasons why the building failed to certify are provided and approved by NYSERDA.

10. Owner Commitments:

- (a) Project must work with an Energy Assessor enrolled within NYSERDA's Multifamily Residential Energy Pathways Participating Contractor Network and subject to the network's requirements in order to complete the energy audit.
- (b) Owner shall cause any lender to the Project to invite NYSERDA to relevant construction progress meetings and shall send to NYSERDA copies of any reports related to project status, allocation of funds, change orders (adds or deducts), cost or time overruns or underruns consistent with those provided to the project's other lenders.
- (c) Owner shall provide notice to NYSERDA of any extension to the completion date granted by HPD or a Senior Lender, if any.
- (d) Owner shall complete a NYSERDA Disclosure Statement that shall describe any potential conflicts of interest and a management plan for dealing with said potential conflicts.
- (e) The Owner hereby agrees to the release of all materials submitted to NYSERDA for open-source publication, e.g. in case studies.
- (f) Owner acknowledges that the NYSERDA incentive will only be released after the financial closing with those additional parties providing project financing.
- (g) Owner acknowledges that the buildings that receive funding under this Agreement will not be eligible for additional funding from utility program funding (such as NYS Clean Heat), Climate Friendly Homes, other HPD REDi initiatives, or other federal grant and rebate programs.
- (h) Owner acknowledges that NYSERDA has permission to study, promote, publish, and generally distribute information, with the exception of any Personal Identifiable Information relating to tenants, about the project publicly for at least ten years and will make it a requirement of any sale agreement transferring control of ownership that new owner abides by this agreement.
- (i) The Owner agrees to provide access to NYSERDA and/or its contractors to make a reasonable number of visits to the Project during the construction phase. Such visit(s) will be scheduled with the Owner with at least one (1) week advance notice to the Owner by NYSERDA. All efforts will be made to schedule these visits to be timed with major construction milestones related to the approved NYSERDA Scope and minimize the number of those required. The purpose of the visit(s) is to provide NYSERDA with an opportunity to evaluate the installed project work for the purposes of evaluating the Qualified Contractor.

11. Post-Construction Analysis and Follow-up Visits:

- (a) Updated DRAFTs, as needed.
- (b) The Owner agrees to provide access to NYSERDA and/or its contractors to make a reasonable number of post-installation follow-up visits to the Project for REDi: DEEP program evaluation purposes. Such visit(s) will be scheduled with the Owner with at least one (1) week advance notice to the Owner by NYSERDA. The purpose of the follow-up visit(s) is to provide NYSERDA with an opportunity to evaluate the installed project work in order to determine the actual demand reduction and energy savings for REDi: DEEP program evaluation purposes.

- (c) The Owner agrees to complete a Consumer Survey, pursuant to DOE IRA HER program requirements, which shall be sent out at least 3 months but not more than six months after project completion.
- (d) The Owner will receive a Post-Installation Certificate from NYSERDA's implementation contractor. The certificate will detail the work performed, equipment and materials installed, and projected energy savings or energy generation to support accurate valuation of the upgrade.
- (e) The Owner agrees to support NYSERDA's program evaluation efforts, which could entail, but is not limited to, providing updates on the building's operations, occupancy rate, and installed measures.

12. Time is of the Essence:

Owner'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 any and all exhibits and attachments hereto that specify a time for performance.

13. Proprietary Information:

It is anticipated that NYSERDA will retain a copy of all materials or reports completed in accordance with these Terms and Conditions. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the Owner 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.

Unless identified as confidential or proprietary by the Participant, information contained in these materials or reports may be used for the purpose of promoting awareness and adoption of energy efficiency strategies, practices, and technologies.

14. Tax Liability:

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

15. Indemnification:

The Owner shall protect, indemnify, and hold harmless HPD, 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 HPD, NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Owner under this section shall survive any expiration or termination of this Agreement.

16. No Warranties:

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

- (c) NYSERDA and the State of New York make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA and the State of New York make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

17. Reservation of Rights to Recapture Funds

The Owner acknowledges that if NYSERDA determines that an Owner has not adhered to the terms and conditions of the REDi: DEEP program for a Project, any NYSERDA incentives paid to the Owner for that Project shall be repaid to, or recaptured by, NYSERDA upon prior approval by HPD and the Senior Lender, if any. Subject to the foregoing, upon notice from NYSERDA, the Owner shall provide NYSERDA direct payment within 30 days for the identified outstanding value of any NYSERDA incentive paid on Projects that do not comply with REDi: DEEP program terms and conditions as identified in this Agreement or in the Program. Subject to the foregoing, failure to repay funds owed to NYSERDA may result in referral of the matter to the Attorney General's Office. NYSERDA shall have the right to seek any other relief that may be appropriate or desirable at law or in equity.

18. Release by the Participant:

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

19. Termination:

This Agreement may be terminated by either party at any time with or without cause, upon 10 days prior written notice.

20. Notices:

- (a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted by any of the following:
- i. via certified or registered United States mail, return receipt requested
 - ii. by personal delivery
 - iii. by expedited delivery service
 - iv. by e-mail

Such notices shall be addressed to NYSERDA at:

New York State Energy Research and Development Authority
Attn: Multifamily Residential Team
1359 Broadway, 19th Floor
New York, NY 10018

Email: redideep@nyserda.ny.gov

Notices addressed to Owner shall be addressed to Owner at the address accompanying its signature below.

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

21. 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.

22. 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.

23. 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 14. 15. 16. 18. 25. 28. 34 and 35 shall survive the expiration or earlier termination of this Agreement.

24. Independent Contractors:

Relationship of the Parties. It is understood and agreed that the personnel furnished by Owner to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be Owner'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 Owner, 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 Owner 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: Owner agrees that if the personnel furnished by Owner are determined to be "leased employees" within the meaning of Section 414(n) of the Internal Revenue Code, Owner 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. Owner 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: Owner 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, Owner and/or Owner's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Owner 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 Owner'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.

25. Assignment:

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

26. Audit:

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

27. Audit Adjustment:

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

28. Executory Clause:

It is understood by and between the parties hereto that this agreement shall be deemed executory only to the extent of the monies available to NYSERDA for the purpose of paying incentives under this Agreement, and no liability on account thereof shall be incurred by NYSERDA beyond monies available for such purpose. This Agreement is subject to the availability of federal funds. In the event that federal funds are unavailable, NYSERDA shall make a reasonable effort to identify alternative funding sources for this project, but reserves the right to terminate this Agreement in accordance with Section 18. Should NYSERDA exercise its right to terminate this Agreement due to the unavailability of funds, the Owner shall have no right to recover from NYSERDA any actual, general, special, incidental, consequential, or any other damages of any description or amount arising out of NYSERDA's termination.

29. 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.

30. Standard Terms and Conditions for All NYSERDA Agreements (Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

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

- a) 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: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (ii) 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: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (ii) 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.

- b) WAGE AND HOURS PROVISIONS. If this is an agreement for a public work covered by Article 8 of the Labor Law or a building service covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, if this is an agreement for a public work or a building service as covered above, or a covered project as defined in Labor Law section 224-a, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.
- c) 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.
- d) 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).
- e) 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.
- f) 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, nonproprietary 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-StateRegulations.aspx>

- g) IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (i) 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.
- (ii) 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.
- h) 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 Section, the terms of this Section shall control.
- i) GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- j) 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.
- k) 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.
- l) 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
- NYSERDA-HPD REDi: DEEP Building Owner Participation Agreement

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.

- m) 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.
- n) 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.
- o) 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:

- i) 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;

- ii) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
 - iii) 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
 - iv) 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.
- p) 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.
- q) 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).
- r) 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.
- s) 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:
- i) 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).
 - ii) 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).
 - iii) 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 (ii) and (iii) 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.

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

- p) COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 ("DERA"), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology ("BART"). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: <https://www.dec.ny.gov/regs/2492.html>.
- q) ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

31. 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.

32. All Legal Provisions Deemed Included:

It is the intent and understanding of the Owner 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 Owner, 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.

33. Other Legal Requirements:

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

34. Owner Agreement to Terms and Conditions:

The undersigned certifies that he or she is authorized to act on behalf of the Owner, and that all information provided in this document, including any attachments, is true and correct to the best of his or her knowledge. The undersigned has read and understands the above Terms and Conditions which are part of this Agreement and agrees on behalf of the Owner to abide by them.

35. NYSERDA Customer Consent Form:

Participant agrees and authorizes the sharing of the participant-customer's information and/or project level information with New York State Department of Public Service Staff and appropriate local utility, including its agents or authorized representatives, in carrying out its responsibilities under New York State Public Service Commission orders. (For clarity, the term project level includes the information based on the scope of the project, including, but not limited to, whole building, building or subsets of the project.)

Customer agrees and authorizes their utility's sharing of the participant-customer's information and/or project-level information with New York State Department of Public Service Staff and NYSERDA,

including its agents or authorized representatives, consistent with NYSERDA's New York State Public Service Commission and statutorily authorized responsibilities, including, but not limited to supporting market development initiatives, and other evaluation and measurement activities. (For clarity, the term project level includes the information based on the scope of the project, including, but not limited to, aggregated and anonymized whole building, building or subsets of the project.)

Participant agrees and authorizes the sharing of the participant-customer's information and/or project level information with New York State Department of Public Service Staff and appropriate local utility, including its agents or authorized representatives, in carrying out its responsibilities under New York State Public Service Commission orders. (For clarity, the term project level includes the information based on the scope of the project, including, but not limited to, whole building, building or subsets of the project.)

36. Federal Regulations and Procedures

This program is funded, in part, with funds provided by the federal government under the Inflation Reduction Act. NYSERDA considers the Contractor to meet the definition of a Subcontractor under NYSERDA's Assistance Agreement with the Department of Energy. As such, NYSERDA is required to comply with DOE and other federal regulations and procedures governing financial awards. The following provisions apply to the work covered under this Agreement:

a. Performance of Work in the United States: All work performed under this Agreement must be performed in the United States. This requirement does not apply to the purchase of supplies and equipment; however, the Contractor should make every effort to purchase supplies and equipment within the United States.

b. Foreign National Participation: If the Contractor anticipates involving foreign nationals in the performance of the Agreement, NYSERDA may be required to provide DOE with specific information about each foreign national to satisfy requirements for foreign national participation. A foreign national is defined as any person who is not a U.S. citizen by birth or naturalization. Contractor shall advise the NYSERDA Project Manager if any foreign nationals will be performing working under this Agreement and shall work with the NYSERDA Project Manager to ensure compliance with this provision.

c. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to NYSERDA who in turn shall report them to DOE and the Regional Office of the Environmental Protection Agency (EPA).

d. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

e. Domestic preferences for procurements - As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

f. Procurement of recovered materials. The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

g. Record Retention. Records related to work funded by the federal award will be required to be kept for 10 years past the final project payment date.

Project Name

Owner Company Name (as listed on W-9 form; must be owner of the subject property)

Signature of Authorized Representative of the Owner

Date

PRINT Name of Authorized Representative

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

Exhibit A
PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability.

- (a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.
- (b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:
 - (1) under the Eminent Domain Procedure Law;
 - (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
 - (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
 - (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
 - (5) if other State or Federal law or rule or regulation specifically requires otherwise.

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

- (a) "Authority" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.
- (c) "Contractor" means any person, Providership, private corporation, or association:
 - (1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or
 - (3) rendering or providing services to the Authority pursuant to a contract.
- (d) "Date of payment" means the date on which the Authority requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a payment.
- (e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.
- (f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.
- (g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.
- (h) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.
- (i) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.
- (j) "Receipt of an invoice" means:
 - (i) if the payment is one for which an invoice is required, the later of:
 - (a) the date on which a proper invoice is actually received in the designated payment office during normal business hours; or

- (b) the date by which, during normal business hours, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.
- (ii) if a contract provides that a payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

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

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

- (a) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date stamped. The invoice shall then promptly be reviewed by the Authority.
- (b) The Authority shall notify the contractor within 15 calendar days after receipt of an invoice of:
 - (1) any defects in the delivered goods, property or services;
 - (2) any defects in the invoice; and
 - (3) suspected improprieties of any kind.
- (c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.
- (d) If the Authority fails to notify a contractor of a defect or impropriety within the fifteen calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the contractor. If the Authority fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.
- (e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

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

- (a) If the case of a payment which a contract provides will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by the contract or other State or Federal mandate has not been submitted to the Authority on a timely basis, then the payment due date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to the Authority and the date when the Authority has actually received such matter.
- (b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the contractor is specifically required by the contract or by other State or Federal

mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority or other entity with the right to do so elects to have such activity or documentation undertaken, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when any such activity or documentation has been completed, the Authority has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

- (c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the contract, prior to payment, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when the State or Federal agency, or other contributing party to the contract, has completed the inspection, advised the Authority of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.
- (d) If appropriated funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the Authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

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

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

Section 504.10 Judicial Review. Any determination made by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section 504.11 Court action or other legal processes.

- (a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a contractor pursuant to this Part shall not extend beyond the date of a notice of

intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

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

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

Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Participant, require the Participant to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Participant, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Participant shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Participant, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Participant, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Participant, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Participant shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in the Participant's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Participant asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the

facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

- (c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.
- (d) Notwithstanding the provisions of this Section, the maximum amount payable by NYSERDA to the Participant pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.