

Commercial Tenant Program  
Program Opportunity Notice (PON) 3308  
\$5.75 million in available funds

**Applications accepted on a first-come, first-serve basis dependent on funding availability through July 31, 2019.**

NYSERDA's Commercial Tenant Program (Program) seeks to achieve significant energy efficiency improvements in commercial tenant office spaces particularly during lease negotiations and space design. The Program aims to encourage building owners and tenants to work together to achieve energy efficiency in commercial buildings. To fulfill these goals, entities are eligible to apply for cost-shared support for energy modeling and energy efficiency package development for commercial tenant office space. This Program will test the ability to standardize energy efficiency packages for tenant spaces within commercial buildings.

Architecture firms, engineering firms, or other third party modeling entities (Modeling Entity) with experience in the tenant design and fit-out process and that are familiar with energy conservation measures specific to tenant spaces are encouraged to apply. All firms must have at least one team member qualified to develop energy models (see Section II: Eligibility for Modeling Entity Qualifications).

**This Program provides cost-share for the development of three (3) different types of energy efficiency packages:**

- Tenant-specific package: NYSERDA will cost-share the development of a custom energy model resulting in a list of energy efficiency measures, or package, tailored to the unique needs and requirements of a tenant. The package includes a financial analysis to allow the tenant to choose the options that work best for its business.
- Building-tenant package: NYSERDA will cost-share the development of a generic energy model and energy efficiency package applicable to standard tenant spaces in the building. This Building-tenant Package can be used by a building owner or manager in future lease negotiations and fit-out designs for tenants. This will allow existing or new tenants to use the Building-tenant Package and may eliminate the need for additional customized tenant-specific packages.
- Combined Package: For buildings where NYSERDA has cost-shared a Tenant-specific Package, a Building-tenant Package can be developed at no cost to the building owner or manager.

**How to Apply:**

Commercial Tenant Program cost-share requests **must be** submitted to the following at this time [commercialprograms@nyserda.ny.gov](mailto:commercialprograms@nyserda.ny.gov):

1. Commercial Tenant Project Application (Attachment A)
2. Proof of System Benefits Charge (SBC) payment in the form of a utility bill
3. Proof of qualifications of Modeling Entity (see Section II)
4. Letter of commitment from the applicable Tenant or Building Owner (Attachment B)
5. Proposed Budget (Attachment C)

For questions regarding the Application process or program specific questions please contact, [commercialprograms@nyserda.ny.gov](mailto:commercialprograms@nyserda.ny.gov) or Sophie Cardona (866-NYSERDA ext. 3590). All contractual questions should be directed to Venice Forbes (866-NYSERDA ext. 3507, [Venice.Forbes@nyserda.ny.gov](mailto:Venice.Forbes@nyserda.ny.gov)).

Incomplete or unsigned Applications will be returned. NYSERDA reserves the right to close or extend the Solicitation at any time and/or add funding to the Solicitation should other program funding sources become available. If changes are made to this solicitation, notification will be posted on NYSERDA's website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).

## I. INTRODUCTION

NYSERDA's Commercial Tenant Program is designed to stimulate investment in energy efficiency improvements in tenant spaces during lease negotiation and space design and to encourage building owners and tenants to work together to achieve energy efficiency in commercial buildings. The Program aims to drive energy efficiency efforts above the current energy code requirements by demonstrating to tenants a cost-effective approach to energy efficient, high performance office space as well as demonstrating to building owners, real estate brokers, and architecture and engineering (A&E) firms a cost-effective and replicable approach to delivering those spaces.

The Program will offer cost-share to offset the cost of Modeling Entities hired by tenants, building owners, or building management firms to perform modeling of a tenant space and identify energy efficiency measures to enable the design of high performing office space. The Program aims to help tenants realize energy bill savings and improve controllability, productivity, employee retainage and recruitment. The Program aims to enable building owners and managers to offer a new service to prospective building tenants during the lease negotiation process. In addition, if the base building systems run more efficiently, building owners may see lower operating costs, and, potentially, increased asset value.

This solicitation is divided into the following components:

- Section I: Introduction
- Section II: Eligibility
- Section III: Application Requirements & Process Overview
- Section IV: Program Cost-Share
- Section V: Program Conditions
- Section VI: General Conditions
- Section VII: Attachments

### **DEFINITIONS:**

**Applicant:** Eligible Applicants include, but are not limited to architecture firms, engineering firms, building owners, building management firms or tenants. At time of Application, the Applicant shall notify NYSERDA of any subcontractors participating in the project and in what capacity. The Applicant shall have the sole responsibility for providing reasonable staffing resources for, and completion of, all work in accordance with this Program and Terms and Conditions.

**Customer:** The Customer is the entity paying for the design and energy modeling services. This may include a tenant, building owner or manager. The Customer must have the ability to install the recommendations provided in the energy efficiency package. In certain cases, the Customer may also be the Applicant.

**Site:** The site is the building location of the project.

**Modeling Entity:** The entity contracting with the Customer, possessing the required qualifications to develop the energy model and energy efficiency packages per Section II.

**Project Team:** The Project Team includes the Applicant, Customer and any design professionals hired by the Customer or Applicant to perform space design and construction services. The Project Team shall be identified in the Application and the Applicant is responsible for keeping the NYSERDA Project Manager apprised of any changes to the Project Team.

**Technical Reviewer:** Entity contracted by NYSERDA to review the qualifications of the Modeling Entity and the accuracy of the energy model and energy efficiency packages. The Technical Reviewer is also involved in the monitoring and verification of energy savings during the project's post-installation phase.

**Tenant-specific Package:** The custom energy model and energy efficiency package developed for the tenant's new commercial office space. The Tenant-specific Package contains options for different levels of energy savings to be integrated into the tenant's space design and includes a financial analysis to allow the tenant to choose the options that work best for its business.

**Building-tenant Package:** The standard energy model and energy efficiency package developed for existing and prospective tenants in a commercial building. The Building-tenant Package includes a more generic set of energy efficiency measures suitable for, and easily transferable to, other similar tenant spaces in the building. This package is specific to the building, but more flexible than a Tenant-specific Package. It can be derived from a tenant-specific model or created as a stand-alone model and energy efficiency package. The Building-tenant Package can be presented to new tenants in leasing materials or after the lease negotiation process as a space design tool and may eliminate the need for further energy modeling.

**Combined Package:** A Combined Package includes the development of a Tenant-specific Package and a Building-tenant Package. The Program offers added incentives for building owners and managers to collaborate with a tenant creating a customized Tenant-specific Package to develop a Building-tenant Package for the building. See Section IV: Program Payments for more information.

**System Benefits Charge:** Fee levied on ratepayers of the following utilities: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, New York State Electric & Gas Corporation, National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

## II. ELIGIBILITY

### ELIGIBLE APPLICANTS

Eligible Applicants include but are not limited to: A&E firms and other third party modeling entities (Modeling Entity), building management firms, building owners or tenants. Modeling Entities that have experience in modeling “above-code” tenant spaces are particularly encouraged to apply.

Modeling Entities approved as Energy Modeling Partners under NYSERDA’s RFP 3036 (Energy Modeling Partners) are automatically eligible to participate in this Program. Otherwise, the Modeling Entity must provide documentation of the following in order to participate in this Program:

- At least one (1) staff member trained and experienced in whole building energy modeling or a named subcontractor with such qualifications.
- At least five (5) years of energy efficiency experience (such as executed energy audits, delivered performance contracts, or demand response projects).
- Two (2) building or tenant level energy models for review by a NYSERDA Technical Reviewer with the following supporting documentation:
  - Brief narrative describing project context (e.g. U.S. Green Building Council Leadership in Energy and Environmental Design (LEED), incentive program participation, etc.) and timeline
  - Current project status (e.g. LEED review completed with 15 Energy and Atmosphere Credit 1 points documented; incentive program report approved with 25% improvement over code documented, and which energy code was followed.)
  - Simulation protocol used (e.g. ASHRAE 90.1 2010 Appendix G)
  - Project outcome (i.e. recommended measures installed)
  - Description of energy conservation measures
  - Backup documentation, as requested by the program Technical Reviewer, which may include but is not limited to input and output modeling files
  - Name of the energy modeler on the project (must be a current member of the Modeling Entity team)
  - Resume or curriculum vitae (CV) of the energy modeler, as well as evidence to support the following required qualifications:
    - Three (3) years of experience in building modeling
    - Experience with energy modeling following ASHRAE Standard 90.1 Appendix G
    - Energy modeling training (eQUEST, EnergyPlus, or equivalent energy modeling tool), or evidence of at least two (2) energy models since 2009 validated by an independent third party (i.e., LEED)
    - ASHRAE Building Energy Modeling Professional (BEMP) or Association of Energy Engineers (AEE) Building Energy Simulation Analyst (BESA) Certification is a plus.

Building owners, building management firms, or tenants applying to the Program must have identified a Modeling Entity to contract with for the development of the energy model and energy efficiency package. This Modeling Entity must meet the minimum requirements for qualification listed above.

The entity paying for the energy model and energy efficiency package (i.e. the tenant, building owner or management firm) must have the ability to install the recommendations detailed in the energy efficiency package. NYSERDA will provide its cost-share to the entity listed as the Applicant in the Application form. For details refer to Section IV: Program Cost Share.

Individual Applicants may submit more than one Application, however, no single Applicant may receive more than 30% of total program funding or \$1,725,000, regardless of the number of projects submitted.

In addition, tenants who install at least one (1) of the energy savings measures recommended in the energy efficiency package must provide available utility data and access to the space for monitoring and verification (M&V). For more details about M&V requirements, please refer to Section V: Program Limitations.

## **ELIGIBLE SITES**

### **Eligible sites for tenant-specific projects:**

Must be commercial real estate office space that is currently leased by a tenant or will be leased by a tenant and:

- The tenant is renewing, signing, or undergoing the lease negotiation process, or the tenant currently occupies the space and is interested in renovating it to meet high performance standards.
  - This applies to tenant-led new fit-outs, building owner/manager led new fit-outs, and tenant-led renovations.
- The tenant or the facility where the leased space is located must be a New York State electricity distribution customer of a participating utility company paying into the SBC.
  - Proof of SBC contribution is required at the time of Application. A tenant without a utility bill in its name may instead submit a utility bill in the name of the building owner, showing the SBC contribution for the building.
- There is no square footage threshold for eligible tenants, however the tenant space cannot occupy more than fifty percent (50%) of the building's total square footage.
- If the tenant is renovating a space, the renovation must be significant enough to require permits for New York State Energy Conservation Construction Code (ECCC) compliance and the energy efficiency package must include measures that exceed the current ECCC requirements for at least two (2) of the following five (5) building systems: lighting, heating, ventilation and air conditioning (HVAC), service water heating, unregulated loads and process loads, or building envelope.

### **Eligible sites for building-tenant projects:**

Commercial real estate office building owners or managers interested in providing energy efficiency packages to their future and/or existing tenants and:

- The building where the leased space is located must be a New York State electricity distribution customer of a participating utility company paying into the SBC. A utility bill must be provided to document such SBC contribution.
- The building must be occupied by more than one commercial office tenant, and a single tenant space cannot exceed more than fifty percent (50%) of the building's total square footage. This applies regardless of whether the building is owner-occupied.

### III: APPLICATION REQUIREMENTS & PROCESS OVERVIEW

#### **APPLICANT:**

Applicants must complete and submit the following documentation:

1. Commercial Tenant Project Application (Attachment A)
2. Proof of SBC payment in the form of a utility bill
3. Proof of Qualifications of Modeling Entity (outlined in Section II above)
4. Letter of Commitment from Tenant or Building Owner (Attachment B)
5. Proposed Budget (Attachment C)

NYSERDA will review the Application and all required documentation. Additional information may be requested at NYSERDA's discretion. All Applications will be reviewed on a first-come, first-served basis dependent on funding availability

After the Applicant submits the Application and all required documentation, a NYSERDA Project Manager will be assigned to review the Application package. If the Application package is incomplete, the NYSERDA Project Manager will notify the Applicant of any missing documentation. The Applicant will then have two weeks to complete the Application package, otherwise the Application will be cancelled and the Applicant will be encouraged to apply again once all necessary documentation is ready for submission.

During review of the Application NYSERDA will assign a Technical Reviewer who is responsible for ensuring the Modeling Entity has the required qualifications. Upon review and approval of the Application and supporting documentation, NYSERDA will notify the Applicant that the Application is approved. NYSERDA will issue a Purchase Order committing its cost-share. **NYSERDA is not committed to cost-sharing a project until a purchase order is issued.**

The Applicant may then schedule a kick-off meeting with all interested parties to discuss project timeline, next steps, and the energy modeling and energy efficiency package development process.

Note: NYSERDA reserves the right to reject an Application that has completed design development and is in the construction development phase. NYSERDA will not cost share any energy modeling or energy efficiency measure recommendations already implemented at the time of applying to the Program.

#### **PROGRAM DELIVERABLES:**

Participation in the Program requires a third party Modeling Entity to work with either a commercial real estate tenant to develop a custom Tenant-specific Package and/or a building owner or building management firm to develop a Building-tenant Package.

The Applicant must submit all deliverables outlined below to the NYSERDA Project Manager once a task is completed. The Applicant shall submit all deliverables in Microsoft Word and PDF format (or other format as identified in the tasks below). Within fifteen (15) business days of receipt of each deliverable, the NYSERDA Project Manager shall provide comments to the Applicant or, if the deliverable is acceptable, the NYSERDA Project Manager shall provide final approval. The Applicant shall prepare revisions to the deliverable reflecting the NYSERDA Project Manager's comments, and resubmit the revised deliverable within fifteen (15) business days after receipt of comments.

The NYSERDA Project Manager may provide additional comments and requests for information following receipt of the Applicant's revisions. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall specify the additional amount of review time necessary up to an additional fifteen (15) business days. All deliverables shall not be considered final until approved by NYSERDA in writing to the Applicant.

## TASKS

**The following tasks and associated deliverables are applicable to both tenant-specific and building-tenant projects. NYSERDA may make adjustments to these tasks and deliverables at its sole discretion.**

### **Task 1. SITE VISIT, ENERGY MODEL COORDINATION MEETINGS AND BASELINE MODEL**

1. **Building Survey and Data Gathering:** The Modeling Entity will conduct an onsite building survey with facility staff and Project Team. This will include a walkthrough of the tenant space and assessment of the central building heating, ventilation and air conditioning (HVAC) systems.

Deliverables:

- Written summary of onsite Building Survey and Data Gathering.
- Written summary of additional building and/or project information from the facility staff/Project Team.

2. **Scoping Meeting and Coordination:** The Modeling Entity will participate in the tenant space design process and assist team members in identifying potential energy conservation measures for the tenant space. The Modeling Entity shall hold kick-off discussions, meetings, and/or review of early stage project documentation relevant to the most significant areas of tenant space energy use.

Deliverables:

- Meeting minutes.
- Identification of version of the energy code used for the project, and other relevant summary information.
- List, or other written summary, of energy efficiency measures under consideration.
- Attendance at design and other tenant meetings, as appropriate and as directed by NYSERDA.

3. **Baseline Energy Model Development:** The Modeling Entity shall undertake energy modeling of the Site, in accordance with ASHRAE Standard 90.1 2013, the Energy Conservation Construction Code of New York State, and NYSERDA Program requirements. The Modeling Entity shall calibrate the model using existing utility information and/or comparable benchmark data, as appropriate.

Deliverable:

- Baseline energy model and report
- Schedule of assumptions used in the modeling including reference to applicable energy code, energy model tool defaults, and/or existing building conditions for baseline parameters, as relevant.

### **Task 2. DEVELOPMENT OF DESIGN OPTIONS**

1. **Energy Efficient Design Development Charrette:** The Modeling Entity will work with the Project Team and the NYSERDA Project Manager to develop a list of design options for consideration in the model, including high efficiency systems, external and internal load reduction, lighting, plug load and other energy savings opportunities. This will result in the development of a preliminary list of energy efficiency measures to be evaluated through energy modeling.

The preliminary energy efficiency measures must be categorized based on the most significant anticipated barrier to their successful implementation. These barriers include:

- a. **Cost:** Typically plant or equipment upgrades (high cost, low risk energy saving "assets")
- b. **On-going Management Challenge:** Typically measures involving process changes and/or controls (medium cost, with moderate risk of being reversed over time)
- c. **Impact on End-User Experience:** This includes people-dependent measures (low cost, but likely to require engagement with end-users).

Deliverable:

- A draft list of potential energy efficiency measures by type submitted to the tenant and the NYSERDA Project Manager. This list shall be shared with the building owner/manager when the building owner/manager is leading the tenant space fit-out process.
2. **Design Options Modeling:** The Modeling Entity shall model energy efficiency measures as adaptations of the baseline model, as appropriate, based on the Design Development Charrette.

Deliverables:

- Initial model inputs and outputs for energy efficiency measures for the tenant's space provided to the tenant, the NYSERDA Project Manager, and NYSERDA's Technical Reviewer.
- A schedule of assumptions used in the modeling, including reference to information sources and/or supplemental calculations, as relevant.

### **Task 3. DEVELOPMENT OF FINAL ENERGY EFFICIENCY PACKAGE**

1. **Final List of Measures:** The Modeling Entity will use energy modeling to inform energy efficiency measure selection, and will work with the Project Team to develop the final list of the tenant's energy efficiency measures for consideration in the final model. The Modeling Entity will review the design development modeling results with the Tenant / Project Team, and recommend a final list of measures, to be included in the Tenant-specific Package, and categorized based on likelihood of implementation (per Task 2.1).

Deliverables:

- Final list of energy efficiency measures to be provided to the tenant, Project Team, and the NYSERDA Project Manager.
- Incremental cost estimates for each of the energy efficiency measures on the final list from the Project Team to be provided to the Tenant and the NYSERDA Project Manager.

2. **Final Energy Model and Financial Analysis:** The Modeling Entity shall model and analyze a final energy efficiency package for the tenant space. This model will include the final list of measures the tenant intends on implementing. The schedule of modeling assumptions shall be updated as appropriate. The Modeling Entity shall undertake a financial analysis of the final energy efficiency package based on model outputs and upon incremental cost estimates for each measure, including energy savings, load reduction, payback period, return on investment, net present value, and internal rate of return.

Deliverables:

- Final Tenant-specific Package, including: each energy efficiency measure, the incremental cost for each measure, the incremental energy savings above code, the incremental annual operational cost savings, simple payback period, net present value, and internal rate of return, to be provided to the tenant, the NYSERDA Project Manager, and NYSERDA's Technical Reviewer.

- Final scenario model inputs and outputs for energy efficiency measures for the tenant's space provided to the tenant, the NYSERDA Project Manager, and NYSERDA's Technical Reviewer.
- Meeting with the tenant, Project team, and NYSERDA Project Manager to review the final results.

**Task 4. BUILDING-TENANT PACKAGE DEVELOPMENT (as applicable, either as a stand-alone energy efficiency package, or as part of a Combined Package)**

1. **Develop Building-tenant Package:** Based on the Tenant-specific Package, the Modeling Entity shall create a more generic set of measures that would be suitable for, or easily transferable to other, similar, tenant spaces in the building, either new or renovated. In the case where no Tenant-specific Package exists and a building owner wishes to develop an energy efficiency package applicable to generic tenant spaces in the building, the Modeling Entity will develop the Building-tenant Package following the same procedures as outlined in all applicable tasks required for the development of a Tenant-specific Package:
  - a. The energy efficiency package will be specific to the building, and based on the measures identified in the initial tenant model (if applicable), but more flexible than the original energy efficiency package. This may include measures that were not requested by the original tenant or were removed because of the original tenant's specific needs and preferences.
  - b. The Building-tenant Package shall be derived from the same methodology as the Tenant-specific Package.

Deliverables:

- A list of energy efficiency measures to be included in a Building-tenant Package.
- Incremental cost estimates for each of the energy efficiency measures on the building-tenant list from the Project Team, as well as cost savings estimates.

2. **Energy Model and Financial Analysis:** The Modeling Entity shall adapt the tenant-specific model to develop a Building-tenant Package, or create a model if no tenant-specific model is available. The Modeling Entity shall also update the schedule of modeling assumptions for the building-tenant measures as appropriate.

The Modeling Entity shall undertake a financial analysis of the energy efficiency package based on model outputs and upon incremental costing estimates for each measure, including energy savings, load reduction, payback period, return on investment, net present value, and internal rate of return.

Deliverables:

- Final Building-tenant Package, including: each energy efficiency measure, the incremental cost for each measure, the incremental energy savings above code, the incremental annual operational cost savings, simple payback period, net present value, and internal rate of return, to be provided to the Building Owner/Manager, the NYSERDA Project Manager, and NYSERDA's Technical Reviewer.

**Task 5. MEASUREMENT AND VERIFICATION (if at least one measure from the energy efficiency package is installed)**

1. **Data Gathering:** The Site shall allow NYSERDA and its Technical Reviewer to conduct one (1) year of reasonable tenant system level technical review including, reasonable energy metering of tenant controlled systems and other reasonable sources of data gathering, at NYSERDA's sole expense and not from any amounts due the Applicant under this Program. The data will be collected by NYSERDA and/or its Technical Reviewer, at NYSERDA's sole expense and not from any amounts due the Applicant under this Program to verify the energy savings predicted by the tenant-specific energy model.

Deliverables:

- The Site shall allow NYSERDA and its Technical Reviewer reasonable access to the tenant space for at least one (1) year to gather reasonable data to verify the energy savings achieved from the energy conservation measures installed, if any. This will include the installation of data loggers on certain pieces of equipment and circuits.
  - NYSERDA will summarize for the Applicant and Customer (if different than the Applicant) results of the data gathering analysis and note any inconsistencies with the predicted savings.
2. **Utility Bill Analysis:** The Site shall allow NYSERDA and its Technical Reviewer to conduct five (5) years of utility bill analysis (if available) of the tenant space to determine persistence of energy savings above code, at NYSERDA's sole expense and not from any amounts due the Contractor under this Agreement.

Deliverables:

- The Site shall provide NYSERDA and its Technical Reviewer reasonable access to submetered utility bill data to enable at least five (5) years of analysis of tenant space energy use. Analysis shall not be distributed or used by NYSERDA for any purpose other than the obligations under this Agreement without prior written approval of Site.
- NYSERDA will provide the Site a summary of the results of the utility bill analysis and note any inconsistencies with the predicted savings.

## IV: PROGRAM COST-SHARE

Eligible project costs are those costs incurred by the Modeling Entity in creating the energy model and energy efficiency package for the commercial tenant office spaces. A budget shall be provided per Attachment C outlining expected project costs.

**Tenant-specific projects** - NYSERDA will provide up to fifty percent (50%) of the eligible project costs.

**Building-tenant projects** - NYSERDA will provide up to fifty percent (50%) of the eligible project costs.

**Combined tenant-specific and building-tenant projects** – If a Building-tenant Package is created for the building in which a custom Tenant-specific Package was developed under this Program, NYSERDA will provide up to one hundred percent (100%) of the development of the Building-tenant Package.

### **PROJECT PAYMENTS:**

NYSERDA will provide its cost-share to the entity listed as the Applicant in the Commercial Tenant Project Application (Attachment A).

**If the Applicant is the third party Modeling Entity:** NYSERDA will contribute up to 50% of the project cost directly to the Modeling Entity, subject to the maximum dollar amount listed in the issued Purchase Order. The Customer under contract with the Modeling Entity is responsible for paying the remaining balance of the project costs, under the terms and conditions to be negotiated by the Modeling Entity and the Customer. As proof that the Customer has paid their portion of the cost-share, NYSERDA may require a copy of the Customer's canceled check, if applicable. Unless otherwise agreed upon, payments will be sent to the authorized Applicant listed in the Commercial Tenant Project Application (Attachment A).

**If the Applicant is a tenant, building owner or building management firm:** At the conclusion of the project and upon receipt of the required documentation, NYSERDA will reimburse successful Applicants up to 50% of the project costs, subject to the maximum dollar amount listed in the issued purchase order. Reimbursement will be based on services actually rendered by the Modeling Entity and as documented by the approved deliverables, invoices and other documentation deemed necessary by NYSERDA. As proof that the Customer has paid the full project cost, NYSERDA may require a copy of the Customer's canceled check, if applicable. Progress payments will not be provided. Unless otherwise noted, payments will be sent to the authorized Applicant listed in the Commercial Tenant Project Application (Attachment A).

**Required Documentation:** In order to process payment, NYSERDA must receive the following documentation: 1) an invoice from the Applicant to NYSERDA, and 2) a copy of the invoice(s) from the Modeling Entity to the Customer clearly indicating the *total* project cost (broken out by non-labor costs, individuals, titles, hourly rates, dates and hours worked on each task). As proof of payment, if applicable, NYSERDA may require a copy of the Customer's canceled check indicating the total amount paid to the Modeling Entity. At NYSERDA's discretion, a copy of the canceled check(s) from the Customer to the Modeling Entity showing the total project cost and a copy of the lump-sum invoice may be accepted in lieu of a detailed invoice.

All invoices and other reimbursement documentation must be sent to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov).

**ADDITIONAL OPPORTUNITY FOR INCENTIVES:**

Before proceeding with implementation, any tenant, building owner or building management firm that has reviewed their energy efficiency packages and decided to implement some or all of the recommendations should inquire about the eligibility requirements of other NYSERDA programs to determine if installation incentives are available. The program offerings of local utility providers should also be consulted.

## V: PROGRAM CONDITIONS

### General Conditions:

- This Program Opportunity Notice does not commit NYSERDA to award a Purchase Order, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies.
- Individual Applicants are limited to 30% of total program funding, \$1,725,000.
- NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the PON when it is in NYSERDA's best interest.
- NYSERDA may award a Purchase Order based on Applications without discussion, or following limited discussion. NYSERDA may request additional data or material to support Applications. A sample Purchase Order is available on request. NYSERDA will notify Applicants whether the Application has been selected to receive an award.
- The following are ineligible for funding:
  - Work completed prior to NYSERDA's receipt of the Application.
  - Owner occupied buildings without a leased space.
  - Buildings occupied by only one tenant or a single tenant that occupies more than fifty percent (50%) of the building's total square footage.
  - Buildings, both new or that have undergone substantial renovations, that have been occupied for less than one year.
  - Tenant spaces that have undergone substantial renovation within the last year and meet current energy code requirements.

### For Tenant-specific Projects:

- The tenant is not required to implement any of the energy saving measures provided in the energy efficiency package. If the tenant does not implement any of the improvements suggested by the model, NYSERDA will not conduct M&V or technical review of the space. NYSERDA will reach out for information as to why the energy savings measures are not being implemented. This feedback will provide valuable input for future real estate tenant initiatives therefore it is highly encouraged that the site, customer and modeler participate in the feedback.
- The Tenant-specific Package must include measures that exceed the current applicable energy code requirements for at least two (2) of the following five (5) building systems: Lighting, HVAC, Service Water Heating, Plug and Process Loads, and Building Envelope.
- The Tenant-specific Package should be completed in agreement with the project's space design and construction schedule to ensure tenants have the option of implementing measures if desired.
- If the tenant does implement at least one of the energy saving measures the tenant will be highly encouraged to provide NYSERDA with pre- and post-occupancy evaluations of employee satisfaction, productivity, absenteeism, performance, and health metrics. NYSERDA may work with a tenant's or building owner's Human Resources Department to support this process as needed.
- The Tenant-specific Package must be completed within one year of Purchase Order (PO) issuance. A one-time extension of up to twelve months may be requested with justification for NYSERDA to consider. Failure to complete the model and energy efficiency package within the one-year timeframe or approved extension timeframe will result in project cancellation. Cancelled projects may reapply if funds remain available

### For Building-tenant Projects:

- The energy model produced for a building-tenant project must include at least one (1) typical floor of leased tenant space and the energy efficiency package must provide energy savings measures applicable to more than one (1) typical tenant within the building.

- The Building-tenant Package must include energy efficiency measures that exceed the current energy code requirements for at least two (2) of the following five (5) building systems: lighting, HVAC, service water heating, plug and process loads, and building envelope.
- The building owner or manager must be willing to provide the Building-tenant Package to all tenants.
- The Building-tenant Package must be completed within one year of Purchase Order (PO) issuance. A one-time extension of up to twelve (12) months may be requested. Failure to complete the model and energy efficiency package within the one-year timeframe or approved extension timeframe will result in project cancellation.

**For Combined Projects:**

- The requirements listed above for a tenant-specific project and a building-tenant project are applicable to the completion of a Combined Project.

## VI: GENERAL CONDITIONS

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

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 proposer 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 except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

**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 Agreements.

Information on the availability of New York subcontractors and suppliers is available from: Empire State Development  
Division For Small Business  
625 Broadway  
Albany, NY 12207

A directory of certified minority- and women-owned business enterprises is available from: Empire State Development  
Minority and Women's Business Development Division 625 Broadway  
Albany, NY 12207

If State Finance Law lobbying amendment and Tax Law 5-a provisions apply, include the following two sections:

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain new procurement lobbying requirements which can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See*, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**Contract Award** - NYSERDA anticipates making multiple awards under this solicitation. NYSERDA may request additional data or material to support submissions including scope of work modifications or negotiations before issuing a Purchase Order. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. A sample Purchase Order is available on request. NYSERDA expects to notify customers in approximately three (3) weeks from the receipt of a complete project package whether the submission has been selected to receive an award.

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies.

NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

**Disclosure Requirement** - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five (5) years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances.

Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

## **VI: ATTACHMENTS**

### **LIST OF ATTACHMENTS:**

1. Commercial Tenant Project Application (Attachment A)
2. Letter of Commitment from Tenant or Building Owner (Attachment B)
3. Proposed Budget (Attachment C)
4. Terms and Conditions (Attachment D)



**Commercial Tenant Program  
Attachment A: Program Application (1 of 2)**

**Applicant and Customer Eligibility-** The Customer listed on this Application must be an electric customer who pays the System Benefits Charge (“SBC”) as part of its electric bill or must be a tenant in a building in which the Building Owner pays the System Benefits Charge. The New York State Energy Research and Development Authority (“NYSERDA”) will determine the eligibility of the Applicant and Customer as part of the Application review process. The party seeking the incentive is the Applicant.

Applicant Information:		
Applicant Name:	Contact Name/Title:	Fed Tax ID #:
	Email:	Phone:
Applicant Address:		
City	Zip Code	
State		
Customer and Site Information (the Customer is the tenant, building owner or manager paying for the project work under this Program; the Site is the location being modeled):		
Customer Name:	Contact Name:	Title:
	Email:	Phone:
Customer Address:		
City	Zip Code	Floor(s)
State		
Site Address (if modeling is taking place at a different location than address listed above, please provide):		
City	State	Zip Code
		Floor(s):
Payment Information (if different than Applicant information provided above):		
Contact Name:	Title:	
Address (if different than Applicant address provided above):		
City	State	Zip Code
		Floor(s):
Modeling Entity Information:		
Company Name:	Contact Name:	Title:
	Email:	Phone:
Address:		
City	State	Zip Code
		Floor(s):

**Turn over**

**Commercial Tenant Program**  
**Attachment A: Program Application (2 of 2)**

**Agreement and Signature**

I certify that all statements made in this Application and required documents provided are true and correct to the best of my knowledge. I agree to the terms and conditions of the Program set forth in this Application. A signature is required from the Applicant.

Applicant Name and Title:

Applicant Signature:

Date:

Please send Application Package to [commercialprograms@nyserda.ny.gov](mailto:commercialprograms@nyserda.ny.gov).

## Commercial Tenant Program Attachment B: Participant Letter of Commitment (1of 2)

*Please check all the appropriate boxes*

### **Terms for Tenants**

I, the Tenant, certify that I will be renewing a lease, signing a lease, or currently occupy the commercial real estate office space named in the Application. The space is within a commercial building located within New York State and I or the facility is a New York State electricity distribution customer of a participating utility company who pays into the Systems Benefits Charge (SBC). I certify that I have hired a third party modeling entity to develop an energy model and energy efficiency package for the space named in the Application. This space does not occupy more than fifty percent (50%) of the building's total square footage. By participating in the Commercial Tenant Program, I agree to allow NYSERDA and its contractors access to my space, access to the metered and submetered utility data for up to five (5) years, and access to the space to enable at least one (1) year of system level technical review (which will require data logging of equipment) if applicable per the Program.

### **Terms for Building Owners or Building Management Firms**

I, the Building Owner/Manager (please circle one), certify that I own/manage (please circle one) the building named in the Application. I certify that the building is a New York State electricity distribution customer of a participating utility company who pays into the Systems Benefits Charge (SBC). I certify that I have hired a third party modeling entity to develop an energy model and Building-tenant energy efficiency package specific to the building named in the Application. The building has at least two (2) leased tenant spaces, neither which exceeds fifty percent (50%) of the building's total square footage.

### **Participant Certifications**

I, Tenant or Building Owner/Manager, certify I have neither applied for or received, nor will apply for or receive, an incentive or other compensation from an energy efficiency program administered by a New York State investor-owned utility or from NYSERDA for the same energy model that is covered by this application.

I, Building Owner/Manager, agree to make the Building-tenant Package available to all tenants.

Yes, the Tenant (upon occupancy) or Building Owner contributes to the SBC as part of its electric bill.

If the Customer installs recommendations from the model, the Customer agrees to allow NYSERDA and its Technical Reviewer access to submetered utility bill data for up to (5) years, if applicable.

If the Customer installs recommendations from the model, the Customer agrees to allow NYSERDA and its Technical Reviewer access to its space for at least one (1) year of system level technical review.



**Commercial Tenant Program  
Attachment B: Participant Letter of Commitment (2 of 2)**

**AUTHORIZED ENTITY PAYING FOR ENERGY MODELING SERVICES**

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

**AUTHORIZED TENANT REPRESENTATIVE (if applicable and different than above)**

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

**AUTHORIZED BUILDING OWNER OR BUILDING MANAGEMENT FIRM REPRESENTATIVE (if applicable and different than above)**

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

Please send Application Package to [commercialprograms@nyserdera.ny.gov](mailto:commercialprograms@nyserdera.ny.gov).

## Commercial Tenant Program Attachment C: Proposed Budget Template

APPLICANT:  
PROJECT:  
Date:

Task	Task Description	Title Rate	Total						
<b>1</b>	<b>Energy Model Coordination Meeting and Site Visit</b>								
	1. Survey and data gathering								
	2. Energy model coordination								
<b>2</b>	<b>Development of Design Options</b>								
	1. Energy Conservation Charette								
	2. Final list of measures								
<b>3</b>	<b>Energy Modeling</b>								
	1. Baseline energy model								
	2. Design Options Modeling								
	3. Final Energy Model								
<b>4</b>	<b>Building-Specific Package Development</b>								
	1. Develop building-specific package								
	2. Model and Analysis								
	<b>Total Hours</b>		0	0	0	0	0	0	0
	<b>Total Labor Fee</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$0

Project Expenses				
Item	Amount	Unit	Unit Cost	Total
Expenses			\$0	\$0
Mileage		mile	\$0.00	\$0
			<b>Total</b>	<b>\$0</b>

Labor Effort =	\$0
Expenses =	\$0
<b>TOTAL PROJECT BUDGET =</b>	<b>\$0</b>
Customer Share =	\$0
<b>NYSERDA Share =</b>	<b>\$0</b>

Applicants may create their own budget table, however all information contained in the table above must be provided.

## **Commercial Tenant Program**

### **Attachment D: Terms and Conditions**

#### **1. Approval**

Incentives are not payable unless NYSERDA has approved the Energy Model and Energy Efficiency Package and approved the other activities and documentation provided by the Applicant.

#### **2. Amounts Payable**

The Purchase Order is a not-to-exceed amount, based on the budget and scope of work provided. Payment will be based on completion of the required documents as outlined in the Solicitation and upon request by the Applicant. NYSERDA also reserves the right to seek a refund for incentives paid if, at any time, it learns that the Project was actually completed prior to application.

#### **3. Inspections, Follow-up Visits and On-Site Monitoring**

(a) NYSERDA reserves the right to make a reasonable number of pre- and post-installation visits to the facility. Such visit(s) will be at a time convenient to the Applicant, building owner, manager or tenant and made with at least one-week advance notice to all parties by NYSERDA.

(b) Generally, the purpose of the follow-up visit(s) is to evaluate the installed Project, speak with the Applicant and site staff to learn about the project implementation and utilization, and help validate the actual energy savings for program evaluation purposes, which may occur well after the project is completed.

(c) The scope of review by NYSERDA of the design and installation of the Project is limited to solely determining the energy savings and whether program conditions have been met. It does not include any kind of safety, quality or other review.

#### **4. Cost and Invoice Documentation**

Upon completion of the post-installation site visit and data collection, and at any other time upon NYSERDA's request, the Applicant shall provide NYSERDA copies of all invoices (including all materials, labor, and equipment discounts) reflecting the costs of conducting the model and creation of the energy efficiency package. The invoices shall include a breakdown of all tasks under this Purchase Order (the application and these Terms and Conditions). In addition, NYSERDA may request any other reasonable documentation or verification of the cost to the Applicant.

#### **5. Incentive Payments**

NYSERDA shall pay the incentive in accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy upon the applicants' meeting the requirements of Commercial Tenant Program. This includes, but is not limited to: (1) installation of the Project in the identified building is completed; (2) all necessary documentation is provided; and (3) NYSERDA has verified installation costs and satisfactory installation of the Project, all in accordance with the specifications.

#### **6. Changes in the Program**

Notwithstanding paragraph 21 (b), the program and these Terms & Conditions may be changed by NYSERDA at any time without notice. Approved applications, however, will be processed to completion under the Terms & Conditions in effect at the time of application to NYSERDA.

#### **7. 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, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Applicant's or its subcontractors' performance of this Purchase Order. The obligations of the Applicant under this Article shall survive any expiration or termination of this Purchase Order, and shall not be limited by any enumeration herein of required insurance coverage.

## **8. Insurance**

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

- (a) except policies in evidence of insurance required under Section 8.02(b), name or be endorsed to cover NYSERDA and the State of New York as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

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

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

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

## **9. 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 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 Project is proper or complies 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 Project or the adequacy or safety of such measures.

## **10. Limit of Incentive Payments**

NYSERDA reserves the right, for any reason, to stop approving incentive applications and limit or stop making incentive payments at any time without notice.

## **11. Release by the Applicant**

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

## **12 Vendor Selection**

NYSERDA has the right not to allow a vendor or contractor to participate in this program.

## **13. Miscellaneous**

- (a) This Purchase Order (the Application, Program Opportunity Notice 3308 and these Terms and Conditions) is the entire agreement between the parties and supersedes all other communications and representations.

(b) If either NYSERDA or the Applicant desires to modify this Purchase Order, the modification must be in writing and signed by an authorized representative of both parties.

#### **14. Audit**

The Applicant shall keep, maintain, and preserve at its principal office throughout the term of the Purchase Order and for a period of three (3) years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Purchase Order, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Applicant's performance under this Purchase Order.

NYSERDA shall have the right from time to time and at all reasonable times during this period to inspect and audit any and all books, accounts and records related to this Purchase Order or reasonably necessary to the performance of an audit at the office or offices of the Applicant where they are then being kept, maintained and preserved. Any payment made under the Purchase Order shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Applicant by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

#### **18. Stop Work Order**

(a) NYSERDA may at any time, by written Order to the Applicant, require the Applicant to stop all or any part of the Work called for by this Purchase Order for a period of up to ninety (90) days after the Stop Work Order is delivered to the Applicant, 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 Applicant 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 Applicant, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

(i) by written notice to the Applicant, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Applicant, or

(ii) terminate the Work covered by such order as provided in the Termination Section of this Purchase Order.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Applicant 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 Purchase Order that may be affected, and the Purchase Order shall be modified in writing accordingly, if:

(i) the Stop Work Order results in an increase in the time required for, or in the Applicant's cost properly allocable to, the performance of any part of this Purchase Order, and

(ii) the Applicant 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 Purchase Order.

(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 Applicant pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.

#### **19. Termination**

(a) This Purchase Order may be terminated by NYSERDA at any time during the term of this Purchase Order with or without cause, upon ten (10) days prior written notice to the Applicant. In such event, payment shall be paid to the Applicant for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Incentive Payment and in reimbursement of any amounts required to be paid by the Applicant pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Applicant shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).

(b) NYSERDA specifically reserves the right to terminate this Purchase Order in the event that the certification filed by the Applicant in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Applicant in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

(c) Nothing in this Article shall preclude the Applicant from continuing to carry out the Work called for by the Purchase Order after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Applicant so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Purchase Order, and (ii) NYSERDA shall have no liability to the Applicant for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

#### **20. Suspension or Termination for Non-Responsibility**

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Purchase Order, at any time, when it discovers information that calls into question the Responsibility of the Applicant. In the event of such suspension, the Applicant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Applicant must comply with the terms of the suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Applicant, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Purchase Order may be terminated by NYSERDA at the Applicant's expense where the Applicant is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

Incentives are not payable unless NYSERDA has approved the Engineering Analysis, conducted site visits, and approved the other activities and documentation provided by the applicant.

#### **21. Independent Contractor**

(a) The status of the Applicant under this Purchase Order shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Applicant, the subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Purchase Order conduct themselves in a manner consistent with such status and by reason of this Purchase Order shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Applicant to perform the Work 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.

(b) 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 virtue of 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 Purchase Order should terminate for any reason.

EXHIBIT B

REVISED 5/12

STANDARD TERMS AND CONDITIONS  
FOR ALL NYSERDA AGREEMENTS

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

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

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Applicant 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, Applicant agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Applicant agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Applicant is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Applicant'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, Applicant 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 Applicant understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Applicant warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Applicant further warrants that, at the time Applicant submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Applicant's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Applicant agrees, as a material condition of the Agreement, that neither the Applicant 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 Applicant, or any of the aforesaid affiliates of Applicant, 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 Applicant shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

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



6. **PROPRIETARY INFORMATION.** Notwithstanding any provisions to the contrary in the Agreement, Applicant 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, Applicant should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Applicant considers a proprietary and/or confidential trade secret, Applicant shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Applicant represents that the information has actual or potential specific commercial or competitive value to the competitors of Applicant. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>).

7. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA’s obligation to pay any invoices submitted by Applicant pursuant to this Agreement, Applicant shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Applicant has both such numbers. Where the Applicant does not have such number or numbers, the Applicant must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Applicant to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

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

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

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

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

12. **CRIMINAL ACTIVITY.** If subsequent to 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 subsequent to 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 particular 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.

13. PERMITS. It is the responsibility of the Applicant to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Applicant certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
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  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Applicants certify that whenever the total amount is greater than \$1 million:

(a) The Applicant has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Applicant has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Applicant 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 Applicant agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Applicant acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Applicant shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Applicant 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 Applicant in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Applicants that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Applicant must have on file with the New York State Department of Taxation and Finance an Applicant Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Applicant is required to provide NYSERDA with a completed Applicant Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Applicant is required to provide NYSERDA with a completed Form ST-220-CA.

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

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Applicant in accordance with Tax Law Section 5-a was false when made.

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

EXHIBIT C

NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>1</sup>

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Applicant 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 Applicant pursuant to Exhibit A 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 an Applicant setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

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

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

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

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

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

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<sup>1</sup> 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>

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 an Applicant by an amount equal to the amount of an unpaid legally enforceable debt owed by the Applicant 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 Applicant 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 Applicant 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 an Applicant 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 Applicant. 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 Applicant 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 Applicant 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.** Applicant may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Applicant 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 an Applicant 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.