



REAL TIME ENERGY MANAGEMENT (RTEM)
Program Opportunity Notice (PON) 3309
\$30 Million available

Applications accepted on a first-come, first-served basis dependent on funding availability until June 30, 2021 by 5:00 PM Eastern Time

The New York State Energy Research and Development Authority (NYSERDA) Real Time Energy Management (“RTEM”) Program (the “Program”) seeks to achieve deep energy savings through the collection and analysis of energy usage data from buildings at a system level. To accelerate the adoption of RTEM practices, NYSERDA is offering cost-shared support for integrating RTEM systems and services into existing facilities. This Program works in conjunction with NYSERDA RFQ 3164 Real Time Energy Management Qualified Vendor, launched in April 2016. Applicants must be qualified as a NYSERDA RTEM Qualified Vendor to apply to this Program.

Real Time Energy Management (RTEM) technology is the combination of building data collection systems (sensors, meters, equipment feeds) with data analytics and building data information services that are able to show building management the actual state of building performance at any point in time. Service providers then capture the discreet data such as set points, power loads, flow rates, temperature and humidity, and feed the information back to building operators with key insights about operations and systems that they then use to fine-tune the building and identify capital projects.

NYSERDA’s RTEM Qualified Vendor list consists of both RTEM System Providers and RTEM Service Providers. RTEM System Providers are defined as providers of the monitoring hardware and software used to extract, process, and store energy usage data. RTEM Service Providers are defined as consulting services that customers contract with to analyze the data from the RTEM system installation and provide, enable, and/or implement energy savings measures based on the data.

RTEM System Providers and RTEM Service Providers who are listed on NYSERDA’s RTEM Qualified Vendor list are eligible Applicants.

The Program offers cost-sharing for RTEM system implementation and services for up to five (5) years (see Table 1: Incentive Levels).

How to Apply:

RTEM Qualified Vendors with eligible projects can log on to <https://nyserda-portal.force.com/login> to complete an Application.

Building Owners and Managers in need of an RTEM Qualified Vendor can visit the NYSERDA list at <http://www.nyserda.ny.gov/Contractors/Find-a-Contractor/RTEM-Qualified-Vendors>.

Program questions should be directed to commercialprograms@nyserda.ny.gov or Joshua Clyburn (866-NYSERDA, ext. 3071). All Contractual questions should be directed to Nancy Marucci (866-NYSERDA, ext. 3335) or nancy.marucci@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.nysesda.ny.gov



I. INTRODUCTION

NYSERDA's RTEM Program is designed to accelerate market adoption of RTEM systems and services over the next five years. Furthermore, the Program will identify and expand the industry's best practices for leveraging RTEM technologies. The Program will focus on how to efficiently extract and analyze data that enables customers to receive the full potential of RTEM benefits.

Research shows that customers who unlock their building's energy data, at the system level, make better energy related decisions than if they were to use only monthly utility bills. NYSERDA seeks to demonstrate the value of comprehensive monitoring and metering analytics, and the advantages gained by obtaining system level energy usage data. The Program seeks to illustrate how customers can use RTEM to maximize energy performance, improve equipment/building optimization, and provide better informed capital investment recommendations.

This solicitation is divided into the following components:

Section II: Eligibility

Section III: Program Incentives

Section IV: Application Requirements & Approval Process Overview

Section V: Program Conditions & Limitations

Section VI: General Conditions

Section VII: List of Attachments



II. ELIGIBILITY

ELIGIBLE APPLICANTS

NYSERDA intends for RTEM Qualified Vendors to apply to the Program with eligible participant site(s). Sites must work with an RTEM Qualified Vendor to receive project funding. To become an RTEM Qualified Vendor (RFQ 3164) apply on-line at http://nyserda-site.force.com/CORE_CONAPP_Program_Page.

If a provider is not already on NYSERDA's RTEM Qualified Vendor List, they are required to apply to RFQ 3164: RTEM Qualified Vendor. Applications to this Program from providers that are not on the RTEM Qualified Vendor List will not be approved until such time that the provider is accepted or rejected. If the provider is rejected, the project application will be rejected. NYSERDA will make all System Installation and Service Cost-Share payments in this Program directly to the RTEM Service Provider. If the RTEM System Provider is different from the RTEM Service Provider, then the RTEM Service Provider and the RTEM System Provider will be responsible for establishing their own payment arrangements.

Building Owners and Managers seeking NYSERDA funding for their sites must choose from NYSERDA's RTEM Qualified Vendor List. Firms interested in applying to be on the NYSERDA RTEM Qualified Vendor List may include, but are not limited to: energy management system providers, Energy Service Companies (ESCOs), energy consultants, and engineering companies. Providers that fail to qualify for the list will not be eligible to submit applications to this Program.

ELIGIBLE PARTICIPANT SITES

Eligible participant sites include: New York State commercial facilities which include, but are not limited to, office buildings, retail, colleges and universities, health care facilities, state and local governments, not-for-profit and private institutions, and public and private K-12 schools that are New York State electricity distribution customers of a participating utility company that pays into the System Benefits Charge (SBC) (Central Hudson Gas & Electric Corporation, Consolidated Edison, New York State Electric & Gas Corporation, National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation).

- Sites must choose from NYSERDA's RTEM Qualified Vendor List. Please visit the website at: <http://www.nyserda.ny.gov/Contractors/Find-a-Contractor/RTEM-Qualified-Vendors> for the current listing of RTEM Qualified Vendors.
- Sites may select providers that are not on the RTEM Qualified Vendor List. However, the provider must apply and be approved as an RTEM Qualified Vendor (as detailed above in this Section II). If the provider fails to qualify, the project will be cancelled and the site will have to enlist a different provider.



ELIGIBLE PROJECTS

Eligible project requirements:

Sites must be greater than 50,000 square feet. Individual sites that do not meet this minimum requirement may be aggregated to meet the requirement.

Awarded projects must be installed and commissioned within one year of receiving a NYSERDA Purchase Order (“PO”). A one-time extension of up to twelve months may be requested. Failure to install within the one-year timeframe or the approved extension timeframe will result in project cancellation.

RTEM systems that are installed prior to the launch of this Program are not eligible to receive a System Installation Cost-Share (as defined in Section III below).

Existing operational RTEM systems and service agreements are eligible for service cost-share (as defined in Section III below) provided all other Program requirements are met.

Monitoring requirements:

Projects must monitor energy usage at levels more granular than the whole-building, or whole-space for tenant applicants. The time frequency of monitoring must be at least hourly, or more frequent. Monitoring hardware must be permanently installed, and not intended for temporary use.

III: PROGRAM INCENTIVES

All projects must include cost-sharing in the form of matching cash support from the site(s). NYSERDA will issue a single PO with a maximum incentive of \$155,000 to include as follows per site:

For RTEM System Installations:

- NYSERDA System Installation Cost-Shares are provided per TABLE 1. The higher cost-share in the first two years of the Program is intended to encourage early adoption of the technology.

For RTEM Services (1-5 years eligible):

- NYSERDA Service Cost-Shares are provided per TABLE 1. The higher cost-share in the first two years of the Program is to encourage early adoption of the technology.
- Additionally, those Applicants submitting for more than three years of service length will receive a reduced cost share in the fourth and fifth year of service



There are two cost-share incentive options available from which to choose. RTEM Applicants will be able to select, on project-by-project basis, either Option A or Option B, as seen below. It is important to note, system and service costs must be disclosed to NYSERDA, regardless of the payment option chosen. Additionally, for both options, payments will only be made to the RTEM service provider.

Incentive Levels

Option A: available for when customers pay upfront costs for RTEM System installations

Types of Incentives	Applications received 6/14/16 – 6/30/18		Applications received 7/1/18-6/30/21	
	NYSERDA Cost-Share	Cap per Project per year	NYSERDA Cost-Share	Cap per Project per year
System Installation	30%	\$75,000	20%	\$50,000
Service Years 1-3	30%	\$20,000	20%	\$15,000
Service Years 4-5	20%	\$10,000	15%	\$10,000

Option B: available when the RTEM System costs are embedded in the RTEM Services costs, and the customer pays little or no upfront costs, allowing both the system and service costs-sharing structure to be stretched over a five-year period.

Types of Incentives	Applications received 6/14/16 – 6/30/18		Applications received 7/1/18-6/30/21	
	NYSERDA Cost-Share	Cap per Project per year	NYSERDA Cost-Share	Cap per Project per year
Years 1-3	30%	\$35,000	20%	\$30,000
Years 4-5	20%	\$25,000	15%	\$25,000

Additional requirements

- NYSERDA will issue a maximum of 5 years of payments regardless of contract length (i.e. system or service costs that extend past 5 years will not be eligible for cost-sharing).
- If the RTEM system costs are embedded into the RTEM services costs, the incentive structure will provide cost sharing for the RTEM service, as well as a weighted portion of the systems costs. The system cost-sharing shall not exceed the length of the RTEM contract, nor the 5-year requirement mentioned above. The RTEM vendor will indicate, to the extent possible, the expected costs of the RTEM Systems and RTEM Services payments in the contract.



FUNDING LIMITATIONS

Site Cap

Each qualifying project site is limited to receiving \$155,000 of program funding.

Provider Cap

Each Applicant (RTEM Service Provider) is limited to receiving \$6 million in total program funding.

Portfolio Expansion Cap

A portfolio of sites submitted as an aggregated project (per the Multiple Sites Template) or as separate Applications having the same ownership or management capable of authorizing the installation of and acting upon information from an RTEM system are limited to receiving funding for ten (10) sites in the portfolio, or campus.

Sites already receiving financial assistance in the form of grants through NYPA for compliance with Executive Order 88, or programs offered by their local utilities, are not eligible to receive incentives for the same activities under this Program. (Financing from NYPA or NY Green Bank is allowable in combination with cost-share from this Solicitation).

IV: APPLICATION REQUIREMENTS AND APPROVAL PROCESS OVERVIEW

APPLICANT:

The Applicant will apply on-line through a NYSERDA portal. The following information will be requested:

1. RTEM Project Application (Attachment A-1)
2. Current, complete utility bill of each site documenting the SBC payment.
3. For projects containing multiple sites, a completed Multiple Site Template (Attachment A-2)
4. A copy of the signed agreement between RTEM Vendor(s) and the site(s) installing and committing to services. The agreement(s) should specify the dollar amount and length of service years.
5. Applicants must also work with an assigned RTEM Advisor (a NYSERDA contracted Consultant) to assist in their submittal of a project summary report

NYSERDA evaluates the project based on the above submitted information. All Applications will be reviewed on a first-come, first-served basis until funds are fully committed.

After the Applicant submits the Application, NYSERDA and the RTEM Advisor will review the application in its entirety, and evaluate the RTEM System specifications and RTEM Services offered. NYSERDA's RTEM Advisor will conduct a pre-installation site visit on at least the first two projects for all new Applicants. Applicants are encouraged to continuously engage with the RTEM Advisor as they submit more projects for funding. Upon review and approval of the



Application information and completion of the pre-installation site visit (if required), NYSERDA will notify the Applicant and site contact(s) that the Application is approved. NYSERDA will then issue a PO committing the system installation cost-share and a full five years of eligible cost-sharing services. After installation, the RTEM Advisor will conduct a post-installation site visit.

Note: An Applicant proceeding with project demolition or installation prior to the NYSERDA conducted pre-installation site visit and approval will not receive a system installation cost-share. NYSERDA is not committed to cost-sharing a project until a PO is issued.

If at any time the project, RTEM system, or services do not meet the minimum requirements established by the Program, the Applicant will not be eligible to receive funds and the project will be cancelled.

PROGRAM DELIVERABLES:

Participation in the Program requires the Applicant to work with the RTEM Advisor to develop a plan to collect and submit the following deliverables to NYSERDA during the course of the project:

1. Project Summary Report – As stated above, prior to receiving a PO from NYSERDA.
The Applicant will provide information and supporting documentation to the RTEM Advisor to help summarize the projects scope of work and to ensure it meets the intent of the Program.
2. Installation and Commissioning Report – Prior to receiving the system cost-share from NYSERDA.
The Applicant will provide information and supporting documentation to the RTEM Advisor to help summarize the completion of installing the RTEM System and to explain the roles and responsibilities of project participants.
3. Services Quarterly Report
The Applicant will provide information and supporting documentation to the RTEM Advisor to help summarize the performance of the project on a quarterly basis. This includes providing a list of recommended energy saving measures that may be operational improvements or capital upgrades. The list shall also specify the expected energy savings and installation cost from each measure.

PROJECT PAYMENTS:

NYSERDA intends to issue progress payments based on the following:

1. System installation cost-share will be issued to the Applicant upon review and approval of installation and commissioning of the RTEM system. The RTEM Advisor will authorize NYSERDA to issue the payment after the post-installation site visit and approval of required documents needed to prepare the Installation and Commissioning report. Failure to provide documents needed to complete the Installation and Commissioning report within 30 days after the commissioning date may forfeit funding from this Program.



2. Service cost-share will be provided annually, after review and approval of the first Services Quarterly Report. (Example: RTEM services begin in September 2016. The Applicant submits December 2016 quarterly reporting. NYSERDA reviews and approves. NYSERDA issues funding for the September 2016- September 2017 reporting period). This process will repeat each following year. If reporting is not received within the first six months after commissioning, and quarterly thereafter, Applicants may forfeit project funding from the Program.

V: PROGRAM CONDITIONS & LIMITATIONS

CONDITIONS

- RTEM services cannot solely consist of software as a service (SaaS). RTEM services can incorporate SaaS in to the services contract to use as a tool to provide, enable, and/or implement energy savings measures.
 - RTEM systems are the monitoring hardware and software used to extract, process, and store energy usage data.
 - RTEM services are consulting services that customers contract with to analyze energy usage data and provide, enable, and/or implement energy savings measures, such as energy efficiency or renewable energy, based on the data.
- RTEM services must initially occur for at least 1 year. Projects are encouraged to participate for the full five (5) years of the Program cycle.
- Applicants must provide proof of payment for the RTEM systems and service by the site(s) in order to receive payment from NYSERDA. Documentation can include, but is not limited to, invoices and proof of purchase.
- RTEM Systems installed prior to submitting a project application are not eligible for a system cost share.
- Awarded projects must be installed and commissioned within one year of receiving a NYSERDA PO. A one-time extension for up to twelve additional months may be requested. Failure to install within the one-year timeframe or approved extension timeframe will result in project cancellation.
- Applicants must submit project level information to receive Program incentives.
- Project information, in addition to requirements listed in the Program Deliverables section above, shall be submitted to comply with project evaluation. Project information includes, but is not limited to, building profile, catalogue of facility's equipment profile, occupation and facility use, installed monitoring points, hardware/software/network specifications, incremental energy usage, measurement and verification data on implemented energy related projects such as energy efficiency or distributed energy resource installations, benchmarking data, and utility billing data.

LIMITATIONS

This PON 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. Applicants are limited to 20% (\$6 million) of total program funding. NYSERDA reserves the right to accept or reject any or all applications received, to negotiate with all qualified sources, or to cancel in part or in its entirety the PON when it is in NYSERDA's best interest.



NYSERDA may award a PO based on applications without discussion, or following limited discussion. NYSERDA may request additional data or material to support applications. A sample PO is available on request. NYSERDA will notify Applicants whether the application has been selected to receive an award.

Inability to complete project installation in a timely manner or adhere to the project schedule may result in project cancellation by NYSERDA.

NYSERDA does not guarantee work to RTEM Qualified Vendors. NYSERDA is not responsible for the relationship between customers and RTEM Vendor(s). NYSERDA is not liable for damages caused by RTEM Vendors.

The following are ineligible for funding:

- Whole-building monitoring or the installation of sub-meters in tenant spaces. Tenant-only projects may not receive NYSERDA cost-sharing for whole-space monitoring.
- Building Management Systems or Building Automation Systems, or other systems designed to control equipment or components.
- New facilities, or those that have undergone substantial renovations, must be occupied for more than one year to be eligible for funding under this solicitation.

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). 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). 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 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.

VII: ATTACHEMENTS FOR REFERENCE

Attachment A-1 - RTEM Application
Attachment A-2 - Multiple Sites Template
Attachment A-3 - Terms and Conditions

Attachment A-1: RTEM Project Application (page 2 of 2)

RTEM SCOPE OF WORK DESCRIPTION	
Gross Site Square Footage	
RTEM Impacted Site Square Footage	
What will be monitored?	<input type="checkbox"/> HVAC <input type="checkbox"/> Lighting <input type="checkbox"/> Other
At what level will they be monitored?	<input type="checkbox"/> System <input type="checkbox"/> Equipment <input type="checkbox"/> Device <input type="checkbox"/> Panel
Please describe the RTEM Scope of Work to include: systems monitored, number of data points, parties involved, and magnitude of services.	

APPLICANT CERTIFICATION.

Terms for applicants:

The Applicant understands that this application may not be approved if the requirements of the Program are not met. The Applicant understands that final payment will be contingent on meeting all the terms and conditions of the Program. Payment will be issued to the Applicant.

I certify that the Applicant and the Site (s) has 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 efficiency measure that is covered by this application.

Overall

NYSERDA does not make any representations of any kind regarding the results to be achieved or the adequacy or safety of any recommendation. NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied for any product of service.

I, the Applicant certifies that the Site (s) is a customer of a New York State investor-owned utility and the System Benefits Charge is paid.

I, the Applicant, certify the number provided is my correct taxpayer identification number (or I am waiting for a number to be issued to me); I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and I am a U.S. citizen or other U.S. person (as defined in IRS Form W-9).

I understand that by signing below I, the Applicant am certifying that I am authorized to commit my organization to the terms of this Application.

AUTHORIZED APPLICANT

SIGNATURE: _____

PRINT NAME AND TITLE: _____

ORGANIZATION AND PHONE: _____

FEDERAL ID!: _____

Federal ID # should match company/organization receiving payment for the project

ATTACHMENT A-3

EXHIBIT A TERMS & CONDITIONS

1. Approval

Incentives are not payable unless NYSEDA has approved the Installation and Commissioning report, conducted site visits, approved the quarterly reporting 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 project cost documented in the submitted copy of the signed agreement between the Applicant and the site. Payment will be based on completion of the required documents as outlined in the Solicitation and upon request by the Applicant NYSEDA also reserves the right to seek a refund for incentives paid if, at any time, it learns that the Project was not actually and properly installed or has subsequently been disconnected.

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

(a) NYSEDA 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 and made with at least one-week advance notice to the Applicant by NYSEDA.

(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 NYSEDA 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 inspection, and at any other time upon NYSEDA's request, the Applicant shall provide NYSEDA copies of all invoices (including all materials, labor, and equipment discounts) reflecting the costs of purchasing and installing the Project. The invoices shall include a breakdown of all equipment purchased for installation under this Agreement (the application and these Terms and Conditions). In addition, NYSEDA may request any other reasonable documentation or verification of the cost to the Applicant of purchasing and installing the equipment.

5. Incentive Payments

NYSEDA shall pay the incentive in accordance with and subject to the provisions of NYSEDA's Prompt Payment Policy upon the applicants' meeting the requirements of Real Time Energy Management 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) NYSEDA has verified installation costs and satisfactory installation of the Project, all in accordance with the specifications.

6. Post-Installation Verification

NYSEDA is not bound to pay any incentives until it has performed a satisfactory post-installation verification of the installation. If NYSEDA determines that the equipment was not installed in a manner that is consistent with the purpose of achieving energy savings, or if the installation was not consistent with generally accepted good engineering practices, NYSEDA may require changes before making any payments.

7. Changes in the Program

Notwithstanding paragraph 21 (b), the program and these Terms & Conditions may be changed by NYSEDA 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 NYSEDA.

8. Indemnification

The Applicant shall protect, indemnify and hold harmless NYSEDA 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 NYSEDA or the State of New York resulting from, arising out of or relating to Applicant's or its subcontractors' performance of this Agreement. The obligations of the Applicant under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

9. No Warranties

(a) NYSEDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSEDA 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. Title to equipment

Title to all of the equipment purchased under this Agreement shall vest with the Applicant.

13 Vendor Selection

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

14. Removal of Equipment

The Applicant agrees, as a condition of participation in the program, to remove and dispose of the equipment being replaced by the Project in accordance with all laws, rules, and regulations.

15. Review of Specifications Submittals and Drawings

The Applicant will provide NYSERDA with a copy of the specifications for the construction of the building projects that will be provided to the construction contractors. Such specifications must include the equipment. NYSERDA may refuse to pay incentives if the specifications do not provide for installation of the equipment consistent with good engineering and energy-efficient design practices. Applicant will, upon request by NYSERDA, provide a copy of the as-built drawings and equipment submittals for the facility. NYSERDA may refuse to pay incentives if the final submittals and drawings do not substantially reflect the installation of the equipment consistent with the original design intent as identified on the applicant application and worksheets.

16. Miscellaneous

(a) This Agreement (the Application, Program Opportunity Notice 3309 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 Agreement, the modification must be in writing and signed by an authorized representative of both parties.

17. Audit

The Applicant shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, 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 Agreement.

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 Agreement 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 Agreement 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 Agreement 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 Agreement.

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

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

(c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section, the maximum amount payable by NYSERDA to the Applicant pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.

19. Termination

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement 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 agreement 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 Agreement 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 Agreement, 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 Agreement, 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 Agreement 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 Agreement 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 Agreement conduct themselves in a manner

consistent with such status and by reason of this Agreement 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 contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

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).

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.¹

(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 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

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

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.