



Appliance Vendor:
(hereinafter "Vendor")

Street Address:

City:

State:

Zip:

County:

Primary Contact:

Job Title:

Telephone Number:

Email Address:

Please check the regions in which the counties to be served are located

- Capital Region** (Albany, Schenectady, Rensselaer, Columbia, Green, Warren, Washington, Hamilton, Saratoga County)
- Western** (Erie, Niagara, Chautauqua, Cattaraugus, Allegany County)
- North Country** (Jefferson, Lewis County)
- Adirondack** (Clinton, Essex, Franklin County)
- Mohawk** (Schoharie, Montgomery, Fulton, Herkimer, Oneida County)
- NYC** (New York, Bronx, Queens, Kings, Richmond County)
- Finger Lakes** (Orleans, Genesee, Wyoming, Monroe, Livingston, Wayne, Ontario, Seneca, Yates, Delaware County)
- Southern Tier** (Steuben, Schuyler, Tompkins, Chemung, Tioga, Broome, Chenango, and Otsego County)
- Mid-Hudson** (Sullivan, Orange, Rockland, Ulster, Westchester, Putnam, Dutchess County)
- Central** (Oswego, Cayuga, Onondaga, Cortland, Oneida, Madison County)

OR

Provide a service radius in miles from your location in the box below:

OR

I wish to serve a radius of ____ miles from the street address listed above.

Through the New York Residential Existing Homes Program, New York State Energy Research and Development Authority (NYSERDA) offers EmPower+ New York (hereinafter referred to as "the Program") to deliver energy efficiency and energy-use education to income-eligible households in New York State.

The Program provides cost-effective direct install and home performance measures. Direct install measures include, but are not limited to, replacement of inefficient lighting with energy efficient lighting, replacement of refrigerators and freezers with more efficient appliances. Home performance measures include, but are not limited to, blower-door assisted air sealing, attic, sidewall and basement insulation, the repair of heating system and domestic hot water equipment, or replacement of heating and domestic hot water heating systems with heat pump technology.



For the purposes of this Vendor Agreement (Agreement), the role of the Vendor will be to replace inefficient refrigerators and freezers for low-income families as identified by the Program. As needed NYSERDA may add additional appliances as Program needs change.

This Agreement sets out the terms and conditions under which Vendors may participate in the Program. Under this Agreement, the Vendor agrees to accept referrals of income-eligible Program participants from NYSERDA's Program Implementer. NYSERDA agrees to provide Program and technical support for participating Vendors.

This Agreement supersedes any previous Agreement, is completely voluntary and can be terminated at any time for any reason by NYSERDA. In the event the Vendor wishes to terminate this Agreement, the Vendor must provide 30-days written notice to NYSERDA.

NYSERDA will make available the following services and support to Vendor:

- Referrals of Program participants for installation of energy saving appliances.
- Program support and training on service delivery, reporting, and payment procedures;
- Access to NYSERDA's NY Home Energy Portal to access Program participant project information;
- Prompt payment for eligible services provided under the Program;
- Quality Assurance (QA) and quality control with prompt feedback to the Vendor to ensure adherence to high standards of quality;
- Easy access to the Program Implementer, for prompt response to Program inquiries.

Prospective Vendors should review this document in its entirety before completing and submitting it to the Program for review and consideration. Following the submission of an application package, NYSERDA will evaluate the provided documentation prior to considering an Agreement for approval. For both new applicants and returning applicants, key evaluation criteria include, but are not limited to the following:

- (i) Completion and submission of all the required Program paperwork;
- (ii) The Vendor's commitment to fair and ethical business practices as demonstrated through a review of resources including, but not limited to, the Better Business Bureau, NYS Department of Labor, and crowd-sourcing websites

For returning Vendors only, the past performance of the Vendor and/or Vendor staff in the Program or other similar programs which may include but is not limited to:

- (i) Demonstration of the Vendor's ability to properly, and consistently, follow Program policies and procedures, and timely completion of work;
- (ii) Review of historic Vendor's QA scores;



- (ii) Satisfactory and professional interaction with Program staff, Program participants, Program participants, other Program Contractors and Implementation Staff;
- (iii) Satisfactory record of fair and ethical business practices;
- (iv) Responsiveness to Program participant complaints, Implementation Contractor inquiries, and NYSERDA directives

Following the execution of this Agreement, the Vendor agrees to play an active role in the Program by providing high-quality services to Program participants. As a condition of participating in the Program and accessing NYSERDA's benefits, Vendor agrees to the following:

1. Program Requirements

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

The types and amounts of insurance required to be maintained under this Section are as follows:

- (1) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury, sickness, or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster, and
- (2) Workers' Compensation Employers Liability, and Disability Benefits coverage as required by New York State. The Vendor shall maintain Workers' Compensation covering the obligations of the Vendor as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits.



If a Vendor is identified as a Sole Proprietor, the contractor must complete and submit form CE-200: <https://ce-200-form.com/>.



The Participating Contract must provide proof of Workers' Compensation upon request by NYSERDA

- B. Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Vendor shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Vendor shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not make payments for projects completed under this Agreement without current insurance certificates.
- C. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, the Vendor shall deliver to NYSERDA a certified copy of each policy upon request.
- D. Within five working days, or contemporaneously with the requirements of each insurance policy, the Vendor shall notify NYSERDA in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Vendor, any non-Customer party to this Agreement or NYSERDA.
- E. The Vendor shall have access to a computer with an operating system capable of running any required and necessary Program software. The Vendor shall have an active email account(s) with the ability to receive emails from NYSERDA, the Implementation Contractor(s), and Program participants and check email on a regular basis for Program announcements and other communications. The Vendor shall ensure any email addresses on file with NYSERDA are current and must identify a primary Program point of contact. The Vendor shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level necessary.

The Participation Contractor is prohibited from downloading any type of hacking tools, including, but not limited to, network sniffers, vulnerability scanners, or password cracking tools.

- F. The Vendor shall adhere to the pricing schedule as provided in Section 5.5 of the [Program Manual](#) . This schedule is subject to change based upon 30-days written notice from the Program.
- G. The new model must be the same size (cubic feet) as the existing model and must be ENERGY STAR® .
- H. Vendor shall accept referrals from the Program and shall provide services to such referrals in accordance with the [Program Manual](#) and this Agreement.

Vendor recognizes that referrals received from the Program constitute a benefit from NYSERDA and that the Vendor must make every effort to pursue a referral in a timely fashion. If the Vendor fails to properly respond to a referral within 30 days, the referral may be made to another participating Vendor and future referrals may be affected. Vendor shall invoice for all work within 30 days of completion of the appliance delivery.

- I. The Vendor shall not use information obtained from NYSERDA or NYSERDA's designees in conjunction with its participation in the Program for any purpose other than to implement obligations under this Agreement. The Vendor acknowledges that information obtained from NYSERDA, or NYSERDA's designees, may include certain information concerning the Program or Program participants that is non-public, confidential, or proprietary in nature. The Vendor agrees such information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by the Vendor, its agents, employees, contractors, or professional advisors, other than is expressly required to implement its obligations under this Agreement.
- J. All Participating Contractors, Vendors and Subcontractors performing work in association with NYSERDA's programs are required to comply with the policies and procedures outlined in the [New York State Information Classification Policy \(NYS-S14-002\)](#) . In addition, the [New York State Information Security Policy \(NYS-P03-002\)](#)  sets forth the minimum requirements, responsibilities, and accepted behaviors to establish and maintain a secure environment to achieve the State's information security objectives. In general, when corresponding with Program participants, Implementation Contractors, and NYSERDA, use the NYSERDA External Contractor Data Security and Controls Policy to determine the type of Customer information that can be shared based on the platform being used. To minimize the occurrence of incoming emails containing confidential information, please instruct Program participants to redact utility account numbers, social security numbers and bank account numbers if you are requesting documents containing this information. Vendors who fail to comply with the NYSERDA External Contractor Data Security and Controls Policy will be subject to disciplinary action.
- K. Vendor shall maintain any relevant licenses as required by federal, State, county or municipal governments or any other governmental agencies for work in the trades it



undertakes through this Program. Vendor shall produce evidence of current licensing upon request by NYSERDA or its Program Implementer.

- L. Vendor acknowledges that participation in the Program is voluntary, and NYSERDA or its Program Implementer may suspend or terminate Vendor's participation in the Program for any reason, including but not limited to, failure to maintain these standards, poor performance, unresponsiveness, or inappropriate conduct. In all cases involving termination of Vendor's participation, NYSERDA's written decision is final.
- M. Vendor shall not knowingly employ as a Subcontractor any firm that has been suspended or terminated from this Program or any other NYSERDA program(s) without NYSERDA's prior written permission. An employee of a Subcontractor who has demonstrated unprofessionalism, unethical behavior or has exhibited poor workmanship on one or more past Program projects may be prohibited from working on Program projects.
- N. NYSERDA reserves the right to make changes to the Program upon notice to the Vendor. Programmatic changes announced through Program Announcements will supersede policies and procedures in this Agreement and/or the Program Manual. Such notifications shall be communicated via email and posting of the Program Announcement on the Contractor Support Site at <http://hpwescontractorsupport.com>.
- O. It is the Vendor's responsibility to ensure the appropriate Program contact's email address is on file with NYSERDA in the event of staff additions/losses or responsibility changes. Vendor acknowledges that failure to follow Program requirements and procedures, including processing of required documents, will jeopardize reimbursement for costs incurred under this Program.
- P. Vendor agrees to perform appliance replacement prior to invoicing NYSERDA for the service. In the event that billing discrepancies are identified for work already paid for, NYSERDA reserves the right to withhold comparable amounts of payments owed to the Vendor until the discrepancies are resolved. Billing for appliance installations which have not been completed may result in termination from the Program.
- Q. The Vendor acknowledges if NYSERDA determines a Vendor has not strictly adhered to the terms and conditions of the Program for a project, any Program incentives paid to the Vendor or any Program incentives due and owing to the Vendor under the Program, shall be repaid to, or recaptured by, the Program from the Vendor."
- R. It is the sole responsibility of the Vendor and its Subcontractors to obtain and comply with the terms of any required permits for installing appliances through the Program. The Vendor shall produce evidence of applicable permits upon request by NYSERDA or its Program Implementer.

A non-participating Subcontractor of a Vendor shall not represent itself as a participant



- in the Program or as able to offer Program services and benefits, for the purpose of executing the sale of a non-Program project. Additionally, Vendor shall not permit any Subcontractor to represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Program Implementer.
- S. The Vendor shall protect, indemnify and hold harmless NYSERDA, its Implementation Contractors, 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 Vendor's or its Subcontractor's performance of this Agreement, including, but not limited to, any claim or suit resulting from or related to mildew, fungus, moisture intrusion or mold of every type and nature. The obligations of the Vendor under this Section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.
- T. The Vendor shall not represent that the services it provides, or the materials it uses, are in any way endorsed or approved by the State of New York, NYSERDA, or NYSERDA's Program Implementer.
- U. The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and the Vendor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power, or authority to obligate or bind the other in any manner not specified in this Agreement.
- V. Neither Vendor nor its employees shall represent themselves as employees of or certified by the State of New York, NYSERDA or NYSERDA's Program Implementer. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.
- W. The Vendor agrees that the personnel furnished by the Vendor are determined to be "leased employees" within the meaning of Section 414(n) of the Internal Revenue Code, the Vendor acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. The Vendor agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in Section 414(n)(5)(B) of the Internal Revenue Code.

- X. The Vendor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, the Vendor and/or a member of a Vendor's staff. Accordingly, the Vendor 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 the Vendor'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.
- Y. NYSERDA may at any time, by written Order to the Vendor, require the Vendor 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 Vendor, 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 Vendor 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 Vendor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:
- a. by written notice to the Vendor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Vendor, or
 - b. terminate the Work covered by such order

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

- a. the Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to, the performance of any part of this Agreement, and
- b. the Vendor 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.

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.

Notwithstanding the provisions of this section, the maximum amount payable by NYSERDA to the Provider shall not be increased or deemed to be increased except by specific written amendment hereto.

- Z. The Vendor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors¹ with respect to the performance of this Agreement, including, but not limited to, the provisions that ensure the appropriate use of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA;

In addition, the Vendor must follow the policies and procedures found on the Doing Business with NYSERDA webpage at <https://www.nyserdera.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.

¹ Code of Conduct for Contractors, Consultants, and Vendors can be found at <https://www.nyserdera.ny.gov/About/Board-Governance>

2. Project Requirements

- A. All refrigerators and freezers installed as part of this Agreement shall be brand new and meet the requirements identified in Section 5.15 EmPower+ Eligible Measures and Accessories in the [Program Manual](#). All refrigerators and freezers installed must include:
- a. Controls that are understandable and easy to use
 - b. Levelers on front legs.
 - c. Shelf adjustability.
- B. All refrigerators installed must include:
- a. Automatic defrost
 - b. Full shelf in freezer
 - c. Separate freezer control

- C. The Vendor shall provide the Program participant with a written warranty of labor and materials. Refrigerators and freezers shall carry a minimum one-year parts and labor warranty from the Vendor, valid from the date the delivery is completed. After one year, the Vendor must honor any valid manufacturer's warrantee for the installed appliance. In the event labor is not covered during this period, the Vendor is expected to charge the Program participant fair market rate for any needed repairs. Damaged or defective items, as determined by the Implementation Contractor, shall be replaced at no cost (including shipping) to the Program. For appliances installed not meeting Program requirements, as identified through a Program participant concern submission or QA inspection, the warranty will be extended one year once the Vendor has remediated all deficiencies to Program/manufacturer's standards.
- D. The Vendor must provide the Program participant with a reasonable time frame for delivery. A courtesy phone call must be made if they are running more than one hour past the scheduled delivery time.
- E. Vendor must maintain satisfactory and professional Program participant interaction, treat Program participants fairly, and shall provide timely completion of work and response to Program participant complaints and NYSERDA directives.
- F. Deliveries must include complete installation into the home, including placement into the designated space and leveling of the new appliance. All refuse related to delivery, including appliance packing materials, must be removed at the time of installation.
- G. If, at the time of the scheduled delivery, there is no one at the residence to receive the delivery, the Vendor can charge a no-show fee not to exceed the cap referenced in Section 5.5 of the [Program Manual](#)-EmPower+ Pricing.
- H. The Vendor must make sure that all units are operational before the delivery crew leaves the home.
- I. Vendor shall provide all Program participants with Vendor contact information, and all included manufacturer's documentation that came with the appliance, which at a minimum shall include the manual(s).
- J. Vendor will provide a confirmation of appliance delivery to the customer identifying the make and model of the appliance installed, signed by the customer. The Vendor may upload a copy of the confirmation in the Program workflow platform. Alternatively, the Vendor may retain a copy of the confirmation of appliance delivery for six years from the date of delivery and provide a copy to NYSERDA upon request as part of Quality Assurance procedures.

- K. At the time of payment request, the Vendor will record all required data including make and model of the appliance installed and attest to delivery confirmation in the Program workflow software. It is expressly understood that NYSERDA and its Program Implementor will approve payment based on the attested delivery confirmation provided by Vendor.
- L. Following the installation of an appliance, the Vendor must make repairs or provide financial compensation within seven working days for any damage done to either the appliance or the home during the installation.
- M. Vendor shall remove old refrigerators and freezers from Program participant's home at the time of installation. The Vendor is responsible to legally dispose of all replaced refrigerators and freezers. All refrigerators and freezers must be dismantled to prevent reuse and parts must not be sold or distributed for reuse. Refrigerants, including but not limited to chlorofluorocarbons (CFC's), hydro chlorofluorocarbons (HCFC's), or 134A (HFC's), must be removed in accordance with Section 608 of the Clean Air Act and 40 CFR Part 82. Any capacitors or ballasts that may contain Polychlorinated biphenyls (PCB's) must be removed and disposed of in a manner consistent with federal, state, and local laws. All capacitors must be physically removed and examined. Any capacitor that clearly says "NO PCBS" can be disposed of in a manner consistent with generally accepted industry practices. If the words, "NO PCBS" do not appear on the label, the capacitor contains PCBs and must be incinerated by an EPA approved incineration site or put in a landfill that is permitted to legally handle PCBs. All refrigerators and freezers must be sent to a shredding or baling facility for final destruction and recycling of materials.
- N. If, during the warranty period, the unit fails three times for a problem originating from the manufacturer and/or repair, the Vendor must replace the appliance at no cost to the Program participant.
- O. The Vendor must notify the Program Implementer immediately once they have been made aware of a manufacturing defect identified during the warranty period and assist in ensuring that the manufacturer proactively fixes the defect before the unit fails.
- P. If a refrigerator or freezer fails due to manufacturing defects during the warranty period, the Vendor must reimburse the Program participant for the cost of food spoilage, up to \$300, due to the appliance failure.
- Q. If the Program participant has to wait more than three days for a warranty repair part for an appliance provided by the Vendor and the appliance is inoperative, the Vendor must provide a loaner to the family.



- R. If Vendor becomes involved in a dispute with a Program participant over business practices, Vendor shall work with the Program Implementer to resolve the dispute amicably.
- S. NYSERDA, its Program Implementer or QA Contractor may conduct random field inspections of work that has been performed through the Program as part of this Agreement. Vendor recognizes NYSERDA’s commitment to inspect at least 10% of all jobs performed by the Vendor under the Program.
- T. Vendor, upon request of NYSERDA, Program Implementer, or QA Contractor, and at no additional cost to the Program participant, shall make reasonable repairs or corrections as required. This provision survives termination of the Agreement.
- U. NYSERDA requires the Vendor maintain a dispute resolution policy on file. The policy shall include protocols for a timely response, identification of responsible parties, documentation of corrective actions, results, and a means of identifying and addressing systemic issues. The policy shall not contain mandatory arbitration clauses. The policy shall require mediation if disputes cannot be settled amicably. If a Vendor, or its Subcontractor, becomes involved in a dispute with a Customer over business practices, the Vendor shall work to settle the dispute amicably utilizing the Vendor’s customer dispute resolution policy. The obligations of the Contractor under this Section shall survive any expiration or termination of this Agreement.

3 Required Disclosures

- A. Using the space below, Vendor shall disclose whether it (any owner, member, principal, shareholder, officer, or employee) has been suspended or terminated from any NYSERDA program(s) during the past five (5) years. In addition, please provide a written explanation of the circumstances leading to such suspension or termination by attaching additional pages if necessary.

Name	Program
_____	_____
_____	_____

- B. Vendor shall disclose whether the company is a Minority or Woman Owned Business.

Is your company a Minority, Veteran or Woman Owned Business? ___Yes ___No



APPLICANT CERTIFICATION

I certify, under the penalties of law that the statements made in this Agreement, and in supporting documentation provided along with this Agreement, have been examined by me and are true and complete and that I have the authority to sign on behalf of Vendor. I understand that by signing this Agreement, I consent to any other inquiry to verify or confirm the information I have given. I hereby authorize any reference identified or provided to NYSERDA by Vendor to release to NYSERDA any information pertaining to past or present relevant work. I hereby release from all liability or damage, NYSERDA and those persons, agencies or organizations who may furnish such information.

Signed:

Name of Vendor Company

Signature Date

Printed Name

Title



EXHIBIT A

REVISED 1/24

STANDARD TERMS AND CONDITIONS

FOR ALL NYSERDA AGREEMENTS

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

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

1. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.
2. **WAGE AND HOURS PROVISIONS.** If this is an agreement for a public work covered by Article 8 of the Labor Law or a building service covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, if this is an agreement for a public work or a building service as covered above, or a covered project as defined in Labor Law section 224-a, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of

the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.
4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).
5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.
6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from



other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in

21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website

for the Committee on Open Government (<http://www.dos.ny.gov/about/foil2.html>) and NYSERDA's Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

a. FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.

As a condition to NYSERDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon



Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.
13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.
14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.
15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:



NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

- a. The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
 - b. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
 - c. The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
 - d. The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.
16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).
18. PROCUREMENT LOBBYING. To the extent this Agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections



139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:
- a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
 - b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
 - c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <https://ogs.ny.gov/iran-divestment-act-2012>).
21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 (“DERA”), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology (“BART”). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: <https://www.dec.ny.gov/regs/2492.html>.
22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

EXHIBIT B
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.³
- b. This exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

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

- a. "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.
- b. "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.
- c. "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.
- d. "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.
- e. "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.
- f. "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.
- g. (1) "Receipt of an Invoice" means:



- i. if the Payment is one for which an invoice is required, the later of:
 - a. the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or
 - b. the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.
- ii. if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

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

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

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

504.4. Payment Procedures.

- a. Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.
- b. NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:
 - 1. any defects in the delivered goods, property or services;
 - 2. any defects in the invoice; or
 - 3. suspected improprieties of any kind.
- c. The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected

or otherwise resolved.

- d. If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.
- e. In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

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

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

- d. If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

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

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

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

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

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

504.11. Court Action or Other Legal Processes.

- a. Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal



action for the payment of such interest, whichever occurs first.

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