

FELLOWSHIP APPLICATION

NYSERDA PON 4772 – Climate Justice Fellowship

This form should be submitted to cjf@nyserda.ny.gov via email once the host employer has been approved through the portal [application](#) and the fellow has been approved through the directory [application](#).

Organization Name _____

Contact Name _____

Contact Title _____

Contact Phone _____

Contact Email _____

Contact Address _____

Fellow Name _____

Fellow Phone _____

Fellow Email _____

Fellow Address _____

1. Have you verified and documented that the prospective fellow is a New York State resident and from a priority population?
 Yes
 No
2. Is the fellow a new hire and **not** a previous or furloughed employee, contractor or non-NYSERDA intern?
 Yes
 No

Additional details: _____

Note: Under this solicitation, interns participating in NYSERDA's New York State Clean Energy Internships Program (PON 4000) may be eligible to become a fellow with their current host employer if they have not already been hired as an employee at that organization.

3. Is there an opportunity for the fellow's role to become a full-time permanent position once the fellowship is complete?

Yes

No

Additional details: _____

Note: Offering employment following the fellowship is encouraged, but not required.

4. Can you confirm that the organization has at least one physical business location in New York State where the fellowship will be hosted with the space and equipment needed to support the work of the fellow including a desktop or laptop computer if needed for their work or to access the additional resources provided by our partners?

Yes

No

Additional details: _____

5. Can you confirm that the organization has at least two or more employees, not including the fellow?

Yes

No

Additional details: _____

Note: Principals, owners and contractors are not considered employees for the purposes of this solicitation. Also, this specific two employee eligibility requirement does not apply to employers who are New York State registered or New York City certified as a WBE/MBE/SDVOB, or to startups actively or recently participating in NYSEDA's Tech to Market programs.

6. Can you confirm that the fellow is **not** a relative of the business owners, principals, hiring managers, or existing employees of the business?

Yes

No

Additional details: _____

Note: "Relative" shall include the following relationships: relationships established by blood, marriage, or legal action. Examples include spouse, mother, father, son, daughter, sister, brother, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, aunt, uncle, nephew, niece, grandparent, grandchild, or cousin. The term

also includes domestic partners (a person with whom the employee's life is interdependent and who shares a common residence) and a daughter or son of an employee's domestic partner.

7. Does your organization have experience managing and mentoring interns or fellows?

- Yes
- No

Additional details: _____

8. List and describe the required comprehensive employee health benefits (i.e., medical, dental and vision) your organization will offer to the fellow during the 12-month employment period.

9. What is the monthly cost to your organization for these health benefits?

10. What is the monthly cost to the fellow for these health benefits?

11. Will you offer the fellow any additional employee benefits such as life insurance, retirement plan, student loan assistance, etc.?

- Yes
- No

Additional details: _____

12. Will you offer the fellow paid time off or sick time in addition to the two weeks paid time off included in the fellowship?

- Yes
- No

Additional details: _____

13. Will you offer the fellow a higher salary than the \$37,000/year provided by this fellowship?

- Yes
- No

Total Salary Offered: _____

14. NYSERDA will provide additional resources for the fellows through our partners at no cost to the fellow or host employer, including peer groups, access to additional mentors, a climate leadership certificate course, skills labs, and access to an online network. Will you commit to providing time for the fellow to take advantage of these resources as part of their work duties?

- Yes
- No

Additional details: _____

15. Does the fellowship project involve heat pumps?

- Yes
- No

16. Approximately what date would you like the fellowship to start? _____

17. Please provide a brief summary describing the projects the fellow would be working on and how they will advance climate justice and clean energy priorities in disadvantaged communities.

18. Please confirm that the fellow will not be working on any NYSERDA funded projects (with the exception of the NY Clean Transportation Prizes program).

- Yes, Confirmed
- No, Not Confirmed

Additional details: _____

**CLIMATE JUSTICE FELLOW
PROGRAM OPPORTUNITY NOTICE (PON) 4772
HOST EMPLOYER AGREEMENT**

The undersigned Host Employer, as defined in the Climate Justice Fellow Program Opportunity Notice (PON) 4772, hereby acknowledges by and through the below signatory who, in signing, asserts that they possess legal authority to speak for and bind the undersigned organization (the “Host Employer” or “Contractor”) that they have read and agree to be bound by the terms and conditions set forth below, including Exhibits A and B, and those in the PON, including its reporting requirements, which are incorporated herein and made a part hereof by reference.

1. The Host Employer acknowledges that the PON may be changed by NYSERDA, without notice and at NYSERDA’s sole discretion, at any time. In the event of a change, said changes will be applicable to all New Hire Applications not yet approved by NYSERDA. The Host Employer must comply with the version of the PON in effect at the time of NYSERDA’s approval of the application.
2. The Host Employer certifies that:
 - a) Any award issued pursuant to this application will be used for wages of a worker employed in the State of New York;
 - b) No employed worker shall be displaced by the newly hired fellow, including a partial displacement such as a reduction in hours, wages, or employment benefits;
 - c) The Host Employer will comply with New York State labor law and federal law for the protection of workers.
3. By submitting this application, I certify that the fellow identified within is not a relative of Host Employer’s owners, principals, or hiring managers as the word “relative” is defined in the PON.
4. I certify that all information contained in this form is true and correct.

The Equipment Owner hereby indicates its acceptance of and agreement to the foregoing by causing its duly authorized representatives to execute this Agreement in the space provided below.

Host Employer Legal Business Name:

Signature _____ Date _____

Print Name _____

Title _____

Email Address _____

EXHIBIT A

GENERAL CONDITIONS

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. EXECUTORY CLAUSE. NYSERDA shall have no liability under this Agreement to the Equipment Owner or to anyone else beyond funds appropriated or otherwise available for this Agreement.

2. 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 Equipment Owner 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, Equipment Owner 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, Equipment Owner 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. Equipment Owner 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.

3. 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 Equipment Owner'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, Equipment Owner 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 Equipment Owner 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.

4. 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, Equipment Owner warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Equipment Owner further warrants that, at the time Equipment Owner submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Applicant's behalf.

5. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Equipment Owner agrees, as a material condition of the Agreement, that neither the Equipment Owner 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 Equipment Owner, or any of the aforesaid affiliates of Equipment Owner, 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 Equipment Owner 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).

6. 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 Equipment Owner 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.

7. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Equipment Owner 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, Equipment Owner 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 Equipment Owner considers a proprietary and/or confidential trade secret, Equipment Owner shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Equipment Owner represents that the information has actual or potential specific commercial or competitive value to the competitors of Equipment Owner. 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>).

8. 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 Equipment Owner pursuant to this Agreement, Equipment Owner shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Equipment Owner has both such numbers. Where the Equipment Owner does not have such number or numbers, the Equipment Owner 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 Equipment Owner 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.

9. **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 A, the terms of this Exhibit A shall control.

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

11. **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.

12. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law and Rules (“CPLR”), Equipment Owner hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Equipment Owner’s actual receipt of process or upon NYSERDA’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Equipment Owner 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. Equipment Owner will have thirty (30) calendar days after service hereunder is complete in which to respond.

13. **CRIMINAL ACTIVITY.** If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Equipment Owner or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Equipment Owner’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 Equipment Owner 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 Equipment Owner knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Equipment Owner and its principals. The Equipment Owner or its principals may also be subject to penalties for any violation of law, which may apply in the particular circumstances. For a Equipment Owner that 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.

14. PERMITS. It is the responsibility of the Equipment Owner 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.

15. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Equipment Owner 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.

16. 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: 518-292-5220
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

(d) The Equipment Owner 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.

17. 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 Contractors, 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.

18. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Equipment Owner 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).

19. 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 Equipment Owner 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 Equipment Owner in accordance with the terms of the agreement.

20. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Equipment Owners 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 Equipment Owner must have on file with the New York State Department of Taxation and Finance a Equipment Owner Certification form (ST-220-TD).

b) Prior to entering into such an agreement, the Equipment Owner is required to provide NYSERDA with a completed Equipment Owner

Certification to Covered Agency form (Form ST-220-CA).

- c) Prior to any renewal period (if applicable) under the agreement, the Equipment Owner 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 Equipment Owner in accordance with Tax Law Section 5-a was false when made.

21. 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).

22. DISCLOSURE REQUIREMENT. The Equipment Owner 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 Equipment Owner 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 terminate the agreement; the Equipment Owner may be subject to penalties for violation of any law, which may apply in the particular circumstances. Equipment Owners 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.

23. 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>.

24. 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. This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

(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.