

Attachment 3 – Sample Purchase Order

PON 1093 Purchase Order Agreement

NYSERDA

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

17 Columbia Circle

Albany, New York 12203-6399

Phone: (518) 862-1090 * Fax: (518) 862-1091

Program Authorization Number

Federal taxpayer ID #: 14-1731395

N.Y. State sales tax exemption #: 14720026K

| | | |
|--|-----------------|---|
| TO: Contractor Name Contractor Address City, State Zip Code Attn: Contractor Contact (the "Contractor") | DATE X/XX/XX | PURCHASE ORDER NUMBER XXXX SHOW ON INVOICES AND SHIPMENTS |
|--|-----------------|---|

SEND INVOICES TO: New York State Energy Research and Development Authority
 17 Columbia Circle
 Albany, NY 12203-6399
 ATTN: Dave McCabe

PLEASE FURNISH THE FOLLOWING, SUBJECT TO THE CONDITIONS NOTED:

| DESCRIPTION | TOTAL COST |
|--|---|
| <p>For the Contractor's Biofuel Station Project located at Contractors Address. The incentive will be paid upon completion of all deliverables listed in the attachments to this Purchase Order (PO) and in PON 1093. Final payment will be calculated as described in PON 1093 and in Exhibit A.</p> <p>The incentive shall be paid upon receipt and approval of invoices for deliverables as defined in PON 1093 and subject to the limitations contained in the attachments to this PO. Such invoices shall provide documentation of evidence that costs have been incurred and are consistent with the eligible costs listed in section 1.5 of Exhibit A. Payment shall be made to the Contractor in accordance with the terms of Exhibit C, Prompt Payment Policy Statement, attached hereto.</p> <p>This PO expires 12 months from the date on this PO. NYSERDA will not make payment on an expired PO.</p> <p align="right">TOTAL COST NOT TO EXCEED</p> | <p align="right">\$XX,XXX.XX</p> |

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IS EXEMPT FROM PAYMENT OF ALL FEDERAL AND NEW YORK SALES TAXES, COMPENSATING USE TAXES AND EXCISE TAXES. DO NOT INCLUDE SUCH TAXES WHEN SUBMITTING INVOICES. THE CONTRACT ESTABLISHED BY THIS PURCHASE ORDER IS GOVERNED BY EXHIBIT B, STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS, WHICH IS INCORPORATED HEREIN AND MADE A PART HEREOF. CONTRACTOR SIGNIFIES ITS ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER AND EXHIBIT B BY DELIVERY OF THE GOODS OR SERVICES AND BY THE ACCEPTANCE OF PAYMENT.

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By: _____
 AUTHORIZED SIGNATURE

Date: _____

EXHIBIT A

Biofuel Station Program

1.0 PROGRAM REQUIREMENTS

1.1 Eligibility Requirements

The Bio-Fuel Station Initiative (the Program) is open to any entity that owns or operates one or more retail fueling stations that is registered with the New York State Department of Tax and Finance to sell gasoline or diesel fuel to the public and which is capable of accepting major credit cards as a form of payment for fuel. The entity that applies must be the entity that will own the Biofuel equipment and must have the legal authority to make improvements to the site at which the Biofuels dispenser(s) will be located. If the entity leases the property or does not own the property they must prove they have the right under the lease agreement to make improvements to the property. These rights should be in place for a minimum of 6 years going forward from the time the Program funds are dispersed to the applicant. If the applicant is a franchisee, they must present documentation of their franchise agreement.

1.2 Available Funds

NYSERDA anticipates awarding up to \$9 million under the Program, but may award more than, or less than that amount.

1.3 Reporting

Applicants will be required to provide semiannual reports to NYSERDA detailing the amount of fuel dispensed and operation of the equipment funded under the Program.

1.4 Program Incentive Schedule

NYSERDA will provide a reimbursement incentive of 50 percent of the eligible costs (defined in Section 1.5), up to \$50,000 per site, for a Biofuel Station Project (defined in Section 1.7) for E85 Ethanol. Biofuel Station Projects for blends of Biodiesel are subject to the following schedule:

| % biodiesel blend to be sold | Max NYSERDA Reimbursement % |
|-------------------------------------|------------------------------------|
| 20% (B20) | 50% |
| 15% (B15) | 40% |
| 10% (B10) | 30% |
| 5% (B5) | 20% |

There is no cap on the total amount of funds that any one entity can receive. Applications from entities that own or operate multiple fueling sites in New York State are encouraged to apply, but no single site can receive more than \$50,000.

1.5 Eligible Costs

Costs for the following are eligible under this Program: piping; dispensers; fire suppression systems; card reader systems for the sale of the Biofuels; directly related site work such as: patching pavement that had to be torn up to install tanks or piping and concrete slabs for dispenser islands; new storage tanks; cleaning of existing tanks; pumps; fittings; signage; sumps; new equipment to retrofit dispensers and pumps; installation-related labor; special fire fighting foams for the local first

responders; and any other equipment that NYSERDA determines is necessary to properly store, dispense, and sell the Biofuel. Only eligible cost items can be used to meet the applicant's required 50 percent cost-share contribution. Applicants will be required to justify costs.

Site work not directly related to the installation of the equipment is not eligible under the Program for reimbursement or as cost-share. Examples of work that are not eligible for reimbursement are upgrades to buildings; general site paving; general aesthetic site work such as flower beds; and any other equipment not directly related to the Biofuel equipment required to store, dispense, and sell the Biofuels.

1.6 Recapture Provision

Entities receiving funds through the Program are required to offer the Biofuel for sale to the public for a minimum of four years from the date the dispenser(s) are operational. If the Biofuel is offered for sale for any period less than 4 years, the funds are subject to recapture. The recapture amount will be based upon the proportion of time the fuel was actually available for sale against the minimum amount of time 4 years that the fuel was obligated to be available for sale.

1.7 Station Requirements

- A Biofuel Station Project must be comprised of: one or more above- or below-ground tanks capable of storing a minimum of 2,000 gallons of fuel; one or more dispenser systems for dispensing either E85 Ethanol or Blended Biodiesel; and a card reader/payment system that accepts major credit cards.
- Code Compliance. All installations of Biofuel equipment must comply with applicable local and State Building and Fire Codes. This includes the requirement that dispensers and associated equipment be approved and listed by an appropriate listing entity such as Underwriter's Laboratory ("UL"). At the time of the issuance of PON 1093, UL is in the process of certifying such equipment. Until such time as UL or another appropriate listing entity publishes lists of approved equipment, each installation is required to seek a compliance waiver from either the New York State Department of State (NYS DOS), Division of Codes, or the local authority having jurisdiction ("AHJ").
- First Responder Preparation: Stations owner/operators awarded Program funds must ensure that the local first responders have the proper fire fighting foam equipment to respond to an E85 fire or other incident related to the storage or dispensing of the biofuel. This includes purchasing special fire fighting foam for the local responders, if needed. The cost of the foam is an eligible item for reimbursement under the Program.
- Signage: Each site receiving funds through the Program must install proper signage to notify the public of the availability and price of the biofuel. Signs should be placed on the marquee of the fueling facility, however, if such placement is prohibited by local jurisdiction, another appropriate sign must be prominently displayed on the property, in order to provide uniformity.

A signage kit for E85 comprised of items such as pump toppers, decals, and banners) developed by the National Ethanol Vehicle Coalition ("NEVC"), must be used at the site. These items can be viewed at the following site. http://www.e85fuel.com/station_promoitems.php To purchase these items contact the NEVC by the information listed below. Ask for the New York E85 station kit. The minimal cost of these items is an eligible item for reimbursement under PON 1093. Station owners and operators are also encouraged to make promotional information about Biofuels available as take-aways for the public. For additional information on the signage kit please contact Rhonda Beul with the NEVC at:

Rhonda Beul
NATIONAL ETHANOL VEHICLE COALITION
3216 Emerald Lane, Suite C

Jefferson City, MO 65109
PH: 573.635.8445
Fax: 573.635.5466
Order@e85.com

Signage kits for Biodiesel refueling facilities can be purchased from the National Biodiesel board. The link to preview these kits is: www.allthingsbiodiesel.com/NYSERDA
For additional information on the signage kit please contact Doug Whitehead at:

Doug Whitehead
Director of Operations
The National Biodiesel Board
PO Box 104898
Jefferson City, MO 65110-4898
PH: 800-841-5849
dwhitehead@biodiesel.org

Sale of Biofuel: Station owner and operators should offer the Biofuel for sale on a continual basis, without interruption, for at least 12 hours per day for a period of 48 months. The Biofuel must be offered at the lowest possible retail price to the general public. Every reasonable attempt should be made to price the E85 on par with the gross margin the station charges for premium gasoline, and Blended Biodiesel on par with the gross margin the station charges for premium diesel.

- Public Announcement: Station owner and operators should announce the opening of the site through the local media, local automobile dealerships, and other appropriate venues; and schedule events to highlight the availability of the Biofuel. All announcements, press releases, and advertisements must be approved by NYSERDA and must include a statement noting support given by NYSERDA through the Program.

2.0 DEFINITIONS

2.1 Biodiesel

Biodiesel is a domestic, renewable fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of ASTM D 6751 as updated and revised. Biodiesel can be used in any concentration with petroleum based diesel fuel in existing diesel engines with little or no modification. Biodiesel is produced by a chemical process which removes the glycerin from the oil. Blended biodiesel is a blend of biodiesel fuel meeting ASTM D 6751 with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Download the Handling and Use Guidelines for Biodiesel at the National Renewable Energy Laboratory website. <http://www.nrel.gov/vehiclesandfuels/npcf/pdfs/40555.pdf>

Additional information about Biodiesel including how and where to purchase the fuel can be found on the National Biodiesel Board website. <http://www.nbb.org/>

2.2 E85

E85 is a blend of typically 85% denatured ethanol [ethyl alcohol (C₂H₅OH) containing 5% hydrocarbon denaturant] and 15% hydrocarbon by volume. The hydrocarbons must meet all applicable State and Federal requirements. Total hydrocarbon volume must range from 15% to 30% of the total volume of the E85 based on information provided in the Handbook for Handling, Storing, and Dispensing E85 dated April 2005, which can be found at www.e85fuel.com/pdf/e85_technical_booklet.pdf and ASTM d5798. Such specifications are incorporated by reference, are available upon request, and located on the NEVC website at www.e85fuel.com

2.3 Completed Facility

A completed facility is one for which all necessary equipment has been installed, all necessary State and local permits have been received, appropriate signage has been installed, a card reader system that takes major credit cards is activated, and the station is open to the general public. Additional requirements for fueling stations are described in Section 1.7. All facilities are subject to inspection by NYSERDA's Consultant to determine if the Biofuel Station Project is completed. The facility must meet all conditions set forth in section 1.7.

Facilities must be completed within 1 year of the execution of the Purchase Order Agreement. Extension requests for the Purchase Order Agreement must be submitted to NYSERDA in writing within 30 calendar days of the Purchase Order Agreement expiration date. Extensions may be granted at NYSERDA's discretion.

2.4 Consultant

NYSERDA will engage an engineering service firm ("Consultant") to provide assistance to the Program. The Consultant will be selected under NYSERDA Request for Proposals 1089.

3.0 REPORTING REQUIREMENTS

- 3.1 The applicant must notify NYSERDA when it has a completed facility. NYSERDA will assign its Consultant to perform a final site inspection to ensure that the facility is fully operational, that it meets all Program requirements; and that all the eligible costs are documented. If the facility meets all of the necessary requirements, the Consultant will forward the payment request including invoices and documentation to NYSERDA and the authorized funding for that facility will be paid to the applicant.

Please use this checklist to ensure the following information will be available at the final site inspection:

- General Site Plan
- Description of work performed
- Tanks installed under the project (both biofuels and non-biofuels): Capacity/Fuels Stored
- Dispensers: Type and number of each
- Pumps: Type
- Piping: Type
- Fire suppression system: Type
- Signage: Listing of required signage in place
- Building permit and certification of occupancy
- Waivers/variances received
- Written certification by the local fire company that E-85 compatible Fire Fighting Foam is on hand and available.
- Promotional information availability
- Description of Public Announcement
- Contractor name
- Construction start/completion dates
- Petroleum Bulk Storage Certificate or Revised Application
- Contractor's Statement of Completion
- Tank manufacturer checklist
- Cost Breakdown for all work, including Quotations, Invoices and Records of Payment

At the completion of the project, detailed cost information must be provided for biofuel equipment. Installing contractors and equipment suppliers should be made aware of this

requirement, as documentation is most easily developed throughout the procurement and construction process.

- 3.2** The applicant is required to submit semi-annual reports to NYSERDA and the Consultant due on July 31 and January 31 detailing the amount of Biofuel sold and the average price of the fuel sold during the previous six months. Reports, to be submitted for a period of 4 years after the facility is completed, must also include information on the operation of the facility and equipment installed under the Program. Applicants that do not submit reports will be subject to a recapture of the Program funds given to them.

EXHIBIT B

REVISED 9/06

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts)

The parties to the attached agreement, contract, license, lease, amendment, modification or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than NYSERDA, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with 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, age, disability 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 a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement 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, 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.

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

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

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **ADDITIONAL TERMS AND CONDITIONS.** The following terms and conditions shall apply to this Purchase Order:

(a) **Release by the Contractor.** The acceptance by the Contractor of final payment pursuant to this Purchase Order shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

(b) **Maintenance of Records.** The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Purchase Order and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Purchase Order, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

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

(d) Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Purchase Order. The obligations of the Contractor under this clause shall survive any expiration or termination of this Purchase Order, and shall not be limited by any enumeration herein of required insurance coverage.

(e) Termination. This Purchase Order may be terminated by NYSERDA at any time during the term of this Purchase Order, with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for allowable costs incurred prior to the effective date of termination.

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

(g) Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in this Exhibit B. References to particular laws of the State of New York in this Exhibit B and elsewhere in this Purchase Order, however, are not intended to be exclusive and nothing contained in such Exhibit and Purchase Order shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

(h) Executory Clause. In accordance with Section 41 of the New York State Finance Law, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds appropriated and available under this Agreement.

EXHIBIT C

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability.

(a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under contracts. This Part constitutes NYSERDA's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by NYSERDA to a person or business in the private sector under a contract it has entered into with NYSERDA on or after May 1, 1988. This Part does not apply to payments due and owing:

- (1) under the Eminent Domain Procedure Law;
- (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
- (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
- (4) if NYSERDA is exercising a legally authorized set-off against all or part of the payment; or
- (5) if other State or Federal law or rule or regulation specifically requires otherwise.

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

(a) "NYSERDA" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between NYSERDA and a Contractor.

(c) "Contractor" means any person, partnership, private corporation, or association:

- (1) selling materials, equipment or supplies or leasing property or equipment to NYSERDA pursuant to a contract;
- (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, NYSERDA pursuant to a contract; or
- (3) rendering or providing services to NYSERDA pursuant to a contract.

(d) "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.

(e) "Designated payment office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203-6399.

(f) "Payment" means provision by NYSERDA of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit NYSERDA's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

(g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(h) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for NYSERDA not to be liable for interest pursuant to Section 506.

(i) "Proper invoice" means a written request for a contract payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the designated payment office.

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

(2) For purposes of this subdivision, if the contract requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced 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.

(k) "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.

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

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, a proper invoice submitted by the Contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within 15 calendar days after receipt of an invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; and
- (3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If 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 Part.

Section 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 Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

(a) If the case of a payment which a contract provides will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by the contract or other State or Federal mandate has not been submitted to 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 the contract 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 the contract 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.

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

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

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

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a Contractor may object to any action taken by NYSERDA pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to 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, 17 Columbia Circle, Albany, New York 12203-6399. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that 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 30 working days.

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

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Part shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by 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.

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