

RFP 916 – ATTACHMENT F

RPS STANDARD FORM CONTRACT

AGREEMENT BY AND BETWEEN

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

[NAME OF OFFEROR]

Dated: _____, 2005

Agreement No. _____

This Agreement ("Agreement") is entered into as of _____, 2005 (the "Effective Date") by and between the New York State Energy Research and Development Authority ("NYSERDA"), a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and [Offeror] ("Seller"), a [insert as appropriate], having a principal business address of _____. NYSEDA and Seller are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

WHEREAS, the New York State Public Service Commission ("PSC") adopted a Renewable Portfolio Standard ("RPS") program to address the energy, economic, and environmental objectives of New York State by creating the potential to build new industries in the State based on clean, environmentally responsible energy technologies [See Case 03-E-0188, "Order Regarding Retail Renewable Portfolio Standard" issued and effective September 24, 2004, and "Order Authorizing Fast Track Certification and Procurement," issued and effective December 16, 2004 (the "Orders")] and the Orders designate NYSEDA as the Central Procurement Administrator of the RPS Program and all associated funding; and

WHEREAS, NYSEDA has conducted a competitive Request for Proposals ("RFP 916") to procure rights to RPS-eligible renewable energy attributes; and

WHEREAS, NYSEDA RFP 916 provided, among other things, that this standard form of contract ("Agreement") would be employed to govern the rights and obligations of the Parties; and

WHEREAS, Seller has participated in such competitive solicitation and has been selected by NYSEDA as a winning bidder with respect to the [name of facility] ("Bid Facility"); and

WHEREAS, the Seller desires to sell to NYSEDA, and NYSEDA desires to purchase from Seller, the RPS-eligible renewable energy attributes associated with [_____%] of the output of the Bid Facility ("RPS Attributes," as defined herein) during the Contract Delivery Term, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, this Agreement has been entered into by the Parties to define, among other things, their rights and obligations concerning the generation of RPS Attributes by Seller and delivery of all right and title to RPS Attributes to NYSEDA, and the payments by NYSEDA to Seller during the term of this Agreement.

Article I

Definitions

The terms defined in this Article I, whenever used in this Agreement (including in any Exhibit hereto), shall have the respective meanings indicated below for all purposes of this Agreement (each such meaning to be equally applicable to the singular and the plural forms of the respective terms so defined). All references herein to a Section, Article or Exhibit are to a Section, Article or Exhibit of or to this Agreement, unless otherwise indicated. The words

“hereby”, “herein”, “hereof”, “hereunder” and words of similar import refer to this Agreement as a whole (including any Exhibit) and not merely to the specific section, paragraph or clause in which such word appears. The words “include”, “includes”, and “including” shall be deemed, in every instance, to be followed by the phrase “without limitation.” Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to “dollars” and “\$” shall be deemed references to the lawful money of the United States of America.

Actual Annual Production. The amount, in MWh, of the total energy production of the Bid Facility over each year during the Contract Delivery Term, measured or compensated to the Delivery Point, except that:

- (i) for a hydroelectric upgrade or Repowering, the Actual Annual Production shall be the product of (a) the total annual energy production of the entire Bid Facility, measured or compensated to the Delivery Point, multiplied by (b) the percentage of the expected average annual energy production resulting from the upgrade or repowering, as indicated on the Bid Proposal Form, subject to adjustment upon final operational certification.
- (ii) for biomass co-fired with fossil-fueled combustion, the Actual Annual Production shall reflect the eligible biomass generation only, determined as the total annual electrical generation of the entire Bid Facility, multiplied by the BTU ratio of (a) the biomass fuel heat input to (b) the total fuel heat input.

Agreement. This Agreement and all Exhibits hereto, all of which are made a part hereof as though herein set forth in full.

Bid Facility. The electric generating station identified and described in the Bid Proposal Form submitted by Seller in response to RFP 916, consisting of a specified nameplate capacity, in MW or fractions thereof.

Bid Price. A single fixed production incentive, expressed in \$/MWh, applicable to each RPS Attribute offered as performance throughout the Contract Delivery Term. For all transactions contemplated and consummated under this Agreement, the Bid Price shall be \$ ____/MWh.

Bid Proposal Package Documents. The Bid Proposal Checklist, Bid Proposal Form, and Bid Facility Self-Certification Form submitted by Seller in response to RFP 916, which shall be incorporated into and made part hereof as Exhibit D.

Bid Quantity. The number of MWh the Bid Facility expects to proffer as performance under this Agreement over each year during the Contract Delivery Term. This number will equal the Expected Total Annual Production multiplied by the Bid Quantity Percentage.

Bid Quantity Percentage. The percentage (%) portion of the Bid Facility’s Expected Total Annual Production that is committed to performance under this Agreement.

Certification and Assignment of Rights Form. The form set forth in Exhibit B to this Agreement.

Commercial Operation. A state of operational readiness under which a Bid Facility is able to produce energy and has obtained all rights, abilities, and approvals to schedule and sell energy into a market administered by the NYISO, and is physically capable of performing such sales.

Contract Administrator. NYSERDA's Director of Contract Management, Cheryl E. Earley, or such other person who may be designated, in writing, by NYSERDA.

Contract Delivery Term. The fixed duration of the period of performance under this Agreement, which shall commence on the later of January 1, 2006 or the date upon which the Bid Facility commences Commercial Operation, and which shall expire in no event later than December 31, 2015.

Customer-Sited Bid Facility. A Bid Facility interconnected on the customer side of a retail electric meter.

Delivery. Bid Facilities located in the New York Control Area (NYCA), and non-Intermittent Bid Facilities located outside of the NYCA must demonstrate to the satisfaction of NYSERDA that the electrical output of the Bid Facility associated with the RPS Attributes is scheduled and delivered into a market administered by the NYISO (physical bilateral energy contracts do not meet this requirement).

An Intermittent Bid Facility located outside of the New York Control Area may sell its electrical output into the spot market of its own control area without simultaneous transmission into the New York Control Area, so long as an equal quantity of energy is transmitted out of the affected spot market and scheduled and delivered into a market administered by the NYISO during the same calendar month (monthly matching).

Delivery Point. For Bid Facilities located within the New York Control Area and non-Intermittent Bid Facilities located outside of the New York Control Area, the generator bus or location where the NYISO measures energy delivery from the Bid Facility into the New York market. For Intermittent Bid Facilities located outside of the New York Control Area, the generator bus or location where the administrator of the local control area measures energy delivery from the Bid Facility into the local market (and assuming monthly matching; see Delivery).

Effective Date. The effective date of this Agreement shall be the date in the first paragraph of page one, above.

Expected Total Annual Production. The amount, in MWh, as specified on the Bid Proposal Form as the expected average annual energy production of the Bid Facility, measured or compensated to the Delivery Point, except that:

- (i) for a Customer-Sited Bid Facility, the Expected Total Annual Production shall reflect an amount net of the expected on-site annual energy consumption met with generation

from the Bid Facility and therefore not scheduled into a wholesale market;

- (ii) for a Repowering or hydroelectric upgrade, the Expected Total Annual Production shall be the product of (a) the post-upgrade or Repowering amount specified on the Bid Proposal Form as expected average annual energy production (in MWh) measured or compensated to the Delivery Point from the entire Bid Facility (line 19 of the Bid Proposal Form), multiplied by (b) the percentage of the expected average annual energy production resulting from the upgrade or Repowering (line 20 of the Bid Proposal Form); provided that Seller must demonstrate that there has been an upgrade. The percentage increase in expected average annual energy production resulting from the upgrade or Repowering must be based on an independent engineer's report, subject to verification prior to any payment by NYSERDA;
- (iii) for biomass co-fired with fossil-fueled combustion, the Expected Total Annual Production shall reflect the eligible biomass generation only, determined as the total expected electrical production of the entire Bid Facility (line 19 of the Bid Proposal Form), times the BTU ratio of (a) the biomass fuel heat input to (b) the total fuel heat input (line 21 of the Bid Proposal Form).

Intermittent Bid Facility. For purposes of this Agreement, intermittent sources shall include wind, solar, tidal, ocean, and run-of-river hydroelectric.

Knowledge. Knowledge shall mean actual knowledge of any officer or manager of Seller, or the knowledge that any such person would be expected to have after conducting a reasonable inquiry, whether or not such an inquiry was actually conducted.

Letter of Credit. An unconditional and irrevocable stand-by letter of credit, substantially in the form attached hereto at Exhibit C, issued by a financial institution reasonably acceptable to NYSERDA that provides for a draft or drafts by NYSERDA in accordance with the terms of this Agreement. See Article XII.

Month. A calendar month, commencing at the beginning of the first day of such calendar month.

MW. Megawatt.

MWh. Megawatt-hour(s).

NYISO. The New York Independent System Operator, Inc.

Person. An individual, a corporation, an association or partnership, an organization, a business, a government or political subdivision thereof, or any governmental agency or instrumentality.

Quantity Obligation. Shall mean, for each year of the Contract Delivery Term, the number of MWh calculated as the Bid Percentage multiplied by the Actual Annual Production; subject, however, to an annual cap of 115% of the Bid Quantity.

Repowering. Shall mean a generation unit other than a Hydroelectric Upgrade with an initial date of Commercial Operation no later than December 31, 2002, that has been or will be substantially and verifiably Repowered on or after January 1, 2003, such that the annual energy production from the facility after Repowering is or will be demonstrably greater than the annual energy production prior to the 2003 level by at least five percent of annual production.

RPS-eligible Attributes. Shall mean any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation of electricity by a Bid Facility. One RPS-eligible Attribute shall be created upon the generation by a Bid Facility of one MWh of energy. RPS-eligible Attributes include but are not limited to: (i) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SOx), nitrogen oxides (NO), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iii) all set-aside allowances from emissions trading programs; and (iv) all credits, certificates, registrations, etc., representing any of the above. If the Bid Facility is a biomass or landfill gas facility and the Seller receives any tradable credits, benefits, emissions reductions, offsets, and allowances based on the greenhouse gas reduction benefits attributed to its fuel usage, it shall provide NYSERDA or its designee with sufficient credits, benefits, emissions reductions, offsets, and allowances to ensure that there are zero net GHGs associated with the production of electricity from such Bid Facility.

RPS-eligible Attribute does not include (i) any energy, capacity, reliability or other power products, such as ancillary services; (ii) production tax credits associated with the construction or operation of the Bid Facility or other financial incentives in the form of credits, reductions, or allowances associated with the Bid Facility that are applicable to a state or federal income taxation obligation; (iii) fuel-related subsidies or "tipping fees" that may be paid to the Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the Bid Facility for compliance with local, state, or federal operating and/or air quality permits.

RPS Attributes. The RPS-eligible Attributes offered and delivered by Seller as performance during the Contract Delivery Term of this Agreement.

Article II

Purchase and Sale of Rights to RPS Attributes

Section 2.01. On the terms and subject to the conditions and provisions of this Agreement, including, but not limited to, the terms, conditions and limitations set forth in

Articles II, III and IV hereto, Seller agrees to sell, assign, convey and deliver to NYSERDA, and NYSERDA agrees to purchase from the Seller, all right, title and interest in the RPS Attributes associated with the energy produced by the Bid Facility during each month of the Contract Delivery Term.

Section 2.02. Such right, title and interest shall include perpetual and exclusive rights to all RPS Attributes, including but not limited to the exclusive rights to claim, consistent with New York State Environmental Disclosure rules: (a) that the energy associated with RPS Attributes was generated by the Bid Facility; and (b) that New York State and or the RPS Program is responsible for the reductions in emissions and/or other pollution resulting from the generation of the project's energy and its delivery into a market administered by the NYISO.

Section 2.03. At the time of such sale, assignment and conveyance by Seller to NYSERDA, the RPS Attributes shall be free and clear of all liens, judgments, encumbrances and restrictions.

Section 2.04. NYSERDA's obligations under this Agreement are expressly conditioned on the eligibility of Seller's Bid Facility, at the time of execution of this Agreement and throughout the duration of the Contract Delivery Term, under the Main Tier eligibility rules and requirements, as such requirements existed on January 18, 2005 and as are stated at Appendix C to the September 24, 2004 Order and elsewhere within the Order. Bid Proposals and/or Bid Facilities selected under this RFP will not be subject to subsequent changes in RPS eligibility rules; however, in the event that the Bid Facility fails to maintain eligibility consistent with the RPS requirements as they existed on January 18, 2005, such ineligibility will extend to the attributes emanating from the Bid Facility.

Section 2.05. Subject to authorization by the PSC, NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the RPS Attributes or the right, title and interest to the RPS Attributes NYSERDA shall acquire under this Agreement, at any time and from time to time to any entity and on such terms and conditions as NYSERDA may desire. Any financial or other consideration received by NYSERDA from any such action shall inure solely to NYSERDA's benefit, to be applied as NYSERDA determines as the Central Procurement Administrator of the RPS Program, and shall not affect the Seller's obligations under the terms of this Agreement.

Article III

Payment

Section 3.01. Invoices. Seller shall submit monthly invoices throughout the term of this Agreement requesting payment by NYSERDA for RPS Attributes created in the prior month during the Contract Delivery Term. Such invoices shall include a statement of the amount due and payable by NYSERDA to Seller, which amount shall be calculated as the multiplicative product of (a) total number of MWH produced by the Bid Facility during the prior month; (b) the Bid Percentage; and (c) the Bid Price. All such invoices must and shall be accompanied by a

completed Certification and Assignment of Rights Form, in the form provided at Exhibit B hereto.

Section 3.02. Payment. NYSERDA will make payment to Seller of the monthly invoiced amount; NYSERDA may adjust payments to subsequent invoices consistent with NYISO billing settlement true-up procedures, based on actual metered production data reflecting deliveries to a NYISO administered market from the Bid Facility or by monthly matching transactions as accounted for by the NYISO. NYSERDA will not pay, during any Contract Delivery Term year, for RPS Attributes beyond 115 percent of the Bid Quantity.

Section 3.03. Prompt Payment Policy. NYSERDA will make payments to the Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit E. The Seller shall be notified by NYSERDA in accordance with Section 5.04.4 (b)(2) of such Exhibit E, of any information or documentation that the Seller did not include with such invoice. Such payments shall be made by check or wire transfer to an account designated by the Seller. NYSERDA will not pay any invoice not accompanied by a completed Certification and Assignment of Rights Form with regard to the RPS Attributes for which payment is requested.

Section 3.04. Maximum Commitment/Limitation. The maximum aggregate amount payable by NYSERDA to Seller hereunder is \$[insert: multiplicative product of (1) Bid Price, (2) Bid Quantity and (3) number of years of Contract Delivery Term, and (4) 1.15]. NYSERDA will not accept delivery nor pay, during any Contract Delivery Term year, for RPS Attributes created by any MWH in excess of 115 percent of the Bid Quantity.

Section 3.05. Settlement. NYSERDA will require the Seller to provide detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Bid Facility was delivered. Seller may also be required to waive confidentiality, as to NYSERDA, for the direct transfer to NYSERDA by an energy market administrator of transactional and/or delivery information and data pertinent to the verification of RPS Attribute creation and delivery.

Section 3.06. Adjustment. Should a Bid Facility's Quantity Obligation fail to achieve 85% of the Bid Quantity for three (3) consecutive years, the Expected Total Annual Production will be adjusted for the remainder of the Contract Delivery Term, for purposes of establishing the Bid Quantity, to equal the average actual annual output over that three-year period.

Section 3.07. Maintenance of Records. The Seller shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of seven (7) years following the expiration of this Agreement, full and detailed books, accounts, and records pertaining to Seller's performance under the Agreement, 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 Seller in the course of such performance.

Article IV

Audit

Section 4.01. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records pertaining to Seller's performance under this Agreement, at the office or offices of the Seller where they are then being kept, maintained and preserved. If such books, accounts and records are not kept at an office within the State of New York, within a reasonable time of a request by NYSERDA, Seller shall make such books, accounts and records available to NYSERDA at NYSERDA's offices or at an agreed upon location within the State of New York. Any payment made under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein which are found by NYSERDA on the basis of any audit of the Seller by an agency of the United States, the State of New York or NYSERDA not to constitute a properly invoiced amount.

Section 4.02. Eligibility Audit. NYSERDA may require periodic audits of the Bid Facility to verify that the Bid Facility remains eligible under the eligibility rules and requirements, as such requirements existed on January 18, 2005 and as are stated at Appendix C to the Order and elsewhere within the Order. Seller shall provide advance written notice to NYSERDA of any plans to materially modify the Bid Facility and shall, at NYSERDA's written request, provide NYSERDA with a written description of the proposed modification. Seller shall not materially modify the Bid Facility without NYSERDA's prior written approval, which shall not be unreasonably withheld, unless such modification would result in the loss by the Bid Facility of RPS eligibility.

Section 4.03. Additional Documents. Within 10 business days of Notice from NYSERDA of selection under RFP 916, Seller shall provide to NYSERDA:

- (a) certificates, dated as of the most recent practicable date prior to the Effective Date, issued by the [insert - jurisdiction of Seller's organization] Secretary of State confirming the corporate good standing of the Seller;
- (b) a certificate of an appropriate officer of the Seller, dated as of the Effective Date, in form and substance reasonably satisfactory to NYSERDA and certifying: (1) the names and signatures of the officers of the Seller authorized to sign a Certification and Assignment of Rights Form and any other documents to be delivered hereunder, and (2) the accuracy and completeness of resolutions of the Seller, authorizing and approving all matters in connection with the transactions contemplated thereby.
- (c) Seller shall promptly provide NYSERDA with updated and corrected versions of the above-referenced certificates upon any change in the information provided therein.

Section 4.04. Progress Reports. On a bi-monthly or more frequent schedule beginning with the Effective Date and continuing through the commencement of the Contract Delivery Term, Seller shall provide written reports to NYSERDA, which reports shall be in letter form,

and which shall describe (1) Seller's progress in obtaining and securing all required environmental or other permits and/or local approvals; (2) the status of development and/or construction planning or activities with regard to the Bid Facility; and (3) for Bid Facilities located within the State of New York, the status of the interconnection process between the Bid Facility and the NYISO. Such reports shall include copies of any permits or approvals granted and/or copies of any correspondence of any type denying or refusing any permit or approval.

Section 4.05. Monthly Data. On a bi-monthly basis throughout the Contract Delivery Term, Seller shall provide to NYSERDA hourly generation data, in a format to be agreed upon.

Article V

Assignments

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonable withheld.

Section 5.02. Seller may, without NYSERDA's prior written consent, grant a security interest in or assign this Agreement as collateral in connection with financing arrangements.

Section 5.03. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment.

Article VI

Seller's Warranties and Guarantees

Section 6.01. As a material inducement to NYSERDA to enter into this Agreement, Seller makes the following warranties and guarantees, all of which shall survive the execution and delivery of this Agreement:

- (a) (1) that Seller is [corporation/limited liability company/partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (2) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to own its assets or lease and operate its properties and carry on its business as now being or as proposed to

be conducted, to construct, finance, own, maintain and operate the Bid Facility, to execute and deliver this Agreement, and to consummate the transactions contemplated herein; and (3) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary.

- (b) that the execution, delivery and performance by Seller, the entry into this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement: (1) have been duly authorized by all requisite corporate action (including any required action of its members); and (2) will not (i) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency or any provision of the limited liability company agreement or other governing documents of Seller; (ii) violate, conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any indenture, agreement (including the respective limited liability company agreements of Seller), mortgage, deed of trust, note, lease, contract or other instrument to which Seller is a party or by which it or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of the Seller.
- (c) that the Bid Facility is or will be eligible under the Order and that it will remain so throughout the Contract Delivery Term.
- (d) that the RPS Attributes, as to which right and title is to be transferred to NYSERDA under this Agreement, are eligible and compliant with the Renewable Portfolio Standard;
- (e) that the RPS Attributes, as to which right and title is to be transferred to NYSERDA under this Agreement, are free and clear of any liens, encumbrances and/or defects of title;
- (f) that the RPS Attributes, as to which right and title is to be transferred to NYSERDA under this Agreement shall not have otherwise been, nor will be sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;
- (g) that Seller will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;
- (h) that this Agreement and each Certification and Assignment of Rights Form will be duly executed and delivered by Seller and will constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof;

- (i) that the Seller has no Knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that Seller's performance under this Agreement will infringe any patent or otherwise interfere with any other right of any Person;
- (j) that there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect Seller's performance of this Agreement or NYSERDA's rights hereunder;
- (k) that Seller has no Knowledge that any information or document or statement furnished by the Seller in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading;
- (l) that Seller shall not, and shall not cause or permit any voluntarily abandonment of the development, construction or operation of the Facility.

Article VII

NYSERDA's Warranties and Guarantees

Section 7.01. As a material inducement to Seller to enter into this Agreement, NYSERDA makes the following warranties and guarantees, all of which shall survive the execution and delivery of this Agreement:

- (a) that NYSERDA is an instrumentality of the State of New York and a public authority and public benefit corporation, created under the New York State Public Authorities Law, validly existing and in good standing under the laws of the State of New York.
- (b) that NYSERDA has all necessary power and authority to execute and deliver this Agreement and all other agreements contemplated herein and hereby and to consummate the transactions contemplated hereby and thereby. The execution and delivery by NYSERDA of this Agreement and all other agreements contemplated herein and hereby and the consummation of the transactions contemplated hereby and thereby have been or, if not yet executed and delivered, will be when executed and delivered, and no other actions or proceedings on the part of NYSERDA are necessary to authorize this Agreement or any other agreement contemplated herein and hereby or the consummation of the transactions contemplated hereby and thereby.
- (c) that the execution, delivery and performance by NYSERDA of this Agreement will not (1) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency or, any provision of the Public Authorities Law; (2) violate, conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any

indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which NYSERDA is a party or by which NYSERDA or any of its property is bound; or (3) result in the creation or imposition of any lien upon any property or assets of NYSERDA. This Agreement will not conflict with any other agreement or contract to which NYSERDA is a party.

- (d) that this Agreement has been duly executed and delivered by NYSERDA and constitutes the legal, valid and binding obligation of NYSERDA enforceable against NYSERDA in accordance with the terms thereof.
- (e) that NYSERDA is familiar with and in compliance with all general and specific laws, except where the failure to so comply would not result in a material adverse effect on NYSERDA's ability to perform its obligations.
- (f) that there is no action, suit or claim at law or in equity, or before or by a governmental authority pending or, to the best knowledge of NYSERDA after due inquiry, threatened against NYSERDA or affecting any of its properties or assets which could reasonably be expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.
- (g) that as a public benefit corporation and instrumentality of the State of New York, NYSERDA may not file, and is not subject to the involuntary filing of a petition for relief pursuant to the United States Bankruptcy Code.

Article VIII

Indemnification

Section 8.01. Indemnification. Seller 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' and/or experts' 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 Seller's performance under this Agreement. The obligations of Seller under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article IX

Insurance

Section 9.01. Maintenance of Insurance; Policy Provisions. The Seller, at no cost to NYSERDA, shall maintain or cause to be maintained, commencing with the Effective Date and continuing throughout the duration of the Contract Deliver Term, insurance of the types and in

the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

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

Section 9.02. Types of Insurance. Seller shall be required to maintain 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 [insert: \$1,000,000 or \$100,000 per/MW Nameplate Capacity, whichever is lower) in respect of claims arising out of personal injury or sickness or death of any one person; [insert \$1,000,000 or \$100,000 per/MW Nameplate Capacity, whichever is lower) in respect of claims arising out of personal injury, sickness or death in any one accident or disaster; and [insert \$1,000,000 or \$100,000 per/MW Nameplate Capacity, whichever is lower) in respect of claims arising out of property damage in any one accident or disaster.

Section 9.03. Delivery of Policies; Insurance Certificates. Within 30 days of the effective date of this Agreement, Seller shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event that any policy furnished or carried pursuant to this Article will expire on a date prior to the expiration date of this Agreement, Seller, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and Seller shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request Seller shall deliver to NYSERDA a certified copy of each policy.

Article X

Events of Default

Section 10.01. Event of Default. For the purposes of this Agreement, “Event of Default” shall mean any of the following:

- (a) Representations and Warranties. Any representation or warranty made in this Agreement that shall prove to have been false or misleading in any material respect as of the time made or deemed to be made; or

- (b) Other Obligations. A Party shall default in the performance of any of its obligations under this Agreement and such default shall continue unremedied for a period of 30 days after Seller receives Notice or otherwise has actual knowledge thereof; or
- (c) Voluntary Proceedings. A Party shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) make a general assignment for the benefit of its creditors; (c) commence a voluntary case under the Bankruptcy Code; (d) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (e) fail to convert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (f) take any corporate action for the purpose of effecting any of the foregoing; or
- (d) Involuntary Proceedings. A proceeding or case shall be commenced against a Party, without its application or consent, in any court of competent jurisdiction, seeking (a) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets; or (c) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 or more days; or an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or
- (e) Judgments. A judgment or judgments for the payment of money in the amount of \$500,000 or more shall be rendered by a court or courts against Seller, and the same shall not be paid or otherwise discharged for a period of more than 60 days unless such judgment has been stayed, released or vacated; or
- (f) Transfer. The transfer or attempted transfer by Seller to any transferee other than NYSERDA of any RPS Attribute associated with this Agreement.
- (g) Commercial Operation. Failure of the Bid Facility to commence Commercial Operation on or before June 30, 2006.
- (h) Abandonment. Seller's abandonment of the Facility or its intentional delay of completion of construction in connection therewith;
- (i) Failure to Perform. The failure of the Bid Facility to produce power, over any period during the Contract Delivery Term of at least twelve (12) consecutive months, at a level of at least 50% of the Bid Quantity.
- (j) Compatible System. For a Bid Facility located outside of the New York Control Area, failure to have compatible environmental attribute tracking and trading system, as

determined by the PSC, available and operational by commencement of Commercial Operation.

Section 10.02. Effect of an Event of Default. In addition to any other remedy available to it under this Agreement or under applicable Law, upon any occurrence of an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement until the earlier of such time as (a) such Event of Default has been cured, or (b) the non-defaulting Party has elected to terminate this Agreement pursuant to Article XI below.

Article XI

Termination

Section 11.01. Termination. This Agreement may be terminated:

- (a) at any time by either NYSERDA or Seller if: (1) an Event of Default occurs (and following the expiration of any applicable cure period), (2) the party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (3) the non-defaulting Party has not waived such Event of Default in writing;
- (b) at any time by the mutual written consent of Seller and NYSERDA;
- (c) unless otherwise mutually agreed upon by NYSERDA and Seller in writing, on the expiration of the Contract Delivery Term (subject to Section 13.03 below);
- (d) by Seller, on or before July 1, 2005;
- (e) by Seller, after January 1, 2006 and on or before January 6, 2006, if: (1) less than 80 percent of the Installed Capacity of the Bid Facility has commenced Commercial Operation by January 1, 2006; AND (2) the “placed in service” eligibility deadline date under the Federal Production Tax Credit (*see* 26 U.S.C. § 45, *et seq.*) has NOT been extended beyond December 31, 2005 by at least six (6) months.

Section 11.02. Effect of Termination. Except as otherwise set forth in Section 15.03 below, in the event of a termination of this Agreement as provided in Section 11.01 above, neither party shall have any further right or obligation hereunder. In addition, the parties hereto agree that irreparable damage would occur in the event that NYSERDA could not obtain rights to RPS Attributes pursuant this Agreement from the date of Event of Default in which Seller was the Defaulting Party, and accordingly, each party hereby agrees that NYSERDA shall be entitled to elect to compel specific performance of this Agreement to compel the delivery of Certification and Assignment Forms for all RPS-eligible Attributes that the Bid Facility produces following the date of any termination for such an Event of Default in accordance with the terms hereof, together with any other remedy at law or equity available to NYSERDA in connection therewith, without the necessity of demonstrating the inadequacy of money damages. In addition, for any

termination by NYSERDA or Seller prior to the date of commencement of Commercial Operations, NYSERDA shall be entitled only to Stipulated Damages pursuant to Article XII.

Section 11.03. Good Faith Negotiation. Both Parties agree that, should any dispute arise during the term of this Agreement, the Parties will make a good faith, though non-binding effort to reconcile any difference or dispute before the filing of an action in any court.

Article XII

Security

Section 12.01. Within 10 days of Notice from NYSERDA of selection under RFP 916, Seller shall provide to NYSERDA Security, in the form of cash, certified funds, or a Letter of Credit conforming to the requirements below, in the amount of \$[insert: \$3.00 multiplied by the Bid Quantity].

Section 12.02. Letter of Credit. A Letter of Credit shall be a clean unconditional and irrevocable standby letter of credit in favor of NYSERDA as beneficiary, issued for direct payment by a bank which is a member of the New York Clearinghouse Association, substantially in the form of the letter of credit attached hereto as Exhibit C (“Letter of Credit”), in a face amount equal to \$ _____ [\$3.00 multiplied by the Bid Quantity], and which Letter of Credit shall provide that the issuing bank will pay to NYSERDA amounts in aggregate up to that same face amount upon presentation of only the Sight Draft in the amount to be drawn and the Payment Certificate, in the form of Annex A and Annex B, respectively, to the Letter of Credit, and have an expiration date not shorter than one (1) year. Should the Bid Facility not have commenced Commercial Operation by a date 30 days prior to the expiration date of the letter of Credit, and Seller not having provided NYSERDA or arranged with NYSERDA to provide a substitute Letter of Credit prior to such expiration, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA until a substitute Letter of Credit has been provided, or for application against subsequent obligations of Seller.

Section 12.03. Replacement. Any assignee within Article V of this Agreement shall, simultaneously with its receipt of the assignment, deliver to NYSERDA a Replacement Letter of Credit meeting the requirements of this Article, and NYSERDA shall, within twenty (20) business days after receipt of a compliant Replacement Letter of Credit, return the original Letter of Credit to Seller. Upon the failure of an assignee to deliver a compliant Replacement Letter of Credit to NYSERDA simultaneously with its receipt of the assignment, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA for application against subsequent obligations of Seller and/or the assignee under this Agreement.

Section 12.04. Refund of Security. Amounts provided by Seller as Security will be returned or refunded to Seller by NYSERDA:

- (a) in their entirety if the Bid Facility is deemed RPS-eligible, and the Bid Facility commences Commercial Operation on or before June 30, 2006;
- (b) at fifty percent (50%) of the amount provided if Seller elects to terminate the contract on or before July 1, 2005.

Section 12.05. Retention of Security. Amounts provided by Seller as Security will be retained by NYSERDA:

- (a) at fifty percent (50%) of the amount provided if the Seller elects to terminate the contract on or before July 1, 2005;
- (b) in their entirety if the Bid Facility fails to attain operational certification and/or to commence Commercial Operation on or before June 30, 2006;
- (c) in their entirety if the Seller elects to terminate the contract under Section 11.01(e), above.
- (d) in their entirety if, upon commencement of the Contract Delivery Term, no compatible environmental attribute accounting system, as determined by the PSC, is operational and available in the control area within which the Bid Facility is located.

Section 12.06. Stipulated Damages. NYSERDA and Seller hereby agree, acknowledge and stipulate that NYSERDA's retention of amounts provided by Seller as Security pursuant to Article XII, in the proportions stated within this Article, is fair and reasonable under the circumstances and in light of the uncertainty and inability to adequately quantify the harm that would result to NYSERDA as a result of such delay.

Article XIII

Force Majeure

Section 13.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, or strikes. Variability in the frequency or force of the wind, of rainfall, or of water levels will in no event constitute force majeure events. Failure by Seller to obtain or secure any permit or approval of any sort with regard to Seller's performance under the Agreement shall not constitute a force majeure event.

Article XIV

Compliance with Certain Laws

Section 14.01. Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

Section 14.02. Laws of the State of New York. Seller shall comply with all of the requirements set forth in Exhibit A hereto.

Section 14.03. All Legal Provisions Deemed Included. It is the intent and understanding of the Seller and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Seller, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.04. Other Legal Requirements. The references to particular laws of the State of New York in this Article and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Seller to comply with all legal requirements.

Article XV

Additional Provisions

Section 15.01. Forward Contract. Each Party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

Section 15.02. Taxes. Seller shall be responsible for and obligated to pay all present and future taxes, fees and levies that may be assessed by any entity upon the Seller's provision of Attributes to NYSERDA, or with respect to the creation of the RPS Attributes and/or the energy with which they are associated, up to the Delivery Point.

Section 15.03. Term. Unless terminated earlier under this Article, this Agreement shall expire upon the expiration of the Contract Delivery Term, provided that payment has been made for all RPS Attributes as to which a Certification and Assignment of Rights Form has been delivered to NYSERDA. Upon such date or upon earlier Termination of this Agreement under Article XI, neither Party shall have any further obligation to the other, except that Sections 8.01, 14.01, 17.01, 18.02, 18.03, 18.04, and NYSERDA's Payment obligation under Article III shall survive.

Section 15.04. Waiver. Either Party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered by the other Party pursuant hereto, or (c) waive compliance with any of the agreements or conditions of the other party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No provision of this Agreement will be deemed to have been waived unless the waiver is in writing; no delay by NYSERDA in exercising its rights hereunder, including the right to terminate this Agreement, shall be deemed to constitute or evidence any waiver by NYSERDA of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

Section 15.05. Independent Contractor. The status of the Seller under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Seller and its respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Section 15.06. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

Section 15.07. Seller Expense. Seller shall, at its own expense, make all arrangements necessary to interconnect the Bid Facility with a transmission or distribution system and deliver the energy produced by the Bid Facility into the New York Control Area in accordance with the requirements of the Order, including meeting the monthly matching requirement of the September 24, 2004 Order. This requirement encompasses Seller's purchasing or arranging for all services including without limitation transmission, ancillary services, any control area services, line losses and transaction fees necessary to deliver energy to the New York Control

Area, in accordance with all rules and protocols of the NYISO, throughout the Contract Delivery Term.

Section 15.08. Environmental Disclosure. At the time of the execution of this Agreement, New York does not employ any registry for the tracking, registration, or trading of renewable or environmental attributes or credits, but rather has instituted the Environmental Disclosure program, under which the Department of Public Service will conduct Conversion Transactions to accomplish verification of the transactions consummated hereunder. In the event that an attribute or credit registry is adopted in the future, Seller and Buyer agree to: (1) take such steps as are required under such system to continue to transfer RPS Attributes to NYSERDA in accordance with the terms of this Agreement; and (2) amend this Agreement as needed to effect its intent and to comply with any requirements of such attribute or credit registry. Should the PSC create, sanction, adopt or begin participation in a Renewable Energy Credit (REC) registry or attribute accounting or tracking system established for generation in the New York Control Area, Seller shall deliver the REC associated with each RPS Attribute to an account designated by NYSERDA.

Section 15.09. Covenant. Seller hereby covenants and promises that the Bid Facility is or will be eligible under the Order and that it will remain so throughout the Contract Delivery Term.

Article XVI

Notices, Entire Agreement, Amendment, Counterparts

Section 16.01. Notices. All notices, demands and other communications hereunder shall be effective only if given in writing and shall be deemed given when (a) delivered in person, (b) delivered by private courier (with confirmation of delivery), (c) transmitted by facsimile (with confirmation of transmission) or (d) five Business Days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid. For purposes hereof, notices, demands and other communications shall be sent to the following (or to such other address as the Seller or NYSERDA shall have furnished to the other party in writing):

To Seller:

Attn:

To NYSERDA:

NYSERDA
Attn: Office of General Counsel
17 Columbia Circle
Albany, New York 12203-6399

Section 16.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Seller and supersedes all prior

agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.

Section 16.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Article XVII

Publicity

Section 17.01. Publicity. Seller agrees to collaborate with NYSERDA's Manager of Technical Communications with regard to the preparation of any press release or public announcement or media interview with respect to the Parties' entry into this Agreement or the subject matter thereof or which concerns NYSERDA or the RPS Program. Seller will not represent that positions taken or advanced by Seller represent the opinion or position of NYSERDA or the State of New York. In any public statement or publication, Seller and/or its employees shall credit the funding participation of the Renewable Portfolio Standard in the activities of the Bid Facility.

Article XVIII

Confidentiality

Section 18.01. In order to enable NYSERDA and the administrator of the NYS Environmental Disclosure Program to verify delivery of RPS Attributes, NYSERDA will require the Seller to provide detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Bid Facility was delivered. Seller may also be required to waive confidentiality, as to NYSERDA, for the direct transfer to NYSERDA by an energy market administrator of transactional and/or delivery information and data pertinent to the verification of RPS Attribute creation and delivery.

Section 18.02. Freedom of Information Law. Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6).

Section 18.03. Claim of Confidentiality. Information of any tangible form including any document that Seller wishes to be protected from disclosure to third parties, including any information provided as a part of a Bid Proposal Package submitted in response to RFP 916, must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

Section 18.04. Trade Secrets/Commercial Information. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” If NYSERDA receives a request from a third party for information or a document received from Seller and which has been marked “Confidential” or “Proprietary,” NYSERDA will process such request under the procedures provided by NYSERDA’s FOIL regulations (see www.nyserdera.org/About/NYSERDA.Regulations.pdf).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

Seller: NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____

By

Name _____

Title _____

Title

STATE OF _____)

) SS:

COUNTY OF _____)

On the ____ day of _____, 2005, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary

EXHIBIT A

REVISED 6/98

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 Seller, 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.

Exhibit B

Certification and Assignment of Rights Form

NYSERDA Agreement No. _____

Name of Seller: _____

Name of Bid Facility: _____

Invoice Number _____

Seller _____ hereby sells, assigns, conveys and delivers to NYSERDA all right, title and interest in the RPS Attributes, such RPS Attributes having been created in the month of _____, in the year _____, for which payment is requested by the accompanying invoice. Such right, title and interest shall include perpetual and exclusive rights to the RPS Attributes for which payment is requested, including but not limited to the exclusive rights to claim, consistent with New York State Environmental Disclosure rules: (i) that the energy associated with these RPS Attributes was generated by the Bid Facility; and (ii) that New York State and or the RPS Program is responsible for the reductions in emissions and/or other pollution resulting from the generation of that portion of the Bid Facility's energy that is associated with these RPS Attributes.

Seller further certifies and guarantees that all of the information provided on the attached invoice requesting payment from NYSERDA under the terms of NYSERDA Agreement No. _____ is true and accurate; that the Bid Facility named above was at all times relevant and is now an eligible facility under the rules of the NYS Renewable Portfolio Standard; that the RPS Attributes to which all right, title and interest is transferred to NYSERDA by this instrument are free and clear of all liens, judgments, encumbrances and restrictions, and have not have otherwise been, nor will be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction.

Date: _____

By: _____
Signature of Seller's Authorized Officer

Name of Seller's Authorized Officer

EXHIBIT C
LETTER OF CREDIT

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____ , 20__

BENEFICIARY:

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

17 COLUMBIA CIRCLE, ALBANY, NEW YORK 12203-6399

LADIES AND GENTLEMEN:

BY THE ORDER OF:

[SELLER]

[SELLER'S ADDRESS]

WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: _____ IN YOUR FAVOR FOR THE ACCOUNT OF _____ (THE "SELLER") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [STATE IN WORDS] U.S. DOLLARS AVAILABLE BY YOUR DRAFTS AT SIGHT ON [INSERT NAME AND ADDRESS OF ISSUING BANK], NEW YORK, NEW YORK, USA, WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX A HERETO (THE "SIGHT DRAFT"); AND
2. A DATED PAYMENT CERTIFICATE PURPORTEDLY SIGNED BY A DULY AUTHORIZED OFFICER OF NYSERDA IN THE FORM OF ANNEX B HERETO (THE "PAYMENT CERTIFICATE").

MULTIPLE DRAWINGS ARE PERMITTED IN AMOUNTS NOT TO EXCEED, IN COMBINATION, THE AGGREGATE AMOUNT.

DEMANDS PRESENTED BY FACSIMILE (TO FACSIMILE NUMBER _____) ARE ACCEPTABLE: PROVIDED THAT IF ANY SUCH DEMAND IS PRESENTED BY FACSIMILE, THE ORIGINAL SIGHT DRAFT, STATEMENT, AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE LOCATED AT THE ADDRESS STATED ABOVE; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR PAYMENT CERTIFICATE AND SIGHT DRAFT PRESENTED IN FULL COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT ON OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE EXPIRATION DATE HEREOF. THIS LETTER OF CREDIT WILL EXPIRE ON [INSERT DATE].

PAYMENT AGAINST CONFORMING DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT SHALL BE MADE BY US AT OR BEFORE 2:00 P.M., NEW YORK TIME, ON THE NEXT (OR, IN THE CASE OF A PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE SECOND NEXT) BANKING DAY AFTER PRESENTATION.

ALL PAYMENTS MADE BY US UNDER THIS LETTER OF CREDIT WILL BE MADE IN IMMEDIATELY AVAILABLE FUNDS AND WILL BE DISBURSED FROM OUR OWN FUNDS. IF REQUESTED BY YOU, PAYMENT UNDER THIS LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK FUNDS TO YOUR ACCOUNT IN A BANK ON THE FEDERAL RESERVE WIRE SYSTEM. BENEFICIARY'S BANK [INSERT NAME AND ACCOUNT NUMBER].

ONLY YOU MAY MAKE ANY PAYMENT CERTIFICATE AND SIGHT DRAFT UNDER THIS LETTER OF CREDIT.

ANY SIGHT DRAFT DRAWN HEREUNDER MUST BE MARKED "DRAWN UNDER [INSERT NAME AND ADDRESS OF ISSUING BANK], STANDBY LETTER OF CREDIT NUMBER _____ DATED _____."

ALL BANK CHARGES INCLUDING BUT NOT LIMITED TO, FEES OR COMMISSIONS, SHALL BE FOR APPLICANT'S ACCOUNT.

MISCELLANEOUS

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED OR TO WHICH IT RELATES (INCLUDING, WITHOUT LIMITATION, THE AGREEMENT) AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR INSTRUMENT.

WE HEREBY AGREE WITH YOU THAT EACH DULY COMPLETED PAYMENT CERTIFICATE AND SIGHT DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO US ON OR BEFORE THE EXPIRY DATE.. THE OBLIGATION OF [ISSUING BANK] UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF [ISSUING BANK], AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500 (PROVIDED, HOWEVER, THAT DRAWINGS PERMITTED HEREUNDER SHALL NOT BE DEEMED TO BE DRAWINGS BY INSTALLMENTS WITHIN ARTICLE 41 OF THE UCP) AND AS TO MATTERS NOT GOVERNED BY THE UCP, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. FEDERAL LAW.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF OUR STANDBY LETTER OF CREDIT UNIT, GLOBAL TRADE SERVICE, MENTIONING OUR REFERENCE NUMBER AS IT APPEARS ABOVE.

[NAME AND ADDRESS OF ISSUING BANK]

AUTHORIZED SIGNATURE
OF OFFICER OF ISSUING BANK

Annex A to Exhibit C - Irrevocable Standby Letter of Credit

SIGHT DRAFT

Letter of Credit No. _____

Date of Letter of Credit: _____

Date of Draft: _____

FOR VALUE RECEIVED

Pay on Demand to: THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
AUTHORITY, U.S. _____ Dollars (U.S. \$_____). The amount of
this draft does not exceed the amount available to be drawn by the Beneficiary under the Letter of Credit.

Charge to account of [Name of Seller].

Drawn under [Name of Bank] Letter of Credit No. _____.

To: [Issuing Bank]

[Address]

Attention: _____

As Beneficiary

By: _____
[Name and Title]

Annex B to Exhibit C - Irrevocable Standby Letter of Credit

PAYMENT CERTIFICATE

To:
[Issuing Bank]
[Address]

Re: Irrevocable Standby Letter of Credit No: _____ [Insert]

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to [Issuing Bank], with reference to the Irrevocable Standby Letter of Credit No: [Insert] ("Letter of Credit"), that Seller, having provided the Letter of Credit to the New York State Energy Research and Development Authority ("NYSERDA") as Security for performance under NYSERDA Agreement No. _____ ("Agreement") in the aggregate amount of \$_____, ("Letter of Credit Amount") either [check the appropriate space]:

_____ Seller terminated the Agreement prior to July 2, 2005; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to fifty (50) percent of the Letter of Credit Amount;

_____ Seller terminated the Agreement under Section 11.01(e) of the Agreement; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ Seller has failed to perform in that Seller's Bid Facility has failed to attain operational certification and/or to commence Commercial Operation on or before June 30, 2006; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ Seller has failed to perform in that no compatible environmental attribute accounting system was operational and available in the control area within which Seller's Bid Facility is located upon commencement of the Contract Delivery Term; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ Seller has assigned its rights under the Agreement and the assignee has not delivered to the undersigned Beneficiary a replacement letter of credit satisfying the requirements of the Agreement; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ the Letter of Credit is currently set to expire within thirty (30) days and the Seller has not made arrangements acceptable to the undersigned Beneficiary to provide a substitute letter of credit prior to such expiration; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit or the Agreement, a copy of which is annexed hereto.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this payment Certificate as of the _____ day of _____.

As Beneficiary

By: _____
[Name and Title]

EXHIBIT D

Bid Proposal Documents

Bid Proposal Checklist

Bid Proposal Form

Bid Facility Self-Certification Form

EXHIBIT E
PROMPT PAYMENT POLICY

PART 504

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 the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority 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 the Authority 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) "Authority" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between the Authority 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 the Authority pursuant to a contract;

(2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or

(3) rendering or providing services to the Authority pursuant to a contract.

(d) "Date of payment" means the date on which the Authority 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 the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(f) "Payment" means provision by the Authority 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 the Authority'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 the Authority 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 the Authority not to be liable for interest pursuant to Section 5.06.

(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 the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(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, the Authority 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 the Authority for the portion working, completed or delivered, the Authority 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 the Authority of a payment due a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the Authority.

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 the Authority 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 the Authority.

(b) The Authority 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 the Authority 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 the Authority 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, the Authority 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. The Authority 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 the Authority 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 the Authority and the date when the Authority 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 the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority 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, the Authority 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 the Authority 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 the Authority, 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 the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority 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 the Authority 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 the Authority 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 the Authority 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 the Authority. 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 address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority'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 the Authority'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 the Authority 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 the Authority 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 the Authority 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 the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.