

Summary of Revisions

March, 2016

The CHP Program PON 2568 has undergone significant changes since the last update. Some elements of the now closed PON 2701 CHP Performance Program have been incorporated into the CHP Program, such as increasing the maximum CHP System size and introducing a custom approach option for projects 1MW and larger. You are encouraged to read the entire PON in order to get a full understanding of the Program requirements going forward.

Major changes include the following:

1. The Program has been renamed the “CHP Program”.
2. Sites must pay the SBC surcharge on their electric bill to be eligible (or, if new construction, will pay it once interconnected). Sites in the Downstate region that pay the SBC surcharge on their gas bill but not on their electric bill are no longer eligible.
3. CHP Systems smaller than 50kW are now eligible.
4. CHP Systems larger than 1.3MW are now eligible, except that after December 31, 2016, systems larger than 3MW will no longer be eligible.
5. A “Custom Approach” option has been added to accommodate customers seeking CHP Systems 1MW and larger whose needs are not being met by the catalog entries.
6. The \$1.5M project incentive cap has been replaced with a \$2.5M project incentive cap.
7. Non-black-start capable induction-based modules 50kW and smaller are now eligible, subject to some limitations, with an incentive that is 2/3 that of a black-start capable module of the same size.
8. Projects can now include the installation of multiple “Catalog Modules” at a single site. The incentive is calculated as though a single larger system was being installed.
9. CHP Systems fueled by propane and compressed natural gas are now eligible in addition to pipeline natural gas.
10. Program requirements for back pressure steam turbines and organic Rankine cycle (ORC) generators have been included.
11. An Application Review section has been added.
12. As part of NYSERDA’s technical review, NYSERDA will perform an estimation of the annual reduction in net greenhouse gas emissions resulting from the proposed project. This estimate must show that the proposed project is expected to result in a net decrease in greenhouse gas emissions when compared to either the status quo for existing buildings, or to the expected non-CHP emissions for new construction.
13. Several sections have been rewritten to improve readability and to provide clarity.
14. An Incentive Calculator is now available to assist in estimating the incentive (Attachment E).



CHP Program
Program Opportunity Notice (PON) 2568
\$21 Million Through 2018 **

Applications for installation of projects up through 3MW accepted through 5:00 PM ET on December 31, 2018*
Applications for installation projects over 3MW accepted through 5:00 PM ET on December 30, 2016*

The Combined Heat and Power (CHP) Program provides incentives for the installation of grid-connected CHP systems at customer sites that pay the System Benefits Charge (SBC) on their electric bill.

The CHP Program supports an accelerated procurement process where customers select from a set of pre-engineered CHP modules supplied by approved CHP vendors (the Catalog Approach) or the more traditional design/build procurement process specifically for larger CHP systems where requirements are not adequately met by the Catalog Approach (the Custom Approach).

Under the Catalog Approach, approved CHP vendors act as a single point of responsibility for the entire project and provide a minimum 5-year maintenance/warranty agreement on the CHP system. Under this approach, NYSERDA will only accept applications from, and will only contract with, approved CHP vendors.

Under the Custom Approach, NYSERDA will accept applications from the site owner, the CHP System owner, or any member of the project team that is willing and capable of taking responsibility for the proper design, integration, installation, commissioning and maintenance of the CHP System. NYSERDA will contract only with the applicant. The Custom Approach is available for projects 1MW and larger in size.

For studies, NYSERDA provides incentives for in-depth technical and financial site-specific CHP feasibility investigations through NYSERDA's FlexTech Program (<http://www.nyserda.ny.gov/flextech>).

NOTE: Incentives for CHP Systems with aggregate generator capacity between 50kW to 3MW are scheduled to decline in 5% increments off the original incentive for applications received in full starting September 1, 2016, March 1, 2017, and September 1, 2017. Subsequent incentive reductions for CHP systems larger than 50kW and initial incentive reductions for CHP systems 50kW and smaller have not been established at this time.

Application Submission: Send two (2) clearly labeled, completed and signed Incentive Application forms and two (2) completed and signed Disclosure of Prior Findings of Non-Responsibility Forms, all of which must contain original signatures, to:

CHP Program, PON 2568
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Digital copies of required documentation may be submitted on compact disc mailed to the above address, or via email to CHP@nyserda.ny.gov with the subject line "PON 2568 Application for [site name]".

CHP Inquiries:

Please direct Program questions to: Edward Kear 518 862-1090 ext. 3269, edward.kear@nyserda.ny.gov

Please direct Contractual questions to: Venice Forbes, 518 862-1090 ext. 3507, venice.forbes@nyserda.ny.gov

** No more than \$9 Million of this is available for installations over 3MW through December 31, 2016.

*Late, incomplete, or unsigned applications will not be accepted. Applications will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's website at www.nyserda.ny.gov.

Introduction

CHP can provide both economic and resiliency benefits to the sites where it is used. CHP is generally more efficient than the traditional means of supplying electricity and heat, so the use of CHP can also have significant greenhouse gas reduction benefits. Since CHP is a reliable form of distributed generation, it can also reduce the load on the electric grid during periods of high demand when the grid is under the most stress. In addition, most CHP systems can provide electric power during grid outages. For these reasons and more, NYSERDA encourages the use of CHP where appropriate. This PON is part of a larger effort to build CHP sales and support infrastructure in New York State, and reduce barriers to its use. The goal is to eventually result in a self-sustaining CHP marketplace.

A hallmark of this solicitation is NYSERDA's emphasis to principally provide consumer protection. In that regard, this program supports only commercially-mature products. This program is not intended to assist inventors with developing or demonstrating prototypes or other pre-commercial activities for bringing a new product to market. NYSERDA addresses the two most important aspects of consumer protection through features of this program as follows:

- (1) To ensure that customers acquire durable, quality CHP equipment, furnished by competent solution providers, projects can proceed in an expedited fashion using Catalog-based products consisting of equipment and solution providers that have been vetted by NYSERDA, or projects can proceed using a Custom approach where NYSERDA will vet the proposed equipment and the project team; and
- (2) To ensure that a proposed CHP system is properly size-matched to the needs of the customer, projects can proceed in an expedited fashion using NYSERDA's conservative sizing guidelines, or projects can proceed using a customized sizing approach where NYSERDA will vet the rationale of the proposed size.

In order to assist potential CHP users to learn about CHP, determine if CHP is right for them, and assist in navigating the process of installing a CHP system, NYSERDA has contracted with ERS Inc. (ERS) to provide CHP out-reach and technical assistance at no cost to the customer. Please note: sophisticated customers that have, or are expected to be able to acquire, sufficient technical resources will receive limited assistance from ERS. If you are interested in taking advantage of the no-cost services available, contact:

ERS Inc.
Gita Subramony
212-789-8182 x 292
gsubramony@ers-inc.com

If you are interested in installing a CHP system on your site using the Catalog Approach, NYSERDA recommends the following course of action:

LEARN: What is CHP? Am I a good candidate?

1. Read about the basics of CHP.
 - The Northeast Clean Heat and Power Initiative (NECHPI) has a great summary of CHP (<http://www.nechpi.org/chp-basics/>).
 - The US Environmental Protection Agency (EPA) also has information on the basics of CHP technology (<http://www.epa.gov/chp/what-chp>).
 - The US Department of Energy CHP Technical Assistance Partnership (DOE TAP) also has some collected papers on CHP implementation (<http://www.northeastchptap.org/good-reads>).
2. Determine if your building could be a good candidate for CHP. If your building has a year round need for electricity *and* thermal energy, CHP could be a good energy saving option. The DOE TAP has a quick questionnaire for initial site screening (<http://www.northeastchptap.org/screening-site-qualification>).
3. If you need more information on CHP technology or its benefits, contact ERS.

PLAN: What are the site-specific considerations for CHP at my building?

1. ERS can help customers through the process of planning a CHP project.
2. Complete a preliminary analysis. This includes determining facility characteristics and outlining energy efficiency and resiliency goals.
 - ERS offers a free preliminary analysis to help estimate CHP feasibility and potential sizing options including financial information.
 - The DOE TAP (<http://www.northeastchptap.org/contact>) can also provide, at no cost, additional information on CHP feasibility.
3. Schedule a visit to your building with ERS to identify potential installation obstacles.
4. If you are seeking a CHP system outside of NYSERDA's sizing guidelines, or if you feel that the Custom Approach better meets your need, a more detailed study will be required. NYSERDA's FlexTech Program (<http://www.nysERDA.ny.gov/flextech>) might be able to help.

SHOP: How do I get the information that I need from the vendors?

1. ERS can help customers through the process of issuing a request for vendor bids.
2. Based on the results of either the preliminary analysis or a detailed study, investigate options in the CHP Catalog ([http://www.nysERDA.ny.gov/PON_2568 Attachment C](http://www.nysERDA.ny.gov/PON_2568_Attachment_C)).
3. Gauge vendor interest.
4. Invite vendors to tour the site so that they can formulate and submit detailed proposals with price estimates and procurement style (e.g., buy, lease, power purchase agreement, etc.).

BUY: How do I know if I am buying the right system for the right price?

1. Receive proposals from multiple vendors for installation and maintenance of the CHP system. ERS can assist with analyzing vendor proposals.
2. Ask follow-up questions regarding proposals and receive proposal revisions if necessary.
3. Select the proposal that best meets your building's needs (the proposal must come from a NYSERDA approved vendor and the system must be in the program catalog to qualify for incentives under the Catalog Approach).
4. The selected vendor prepares and submits the application to NYSERDA.

Upon NYSERDA'S acceptance of your project into the program, assist your vendor with meeting the program's milestones for installation and commissioning.

The following is a summary of required documentation prior to application. Please review the Application Requirements listed within this offering:

- A Feasibility Study, such as a NYSERDA FlexTech CHP study or equivalent, if not within NYSERDA CHP sizing guidelines (see below for requirements)
- 30% design (minimum)
- Financial plan (structure of the deal is defined; the customer knows how the CHP system installation will be paid for)
- An installation schedule showing delivery dates for major components and full operation within 10 months of the NYSERDA approval. (Full operation within 24 months for Custom Approach)
- A list of all permits and approvals required.
- Electric interconnect application submitted and a Preliminary Determination and Cost Estimate for the Coordinated Electric System Interconnection Review (CESIR) received from the electric utility.
- Preliminary determination of gas availability from the gas utility, if the CHP System will be fueled by pipeline natural gas.

Program Requirements

The New York State Energy Research and Development Authority (NYSERDA) will provide financial incentives for the installation of grid-connected CHP systems at customer sites that pay the System Benefits Charge (SBC) on their electric bill, or if new construction, will pay the SBC surcharge on the electric bill once interconnected. Incentive funds will be allocated on a project-by-project, first-come-first-served basis in the order of receipt of full and complete applications for projects up to 3MW until December 31, 2018 or until all funds are committed, whichever comes first. Applications for projects with an aggregate generator nameplate size greater than 3MW will be accepted through December 30, 2016. In all instances, the maximum incentive per project, including bonuses, is \$2.5M.

CHP System

For the purposes of this program, a “CHP System” is either:

- A pre-engineered grouping of equipment as described in the CHP Catalog (Attachment C) with a unique catalog model number (a Catalog Module);
- One or more Catalog Modules installed within the same area of customer’s site regardless of whether or not individual Catalog Modules are serving different electric and/or thermal loads; or
- A custom designed grouping of CHP equipment not already available in the CHP Catalog.

A CHP System may consist of more than one prime mover/generator units, and may also include absorption chillers or other thermally activated devices, such as organic Rankine cycle (ORC) generators.

CHP equipment installed at dispersed locations within a campus or a large building, and serving different electric and/or thermal loads may be considered to be separate CHP Systems at the sole discretion of NYSERDA.

CHP Catalog Approach

NYSERDA maintains a catalog of pre-approved CHP equipment supplied by approved vendors (the CHP Catalog). The CHP Catalog may be updated frequently. Vendors may seek qualification of their CHP equipment through RFI 2568.

Each pre-approved CHP module in the CHP Catalog (Catalog Module) has been evaluated for reasonable component sizing and are comprised of reputable components. In addition, Catalog Modules designated as “pre-qualified” have demonstrated real-world performance through long-term monitoring. The approved vendors in the catalog are required to take full, single point-of-contact responsibility for proper installation and performance, and must provide a warranty/service agreement for a minimum of 5 years for the pre-qualified and conditionally qualified Catalog Modules that they offer.

Customers selecting CHP equipment from the CHP Catalog work with the approved vendor who will submit an application to NYSERDA representing the vendor-customer team. Applications for incentives for CHP Systems using Catalog Modules can only be submitted by the pre-approved Vendors. If the application for the incentive is approved, NYSERDA will contract with the Vendor and all incentive payments will be made to the Vendor.

Through December 31, 2016, Applicants that are contemplating systems greater than 3MW using multiples of catalog equipment are encouraged to use the Catalog Approach.

Custom Approach

Customers with larger electric and thermal loads that have requirements that are not adequately met through the CHP Catalog, or by using variants of the equipment from the pre-approved Vendors, may use an optional Custom Approach. Under this approach, NYSERDA will accept applications from the site owner, the CHP System owner,

or any member of the project team that is willing and capable of taking responsibility for the proper design, integration, installation, commissioning and maintenance of the CHP System. NYSERDA will contract only with the applicant. The Custom Approach is available for projects 1MW and larger in size.

Applicants using the Custom Approach must meet the same program requirements as applicants using the Catalog Approach. In addition, Custom Approach applicants must demonstrate that the equipment selected is quality equipment from reputable suppliers, that it meets NYSERDA emission requirements of no more than 1.6 lbs-NOx/MWh, and the components are properly matched to each other and to the building.

Black-Start Capability

Black-start capability refers to the ability of a CHP System to operate in a grid-independent mode during grid outages or emergencies, including the ability to re-start from a non-operating (or “black”) condition without grid power. Typically, this involves the use of a synchronous generator (optionally paired with an inverter). Induction generators are not capable of grid-independent operation or black-start. The transition between grid-connected and grid-independent modes of operation may be either manual or automatic.

In order to receive an incentive under this Program, all CHP Systems with an aggregate nameplate rating greater than 50kW (except back pressure steam turbines and ORC devices) must be capable of grid-independent operation during grid outages (black-start capable), and must be installed to provide priority power (to on-site priority loads as determined by the customer) during grid outages.

All Catalog Modules listed in the CHP Catalog (except, in some instances, non-directly-fueled back pressure steam turbines and ORC devices, and some directly-fueled modules 50kW and smaller), are capable of grid-independent operation during grid outages (black-start capable). In order to receive an incentive under this Program, all Catalog Modules that are black-start capable must be installed to provide priority power (to on-site priority loads as determined by the customer) during grid outages.

The CHP Program provides a limited incentive for the use of non-black-start capable, directly-fueled Catalog Modules 50kW and smaller. If these non-black-start capable directly-fueled Catalog Modules are used in a CHP Systems which is also 50kW and smaller, the incentive will be 2/3 of the incentive for the same sized black-start capable Catalog Module. There will be no incentive for non-black-start capable Catalog Modules when used in CHP Systems larger than 50kW.

Examples:

- A CHP System consisting of two generators at 20kW each, where neither has black-start capability, each generator will be incentivized at the 2/3 rate;
- A CHP System consisting of two generators at 20kW each, where one is black-start capable and the other is not, one will be incentivized at the full rate and the other will be incentivized at the 2/3 rate;
- A CHP System consisting of two generators at 30kW each, where one is black-start capable and the other is not, one will be incentivized at the full rate and the other will receive no incentive.

Conservative CHP System Sizing Guidelines

NYSERDA has developed a set of conservative CHP System sizing guidelines for common building types based on combinations of site characteristics and CHP System sizes that have been shown to perform well. Applications that fall within the sizing guidelines require significantly less engineering analysis and will receive a streamlined review by NYSERDA. The CHP System sizing guidelines can be found in NYSERDA’s CHP Catalog. The sizing guidelines may be updated frequently.

Base Incentives

CHP Program incentives are based on the size of the CHP System, capacities of any thermally activated devices (chillers, ORCs) included in the CHP System, and the region of the State where it is installed.

The incentive regions are defined as:

- Upstate – Customer sites located in the area of the State north and west of Westchester County.
- Downstate – Customer sites located in New York City and Westchester County.

The size of a CHP System is determined by the aggregate prime mover/generator nameplate rating.

If the installation of a CHP System involves the installation of multiple Catalog Modules, or if a Custom Approach is being used, the CHP Program incentive will be based on the aggregate size of the CHP System. All projects, in the same region, with the same aggregate size will receive the same incentive. For example: The Upstate incentive for a CHP System totaling 1.2MW will be the same if it is comprised of a single 1.2MW Catalog Module; two 600kW Catalog Modules; three 400kW Catalog Modules; etc., or if it resulted from a custom design.

The CHP Program Incentive Calculator (Attachment E) can be used to estimate the incentive that will be available for a particular CHP System design. Note: The Incentive Calculator is only to be used to obtain an estimate of the CHP Incentive applicable to a proposed project. NYSEDA takes no responsibility for errors or misinterpretations resulting from its use. NYSEDA will review each application, and in its sole discretion, assign the appropriate incentive.

Bonus Incentives

Target Zones have been established by Consolidated Edison for load service areas of particular interest. Each of these Target Zones has been assigned a target year. If a project site is within a Target Zone based on the Consolidated Edison Target Zone map that is in effect as of the date of application approval by NYSEDA, an additional bonus equal to 10% of the base CHP Program incentive will be paid as part of the final invoice, provided the CHP System is fully operational prior to May of the target year and the total CHP Program incentive does not exceed \$2.5M. Information about Target Zones, and maps showing their locations, can be found at: http://www.coned.com/dg/incentive_programs/incentivePrograms.asp. The Target Zone maps may be updated frequently. Sites appearing on a map in close proximity to the border of a Target Zone may be subject to confirmation by Consolidated Edison whether the site is in fact within the Target Zone.

The base CHP Program incentive for the full CHP System will be increased by 10% if the CHP system is installed to support critical infrastructure, the electric and thermal outputs of the CHP System benefit the portion of the building designated as such, all Catalog Modules used in the CHP System are black-start capable, and the total CHP Program incentive does not exceed \$2.5M. Determination of eligibility is at NYSEDA's sole discretion.

Critical infrastructure are those systems and assets so vital to the state that the disruption, incapacitation or destruction of such systems or assets, could jeopardize the health, safety, welfare or security of the state, its residents or its economy, including sites that are designated to be an official "facility of refuge" (as recognized by the American Red Cross or the local Office of Emergency Management).

Examples of critical infrastructure include, but are not limited to:

- Hospitals and nursing homes
- Public safety facilities (police, fire, emergency medical services, emergency management, dispatch center or public safety answering point)
- Communications facilities (broadcasting, telecommunications)
- Utilities (water, wastewater treatment)
- Food and medicine warehousing and distribution centers (supermarkets, pharmacies)

Increased Resiliency – The N+1 Option

Sites that desire increased resiliency can install a CHP System with redundant, additional prime mover/generator unit(s) of the same size.

The CHP Program will provide an incentive for one (1) such redundant prime mover units (N+1 Option) as long as:

- The electric and thermal load profiles (or sizing guidelines) justify the base number of prime mover units.
- The CHP System is configured so that, in general, no more than the base number of units are operating under normal conditions.
- The CHP System, as installed in the building, is capable of full operation (all units, base plus redundant, are operating simultaneously) in both grid connected and grid independent (grid outage) modes.
- The aggregated output of all units does not significantly exceed the annual peak electric demand of the meter behind which it is installed.
- The size of no single prime mover significantly exceeds the annual average electric demand (annual kWh/8760) of the electric meter behind which it is installed.

The incentive for a project employing the N+1 Option will be calculated as though a CHP System sized to include a single redundant unit will be installed, regardless of the number of redundant units actually installed. For example, if the design for a CHP System without redundancy includes the installation of two (2) prime mover units, under the N+1 Option, the CHP Program will provide an incentive for a CHP System with one additional unit, in this case, a total of three (3) prime mover units. The customer is free to install additional redundant prime mover units if further resiliency is desired.

The N+1 option is only available for CHP Systems that are capable of full operation during a grid outage (no non-black-start modules). If such a system is installed, the CHP System owner/site owner should consider participating in a demand response program.

Back Pressure Steam Turbines (BPST)

BPST based CHP Systems are eligible using either the Catalog or Custom Approaches. The incentive will be based on annual average hourly production estimated using an 8760-hour analysis of steam supply flow. BPST systems are not required to be capable of grid-independent operation (i.e., black-start capable), however the incentive for a non-black-start system will be only 2/3 that of a black-start capable system.

Organic Rankine Cycle (ORC) Generators

In general, ORCs can either be a standalone system, using some site specific waste heat, or integrated into a CHP system as a bottoming cycle powered by the thermal output of the system's other prime mover(s).

The incentive for standalone ORCs is based on the estimated annual average output using an 8760-hour model of the waste heat availability and the ORC performance curve. Just like BPSTs, black-start is not required, but the incentive is 2/3rd for non-black-start ORCs.

The incentive for integrated ORCs is based on the output of the ORC when powered by the thermal output of the CHP System's prime mover(s) under full load. Black-start is not required, but the incentive is 2/3rd for non-black-start ORCs. However, if the combined system (prime mover and ORC) is black-start capable, and can provide full electric output during grid outages, then the ORC component will receive the full incentive.

Project Requirements

In order to be approved for an incentive, the site must show that it is subject to the SBC surcharge on its electric bill.

The Applicant must demonstrate that the site's electric and thermal load profiles justify the size of the CHP System such that the annual fuel energy utilization would be expected to exceed 60% based on fuel Higher Heating Value (HHV), or that the proposed CHP System size falls within NYSERDA's conservative CHP System sizing guidelines as specified in the CHP Catalog.

If the site is located within a 500-year flood zone then the CHP System, including all components required for proper operation (pumps, controls, switch gear, etc.) must be located above the expected flood level.

The CHP System prime mover(s) cannot produce more than 1.6 lbs-NO_x/MWh (pounds of NO_x per megawatt hour of electric production) at any point over the entire operating range of the system.

The CHP System may include equipment fueled by pipeline natural gas, propane or compressed natural gas. CHP Systems where the prime mover is fueled directly by low BTU or adulterated fuels, such as biogas, landfill gas, and gasifier gas are not eligible under this Program. However, on a case by case basis, at NYSERDA's sole discretion, external-combustion-driven CHP Systems such as back pressure steam turbines or ORC devices may be considered eligible when using steam and/or waste heat derived from low BTU or adulterated fuels (the NYSERDA discretion will primarily consider the long-term availability of the steam and/or waste heat source relative to the anticipated lifespan of the CHP equipment).

Recommissioning

NYSERDA intends to dispatch a re-commissioning agent, at NYSERDA's expense, to a selected number of CHP Program sites in general between the 12th and 24th month of CHP System operation to inspect the CHP System, analyze its operation and performance, identify any areas for improvements, and make recommendation as appropriate. The re-commissioning activity may include the temporary (approximately one month) installation of additional monitoring equipment. The vendor, site owner and system owner (if applicable) must agree to provide site access and to cooperate with NYSERDA's re-commissioning agent.

Monitoring

All CHP Systems larger than 50kW installed under this PON must be instrumented so that CHP System performance (including thermal use) can be measured on 15 minute intervals. In addition, NYSERDA intends to sample the performance of small CHP Systems (50kW and less) by accessing any monitoring system included within the CHP System by the Vendor, or by installing monitoring equipment at NYSERDA's expense at select CHP project sites. In any case, the site owner must provide a communications route (phone line or internet connection) so that this performance data can be automatically uploaded to NYSERDA's DG Performance Website (<http://chp.nyserderda.ny.gov>) on a daily basis for at least 3 years, where such performance data will be available to the public.

Project Schedule – CHP Systems less than 1MW.

You should be ready to proceed – Your project schedule should be more aggressive than the following milestone schedule (time measured from formal approval of your application by NYSERDA):

- Within 120 days: Major CHP system components delivered to site or staging area approved by NYSERDA project manager.
- Within 300 days: CHP system fully installed, operational, and final approval to operate received from the electric utility. This will trigger a post installation inspection by NYSERDA or NYSERDA's agent.
- Within 365 days: CHP system fully commissioned, performance data reliably transmitted to NYSERDA's DG Performance website, and commissioning report accepted by NYSERDA's project manager.

Missing any of these milestones without prior communication and coordination with NYSERDA may result in termination of NYSERDA's agreement and forfeiture of any unpaid incentive payments.

Project Schedule – Custom Approach for CHP Systems 1MW and larger

You should be ready to proceed – Your project schedule should be more aggressive than the following milestone schedule (time measured from formal approval of your application by NYSERDA).

- Within 30 days: Purchase order from the CHP System customer (site owner, system owner, etc.) received and accepted by the CHP System Vendor.
- Within 3 months: Proof of major CHP System components being ordered for the project.
- Within 6 months: Final design signoff by customer.
- Within 15 months: Major CHP system components delivered to site or staging area approved by NYSERDA project manager.
- Within 24 months: CHP system fully installed, operational, and final approval to operate received from the electric utility.
- Within 30 months: CHP system fully commissioned, performance data reliably transmitted to NYSERDA's DG Performance website, and commissioning report accepted by NYSERDA's project manager.

Missing any of these milestones without prior written permission may result in termination of NYSERDA's agreement and forfeiture of any unpaid incentive payments.

Incentive Payment Schedule

Incentive payments will be made as follows:

- 33% of the base incentive and Critical Infrastructure bonus (if eligible) when the following have been accepted by NYSERDA's project manager:
 - Copy of the final design.
 - Copy of the building permit.
 - Copy of the preliminary electric utility interconnect approval.
 - Copy of the preliminary gas utility interconnect approval (if required).
 - Proof of application of all other required permits/approvals.
 - A copy of the signed agreement(s) between the site owner and the CHP System vendor, developer, and/or installer that permits the Project to proceed at the site.
 - A copy of the signed 5-year warranty/service/maintenance/performance agreement (if following the Catalog Approach).
 - Evidence that major equipment has been delivered to the site or staging area approved by NYSERDA's project manager.
- 33% of the base incentive and Critical Infrastructure bonus (if eligible) when the CHP System is fully installed including interconnections to building systems, and written permission to operate has been obtained from the electric utility and submitted to NYSERDA.
- The remainder of the base incentive and Critical Infrastructure bonus (if eligible) when:
 - The CHP system is fully commissioned and operational.
 - A commissioning report, including a detailed cost breakdown, has been accepted by NYSERDA's project manager,
 - A copy of the final as-built design drawings,
 - A post-installation inspection has been completed by NYSERDA or NYSERDA's agent.
 - A copy of the final electric interconnection agreement has been received by NYSERDA's project manager.
 - A copy of a signed maintenance agreement for the CHP System (if following the Custom Approach)

- Performance data is being reliably and correctly delivered to NYSERDA's DG Performance website, if monitoring is required.

In addition, if the project is eligible for a Targeted Zone bonus and the CHP System is fully operational prior to May of the target year, the Targeted Zone bonus will be paid at this time.

Application Requirements

NYSERDA discourages premature applications, where the project will not be able to achieve the Program's required timelines; however, NYSERDA will not accept an application for an incentive if major components of the CHP System have already been delivered to the site prior to application submittal unless prior written approval has been received from NYSERDA's Project Manager. All Catalog applications must be submitted by the Vendor.

Required Documentation

- A Feasibility Study or Project Description containing the following (at a minimum):
 - A description of the building including, but not limited to:
 - Location,
 - Usage (multi-family, hotel, industrial, etc.).
 - Size (square footage and a size metric appropriate for the usage such as 300 units in an apartment building, or 100 hotel rooms, etc.).
 - The overall annual electric and thermal consumptions, and peak electric demand.
 - The portions of the building, or the particular processes and systems that will be impacted by the proposed CHP system.
 - A description of the thermal loads and thermal storage.
 - A description of existing systems to be impacted by the installation of the CHP system (boilers, chillers, etc.) and whether or not any of this equipment will be replaced, removed, or decommissioned as part of this project.
 - A description of all existing distributed generation equipment (PV, fuel cell, other CHP, etc.) and all backup generation equipment on the site which is connected to serve the same electric load as the proposed CHP system.
 - Actual monthly electric consumption (for the meter or meters being impacted by the project)
 - Actual or modeled monthly thermal consumption for the relevant thermal load(s) (hot water, space heating, etc. including chilled water loads if a chillier is proposed) covering a 12-month period.
 - Actual monthly gas or fuel oil consumption covering a 12-month period (preferably the same period as above).
 - If the CHP System is not sized in accordance with NYSERDA's conservative sizing guidelines, provide a compendium of actual or modeled electric and thermal hourly load profiles for a 24-hour day representative of a weekday and a weekend for each of the four seasons, and an 8760-hour electric and thermal load profile representative of a complete year. When actual data is not available, modeled profiles can be generated using any industry recognized building modeling software that generates an 8760 profile for both electric and thermal loads. For existing buildings, modeled profiles must be calibrated using actual monthly consumption data and actual hourly coincident electric and thermal measurements for a period of not less than 14 continuous days during which no unusual events were happening in the building, such that the measured profiles are representative of typical operation.
 - If the CHP System is not sized in accordance with NYSERDA's conservative sizing guidelines, provide an analysis of the expected operation and performance of the proposed CHP system based on the 8760-hour load profile including monthly (12 consecutive months) and annual performance estimates, including:
 - operating efficiency,
 - fuel input, net electric (kWh) output (i.e. less parasitic electric use),
 - thermal energy generated,
 - thermal energy usable, and

- run hours.
 - Financial analysis showing estimated costs (capital and operating) and savings, including the impact of transferring to a stand-by tariff for electric delivery (as well as staying on the parent tariff if eligible for such an option), and simple payback both with and without the expected NYSERDA incentive. The stand-by tariff analysis (and the parent tariff analysis, if applicable) must include the impact of scheduled maintenance, and should include a sensitivity analysis for unplanned CHP system downtime.
- Drawings showing:
 - Floor plan showing equipment location, utility interconnection locations, and layout within the building/site. Indicated required maintenance and service clearances.
 - Any required changes to the building's structural components.
 - Mechanical and Plumbing (M&P) design, including makeup air and exhaust chimney - must show thermal monitoring sensor locations and type.
 - Electrical design - must show meter/sensor locations and type.
 - Gas design – must show meter location and type (if not included with the M&P drawings).
 - A Piping and Instrumentation Diagram (P&ID) of the complete CHP System formatted as an 8.5 x 11-inch PDF. If the Application is approved, this will become part of the contract.
- If the CHP System was not selected from the Catalog (projects using the Custom Approach) provide:
 - The make, model, and performance characteristic of all major components.
 - Cut sheets or web URLs for major components.
 - Documentation that the CHP System prime mover(s) will produce no more than 1.6 lbs-NOx/MWh (pounds of NOx per megawatt hour of electric production) at any point over the entire operating range of the prime mover.
 - Process diagram showing design flowrates, temperatures, and locations of meters and sensors, if not already included on the P&ID.
 - Description of the monitoring system and plan consistent with NYSERDA's CHP Monitoring Standard which can be found under RFI 2568.
 - Indicate means of noise attenuation to be employed.
- If rigging is required, provide a description.
- Description of the priority electric load(s).
- A copy of a letter from the electric utility either indicating that further review is not necessary, or providing a cost estimate for the Coordinated Electric System Interconnection Review (CESIR).
- A letter from your gas utility indicating that a preliminary determination shows that sufficient gas is available, if the CHP System will be fueled by pipe-line natural gas.
- A list of all required permits/approvals.
- A detailed project schedule.
- A completed and signed Part 1 of the Short Environmental Assessment Form (SEQRA)
- A copy of an electric utility bill showing payment of the relevant SBC Electric surcharge.
- If the CHP system will be installed to support critical infrastructure, provide documentation to support that claim.
- If the site is a facility of refuge, provide a letter from the American Red Cross or the local emergency management official designating the site as such, and documentation showing that the CHP system will benefit the portion of the building designated as a facility of refuge during a grid outage.
- If the site is within a Target Zone, provide documentation.
- Incentive Application (Attachment A) signed by the applicant (i.e. Vendor for the Catalog Approach), the building owner and the CHP system owner, if applicable.
- Completed Disclosure of Prior Findings of Non-Responsibility Form (Attachment B) signed by the applicant.

Application Review

All applications will receive a technical review by NYSERDA staff or technical contractors to ensure the following:

- The proposed project meets Program requirements.
- The site energy profile modeling (if required) is reasonable and consistent with procedures and techniques acceptable to NYSERDA.
- The system design and estimated performance is consistent with equipment performance profiles, proposed operating profiles and (if available) the site energy profile models.

In addition, NYSERDA will perform an estimation of the annual reduction in net greenhouse gas emissions resulting from the proposed project. This estimate must show that the proposed project is expected to result in a net decrease in greenhouse gas emissions when compared to either the status quo for existing buildings, or to the expected non-CHP emissions for new construction.

Consistent with NYSERDA's programmatic emphasis on consumer protection, NYSERDA may reject an application based on the results of the technical review, or if in NYSERDA's opinion, the project is not in the best interest of the customer.

Program Funding

This Program is funded using multiple funding sources, some of which have limitations as to the location and size of eligible projects. Applicants should be aware that as Program funds are committed there may come a time when specific projects may not be approved due to limitations tied to the remaining funds.

Coordination of Public/Utility Funding

If a project to install a CHP System is awarded other public grant funding and/or utility incentive funding, NYSERDA may reduce the incentive amount with the intent that total public/utility funding, including NYSERDA's incentive, will not exceed 100% of the total project cost. The Applicants must inform NYSERDA's project manager of all pending and awarded public grant funding and utility incentives related to the project.

General Conditions

Program Terms & Incentive Levels - NYSERDA reserves the right to change program terms (including rules and incentive amounts) at any time without prior notice. Projects resulting from approved applications will continue to be subject to the program terms in effect at the time of application approval. If NYSERDA changes a required form template after an applicant has submitted a completed copy to NYSERDA for review, it is in NYSERDA's discretion to require resubmission. NYSERDA reserves the right, for any reason, to stop approving incentive applications at any time without prior notice. NYSERDA reserves the right to extend and/or add funding to the solicitation should other program funding sources become available.

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your application. Review should include whether it is critical for evaluating an application, and whether general, non-confidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the applicant wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written

request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx> However, NYSEDA cannot guarantee the confidentiality of any information submitted.

Omnibus Procurement Act of 1992 - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

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

Empire State Development
Division for Small Business
30 South Pearl Street
Albany, NY 12245

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

Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245

State Finance Law sections 139-j and 139-k - NYSEDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain new procurement lobbying requirements which can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>
The attached Application calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

Tax Law Section 5-a - NYSEDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSEDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Prior to contracting with NYSEDA, the prospective contractor must also certify to NYSEDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSEDA. See, ST-220-CA (available at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

Limitation - This solicitation does not commit NYSEDA to award a contract, pay any costs incurred in preparing an application, or to procure or contract for services or supplies. NYSEDA reserves the right to accept or reject any or all applications received, or to cancel in part or in its entirety the solicitation when it is in NYSEDA's best interest.

Disclosure Requirement - The applicant shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When an applicant is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSEDA after the award of a contract, NYSEDA may exercise its stop-work right pending further investigation, or

terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Applicants must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

Attachments

The following Attachments can be found at <http://www.nyserda.ny.gov/PON2568>

Attachment A - Application

Attachment B - Disclosure of Prior Findings of Non-responsibility Form

Attachment C - CHP Catalog

Attachment D - Sample Agreement

Attachment E - Incentive Calculator

CHP Program PON 2568 Incentive Application (Attachment A)

Part 1

Applicant	CHP System Owner	Site Owner
Company Name	Company Name	Company Name
Address	Address	Address
Contact Name	Contact Name	Contact Name
Phone	Phone	Phone
email	email	email

Site

Name	
Address	Electric Utility
	County
Geo Code (Longitude and Latitude)	ISO Zone (A-J)
Targeted Zone Identifier (if applicable)	Target Year
Is this a site of critical infrastructure? (If so, specify)	
<input type="checkbox"/> Catalog Approach <input type="checkbox"/> Custom Approach <input type="checkbox"/> BQDM Zone	

CHP System

Total Aggregate Size (kW)	
Catalog Module Name	Quantity
Catalog Module Name	Quantity

Incentive

Base Incentive	
Critical Infrastructure bonus (10% of Base Incentive if applicable)	
Targeted Location bonus (10% of Base Incentive if applicable)	
Total Incentive	

Schedule

Final Design Approval	
All Major Components of CHP System Delivered to Site or Approved Staging Area (Invoice #1)	
CHP System Fully Operational and Final Utility Approval Received (Invoice #2)	
CHP System Fully Commissioned, Performance Data Flowing to NYSERDA's Data Agent and Commissioning Report Submitted (Invoice #3)	

Applicant Signature (Catalog Approach: this is the approved Vendor. Custom Approach: this is the responsible member of the Project team)

I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the application requirements noted have been completed and are enclosed or will be submitted electronically. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this application may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this application.	
Name	Signature Date
Title	
Signatory must be legally able to bind the organization.	



CHP Program PON 2568 Incentive Application (Attachment A)

Part 2

Applicant: _____

Site Name / Address: _____

The Site Owner and CHP System Owner do hereby acknowledge and support this application for a CHP Program incentive being submitted by the Applicant. The Site Owner and CHP System owner understand that if this application is approved, NYSEERDA will negotiate a contract with the Applicant and all subsequent incentive payments will be made to the Applicant. The Site Owner and CHP System Owner agree to facilitate reasonable pre- and post-installation site visits and inspections, including re-commissioning activities by NYSEERDA or NYSEERDA's agents as described in PON 2568. The Site Owner and CHP System Owner agree to permit NYSEERDA or NYSEERDA's agent to collect CHP System performance data as described in PON 2568 and RFI 2568 for a period of at least 3 years and to facilitate automated data communications through an internet connection or phone line. The Site Owner and CHP System Owner will allow NYSEERDA or NYSEERDA's agents to take photographs of the CHP System and exterior views of the site with explicit permission for NYSEERDA to use, reproduce, distribute, exhibit, alter, publish or otherwise use such photographs in all forms, manner, including composite or distorted representations, and media, including electronic, print, digital, or electronic publishing via the Internet, and for all purposes, including advertising, trade, or any other lawful purposes.

The Site Owner and CHP System Owner hereby acknowledge that NYSEERDA's role in this installation is that of a funder, and that NYSEERDA would not fund the incentive payments to the Applicants without Site Owner and CHP System Owner agreeing to indemnify and hold NYSEERDA harmless from all liability. Therefore, the Site Owner and CHP System Owner hereby agree to protect, indemnify and hold harmless NYSEERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSEERDA or the State of New York resulting from, arising out of or relating to the installation and performance of the CHP System.

Site Owner Signature

Name	Signature
Title	
Signatory must be legally able to bind the organization.	
Sworn to before me this ____ day of _____, 2____	
_____ Notary Public Signature	Stamp of Notary Public

CHP System Owner Signature (Must be signed if the CHP System Owner is not the Site Owner)

Name	Signature
Title	
Signatory must be legally able to bind the organization.	
Sworn to before me this ____ day of _____, 2____	
_____ Notary Public Signature	Stamp of Notary Public

**PON 2568 Attachment B
Disclosure of Prior Findings of Non-Responsibility Form**

(Mandatory)

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number:		
Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		
Basis of Finding of Non-responsibility: (Add additional pages as necessary)		

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information? (Please indicate with an "X")		Yes
		No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (Add additional pages as necessary)

Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate.

By: _____ Date: _____
Signature

Name: _____ Title: _____



CHP Program
Program Opportunity Notice (PON) 2568

Attachment C - CHP Catalog

The CHP Catalog changes frequently.

The current version can be found at <http://www.nyserra.ny.gov/PON2568>

**New York State Energy Research and Development Authority
AGREEMENT**

1. Agreement Number:
2. Contractor:
3. Contact:
4. Start Date:
5. Project Site:
6. Base Incentive : \$
Critical Infrastructure Bonus: \$
Target Zone Bonus: \$
Total Incentive: \$
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, New York State Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement;
- Exhibit E, Signed Application Form; and
- Exhibit F, CHP System Description

**NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY**

Signature: _____

Signature: _____

Jeffrey J. Pitkin
Treasurer

Name: _____

Title: _____

EXHIBIT A – Statement of Work

1. Approval

Incentives are not payable unless NYSERDA has conducted site inspection(s), and approved the other activities and appropriate documentation has been provided by the Contractor.

2. Eligible Equipment

The CHP System installed under this Agreement shall be as described in Exhibit F, CHP System Description. NYSERDA reserves the right to require factory testing of major components or the complete CHP system prior to delivery to the Project Site. The “Project” is defined as the installation and integration of the CHP System into the Project Site’s electric and appropriate thermal systems as described in Exhibit F and the application submitted to NYSERDA’s Project Manager, or as approved in writing by NYSERDA’s Project Manager.

3. Incentive Payments

(a) NYSERDA will pay the Base Incentive upon the Contractors’ meeting of the requirements of the CHP Program as conforming to the approved application as provided to NYSERDA’s Project Manager:

- Incentive Payment #1 - 33% of the Base Incentive when the following have been accepted by NYSERDA’s Project Manager:
 - Copy of the final design of the Project
 - Copy of the building permit
 - Copy of the preliminary electric utility interconnect approval
 - Copy of the preliminary gas utility interconnect approval, if the CHP System will be fueled by pipe-line natural gas
 - Proof of application for all other required permits/approvals
 - A copy of the signed agreement(s) between the site owner and the CHP System vendor, developer, and/or installer that permits the Project to proceed at the site
 - A copy of the signed 5-year warranty/service/maintenance/performance agreement (if following the Catalog Approach).
 - Evidence that major equipment has been delivered to the site or staging area approved by NYSERDA Project Manager
- Incentive Payment #2 - 33% of the Base Incentive when the CHP system is fully installed including interconnections to building systems, and final permission for full operation has been obtained from the electric utility.
- Incentive Payment #3 – The remainder of the Base Incentive when:
 - The CHP system is fully commissioned and operational
 - A commissioning report has been accepted and approved by NYSERDA’s Project Manager
 - A copy of the final as-built design drawings of the Project have been received by NYSERDA
 - A copy of the final electric interconnection agreement has been received by NYSERDA

- Performance data is being reliably and correctly delivered to NYSERDA's Distributed Generation (DG) Performance website
- A post-installation inspection has been completed by NYSERDA or NYSERDA's agent
- A copy of a signed maintenance agreement for the CHP System (if following the Custom Approach)

(b) If NYSERDA determines that the Project Site qualifies as supporting critical infrastructure, a bonus incentive equal to 10% of the Base Incentive will be paid over the three Invoices using the same ratios as the Base Incentive.

(c) If NYSERDA determines that the Project Site is within a Target Zone, a bonus incentive equal to 10% of the Base Incentive will be paid as part of Invoice #3 as long as the CHP system is fully operational prior to May of the Target Year for that Target Zone. The Target Zone Bonus will only be paid if the System is fully operational by April 30, 20xx.

4. Commissioning Report

Upon completion of the post-installation inspection, the Contractor shall provide NYSERDA

- (a) a detailed description of all activities performed to commission the Project and the results of such commissioning activities,
- (b) a detailed description of the stand-alone testing completed if the system is black-start capable, and
- (c) a detailed cost breakdown backed up by copies of all invoices (including all materials, labor, and equipment discounts) reflecting the costs of purchasing and installing the Project. The invoices shall include a breakdown of all equipment purchased for installation under this Agreement (the application and these Terms and Conditions) and shall note any other subsidies garnered by the Project including source(s) and amount(s). In addition, NYSERDA may request any other reasonable documentation or verification of the cost to the Contractor of purchasing and installing the Project.

5. Stand-Alone Testing [**Replace this paragraph with "5. Not Used" if black-start is not required**]

During commissioning, the Contractor shall demonstrate the actual operation of the CHP system in grid-parallel mode, its transition to and operation in stand-alone mode where it actually serves the project site to the fullest extent intended, its shut down and restart in stand-alone mode where it actually serves the project site to the fullest extent intended, and its transition back to and operation in grid-parallel mode. If the site serves as critical infrastructure the Contractor shall confirm that all portions of the site serving this purpose are supported by the CHP System during stand-alone mode.

6. Inspections, Follow-up Visits

NYSERDA reserves the right to make, or to have its agent make, a reasonable number of pre- and post-installation inspections and visits to the Project Site. Such visit(s) will be at a time convenient to the Site Owner and made with at least one-week advance notice to

the Site Owner by NYSERDA. Contractor must ensure Site Owner's cooperation with these inspections.

7. Post-Installation Re-commissioning

NYSERDA reserves the right to dispatch a re-commissioning agent, at NYSERDA's expense, to the Project Site, in general, between the 12th and 24th month after Project commissioning to inspect the Project, analyze its operation and performance, identify any areas for improvements, and make recommendation as appropriate. The re-commissioning activity may include the temporary (approximately one month) installation of additional monitoring equipment. The Contractor shall, and shall cause the Site Owner and CHP System Owner (if applicable) to agree to provide site access and to cooperate with NYSERDA's re-commissioning agent.

8. Post-Installation Performance Monitoring [Use one of the following three paragraphs depending on the project]

Alternative 1 – Projects over 50kW

The CHP systems shall be instrumented so that Project performance (including fuel consumption, electric production, and thermal use) can be measured on 15 minute intervals in conformance with RFI 2568 Attachment C Monitoring Standard. The Contractor shall provide, or cause the Site Owner to provide a communications route (phone line or internet connection) so that this performance data can be automatically uploaded to NYSERDA's DG Performance Website (<http://chp.nyserderda.ny.gov>) on a daily basis for a period of at least 3 years after Project commissioning, where it will be available to the public.

Alternative 2 – Smaller systems where vendor collects performance telemetry.

The Contractor shall provide NYSERDA with an automated upload of telemetric CHP System performance data collected by the Contractor for monitoring purposes. Such data shall include fuel usage, electric output, thermal output and thermal used collected on not more than hourly intervals. This performance data shall be automatically uploaded to NYSERDA's DG Performance Website (<http://chp.nyserderda.ny.gov>) on a daily basis for a period of at least 3 years after Project commissioning, where it will be available to the public.

Alternative 3 – Neither of the above apply

NYSERDA reserves the right to install a performance monitoring system on the CHP System at NYSERDA's expense. If NYSERDA so elects, the Contractor shall provide, or cause the Site Owner to provide a communications route (phone line or internet connection) so that this performance data can be automatically uploaded to NYSERDA's DG Performance Website (<http://chp.nyserderda.ny.gov>) on a daily basis for a period of at least 3 years after Project commissioning, where it will be available to the public.

9. CHP System Installation, Performance and Maintenance

The Contractor shall take full, single point-of-contact responsibility for proper installation and performance of the CHP system, and must provide a warranty/service

agreement to the CHP System Owner for a minimum of 5 years from the date of commissioning.

10. No Warranties

(a) NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Contractor, Site Owner and/or CHP System Owner's reliance on warranties is limited to any warranties that may arise from, or be provided by Contractor, vendors, etc. (b) The Contractor acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering and construction of the project is proper or complies with any particular laws, codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the Project or the adequacy or safety of such measures.

11. Removal of Equipment

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

12. Coordination of Public Funding

If the Project is awarded other public grant funding and/or utility incentive funding, NYSERDA may reduce the incentive amount with the intent that total public/utility funding, including NYSERDA's incentive, will not exceed 100% of the total Project cost. The Contractor, Site Owner and CHP System Owner shall inform NYSERDA's project manager of all pending and awarded public grant funding and utility incentives related to the Project in a timely manner. Upon submission of all subsequent invoices for Incentive Payments the Contractor, Site Owner and CHP System Owner shall provide to NYSERDA's project manager the amount of the public grant funding and utility incentive award(s) and a breakdown of the most current estimate of the total Project cost. NYSERDA may then adjust the amount of any unpaid Incentive Payments as appropriate.

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and the Exhibits noted thereon, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

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

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

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

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance of Work by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection with the Work.

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

Work: The Work described in the Exhibit A (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

Article II

Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified at Item 3, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in the Site Owner/CHP System Owner to all equipment purchased hereunder.

Article III

Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A, Statement of Work.

Article IV

Payment

Section 4.01. Payment Terms. In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 7, Page One of this Agreement for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYSERDA's payments shall be on a reimbursement basis, and shall be paid only to the extent that Cash-based Expenses are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, and the following:

Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Incentive Payment so identified, the Contractor may submit invoices, including documentation reasonably sufficient to demonstrate completion, requesting payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work, including evidence of the Contractor's cost share, if applicable.

Section 4.02. Progress Payments.

(a) Invoicing: Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event so identified, the Contractor may submit invoices, including documentation reasonably sufficient to demonstrate completion, requesting payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work, including evidence of the Contractor's cost share, if applicable. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to invoices@nyserda.ny.gov. Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. In accordance with and subject to the provisions of Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an

invoice, the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement.

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Contractor's performance under this Agreement.

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 7 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Performance

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 Contractor'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.

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its

rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

Article VI

Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of all deliverables shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such deliverables by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work.

Article VII

Force Majeure

Section 7.01. 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, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

Article VIII

Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information.

(a) NYSERDA shall have the unlimited right to use, duplicate, or disclose performance data uploaded to NYSERDA's DG Performance Website, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Contractor shall have the right to use performance data uploaded to NYSERDA's DG Performance Website for its private purposes, subject to the provisions of this Agreement.

(c) The use, public performance, reproduction, distribution, or modification of any materials used by Contractor in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.

(d) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

Section 8.02. Representations.

(a) All materials have been or will be created solely by the Contractor's full-time employees during the course of their employment, or independent contractors who assigned or will assign all right, title, and interest worldwide to the Contractor.

(b) The use, public performance, reproduction, distribution, or modification of the materials does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy.

Section 8.03. Licenses. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content contained in the materials.

Section 8.04. Assignment of Rights. The Contractor hereby irrevocably assigns, conveys and otherwise transfers to NYSERDA, and its respective successors and assigns, all rights, title and interests worldwide in and to the materials and all copyrights, trade secrets, patents, trademarks, service marks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether now known or hereafter to become known. In the event

the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA, the Contractor hereby unconditionally and irrevocably waives the enforcement of all such rights, and all claims and causes of action of any kind with respect to any of the foregoing against NYSERDA, its distributors and customers, whether now known or hereafter to become known and agrees, at the request and expense of NYSERDA and its respective successors and assigns, to consent to and join in any action to enforce such rights and to procure a waiver of such rights from the holders of such rights. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA and cannot be waived, the Contractor hereby grants to NYSERDA, and its respective successors and assigns, an exclusive, worldwide, royalty-free, perpetual license to reproduce, distribute, modify, publicly perform and publicly display, with the right to sublicense through multiple tiers of sublicensees and assign such rights in and to the materials including, without limitation, the right to use in any way whatsoever the materials and the Contractor retains no rights to use the materials and agrees not to challenge the validity of the copyright ownership by NYSERDA in the materials. In the event that any development of any materials under this Agreement is to be performed by a subcontractor, the Contractor agrees to include the provisions contained in this section in any such subcontract.

Section 8.05. Restriction on Use. The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

Article IX

Warranties and Guarantees

Section 9.01. Warranties and Guarantees. The Contractor warrants and guarantees that:

(a) all information provided and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

(c) it is familiar with and 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;

(d) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;

(e) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;

(f) neither the Contractor nor any of its employees, agents, representatives or servants has actual 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 the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(g) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

(h) it has no actual knowledge that any information or document or statement furnished by the Contractor 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, and that all facts have been disclosed that would materially adversely affect the Work;

(i) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement;

<http://www.nyserda.ny.gov/About/Board-Governance.aspx>

(k) its rates for the indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles; and

(l) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Article X

Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor 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 XI

Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor 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 11.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims

arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

(b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor 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 the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

(i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or

(ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Contractor shall resume Work. An equitable

adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

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

(ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

(d) Notwithstanding the provisions of this Section 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor). Articles VIII, IX, and X shall survive any termination of this Agreement.

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

(c) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects: (i) any such

continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

12.03 Suspension or Termination for Non-Responsibility.

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the Responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act

or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

Article XIV

Compliance with Certain Laws

Section 14.01. Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor 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 Contractor, 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 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C 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 Contractor to comply with all legal requirements.

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

NYSERDA

Name: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: Cheryl.Glanton@nysesda.ny.gov

Personal Delivery: Reception desk at the above address

Contractor Name

Name: Primary Point of Contact

Title:

Address:

Facsimile Number:

E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03. 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 XVI

Publicity

Section 16.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which the Work is referred to or discussed.

(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

1. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. **WAGE AND HOURS PROVISIONS.** If this is 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent

with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. **INTERNATIONAL BOYCOTT PROHIBITION.** If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. **SET-OFF RIGHTS.** NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. **PROPRIETARY INFORMATION.** Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial

enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>).

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

11. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. **CRIMINAL ACTIVITY.** If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. **PERMITS.** It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.esd.ny.gov>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. **COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. **PROCUREMENT LOBBYING.** To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. **COMPLIANCE WITH TAX LAW SECTION 5-a.** The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).

b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).

c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law (See www.ogs.ny.gov/about/regs/ida.asp).

EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.

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

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

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

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

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

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to

NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

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

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

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

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

504.4. Payment Procedures.

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

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

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

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

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

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

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

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

504.10. Judicial Review. Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is

subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

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

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

Exhibit E, Signed Application Form

Exhibit F, CHP System Description

[Catalog Approach]

The CHP System shall consist of:

Quantity	Vendor	Catalog Designation
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Catalog pages for the listed Catalog Module(s) are attached. If the CHP System consists of more than one Catalog Module, a piping and instrumentation diagram (P&ID) is also attached.

[Custom Approach]

The CHP System shall consist of the following major components:

	Quantity	Make	Model
Prime mover:			
Generator:			
Exhaust heat exchanger:			
DHW heat exchanger:			
Space heat exchanger:			
Dump heat exchanger:			
Other heat exchanger(s):			
Heat rejection radiator:			
Chiller:			
Chiller cooling tower:			
Duct firing module (HRSG):			
ORC:			
ORC cooling tower:			
Emission control system:			
Protection relay:			
Synchronization system:			
Transfer switch:			
Inverter/Power converter:			
Data logging system:			

A piping and instrumentation diagram (P&ID) is attached.

CHP Program

Program Opportunity Notice (PON) 2568

Attachment E – Incentive Calculator

The Incentive Calculator is an Excel spreadsheet.

It can be found at <http://www.nyserda.ny.gov/PON2568>