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

**(“NYSERDA”)**

**SAMPLE AGREEMENT**

1. Agreement Number:

2. Contractor:

3. Project Director:

4. Effective Date:

5. Total Amount of Award:

6. Project Period:

7. Expiration Date:

8. 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, Standard Terms and Conditions;

 ● Exhibit D, Prompt Payment Policy Statement;

 ● Exhibit E, Web-Related Contract Addendum;

 ● Exhibit F, Certification for Access to NYSERDA’s Internal Networks and Systems; and

 ● Exhibit G, Contractor Confidentiality Agreement.

9. ACCEPTANCE. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY NYSERDA.

**[CONTRACTOR] NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**

Signature: Signature:

Name NYSERDA Authorized Signatory

Title

**EXHIBIT A**

**STATEMENT OF WORK TEMPLATE**

**(Insert Region name and Boroughs (NYC only) Clean Energy Hub Services**

Primary Contractor: \_\_\_\_\_\_\_\_\_\_

Project Agreement Number: \_\_\_\_\_\_\_\_\_\_

Project Director: \_\_\_\_\_\_\_\_\_\_

Project Period: \_\_\_\_\_\_\_\_\_\_

**Background/Objectives**

The New York State Energy Research and Development Authority (NYSERDA) is contracting with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Contractor”), which together with subcontractors shall serve as a Regional Clean Energy Hub (collectively, “Hub”) to support clean energy actions and a more inclusive energy economy in the following region in New York State, as defined by the Regional Economic Development Council (REDC) regions: Mohawk Valley. The Contractor and/or its subcontractors shall serve as a Regional Clean Energy Hub and will play an instrumental role in engaging disadvantaged communities, the current definition for which can be found at <https://www.nyserda.ny.gov/ny/disadvantaged-communities>[[1]](#footnote-2) to ensure they have access to, and benefit from, the clean energy economy. NYSERDA will update the Contractor if and when the definition of disadvantaged communities is amended over time. The current definition in place at all times shall be the one employed by the Contractor.

The Hub shall:

* Increase consumer awareness of and access to clean energy technologies and opportunities;
* Increase consumer uptake of clean energy projects, with support for accessing wrap around (non-NYSERDA) services/resources;
* Advance local capacity to engage with community residents about clean energy policy, technologies, and opportunities;
* Increase public participation in energy planning and program coordination activities;
* Increase partnerships with clean energy partners, affordable housing providers, non-energy partners, third-party funding providers, philanthropic organizations, etc. that result in scalable activities and projects;
* Increase the diversity of participating contractors in the clean energy sector; and
* Support career pathways for priority populations (under the current definition at any given time as found on NYSERDA’s website, available here: <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Workforce-Development/Definitions>) in disadvantaged communities through partnerships with training, education, and clean energy businesses for employment opportunities in the clean energy workforce. NYSERDA will notify the Contractor if the definition of priority populations is updated.

At the time of contracting, the Contractor shall identify the member(s) of the Contractor’s team to serve as the Hub Director(s), agreed upon by the Contractor and the NYSERDA Project Manager and identify who will serve as the main point of contact and submit all project deliverables. Should the Hub Director(s) become unavailable to serve in this capacity for any reason, the Contractor shall notify the NYSERDA Project Manager in writing at least two (2) weeks in advance of such change and shall identify a replacement within two (2) weeks. NYSERDA reserves the right to review and approve the Hub Director(s) assigned to this Agreement. NYSERDA will work with the Contractor to address any program deficiencies and reserves the right to require the Contractor or any of its subcontractors to add additional staff, reduce staff assignments, or entirely remove staff from this Agreement based on performance, misrepresentation, or other criteria determined by NYSERDA.

The Contractor is responsible for hiring and deploying appropriately skilled personnel. Acceptable candidates are those that have strong skills in the areas of project management; community coordination; residential buildings and communities with a focus on low- to moderate-income households and disadvantaged communities; clean energy services and technologies; and excellent public speaking, writing, verbal, and computer skills.

The Contractor shall hire, or cause to be hired through subcontractors, Energy Advisors who will execute the services within this Agreement within their region(s), coordinate and provide on-the-ground outreach and engagement support, and develop partnerships promoting NYSERDA and other energy programs and resources for clean energy solutions and clean energy workforce development opportunities. In addition, assist residents, small businesses, nonprofits, and affordable housing providers, with a focus on underserved rural communities and otherwise disadvantaged communities with adoption of clean energy solutions including energy efficiency and renewable energy. Energy Advisors will provide outreach assistance and work with community members, energy professionals, constituency and community-based organizations, chambers of commerce, or other organizations with a strong local presence and relationships in the area to develop firm strategic partnerships to drive clean energy action.

The Contractor shall provide resumes of all prospective Energy Advisors, prior to hiring to the NYSERDA Project Manager for approval. Contractor hires and changes to Energy Advisors are subject to NYSERDA’s approval and NYSERDA reserves the right to interview and approve each new Energy Advisor hired by the Contractor and/or Energy Advisors prior to starting work under this Agreement. NYSERDA holds the Contractor solely responsible for Energy Advisor performance. If NYSERDA and/or the Contractor finds an Energy Advisor’s performance unsatisfactory, on the grounds of non-performance, poor representation, or any other reason related to program outcomes, the Contractor will work with NYSERDA and the Energy Advisor to address the concerns and resolve the issues in an expeditious manner. If the issues cannot be resolved, NYSERDA reserves the right to replace the Energy Advisor.

The Contractor shall train the Energy Advisors to deliver the tasks outlined in this Agreement. The Contractor shall manage the work of the Energy Advisors on a day–to-day basis and provide fiscal oversight of the program. Energy Advisors may be required to work outside normal business hours and on weekends.

The Contractor shall outline and update the Full-Time individuals and Full Time Equivalents (FTEs) in Attachment C Staffing Plan. Necessary full-time individuals and FTEs can be modified by NYSERDA as necessary. All individuals providing services under this Agreement shall be identified in Attachment C Staffing Plan. For any vacant or to be hired roles in the Staffing Plan, the Contractor shall identify the skill set and qualifications, and provide a resume for staff that were not hired at the time of the proposal.

**Contractor Team:** At the beginning of the Project Period, the Contractor Team for this Agreement shall consist of the Contractor and the following Subcontractors.

**The Contractor is defined as:**

Company Name

Contact Name

Street Address

City, State Zip code

Email/Phone/Fax

***Subcontractor(s)*** is/are defined as: (include all subcontractors)

 Subcontractor One name

 Subcontractor street address

 City, State Zip code

Email/Phone/Fax

Subcontractor Two name

 Subcontractor street address

 City, State Zip code

Email/Phone/Fax

Subcontractor Three name

 Subcontractor street address

 City, State Zip code

Email/Phone/Fax

Subcontractor Four name

 Subcontractor street address

City, State Zip code

Email/Phone/Fax

NYSERDA reserves the right to terminate this Agreement if the Contractor, its Energy Advisors, and/or subcontractor(s) fail to satisfactorily perform the Tasks and Deliverables, outlined herein, after careful consideration and consultation with the Contractor. NYSERDA reserves the right to directly contract with the Energy Advisors and other Subcontractors, or to have other contractors enter such agreements including the case in which this Agreement is terminated for cause or not renewed. See Section 12.02(c) of this Agreement.

Confidential and proprietary participant information shared with the Contractor Team while providing services shall be kept confidential by the Contractor Team. Such information shall not to be shared with other parties or used by the Contractor Team for any purpose outside of the specific assignment or agreement. See Appendix B, section 8.01.

Contractors shall work with any NYSERDA-procured contractors or consultants brought in to assist with the development and implementation of Hub activities.

Web Accessibility:

Any network-based information and applications development, or programming delivered to or by the State pursuant to this contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the “Accessibility Policy”). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by NYSERDA and any report on the results of such testing must be satisfactory to NYSERDA.

Access to NYSERDA’s Internal Networks and Systems.   In order for the Contractor’s staff to fulfill the requirements of this TWO, access to NEIS and Salesforce is necessary.  Each individual Contractor employee who will be completing work under this TWO must complete Exhibit F, Certification for Access to NYSERDA’s Internal Networks and Systems as amended and superseded.  In addition, the Contractor and its employees are subject to NYSERDA’s Information Security Policies and Data Classification and Security Controls, as amended and superseded, which can be found here: <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>.

Additional Policies and Procedures. The Contractor’s staff shall sign and agree to abide by such policies and procedures as detailed in Exhibit F, Contractor Confidentiality Agreement as amended and superseded and any other relevant policies and agreements that are applicable to the Work being conducted.

**DEFINITIONS:**

*Career Pathways Partnership*: regional partnership that supports resource and program alignment to enhance existing formalized career pathways, partnerships with potential employers, and other workforce development opportunities to improve alignment between and linkages among community-based training providers, educational institutions, and employers around employment and career development opportunities.

[*Clean Energy Communities (CEC)*](https://www.nyserda.ny.gov/cec)*:* a NYSERDA program that provides grants, coordinator support, and a clear path forward to local governments that demonstrate leadership by completing NYSERDA-selected high-impact actions.

[*Clean Heating and Cooling Communities*](https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Heating-and-Cooling-Communities/Campaigns)*:* a NYSERDA program that supports communities in implementing multi-year community-based outreach and education campaigns aimed at getting groups of homes and businesses in New York State to install clean heating and cooling technologies.

[*Climate Smart Communities*](https://climatesmart.ny.gov/) *(CSC):* a New York State Department of Environmental Conservation (DEC) Certification program which recognizes municipalities for taking climate action by offering technical assistance, grants, and rebates for communities to help reduce harmful emissions, build resilience to climate change, and thrive in the new resilient green economy.

*Community-Based Organization:* For purposes of this initiative, a Community-Based Organization refers to a public or private organization aimed at making desired improvements to a community's social health, well-being, and overall functioning, and represents of a community or significant segments of a community; and provides services to individuals in the community, based on input from community members.

*Contractor(s):* refers to the organization(s) successfully awarded contract(s).

*Energy Advisor:* refers to a locally based representative with a demonstrated strong presence in their county(ies) and region(s) hired by Contractor(s) and approved by NYSERDA to effectively provide the services requested in this RFP. Energy Advisors will be part of the project team responsible for providing services throughout the entire region. Energy Advisors must live, work or provide services within the region they serve. Energy Advisors can be employees or subcontractors to the primary Contractor.

*Energy Professional*: a contractor, installer, or consultant that performs assessments or installation of energy efficiency or renewable energy measures through programs including, but not limited to, Assisted Home Performance with ENERGY STAR®, EmPower New York, Weatherization Assistance Program (WAP), Home Energy Assistance Program (HEAP), NYS Clean Heat, NY-Sun, Renewable Heat NY, Multifamily Performance Program, Flextech, Comfort Home, and other clean energy programs.

*Equitable Stakeholder Engagement:* refers to identifying and engaging diverse stakeholders, with an emphasis on disadvantaged communities that have historically not been effectively engaged in development and planning of programs and policies to ensure all communities can participate in and benefit from the transition to a clean energy economy.

*Hub Director:* refers to staff responsible for managing the Hub team, ensuring professionalism and an appropriately skilled Energy Advisor network, and submitting all project deliverables.

*Hub Services*: the work performed by Contractor(s) to manage and provide community-based outreach and engagement to individuals, small businesses, non-profits, and affordable property owners, and other services as described in this agreement.

[*MWBE*](https://esd.ny.gov/doing-business-ny/mwbe)*:* Minority and/or Women-owned Business Enterprise

*Partners*: groups, organizations, companies and/or individuals working within an economic development region that Hubs will collaborate with to deliver services, as outlined in this agreement. For contracting purposes, if a funding or resourcing agreement exists between a Hub and a partner organization, the organization should be identified as a subcontractor in the proposal. Partners are not considered subcontractors or entities receiving compensation through a contract with NYSERDA but will actively work with a Hub in the region.

*Partnership:* strategic relationships created by the Contractor and/or its subcontractor organization(s) with the goal of extending NYSERDA’s outreach and engagement to disadvantaged communities that does not involve a contractual relationship with the Contractor under the Regional Clean Energy Hub initiative. A partnership is characterized by demonstrated activity, including but not limited to cross promotion of programs or services, cross-referrals, support of capacity building activities in the community, support with accessing wrap-around resources, etc.

*Priority Populations:* As defined by NYSERDA [Clean Energy Workforce Development](https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Workforce-Development/Definitions)

*Region*: one of the [ten (10) economic development regions](https://esd.ny.gov/regions) as defined by the New York State Empire State Development Corporation. Regions include Capital District, Central New York, Finger Lakes, Long Island, Mid-Hudson, Mohawk Valley, New York City, North Country, Southern Tier and Western New York.

*Regional Clean Energy Hub (Hub)*: refers to a team of organizations responsible for establishing and fostering partnerships in their region to deliver services at the community level, as outlined in this agreement.

*[Regional Economic Development Councils](https://regionalcouncils.ny.gov/) (REDCs*): New York State established ten (10) REDCs comprised of members of the local communities to develop long-term strategic plans for economic growth to meet the goals and objectives for their regions. The state is divided into ten (10) regions: Capital District, Central New York, Finger Lakes, Long Island, Mid-Hudson, Mohawk Valley, New York City, North Country, Southern Tier, and Western New York.

[*SDVOB*](https://online.ogs.ny.gov/SDVOB/search): Service-Disabled Veteran-Owned Businesses

*Small Business:* In New York State, the definition of a small business for the purposes of Chapter 15 Economic development law, S 131 (Article 4-B Division for Small Business), “a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.”

*Subcontractor:* an organization that has a contractual agreement/Memorandum of Understanding with the Contractor to perform the services in this agreement.

*Team:* proposing organization and their subcontractors/partners providing services as outlined in the Statement of Work.

**Tasks**

The total NYSERDA award amount for all Tasks shall not exceed $0.00. Any modifications to this amount shall be by mutual agreement.

Regardless of any subcontracting arrangements, the Contractor shall be solely responsible for all tasks and deliverables in this Agreement. The Contractor shall conduct all work as outlined in the following tasks. All cost overruns shall be the sole responsibility of the Contractor. Services shall be provided throughout the term of the Agreement, or as directed by NYSERDA. The Contractor shall scale the resources (staffing and funding) for each year of the Program, as capacity is developed, and services are expanded.

The Contractor shall work with their assigned NYSERDA Project Manager to determine the classification rating and required controls for any Information Assets collected or stored on behalf of NYSERDA.

**Task 0.0: Start Up Funding for Hub Services**

Upon agreement execution, NYSERDA will provide an up-front capital payment equal to 10% of the total funding allocation. This funding will be recaptured by NYSERDA over the first 24 months of the agreement term. The Contractor shall account for the 10% startup funding over the first 24-months of the contract by dividing the 10% startup payment by 24 and reduce the total monthly invoice by that amount.

The Contractor shall upload to NYSERDA’s Project Management System, signature pages of the fully executed Agreement by both parties attesting to perform the project according to the terms and conditions of the Agreement and submit an invoice in the prescribed template for Task 0.0.

**Deliverables 0.0:**

* Signature pages of fully executed Agreement
* Invoice submission

**milestone Payment 0.0:** 10 percent of the total budget for years one (1) through four (4)

**Task 0.1 Regional Assessment and Barriers Analysis**

The Contractor shall submit a Work Plan, to the NYSERDA Project Manager within thirty (30) days of Agreement execution, detailing the timeline, tasks and resources required to complete the Regional Assessment and Barriers Analysis Report.

The Contractor shall submit to the NYSERDA Project Manager, within two (2) months of Agreement execution, the Regional Assessment and Barriers Analysis using a template provided by NYSERDA. This analysis should leverage, and not duplicate, work already done by regional organizations including the REDC Strategic Plans. The Report shall provide a baseline of the current energy landscape, community assets which includes organizations in the clean energy transition space and can be leveraged to build capacity, energy barriers and challenges, list of key stakeholders within the region, other available resources to address barriers and challenges identified, and other relevant regional context.

* The Regional Assessment and Barriers Analysis shall also identify key stakeholders not traditionally engaged in the transition to a clean energy economy and outline how these organizations will be meaningfully engaged.
* The Regional Assessment and Barriers Analysis shall also identify the current energy landscape for small businesses, Service-Disabled Veteran-Owned Businesses (SDVOBs), and Minority and Women Owned Business Enterprises (MWBEs) in the clean energy sector and identification of gaps in the Region. Identify what market intelligence exists and how those resources will be directed to where there is demand or a need/opportunity.

**Deliverables 0.1:**

* Work Plan
* Regional Assessment and Barriers Analysis Report

**Task 1.1. Subcontractor/ Agreements**

The Contractor shall submit to NYSERDA, within forty-five (45) days of Agreement execution, fully executed subcontractor agreements for all subcontractors listed in this Agreement. Any confidential information contained in the subcontract agreement shall be so marked, and cross reference the Freedom of Information Law (FOIL) section of Appendix B Terms and Conditions. The subcontractor agreements shall include:

* Organization Name
* Primary Contact Name, address, telephone number and email
* Scope of Services – outline the credentials, skills, and activities that a subcontractor(s) will provide under this Agreement or the nature of the partnership.
* Coverage Area – identify the geographic area (county or counties) that the services will be performed in by the subcontractor.
* Payment Terms – outline how the subcontractor organization will be paid for their services and the accountability mechanism that will be put in place to ensure performance under this Agreement.

**Deliverable 1.1:**

* Fully executed Subcontractor Agreements for each organization listed in this Agreement.

**\*GO/NO GO DECISION** – THE CONTRACTOR SHALL NOT BE ALLOWED TO WORK ON ANY FURTHER TASKS UNDER THIS AGREEMENT WITHOUT WRITTEN PERMISSION FROM THE NYSERDA PROJECT MANAGER, WHICH SHALL BE ISSUED AT NYSERDA’S SOLE DISCRETION.

**Task 1.2 New Subcontractor Selection**

The Contractor shall not change subcontractors without NYSERDA written approval. Any additional subcontractors shall be identified and selected in accordance with Article V of this Agreement and shall be promptly communicated in writing to the NYSERDA Project Manager. The Contractor shall provide the NYSERDA Project Manager with the position description, and a summary of the level of effort, the methods used to advertise the position, number of qualified individuals who responded, number of individuals interviewed, and rationale for the selected individual (“Position Fulfillment Memo”).

**Deliverables 1.2:**

* Position description
* Position Fulfillment Memo

**Task 2.0 - Contract Management and Progress Reporting**

The Contractor shall be responsible for overall Contract management and coordination of all Tasks in this Agreement. The Contractor shall complete the following activities related to Contract Management:

* Coordinate the Work of the Contractor's employees and those of subcontractors and partners that are undertaking Tasks described in this Agreement.
* Provide oversight of the Schedule, resources, Budgets, scope, and program outcomes for all key staff including subcontractors and partners.
* Provide all project reporting and deliverables to NYSERDA as specified in this Agreement.
* Participate in conference calls, trainings and meetings as needed to gauge project status. NYSERDA shall schedule and conduct on an as-needed basis in-person visits, conference calls, or face-to-face meetings to verify the successful completion of project Tasks.
* Report any significant events, program feedback, or issues to the NYSERDA Project Manager.
* Ensure Energy Advisors are appropriately trained, attend all required training, a kick-off meeting, annual conferences, presentations to the public and attend all required program meetings as requested by NYSERDA. Costs associated with these trainings shall be outlined in the Budget Form and in the Quarterly Plans subject to the approval of the NYSERDA Project Manager.
* Review all Deliverables for completeness, accuracy, and quality prior to submission to the NYSERDA Project Manager.
* Other contract management activities, as directed by the NYSERDA Project Manager.

The Contractor shall use Salesforce or other Customer Relationship Management (CRM) as directed by NYSERDA for tracking and reporting as detailed in Task 2.1 and 2.3 to ensure it is in accordance with NYSERDA’s Data Classification and Security Controls Policy. Additionally, cloud-based CRMs must be hosted (and the data remain) in the continental United States in accordance with New York State Office of Information Technology Services (ITS) policy P03-002. The system shall adhere to and meet ITS security requirement for data classified as high-confidential and be encrypted at rest. NYSERDA will also capture relevant data where available directly from existing systems such as for EmPower energy efficiency projects and On-Bill Recovery, Smart Energy, and Companion loans.

**Deliverables 2.0:**

* Task 2.0 activities included in Monthly Reporting

**Task 2.1 Monthly Progress Reporting**

The Contractor shall submit Monthly Progress Reports (Monthly Report) to NYSERDA's Project Manager in a template provided by NYSERDA no later than the 15th of the month following each reporting period. The Monthly Reports shall include but are not limited to workshop details, community campaign leads and installations, outreach/marketing activities, project tracking, stakeholder engagement, partnerships, etc.

The Contractor shall ensure all agreed upon metrics and activities are included in the Monthly Report.

The Contractor shall maintain and revise the Schedule of Hub Activities throughout the program period. Changes to the Schedule of Hub Activities are subject to NYSERDA approval. If the Project timeline is extended past the end of the Project Period listed as Item 6 on Page 1 of this Agreement, the Contractor shall continue to submit Monthly Reports, but no additional payments shall be allocated for those Deliverables, unless otherwise identified and approved by the NYSERDA Project Manager. NYSERDA reserves the right to request additional analysis, clarification on certain Tasks, or other content for inclusion in the Monthly Reports.

**Deliverables 2.1:**

* Monthly Report
* Current Schedule of Hub Activities

**Task 2.2: Invoicing**

The Contractor shall review all contract expenditures by itself and its subcontractors for accuracy and completeness and submit one invoice, in the template provided by NYSERDA and as outlined in Article IV of this Agreement monthly. Invoicing shall include the prescribed Invoice template and all necessary backup documentation. The Contractor shall submit the invoice and necessary documentation by the 15th day of the month for the preceding month’s expenditures. NYSERDA is not responsible for any costs that are greater than the NYSERDA contribution not-to-exceed amount for the Agreement. NYSERDA will recapture the 10% startup funding provided in Task 0.0, over a -24-month period. This funding will be recaptured by NYSERDA over the first 24 months of the agreement term. The Contractor shall divide the 10% startup payment by 24 and reduce the total monthly invoice by that amount.

The Contractor shall utilize NYSERDA’s Project Management database to upload all invoices and supporting documentation.

**Deliverable 2.2:**

* Monthly Invoice including documentation

**Task 2.3 Metrics Tracking**

The Contractor shall utilize the approved system (see Task 2.0) for tracking and reporting community interactions and progress, including providing narratives to document ongoing activities.

The Contractor shall track the metrics below, prepare and submit to the NYSERDA Project Manager the prescribed Monthly Report:

* Number of enrollments and installations resulting from community campaign efforts implemented by the Contractor;
* Projects coordinated with other resources (e.g., wrap-around services);
* Geographic distribution of energy literacy workshops, demonstrations, etc. and the number of participants at these sessions, number of workshop participants that have taken energy savings actions or participated in a clean energy program;
* Stakeholders engaged in public stakeholder forums and geographic distribution of stakeholder forums;
* New partnerships developed with other locally based organizations;
* Number of clean energy businesses that work with the Hub to hire from priority populations or disadvantaged communities;
* Number of MWBEs and/or SDVOBs recruited into the clean energy sector;
* Other metrics as required by NYSERDA.

**Deliverable 2.3:**

* Metrics Tracking included in Monthly Reporting

**Task 2.4: Quarterly Plan**

The Contractor shall submit Quarterly Plans following NYSERDA’s prescribed Quarterly Plan template no less than 30 days prior to the following quarter. During each calendar year, quarter start and end dates are as follows: Quarter 1: January 1-March 31, Quarter 2: April 1-June 30, Q3: July 1-September 30, Quarter 4: October 1-December 31.

The first Quarterly Plan shall be submitted to the NYSERDA Project Manager within 15 days of contract execution.

The Quarterly Plan shall include, but it not limited to, planned outreach/events, energy literacy workshops, new campaigns, support of existing campaigns, stakeholder engagement, partnerships, contractor recruitment and local project support. The Contractor shall identify the Energy Advisor(s) and their roles associated with each Task in the Quarterly Plan.

**Deliverable 2.4:**

* Quarterly Plans

**Task 2.5 Annual Review and Final Presentation**

The Contractor shall prepare and submit to the NYSERDA Project Manager an Annual Progress Presentation (slide deck) 30 days prior to the contract’s annual review period (every 12 months from contract execution) for the agreement term.

No less than 60 days prior to Agreement completion as noted on Page 1, Item 6, Project Period, the Contractor shall prepare a Final Progress Presentation (slide deck) to the NYSERDA Project Manager for approval. The Annual and Final Progress Presentations shall be limited to no more than 10 slides and include project team, collective lessons learned, best practices, outcomes, metrics, and achievements throughout the Project Period. The Annual and Final Progress Presentation shall include a summary of metrics addressing the anticipated energy, environmental and economic benefits (where applicable) that are realized by the Team. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract was executed. The Contractor shall present the Final Progress Presentation to the Hub Network as directed by NYSERDA.

To further NYSERDA’s goal of transferring technology or knowledge amongst all NYS customers and communities, the Contractor shall make all final Deliverables available for use and in a format approved by NYSERDA.

**Deliverables 2.5:**

* Annual Progress Presentation
* Final Progress Presentation

**Task 2.6 Other Program Services**

It is expected that successful outreach, engagement, and capacity building will require review and calibration of efforts over time, as market conditions evolve, and Hubs successfully identify barriers and opportunities within communities. As such, NYSERDA will establish a Regional Clean Energy Hub Advisory Group (“Advisory Group”) to regularly review progress of the Hubs, share best practices, and provide recommendations to NYSERDA and the Hubs. Recommendations from the Advisory Group will be vetted and approved by NYSERDA in coordination with the Hubs for feasibility and potential impact before adoption. The Contractor shall work with the Regional Clean Energy Hub Advisory Group (“Advisory Group”) or other working group(s) that will be convened to regularly review progress of the Hubs, share best practices, and provide recommendations to NYSERDA based on changing market needs and priorities, opportunities, etc.

NYSERDA may contract for additional program and administrative services to support the implementation of the Hubs. As such, the Contractor shall work with NYSERDA-procured contractors or consultants in the development and implementation of Hub services, including but not limited to the development and streamlining of reporting processes, consistent messaging, coordination of statewide and local stakeholder engagement, and the provision of technical training to Hubs.

The Contractor shall include activities related to other program services in the Monthly Report as outlined in Task 2.1 above.

**Deliverable 2.6:**

* Activities related to Other Program Services included in the Monthly Reports as outlined in Task 2.1 above.

**Task 3.0 - Campaigns, Education and Outreach**

The Contractor shall work to understand barriers and drivers to clean energy adoption in the Region and use that information to determine and develop key messages and strategies for each audience and program the Contractor will support. The Contractor shall creatively and actively promote NYSERDA and other relevant programs and resources to encourage participation and adoption of clean energy programs and solutions.

**Task 3.1 Marketing**

The Contractor shall conduct marketing and other media efforts, develop case studies, brochures, fact sheets, news publications, newsletters, email blasts, call scripts, and boilerplate language for use in social media applications or other Energy Advisor generated customer materials, tools, and resources. To ensure that marketing, events, and media efforts are aligned and coordinated with NYSERDA and the Hubs brand messaging, the Contractor shall ensure the Energy Advisors fully use existing NYSERDA and Hubs marketing materials and templates possible including email, presentations, print ads and other media as these templates relate to outreach efforts.

The Contractor shall also ensure the Energy Advisors use, as necessary, any tablecloths, banners, or equipment provided by NYSERDA to promote its programs or related opportunities. The Contractor shall submit a draft of any new marketing materials or tools and resources, including those proposed to be developed for mass printing, and presentations, to the NYSERDA no less than two (2) weeks prior to the publication/print date for approval. It is possible that some of the materials may lead to creation of new templates approved by NYSERDA’s marketing unit. Any new materials are subject to written approval by NYSERDA prior to creation and distribution including the use of NYSERDA and Hubs logos. Activities under this task must be approved by the NYSERDA project manager.

The Contractor shall provide documentation and information as requested by NYSERDA for creation of press releases and/or case studies to demonstrate the success of the Tasks completed in this Agreement. The Contractor shall also include marketing activities in the Monthly Report as outlined in Task 2.1 above.

**Deliverables 3.1:**

* Draft marketing materials, tools, and resources.
* Documentation and information for press releases and case studies.
* Marketing activities included in the Monthly Reports as outlined in Task 2.1 above.

**Task 3.2 Education**

The Contractor shall promote and deliver energy literacy and educational awareness services including but not limited to conducting webinars, workshops and participating in conferences and other events to educate members of disadvantaged communities and the public on the benefits of NYSERDA programs and the Regional Clean Energy Hub. The Contractor shall conduct energy literacy workshops throughout the Region with an emphasis on disadvantaged communities with a minimum of two (2) workshops per county, preferably during the heating season, in each Region per year. Each workshop shall contain at least ten (10) participants. The workshops shall be open to all households regardless of income. The Contractor shall use NYSERDA’s Workshop Curriculum as a model, be interactive with hands-on activities geared towards adult audiences using examples of community resources appropriate for households with limited resources and program applications shall be made available at the workshop to encourage eligible participants who are not already enrolled to do so. The Contractor shall use NYSERDA’s energy literacy and sign in templates to promote the workshops, engage workshop participants and gather participants information.

The Contractor shall ensure that each workshop participant completes an “Energy Action Plan”, and each household receives an Energy Kit, for in-person workshops, to be supplied to the Contractor by NYSERDA as supplies last. The Contractor shall keep a copy of each participant’s Energy Action Plan to follow up with the participant on which actions they implemented from their Energy Action Plan 60 days after the workshop.

The Contractor shall coordinate with their regional partners to promote the workshops and increase attendance. The Contractor shall also include education activities in the Monthly report as outlined in Task 2.1 above.

**Deliverable 3.2:**

* Education activities included in the Monthly Reports as outlined in Task 2.1 above.

**Task 3.3 Outreach**

The Contractor shall implement the outreach strategy as defined in their proposal to meet regional needs/priorities.

Insert Strategy

The Contractor shall ensure that outreach efforts are aligned and coordinated with NYSERDA and the Regional Clean Energy Hub brand and messaging as approved by the NYSERDA Project Manager. The Contractor shall use the NYSERDA implemented branding and materials of the Regional Clean Energy Hub to create a coherent/uniform identify/brand across New York State.

The Contractor shall develop visibility for the Hub through promotion as coordinated with and approved by NYSERDA. The Contractor shall work in coordination with CEC Coordinators, Clean Heating and Cooling campaign teams, CSC Climate Smart Coordinators, New York Power Authority (NYPA) Environmental Justice (EJ) outreach staff, etc. in their region to implement the outreach strategy defined above. The Contractor shall also include outreach activities in the Monthly report as outlined in Task 2.1 above.

**Deliverable 3.3:**

* Outreach activities included in the Monthly Reports as outlined in Task 2.1 above.

**Task 3.4 Community Campaigns**

Community campaign opportunities shall be determined by NYSERDA and the Contractor based on market need and/or regional opportunity. The Contractor shall implement new community campaigns to aggregate demand similar to the Solarize or HeatSmart Communities models to reduce soft costs and to move NYSERDA towards a more integrated approach to community campaigns and a more robust, technology agnostic community campaign model that will promote a range of clean energy programs and technologies that address community needs, barriers, opportunities particularly in disadvantaged communities. The Energy Advisor role shall be to engage end user customers via education, outreach, one-on-one engagement, etc. for the purpose of signing them up to campaigns. Among other things, Hub efforts/activities (metrics) will be measured and deemed successful based on the customer enrollments/installations of implemented technologies (i.e., energy efficiency, heat pumps, etc.) input into Salesforce or other NYSERDA approved CRM. For leads, Contractors shall use NYSERDA’s web-to-lead intake form compatible with Salesforce to capture leads in the specified format. Campaigns shall leverage tools and lessons learned from the existing campaigns including HeatSmart and Solarize community campaigns.

NYSERDA included $250,000 per Region, except the New York City Region which is allocated $3,000,000, over four (4) years, for Hubs to directly implement new or expand the reach of existing community campaigns. These funds cannot be used for campaigns that are either duplicative or are currently funded by NYSERDA. Campaigns will leverage tools and lessons learned from the existing campaigns including HeatSmart and Solarize.

Upon contract execution, a strawman template will be provided for the Contractor to propose campaigns throughout the course of the term of the contract, to NYSERDA for consideration for funding through their regional allocation. All community campaign funding must be approved by NYSERDA prior to incurring any costs.

The Contractor shall support or complement (e.g., expand the geographic reach) other targeted outreach and engagement efforts taking place within their region to minimize market confusion and maximize impact. Examples of activities the Contractor shall perform in support of existing campaigns includes but is not limited to participation in kick off meetings, presenting at campaign events, engaging, and soliciting participation from end users, addressing questions related to program applications, etc.

* For CEC municipal campaigns, the Hubs may also participate as a member of the core team and contribute to the development of the scoping document, if applicable. The Contractor shall evaluate the scope (geography, technology) of a proposed campaign and determine whether it addresses the regional needs and priorities and what role is best suited for the Hub.
	+ For Municipal Campaigns where the Hub is a member of the core team through the CEC program, the Hub shall report the Campaign metrics in the Monthly Report.

Contractors shall align and streamline existing and future NYSERDA outreach, engagement, and campaign activities and work in coordination with [CEC Coordinators](https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Communities/Find-A-Coordinator) and [Clean Heating and Cooling Campaign teams](https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Heating-and-Cooling-Communities/Campaigns) in their region to maximize touchpoints and minimize the frequency and number of interactions required to get to action (Clean Heating and Cooling, CEC, Electric Vehicle (EV) Accelerators, Energy Efficiency, Solar for All, etc.).

The Contractor shall include all campaign activities in the Monthly Report as outlined in Task 2.1 above.

**Deliverables 3.4**

* Campaign activities included in the Monthly Report as outlined in Task 2.1 above.
* Completion of milestone-based deliverables for approved campaigns.

**Task 4.0 Project Coordination**

The Contractor shall provide program and NYSERDA On-Bill Recovery, Smart Energy, and Companion loan application assistance, with applying for and coordinating NYSERDA work with other programs such as the Weatherization Assistance Program (WAP), Home Energy Assistance Program (HEAP), Affordable Housing Corporation (AHC), HOME, local Community Development Block Grant (CDBG) funds, lead and mold abatement resources, utility programs, or other available resources to enable a holistic clean energy project.

The Contractor shall conduct ongoing project management and partner with energy professionals, particularly NYSERDA Participating [Contractors](https://www.nyserda.ny.gov/Contractors/Find-a-Contractor), to ensure coordination of NYSERDA and other program resources with the goal of project implementation. The Contractor shall use the Monthly Report template to track coordination of projects.

**Deliverable 4.0:**

* Project Coordination included in the Monthly Report.

**Task 5.0 Equitable Engagement**

An inclusive clean energy economy requires robust and meaningful engagement of community members to identify barriers to accessing programs or resources, uncover local needs and opportunities, and inform policy, strategy, and program development. NYSERDA expects that the Hubs will increase NYSERDA’s capacity for engagement at the local level and increase the frequency and depth of stakeholder input, to inform NYSERDA initiatives.

To operationalize an engagement strategy for the region, the Contractor shall develop a Regional Equitable Engagement Plan in collaboration with various stakeholders including disadvantaged communities, which will complement and build on the Regional Assessment and Barriers Analysis. The Regional Equitable Engagement Plan should identify:

* The segments of the community that will be prioritized for engagement (with a focus on disadvantaged communities), how those segments were identified, and with what stakeholder input.
* Methods for engagement (e.g., focus groups, surveys, workshops and events, or other methods for soliciting input from disadvantaged community members).
* How participation will be encouraged through partnerships with trusted community messengers.
* A plan to provide compensation and accommodations for ensuring accessibility for various community members that typically face barriers to participation.
* How stakeholder feedback will be communicated back to NYSERDA; and
* The method for providing a feedback loop and updates to stakeholders.

The Contractor shall develop and implement strategies, as approved by NYSERDA, for comprehensive stakeholder engagement within their region to include multiple methods to uniformly collect feedback and share information with various communities in the region once a year, at a minimum. Stakeholder engagement may occur at a different frequency as market or program needs change, as directed by NYSERDA. The Contractor shall also facilitate public stakeholder forums to receive and elevate community feedback on a quarterly basis, and report back to NYSERDA in a clear and coherent manner to ensure NYSERDA’s policy and programs are effective at serving diverse constituencies with a stake in the state’s clean energy investments. Stakeholders may include, but are not limited to, residents (including priority, disadvantaged populations), small businesses, nonprofits and community-based advocacy organizations, local municipalities, building owners, service providers, etc. The Contractor shall elevate feedback to NYSERDA more frequently (e.g., monthly) if the feedback warrants a more immediate response or action. The Contractor shall provide the feedback received in a format and system as directed by NYSERDA.

The Contractor shall capture the physical address of stakeholder engagement forums for geocoding purposes in accordance with guidance on address information from NYSERDA. This information may be used to determine benefits to disadvantaged communities.

The Contractor shall participate in train-the-trainer style workshop(s) coordinated with other Regional Clean Energy Hub staff, NYSERDA staff and/or an independent consultant to be contracted by NYSERDA, on relevant topics such as recommended equitable engagement best practices and resource skills, and a toolkit for use in implementing the Regional Equitable Engagement Plan and addressing barriers to clean energy access and inclusion in program planning faced by disadvantaged populations. Such a collaborative structure and the associated plan shall also serve as a platform for providing consultation to NYSERDA and identifying capacity needs to accelerate expansion of the local service delivery and workforce development ecosystem.

**Deliverables 5.0:**

* Regional Equitable Engagement Plan
* Collect and report stakeholder feedback to NYSERDA.
* Disseminate information back to stakeholders for feedback received.
* Equitable engagement activities, including NYSERDA sponsored stakeholder forums, included in the Monthly Reports as outlined in Task 2.1 above.

**Task 5.1 Workforce and Small Business Development**

The Contractor shall work with local Chambers of Commerce, education and training partners, clean energy businesses, local trades, and unions to contribute to increased workforce development and economic opportunity for priority populations, individuals, and businesses in disadvantaged communities, helping them to fully participate in the clean energy economy. Activities may include, but are not limited to:

* Help enable career pathways for priority populations and disadvantaged communities, to build their basic/foundational and technical skills to meet employer needs in the clean energy workforce and lead to job placement. This may include but is not limited to:
	+ Partnerships to gain an understanding of the barriers to employment readiness in the clean energy workforce and help inform training programs based on this need.
	+ Partnerships with training programs that reduce barriers for and reflect the range of employment readiness needs of individuals with employment barriers.
* Support a Career Pathways Partnership(s) that identifies skill/competency-based shortages that are in demand with multiple employers in one or more clean energy sectors and education and training institutions including but not limited to: Department of Labor Career OneStops, Adult Education, community-based training providers, community colleges, etc.
* Work to connect small businesses, MWBEs and SDVOBs with business development resources to establish or grow their work in the clean energy sector. Hubs shall direct small businesses in the clean energy sector to small business resources such as the [New York Small Business Development Centers](https://nysbdc.org/services.html?gclid=EAIaIQobChMI1M2KnbnR8gIVlbbICh1HeAGkEAAYASAAEgK-9fD_BwE) administered by the State University of New York (SUNY), and other appropriate resources.
* Work with NYSERDA to identify and recruit energy contractors to expand production capacity in existing clean energy programs, with an emphasis on diversity e.g., MWBEs and SDVOBs, operating within their region(s) that may not already participate in NYSERDA programs to become participating contractors or installers.
* Develop partnerships with organizations that can help grow capacity of small contractors located in disadvantaged communities by supporting mentoring, training, access to capital and other supports. Identify and track measures of success.

The Contractor shall work with local educational institutions, energy professionals, and job development programs to provide a career path for people from priority populations and disadvantaged communities to fully participate in the clean energy workforce.

**Deliverable 5.1:**

* Workforce Development activities included in the Monthly Reports as outlined in Task 2.1 above.

**Task 5.2 Energy Professional Recruitment**

The Contractor shall recruit energy professionals, particularly MWBE and SDVOB firms, operating within their region(s) or small clean energy businesses located in or providing services to disadvantaged communities that may not already participate in clean energy programs to become participating contractors. The Contractor shall educate the potential energy professionals on the benefits for their business and benefits to disadvantaged communities, of participation in clean energy programs. The Contractor shall connect the potential energy professional with the point person for program recruitment. The Contractor shall document and provide energy professional recruitment efforts in the monthly report.

**Deliverable 5.2:**

* Energy Professional Recruitment activities, included in the Monthly Reports as outlined in Task 2.1 above.

**Task 6.0 Local Projects and Pilots**

NYSERDA shall provide Local Project Support funding to complement activities that a Contractor is providing under this Agreement. Up to $300,000 is allocated and included in the total funding allocation, over four (4) years per region, except the New York City Region which includes $900,000 for up to three (3) Hubs, to address barriers to engagement in the clean energy economy or other needs in disadvantaged communities. Funds shall not be used for initiatives or services that are duplicative or are currently funded by NYSERDA or other available program administrators. Use of funding shall be for efforts that facilitate access to clean energy solutions or improve engagement of disadvantaged communities located within the Hub’s service area. Examples of activities could include, but are not limited to:

* Capacity building assistance for community-based organizations to promote NYSERDA programs and clean energy solutions.
* Non-energy efficiency rehabilitation funding to enable energy efficiency projects.
* Seed funds for innovative demonstration or pilot projects deploying new clean energy technologies or models related to increasing access to clean energy solutions or otherwise improving engagement of members of disadvantaged communities.

Upon contract execution, a Local Project Support Application and evaluation criteria will be provided. All Local Project Support funding must be approved by NYSERDA prior to incurring any costs.

**Deliverable 6.0**:

* Completion of milestone-based deliverables as outlined in approved application.

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.

Expiration Date: The date, located on Page One, Item No. 7, beyond which any funding balances will be disencumbered, unless NYSERDA, in its sole discretion, elects to extend. Any extensions of this date are only effective if in writing.

 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 Contractor 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. **[If cost-share is applicable, insert -** It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed.**]**  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 5, 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 is not obligated to make any payments beyond the Expiration Date of this contract. Any funding balances will be disencumbered at that time, unless NYSERDA, in its sole discretion, elects to extend the Expiration Date. Any changes to expiration dates will be effective only if in writing. 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:

(a) Billing Rates: The Contractor shall be reimbursed for the services performed by its employees under the terms of this Agreement at the lesser of employee’s billing rate set forth in the Budget or the employee’s billing rate applicable at the time the Work is performed. Such billing rates shall be inclusive of actual Cash-based Expenses in the form of wages paid the employee, fringe benefits, overhead, general and administrative (G&A), and other indirect costs. Contractor hereby warrants and guarantees that the billing rates charged herein are Contractor’s customary billing rates for performance of work of the type described in the Statement of Work attached hereto.

 (b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be submitted electronically to NYSERDA’s online invoice system at: <https://services.nyserda.ny.gov/Invoices/> or, if this project is managed through NYSERDA’s Salesforce application, via NYSERDA’s Salesforce Contractor Portal with the Contractor’s log-in credentials. If electronic submission is not possible, invoices may be addressed to NYSERDA, “Attention: Accounts Payable.” Such invoices shall reference the purchase order number, which will be generated and provided to the Contractor upon contract execution, and the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA’s Funding share and the Cost-Share and Other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA’s funding share paid to the proportion of the Work completed. Proper final invoices must be paid by NYSERDA prior to the Expiration Date of the contract.

 Section 4.02. Payments.

(a) Invoicing: Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event, for projects not managed through NYSERDA’s Salesforce application, the Contractor shall submit invoices electronically to NYSERDA’s online invoice system at: <https://services.nyserda.ny.gov/Invoices/>. For projects managed through NYSERDA’s Salesforce application, the Contractor shall submit the identified deliverables, including documentation reasonably sufficient to demonstrate completion and evidence of the Contractor’s cost share, if applicable, and may request payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work. The agreement number shown as Item 1 on page 1 of this Agreement, as well as the purchase order number, which will be generated and provided to the Contractor upon contract execution, should be referenced when submitting documentation of deliverables. Documentation shall be submitted electronically via email to the assigned Project Manager along with a statement “I hereby request that upon NYSERDA’s approval of these deliverable(s), payment of the corresponding milestone payment amount be made in accordance with NYSERDA’s Prompt Payment Policy, as detailed in the NYSERDA agreement” or, if this project is managed through NYSERDA’s Salesforce application, via NYSERDA’s Salesforce Contractor Portal with the Contractor’s log-in credentials.

 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 prior to the Expiration Date of the contract. 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. Unless otherwise addressed by separate provision(s) within this Agreement governing the destruction of certain project data, 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 5 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. Prior to beginning any Work, Contractor shall notify the NYSERDA Project Manager of all subcontractors performing work under the Agreement, as well as all changes in subcontractors throughout the term of the Agreement. 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. For each Subcontract valued at $100,000 or more, the Contractor shall obtain and maintain, pursuant to Section 4.05, a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form from such Subcontractor prior to the execution of the Subcontract. Such form shall be made available to the Contractor by NYSERDA. Each such Subcontract shall contain a provision whereby the Subcontractor warrants and guarantees that there is and shall be no actual or potential conflict of interest that could prevent the Subcontractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of the Subcontract and that the Subcontractor shall have a duty to notify NYSERDA immediately of any actual or potential conflicts of interest. 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 and Project Period noted in Item No. 7 of this Agreement. 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) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.

 (b) All Proprietary Information shall be the property of Contractor.

 (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.

(e) In conjunction with Contractor’s performance of the Project, NYSERDA or other entities may furnish Contractor with information concerning the Work that is collected and stored by, or on behalf of, NYSERDA (the “Information”). The Contractor must follow the policies and procedures outlined in the [New York State Information Classification Policy (NYS-S14-002[[2]](#footnote-3))](https://its.ny.gov/document/information-classification-standard) and the [New York State Information Security Controls Standard](https://its.ny.gov/document/information-security-controls-standard)[[3]](#footnote-4).

Any non-public, confidential, or proprietary Information will be kept confidential and will not, without NYSERDA’s prior written consent, be disclosed by Contractor, Contractor’s agents, employees, contractors or professional advisors, in any manner whatsoever, in whole or in part, and will not be used by Contractor, Contractor’s agents, employees, contractors or professional advisors other than in connection with the Work. Contractor agrees to transmit the Information only to Contractor’s agents, employees, contractors and professional advisors who need to know the Information for that purpose and who are informed by Contractor of the confidential nature of the Information and who will agree in writing to be bound by the terms and conditions of this Agreement.

The NYS Office of Information Technology Services (ITS) establishes and regularly updates policies, standards, and guidelines for technology and information security (collectively referred to as “ITS Security Policies”) for State Entities, including NYSERDA.  Contractor shall conform to the requirements of ITS Security Policies when conducting work on behalf of NYSERDA including, but not limited to, application development, web development, hosting, or managing NYSERDA’s sensitive data are required to comply with the NYS requirements.  These requirements include, but are not limited to, the NYS Information Security Policy NYS-P03-002 which sets forth the minimum requirements, responsibilities, and accepted behaviors to establish and maintain a secure environment and achieve the State's information security objectives. In addition to this umbrella policy, the following standards establish specific minimum information security requirements:

* [Vulnerability Scanning Standard (NYS-S15-002)](https://its.ny.gov/document/vulnerability-scanning)
* [Security Logging Standard (NYS-S14-005)](https://its.ny.gov/document/security-logging)
* [Patch Management Standard (NYS-S15-001)](https://its.ny.gov/document/patch-management)
* [Encryption Standard (NYS-S14-007)](https://its.ny.gov/document/encryption-standard)

A complete list of ITS Security Policies is available at: <https://its.ny.gov/tables/technologypolicyindex>.

Contractor shall notify NYSERDA’s Information Security Officer immediately upon discovery or notification of any security breaches or vulnerabilities:

* information.security@nyserda.ny.gov
* (518) 862-1090 x3486

Contractor will keep a record of the location of the Information. At the conclusion of the Project Period, Contractor will return to NYSERDA all the Information and/or provide proof to NYSERDA that the Information was destroyed. Contractor also agrees to submit to an audit of its data security/destruction practices by NYSERDA or its representative during the contract term and for up to two (2) years following the expiration of the Agreement.

Additional information on the above can be found on the Doing Business with NYSERDA webpage at <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.

(f) If, in the course of performance of the Agreement, Contractor or Subcontractors (if any) encounter any information in NYSERDA’s Salesforce or other database platforms that a reasonable person would identify as unrelated to the Agreement or otherwise inadvertently produced to Contractor or Subcontractors, Contractor shall notify NYSERDA immediately and neither Contractor nor Subcontractor shall use such inadvertently produced information for its own use. Any Contractor access to NYSERDA information shall be used solely for NYSERDA-related matters. This shall include, but not be limited to, access to the Salesforce CRM.

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, [[4]](#footnote-5) including, but not limited to, the provisions that ensure the appropriate use of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA;

(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;

(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; and

(m) Contractor represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify NYSERDA immediately of any actual or potential conflicts of interest.

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, and Article XVII shall survive until the payment obligations pursuant to Article VIII have been met.

 (b) NYSERDA specifically reserves the right to terminate this agreement upon its determination of excessive project schedule lapses or delays. NYSERDA also reserves the right to deny schedule extensions for project completion beyond those to which the parties agreed upon the initial execution of the agreement.

(c) 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.

 (d) 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.

Section 14.04. Sexual Harassment Policy. The Contractor and all Subcontractors must have a written sexual harassment prevention policy addressing sexual harassment in the workplace and must provide annual sexual harassment training to all employees.

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:

1. via certified or registered United States mail, return receipt requested;
2. by facsimile transmission;
3. by personal delivery;
4. by expedited delivery service; or
5. 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@nyserda.ny.gov

Personal Delivery: Reception desk at the above address

**[Contractor Name]**

Name:

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 for no-cost time extensions, which may be signed by NYSERDA and require no counter-signature by the Contractor, and 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 Communications Department to prepare any press release and to plan for any news conference concerning the Work. In addition, the Contractor shall notify NYSERDA’s Communications Department 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 12/19

STANDARD TERMS AND CONDITIONS

FOR ALL NYSERDA AGREEMENTS

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

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

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

 2. WAGE AND HOURS PROVISIONS. If this is 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.ny.gov/about/foil2.html>) and NYSERDA’s Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx> .

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development

Division for Small Business

625 Broadway

Albany, New York 12207

Telephone: 518-292-5200

Fax: 518-292-5884

<http://www.esd.ny.gov>

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

NYS Department of Economic Development

Division of Minority and Women’s Business Development

625 Broadway

Albany, New York 12207

Telephone: 518-292-5200

Fax: 518-292-5803

<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

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

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

1. 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).
2. 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).
3. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

 20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <https://ogs.ny.gov/iran-divestment-act-2012>).

 21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 (“DERA”), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology (“BART”). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: https://www.dec.ny.gov/regs/2492.html.

 22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

EXHIBIT 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.[[5]](#footnote-6)

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

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

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

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

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

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

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

 (f) “Proper Invoice” means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA’s Controller, marked “Attention: Accounts Payable,” at the Designated Payment Office.

 (g)(1) “Receipt of an Invoice” means:

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

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

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

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

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

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

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

 **504.4.** Payment Procedures.

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

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

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

 (2) any defects in the invoice; or

 (3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

 **504.11.** Court Action or Other Legal Processes.

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

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

Exhibit E

**WEB-RELATED CONTRACT ADDENDUM**

 Addendum to Agreement between **NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY** (“NYSERDA”) and (“the Contractor”). This Addendum is made a part of the Agreement to which it is attached.

 Section 1. Definitions.

A) **Contractor Content** refers to the dynamic web pages and static content, developed

under this Agreement and includes, but is not limited to text HTML (Hyper-Text Markup Language), image, audio, video, server and browser based scripts and programs, and other presentation materials and computer files designed to be presented to a web browser by a web server using standard Internet protocols and accessible through a URL (Universal Resource Locator) address.

B) **Contractor Tools** means the software tools of general application, whether in the public domain, or owned or licensed to the Contractor, which are used to develop the Web Site.

C) **Data** includes, ***[fill in or state “none”]***

D) **Documentation** means the documentation for all materials necessary to develop, implement, and maintain a fully functional Web Site as developed by Contractor.

E) **Error** means any failure of the Web Site (i) to meet the specifications in the Statement of Work or the Section of this Addendum addressing hosting requirements and/or (ii) to operate with the hardware or software owned or licensed by the selected Internet Service Provider.

F) **Final Version** means a non-copy protected and unencrypted digital master of the final version of the Web Site, recorded in executable form on the specified medium with any necessary supporting software and data, as to which all development work hereunder has been completed and which meets all requirements of the Statement of Work.

G) **Licensed Content** includes, ***[fill in or state “none”]***

H) **Licensed Software and Tools** includes, ***[fill in or state “none”]***

I) **NYSERDA Content** includes, but is not limited to text, HTML, image, audio, video, server and Browser based scripts and programs and other presentation materials provided by NYSERDA.

J) **Open Source Software and Tools** includes, ***[fill in or state “none”]***

K) **Public Domain** means property rights that are held by the public at large.

L) **Server Environment** means the Web Site Content, Open Source Software and Tools, and Licensed Software and Tools that make up the presentation layer, business logic layer, and persistence layer.

M) **Web Site Content** includes the Contractor Content, NYSERDA Content, Licensed Content and all Data presented in the Web Site.

N) **Web Site** shall mean the Server Environment, and related systems and non-server hardware necessary to implement, operate and maintain the Final Version.

 Section 2. Warranties and Representations. Contractor warrants and represents that:

 (A) The Contractor has been informed that NYSERDA intends to use the equipment supplied and work performed under this Contract, or that Contractor will do so upon NYSERDA’s behalf or in accordance with the Agreement, for ***[specify particular purpose of NYSERDA]*** and that NYSERDA is relying on the Contractor’s skill and judgment to select or furnish equipment suitable for that purpose. The Contractor warrants that the equipment and work performed will be fit for the particular purpose of NYSERDA.

 (B) The Web Site (1) will be of high quality and free of viruses and defects in material and workmanship in all material respects; and (2) will conform in all respects to the functional and other descriptions contained in the specifications for the Web Site as set forth herein and in the Statement of Work. For a period of one year after the date of acceptance of the Final Version by NYSERDA (the “Warranty Period”), Contractor agrees to fix at its own expense any Errors.

 (C) Any information or materials developed for, or any advice provided to NYSERDA, shall not rely or in any way be based upon confidential or proprietary information or trade secrets obtained or derived by Contractor from sources other than NYSERDA unless Contractor has received specific authorization in writing to use such proprietary information or trade secrets.

 (D) Notwithstanding the definition of Licensed Content, the use, public display, public performance, reproduction, distribution, or modification of the Web Site does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trade secrets, trademarks, service marks, publicity, privacy, and patents. The use of the Contractor Tools and any other software in the Web Site does not and will not violate the rights of any third parties, including but not limited to, copyrights, trade secrets, trademarks, service marks, publicity, privacy, and patents.

 (E) The Contractor’s performance of this Agreement will not conflict with any other contract to which Contractor is bound, and while developing the Web Site. The Contractor will not engage in any such consulting services or enter into any agreement in conflict with this Agreement, or that which demonstrably, negatively affects this Agreement.

 (F) The Contractor Content and the Documentation was or will be created solely by Contractor’s employees during the course of their employment, or independent contractors who assigned or will assign all right, title and interest worldwide in their work to Contractor.

 (G) Contractor is the owner of all right, title and interest in the tangible forms of the Contractor Content and Documentation and all intellectual property rights protecting them. The Contractor Content and Documentation and the intellectual property rights protecting them are free and clear of all encumbrances, including, without limitation, security interests, licenses, liens, charges or other restrictions.

 (H) The Contractor Content and the Documentation are not in the Public Domain.

 (I) The Final Version shall not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing or contain any viruses or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

 Section 3. Proprietary Rights.

 (A) NYSERDA’s Ownership Rights. Contractor acknowledges and agrees that except as stated in subsection (C) of this section, the Contractor Content, Data, and Documentation, are and shall be the property of NYSERDA. Title to any and all now known or hereafter known tangible and intangible intellectual property rights including but not limited to copyrights, trademarks, service marks, patents and trade secrets in the Contractor Content, Data, and Documentation is with, and shall remain with NYSERDA.

 (B) Assignment of Rights. Except as provided in subsection (C) of this section, 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 Contractor Content, Data, and Documentation 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 Contractor has any rights in and to the Contractor Content, Data, and Documentation that cannot be assigned to NYSERDA, 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 Contractor has any rights in and to the Contractor Content, Data, and Documentation that cannot be assigned to NYSERDA and cannot be waived, 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 Contractor Content, Data, and the Documentation including, without limitation, the right to use in any way whatsoever the Contractor Content, Data, and Documentation. Contractor retains no rights to use the Contractor Content, Data, and Documentation except as stated in subsection (E) of this section and agrees not to challenge the validity of the copyright ownership by NYSERDA in the Contractor Content, Data, and Documentation. In the event that any development work under this Agreement is to be performed by a subcontractor, Contractor agrees to include the provisions contained in this subsection in any such subcontract.

 (C) Ownership of Components. Except as specifically provided in the definition of Contractors Content, the Contractor grants to NYSERDA a royalty-free, worldwide, perpetual, irrevocable, assignable, nonexclusive license, with the right to sublicense through multiple tiers of sublicensees, to use, reproduce, distribute, modify, publicly perform, publicly display, digitally perform, make, have made, sell, offer for sale, or transfer without compensation the Retained Components on the Web Site or any Web site operated by or for NYSERDA and related marketing material.

 (D) Power of Attorney. Contractor agrees to execute, when requested, patent, copyright, or similar applications and assignments to NYSERDA, and any other lawful documents deemed necessary by NYSERDA to carry out the purpose of this Agreement. Contractor further agrees that the obligations and undertaking stated in this subsection (D) will continue beyond the termination of this Agreement. In the event that NYSERDA is unable for any reason whatsoever to secure Contractor’s signature to any lawful and necessary document required to apply for or execute any patent, copyright or other applications with respect to the Contractor Content and Documentation (including improvements, renewals, extensions, continuations, divisions or continuations in part thereof), Contractor hereby irrevocably designates and appoints NYSERDA and its duly authorized officers and agents as Contractor’s agents and attorneys-in-fact to act for and in Contractor’s behalf and instead of Contractor, to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other rights thereon with the same legal force and effect as if executed by Contractor.

 (E) License to Web Site Content and NYSERDA Content. NYSERDA grants to Contractor a nonexclusive, worldwide license to reproduce and modify NYSERDA Content and the Contractor Content for the sole purpose of developing and maintaining the Web Site.

  ***[choose and insert one “(F)” below, as appropriate]***

 (F) Licenses to Third-Party Content. Contractor shall be responsible for obtaining and paying for any necessary licenses to use third-party content other than the third-party content listed on Schedule “A” as NYSERDA Content. NYSERDA shall be responsible for obtaining and paying for any necessary licenses to use third-party content listed on Schedule “A”.***[Make sure Schedule “A” is attached to the addendum.]***

 ***or***

 (F) Licenses to Third-Party Content. Contractor shall be responsible for obtaining and paying for any necessary licenses to use third-party content.

 (G) Licenses to Contractor Tools and Other Software. Contractor shall be responsible for obtaining licenses for and paying license fees for any Contractor Tools used in this project that are not owned by Contractor and for obtaining licenses for and paying license fees for any othersoftware used in this project ***[, including but not limited to [specify those known at time of contracting]]*** that is not owned by Contractor.

 ***[Domain Name subsection to be included if Web Site will use a Domain Name registered to NYSERDA]***

 (H) NYSERDA’s Domain Name. Any domain name registered in connection with the Work performed under this Agreement shall remain the sole property of NYSERDA. Contractor acknowledges that Contractor has no right to use NYSERDA’s domain name other than in connection with the Web Site development and maintenance project covered in this Agreement. If Contractor registers NYSERDA’s domain name, the Contractor shall specify NYSERDA’s Manager of Computer Systems, or such other NYSERDA employee as NYSERDA shall direct Contractor in writing, as the administrative and technical contact when registering the domain name.

 Section 4. Confidentiality.

 (A) Confidential Information. Information from or regarding a third party and obtained by, through, from, or as a result of this Agreement or the Web Site, either directly or indirectly, and any Web Site Content or other information or materials, whether or not from or regarding a third party, which NYSERDA designates as confidential, including any passwords used in connection with the Web Site. Nothing in this section shall in any way be interpreted as superseding any right or obligation NYSERDA might have to disclose, or not disclose, any third-party information pursuant to the New York State Freedom of Information Law or other applicable law.

 (B) Restrictions on Use. Contractor agrees that except as authorized in writing by NYSERDA: (i) Contractor will preserve and protect the confidentiality of all Confidential Information; (ii) Contractor will not disclose to any third party, the existence, source, content or substance of the Confidential Information or make copies of Confidential Information; (iii) Contractor will not deliver Confidential Information to any third party, or permit the Confidential Information to be removed from Contractor’s premises; (iv) Contractor will not use Confidential Information in any way other than to develop or maintain the Web Site or perform its obligations under the Statement of Work as provided in this Agreement; (v) Contractor will not disclose, use or copy any third party information or materials received in confidence by Contractor for purposes of work performed under this Agreement.

 (C) Limitations. Information shall not be considered to be Confidential Information if Contractor can demonstrate that it (i) is already or otherwise becomes publicly known through no act of Contractor; (ii) can be shown by Contractor to have been independently developed by it without use of the Confidential Information; or (iii) is authorized in writing by NYSERDA to be disclosed, copied or used.

 Section 5. Accessibility. Any network-based information and applications development, or programming delivered to or by the State pursuant to this contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the “Accessibility Policy”). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by NYSERDA and any report on the results of such testing must be satisfactory to NYSERDA.

 Section 6. Privacy Policy Statement. Contractor shall develop from the draft provided in Appendix 1, an appropriate privacy statement for the Web Site, which privacy statement must address, at a minimum, the issues of: notice, choice, access, security and, as applicable, enforcement, with respect to the information obtained from or learned about visitors to the Web Site. ***[The privacy statement must be approved in advance by NYSERDA and must be posted on the Web Site as instructed by NYSERDA,]*** prior to the web site going live.

 Section 7. Disclaimer Statement. Contractor shall post the Disclaimer Statement as provided in Appendix 2 on the Web Site prior to being available to the public as provided by NYSERDA.

 Section 8. Hosting.

 (A) Standards. Contractor’s hosting of the Web Site shall conform to the following:

 (i) Availability. The Web Site shall be publicly available to users a minimum of 99.9% of the time, exclusive of a daily maintenance window between 2:00 a.m. and 5:00 a.m. EST. In cases of needed maintenance that affect Web Site availability, written notification must be provided to NYSERDA no later than 24 hours in advance.

 (ii) Security. Contractor shall comply with New York State Enterprise Information Security Office (EISO), Cyber Security Policy P03-002, NYSERDA’s Information Security Policy, and other New York State policies/procedures including but not limited to prevent unauthorized access to restricted areas of the Web Site and any databases or other sensitive material generated from or used in conjunction with the Web Site; and Contractor shall notify NYSERDA’s Information Security Office as soon as possible of any known security breaches or holes. Questions concerning this policy may be directed to the EISO (518) 474-0865, attn: Director. Or visit EISO at <https://www.its.ny.gov/eiso>.

 (iii) Inapplicability of Force Majeure. The foregoing standards shall apply regardless of the cause of the interruption in service, even if the interruption in service was beyond the control of the Contractor.

 (B) Maintenance. Contractor shall provide all hosting related maintenance for the Web Site on an ongoing basis during the term of the Agreement, including backups, server maintenance, and troubleshooting.

 (C) Site Backup. Contractor shall maintain daily backups of the Server Environment sufficient to reestablish a fully functional site within 5 business days. Such backups shall be made available to NYSERDA within 3-5 business days upon request.

  (D)   Activity Logs.   Contractor shall configure its web servers to capture standard visitor log information needed to provide detailed traffic/site performance reports for the Web Site.  Contractor shall provide such traffic/site performance reports and access to activity data to NYSERDA on a monthly basis. Preferred platform for activity logs is Google Analytics.  NYSERDA will be provided with Administrator access to analytics, or, NYSERDA will provide Google Analytics tracking code to the Contractor to be included on every page of the website.

 (E) Termination During Web Site Hosting. In the event of expiration or termination of this Agreement while Contractor is providing Web hosting services, Contractor shall download all materials on the Web Site to a medium of NYSERDA’s choosing and deliver such materials to NYSERDA within 3-5 business days of expiration or termination of this Agreement. In addition, at no cost to NYSERDA, Contractor shall: (a) keep the Web Site publicly accessible for a period of 90 days following the date of termination of this Agreement; (b) if the transfer requires a change in the Domain Name, immediately upon the date that the Web Site is no longer publicly accessible, and for a period of 12 months thereafter, maintain the Web Site’s URL and, at such URL, provide 1 page (including a hypertext link) that NYSERDA may use to direct its users to its new Web Site or some other URL of NYSERDA’s choosing; and (c) if the transfer does not require a change in the Domain Name, cooperate with NYSERDA in assigning a new IP address to the Domain Name as NYSERDA may request and transferring all operations of the Web Site to a new provider.

 Section 9. Termination. In the event this Agreement is terminated by NYSERDA pursuant to the provisions of Article XII, NYSERDA will have the right, in addition to all of its other rights, to require Contractor to deliver all of Contractor’s completed work and work in progress, including all originals and copies thereof, as well as any other materials provided to Contractor by NYSERDA or third parties, or created by Contractor under this Agreement. Any payments made pursuant to Articles IV and XII of this Agreement shall be deemed payment in full for all of such work in progress, including full payment for all source code, object code, documentation, notes, graphics, and all other materials and work relating to the portion of the Web Site and the assignment or licenses of rights relating to the Web Site which has been completed as of the time of termination. Subject to Contractor’s obligations under the provision of this Addendum addressing Termination During Web Site Hosting, Contractor shall remove all copies of the Web Site Content from servers within its control and use reasonable efforts to remove any reference to NYSERDA or the Web Site Content from any site which caches, indexes or links to the Website. This Addendum shall survive termination of this Agreement.

 Section 10. Portability Requirement. Contractor shall develop the Web Site in such manner that a fully functional site can be reestablished from Contractor’s servers to the servers of NYSERDA or the servers of a specific third party designated by NYSERDA within 3-5 business days without losing functionality or operation.

 Section 11. Creative Control. The parties acknowledge that NYSERDA possesses final creative control over all content including that which is developed by Contractor.

 Section 12. Conflicts. To the extent that any provision of this Addendum conflicts with any provision of the balance of the Agreement, the provisions contained in this Addendum shall control.

 Section 13. Subcontractor Contracts. Contractor shall cause each subcontrator which is to perform work to be performed pursuant to this Addendum and those provisions of the Statement of Work related to Web Site Content or a Web Site to execute a contract regarding confidentiality and assignment of rights prior to each such individual or company’s commencement of services thereunder. Such subcontracts shall (in addition to any provisions required pursuant to Article V): (a) include a full assignment of all rights to NYSERDA, (b) include a waiver of any moral or similar rights, (c) be freely assignable, and (d) contain restrictions on use and disclosure at least as protective of NYSERDA’s interests as those contained in this Addendum. The Contractor shall submit to NYSERDA’s Contract Administrator for review and approval any subcontracts(s) for work to be performed pursuant to this Addendum and those provisions of the Statement of Work related to a Web Site. All provisions of Article V not specifically in conflict with this Section shall continue to apply.

**APPENDIX NO.1**

**INTERNET PRIVACY POLICY**

1. **Introduction**
Thank you for visiting the New York State Energy Research and Development Authority's ("NYSERDA") website. This website is designed to make it easier and more efficient for individuals and businesses to interact with NYSERDA. NYSERDA recognizes that it is critical for individuals and businesses to be confident that their privacy is protected when they visit NYSERDA's website.

Consistent with the provisions of the Internet Security and Privacy Act, the Freedom of Information Law, and the Personal Privacy Protection Law, this policy describes NYSERDA's privacy practices regarding information collected from *users* of this website. This policy describes **what** information is collected and **how** that information is used. Because this privacy policy only applies to this website, you should examine the privacy policy of any website, including other *state agency websites*, that you access using this website.

For purposes of this policy, "*personal information*" means any information concerning a natural person who, because of name, number, symbol, mark, or another identifier, can be used to identify that natural person. **NYSERDA does not collect any personal information about you unless you provide that information voluntarily by sending an e-mail, responding to a survey, or completing an on-line transaction**.

**Information Collected Automatically When You Visit this Website** When visiting this website NYSERDA may automatically collect and store the following information about your visit:

*User* client hostname. The hostname or Internet Protocol address of the *user* requesting access to a *state agency website*.

(ii) HTTP header, "*user* agent." The *user* agent information includes the type of browser, its version, and the operating system on which that the browser is running.

(iii) HTTP header, "referrer." The referrer specifies the web page from which the *user* accessed the current web page.

(iv) System date. The date and time of the *user's* request.

(v) Full request. The exact request the *user* made.

(vi) Status. The status code the server returned to the *user*.

(vii) Content length. The content length, in bytes, of any document sent to the *user*.

(viii) Method. The request method used.

(ix) Universal Resource Identifier (URI). The location of a resource on the server.

(x) Query string of the URI. Anything after the question mark in a URI.

(xi) Protocol. The transport protocol and the version used.

None of the foregoing information is deemed to constitute *personal information*.

The information that is collected is automatically used to improve this website's content and to help NYSERDA understand how *users* are interacting with the website. This information is collected for statistical analysis, to determine what information is of most and least interest to our *users*, and to improve the use of the material available on the website. The information is not collected for commercial marketing purposes and NYSERDA is not authorized to sell or otherwise disclose the information collected from the website for commercial marketing purposes.

**Cookies**
Cookies are simple text files stored on your web browser to provide a means of distinguishing among *users* of this website. The use of cookies is a standard practice among Internet websites. To better serve you, we occasionally use "session cookies" to enhance or customize your visit to this website. Session cookies can be created automatically on the device you use to access this website but do not contain *personal information* and do not compromise your privacy or security. We may use the cookie feature to store a randomly generated identifying tag on the device you use to access this website. A session cookie is erased during operation of your browser or when your browser is closed.

If you wish, you may complete a registration to personalize this website and permit a "persistent cookie" to be stored on your computer's hard drive. This persistent cookie will allow the website to recognize you when you visit again and tailor the information presented to you based on your needs and interests. NYSERDA will use persistent cookies only with your permission.

The software and hardware you use to access the website allows you to refuse new cookies or delete existing cookies. Refusing or deleting these cookies may limit your ability to take advantage of some features of this website.

**Information Collected When You E-mail this Website or Complete a Transaction**
During your visit to this website you may send an e-mail to NYSERDA. Your e-mail address and the contents of your message will be collected. The information collected is not limited to text characters and may include audio, video, and graphic information formats included in the message. Your e-mail address and the information included in your message will be used to respond to you, to address issues you identify, to improve this website, or to forward your message to another State agency for appropriate action. Your e-mail address is not collected for commercial purposes and NYSERDA is not authorized to sell or otherwise disclose your e-mail address for commercial purposes.

During your visit to this website you may complete a transaction such as a survey, registration, or order form. The information, including *personal information*, volunteered by you in completing the transaction may be used by NYSERDA to operate NYSERDA's programs, which include the provision of goods, services, and information. The information collected by NYSERDA may be disclosed by NYSERDA for those purposes that may be reasonably ascertained from the nature and terms of the transaction in which the information was submitted.

NYSERDA does not knowingly collect *personal information* from children or create profiles of children through this website. *Users* are cautioned, however, that the collection of *personal information* submitted in an e-mail will be treated as though it was submitted by an adult, and may, unless exempted from access by federal or State law, be subject to public access. NYSERDA strongly encourages parents and teachers to be involved in children's Internet activities and to provide guidance whenever children are asked to provide *personal information* on-line.

**Information and Choice**
As noted above, NYSERDA does not collect any *personal information* about you unless you provide that information voluntarily by sending an e-mail, responding to a survey, or completing an on-line form. You may choose **not** to send us an e-mail, respond to a survey, or complete an on-line form. While your choice not to participate in these activities may limit your ability to receive specific services or products through this website, it will not normally have an impact on your ability to take advantage of other features of the website, including browsing or downloading information.

**Disclosure of Information Collected Through This Website**
The collection of information through this website and the disclosure of that information are subject to the provisions of the Internet Security and Privacy Act. NYSERDA will only collect *personal information* through this website or disclose *personal information* collected through this website if the *user* has consented to the collection or disclosure of such *personal information*. The voluntary disclosure of *personal information* to NYSERDA by the *user*, whether solicited or unsolicited, constitutes consent to the collection and disclosure of the information by NYSERDA for the purposes for which the *user* disclosed the information to NYSERDA, as was reasonably ascertainable from the nature and terms of the disclosure.

However, NYSERDA may collect or disclose *personal information* without consent if the collection or disclosure is: (1) necessary to perform NYSERDA's statutory duties, or necessary for NYSERDA to operate a program authorized by law, or authorized by state or federal statute or regulation; (2) made pursuant to a court order or by law; (3) for the purpose of validating the identity of the *user*; or (4) of information to be used solely for statistical purposes that is in a form that cannot be used to identify any particular person.

Further, the disclosure of information, including *personal information*, collected through this website is subject to the provisions of the Freedom of Information Law and the Personal Privacy Protection Law.

NYSERDA may disclose *personal information* to federal or state law enforcement authorities to enforce its rights against unauthorized access or attempted unauthorized access to NYSERDA's information technology assets.

**Retention of Information Collected Through this Website**
The information collected through this website is retained by NYSERDA in accordance with the records retention and disposition requirements of the New York State Arts & Cultural Affairs Law. Information on the requirements of the Arts & Cultural Affairs Law may be found at <http://www.archives.nysed.gov/records/mr_retention.shtml>. In general, the Internet services logs of NYSERDA, comprising electronic files or automated logs created to monitor access and use of Agency services provided through this website, are retained for the equivalent of three backup cycles and then destroyed. Information, including *personal information*, that you submit in an e-mail or when you complete a survey, registration form, or order form is retained in accordance with the records retention and disposition schedule established for the records of the program unit to which you submitted the information. Information concerning these records retention and disposition schedules may be obtained through the Internet privacy policy contact listed in this policy.

**Access to and Correction of Personal Information Collected Through this Website**
Any *user* may submit a request to NYSERDA's privacy compliance officer to determine whether *personal information* pertaining to that *user* has been collected through this website. Any such request shall be made in writing and must be accompanied by reasonable proof of identity of the *user*. Reasonable proof of identity may include verification of a signature, inclusion of an identifier generally known only to the *user*, or similar appropriate identification. Requests should be addressed to:

New York State Energy Research and Development Authority
Attn: Privacy Compliance Officer
17 Columbia Circle
Albany, New York 12203-6399

The privacy compliance officer shall, within five (5) business days of the receipt of a proper request, provide access to the *personal information*, should any exist; deny access in writing, explaining the reasons therefore; or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not be more than thirty (30) days from the date of the acknowledgment.

In the event that NYSERDA has collected *personal information* pertaining to a *user* through the NYSERDA website and that information is to be provided to the *user* pursuant to the *user's* request, the privacy compliance officer shall inform the *user* of his or her right to request that the *personal information* be amended or corrected under the procedures set forth in section 95 of the Public Officers Law.

**Confidentiality and Integrity of Personal Information Collected Through this Website**
NYSERDA is strongly committed to protecting *personal information* collected through this website against unauthorized access, use or disclosure. Accordingly, NYSERDA limits employee access to *personal information* collected through this website to only those employees who need access to the information in the performance of their official duties. Employees who have access to this information follow appropriate procedures in connection with any disclosures of *personal information*.

In addition, NYSERDA has implemented procedures to safeguard the integrity of its information technology assets, including, but not limited to, authentication, monitoring, auditing, and encryption. These security procedures have been integrated into the design, implementation, and day-to-day operations of this website as part of our continuing commitment to the security of electronic content as well as the electronic transmission of information.

For website security purposes and to maintain the availability of the website for all *users*, NYSERDA may employ software to monitor traffic to identify unauthorized attempts to upload or change information or otherwise damage this website.

**Disclaimers**
Information is provided on this website to allow the public immediate access to public information. Every reasonable attempt is made to provide only accurate, current and reliable information. However, NYSERDA, its officers, agents and employees expressly disclaim any express or implied warranty or representation as to the accuracy, completeness, currency, suitability or reliability of any information provided by this website.

In order to provide *users* with certain information, this website may provide links to other websites including local, State, and federal governmental agencies. A website link does not constitute an endorsement of the content, viewpoint, accuracy, opinions, policies, products, services or accessibility of that website. Once you link to another website from this website, including one maintained by the State, you become subject to the terms and conditions of that website including, but not limited to, its privacy policy.

Further, the information provided in this privacy policy should not be construed as giving business, legal, or other advice.

**Contact Information**
For questions regarding this Internet privacy policy, please contact:

New York State Energy Research and Development Authority
Attn: Privacy Compliance Officer
17 Columbia Circle
Albany, New York 12203-6399

**Definitions**
The following definitions apply to terms appearing in *italics*, in this policy:

*Personal Information* shall have the meaning set forth in subdivision 5 of section 202 of the State Technology Law.

*State Agency Website* shall have the meaning set forth in subdivision 7 of section 202 of the State Technology Law.

*User* shall have the meaning set forth in subdivision 8 of section 202 of the State Technology Law.

**This Policy last updated June 10, 2002**

**APPENDIX NO. 2**

**DISCLAIMER**

**DISCLAIMER OF WARRANTY**

Information contained on this web site is provided "as is," without warranty of any kind. In particular, the New York State Energy Research and Development Authority ("NYSERDA"), its employees, officers, and members, and the State of New York, make no warranties or representations, expressed or implied, as to the fitness for a particular purpose or merchantability of any product, apparatus, downloaded computer software product, service, or the usefulness, completeness, or accuracy of any processes, methods, downloaded computer software product, or other information contained, described, disclosed, or referred to herein. NYSERDA, its employees, officers and members, and the State of New York, make no representation that the use of any product, apparatus, process, method, downloaded computer software product, or other information will not infringe privately owned rights.

**DISCLAIMER OF LIABILITY**

In no event shall NYSERDA, its employees, officers or members, or the State of New York be liable for any direct, indirect, punitive, incidental, special, or consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data, or profits, arising out of or in any way connected with the use or performance of this web site, the provision of or failure to provide services, or for any information, software, products, services, or graphics obtained through this web site, or otherwise arising out of the use of this web site, whether based on contract, tort, strict liability, or otherwise, even if NYSERDA, its employees, officers and members, and the State of New York have been advised of the possibility of damages.

**DISCLAIMER OF ENDORSEMENT**

Reference to any specific product, service, process, or method by trade name, trademark, service mark, manufacturer or otherwise on this web site does not constitute an implied or expressed recommendation or endorsement, or favoring by NYSERDA, its employees, officers or members, or the State of New York, and shall not be used for advertising or product endorsement purposes.

Certain links on this site lead to information and resources on servers maintained by third parties, and are provided as a convenience to our website visitors. NYSERDA, its employees, officers and members, and the State of New York, have no control over these outside sites and are, therefore, not responsible or legally liable for their content. Inclusion of any outside site does not imply an endorsement of the site, or information contained therein, by NYSERDA, its employees, officers or members, or the State of New York.

**USE OF SITE AND MATERIALS; UNAUTHORIZED ALTERATIONS**

The information, application forms, and other materials contained on this web site, individually and collectively, are provided for informational purposes. We encourage you to download and reproduce copies of the information, application forms, and other materials, especially application forms for participation in NYSERDA programs. However, downloading and reproduction of such information, application forms, and other materials is permissible only if downloading and reproduction is without alteration of the content. The unauthorized alteration of application forms is expressly prohibited. Application forms that are altered in any way, other than filling in the blanks with the information requested, may result in NYSERDA's considering such form as null and void.

EXHIBIT F

**Certification for Access to NYSERDA’s Internal Networks and Systems**

Pursuant to Agreement \_\_\_\_\_\_\_, (Contractor and Contractor’s Employee) requires access to NYSERDA’s internal networks and systems using either NYSERDA issued or their own equipment.

During the term of the Agreement, (Contractor’s Employee and Contractor) shall comply with all of NYSERDA’s policies including, but not limited to NYSERDA’s Information Security Policies and Data Classification and Security Controls, as amended and superseded, which can be found at <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>. These policies shall include at a minimum the following:

**Security**

The NYS Office of Information Technology Services (ITS) establishes and regularly updates policies, standards, and guidelines for technology and information security (collectively referred to as “ITS Security Policies”) for State Entities, including NYSERDA. The NYS Information Security Policy [NYS-P03-002](https://its.ny.gov/document/information-security-policy) sets forth the minimum requirements, responsibilities and accepted behaviors to establish and maintain a secure environment and achieve the State's information security objectives. In addition to this umbrella policy, the following additional policies establish specific minimum information security requirements:

* Individual accountability is required when accessing all IT resources. Each individual is responsible for protecting against unauthorized activities performed under their user ID. This includes locking your computer screen when you walk away from your system and protecting your credentials (e.g., passwords, tokens or similar technology) from unauthorized disclosure, including sharing. Credentials must be treated as confidential information, and must not be disclosed or shared.
* Acceptable Use of Information Technology Resources Policy ([NYS-P14-001](https://its.ny.gov/document/acceptable-use-information-technology-it-resources-policy))
* When the use of password or authentication is required for NYSERDA network access, Contractor’s Employee will follow the required guidelines set forth in NYSERDA’s Information Security Policies and Data Classification and Security Controls under the Password Policy regarding complexity and non-sharing of passwords.
* Contractor’s Employee is prohibited from downloading any type of software including, but not limited to, hacking tools, network sniffers, vulnerability scanners, or password cracking tools. If at some point it is a requirement of the project to use these products to identify security issues, NYSERDA shall approve the download in writing.
* Contractor’s Employee is provided with User's Guides which provide a listing of available features and instructions for both the phone system and voicemail system. Voicemail systems are neither private nor confidential. Contractor’s Employee waives any right to privacy in voicemail messages to the extent permitted by law and employees consent to access and disclosure for any lawful purpose.
* Contractor’s Employee shall not transmit non-public, confidential, personal, private, or sensitive information to non-NYSERDA e-mail accounts.
* Contractor’s Employee shall follow guidance provided by NYSERDA’s Marketing department regarding email signatures, consistent with New York State branding requirements.
* No sensitive, proprietary or confidential information is to be stored on non-NYSERDA-provided devices at any time, unless approved by the Information Security Officer. In addition, use of such equipment shall conform to other relevant NYSERDA and New York State Information Technology policies.

A complete list of ITS Security Policies is accessible at:

<https://its.ny.gov/tables/technologypolicyindex>

**Data Governance**

All data collected and stored by, or on behalf of, NYSERDA are classified and managed per the policies and procedures outlined in the [New York State Information Classification Policy (NYS-S14-002)](https://its.ny.gov/document/information-classification-standard), and NYS Information Security Controls ([NYS-S14-003](https://its.ny.gov/document/information-security-controls-standard)). This includes data in applications, internal and external systems, PDF files, email messages, web pages, and other documents.

**Access Control**

Prior to accessing the NYSERDA network, all individuals will be asked to authenticate their identity and to agree to the following logon banner:

*NOTICE*

*This system and all data on it are the property of NYSERDA. Unauthorized use or attempted unauthorized use of this system is not permitted and may constitute a crime. Such use may subject you to appropriate disciplinary and/or criminal prosecution. Use of this system is only permitted under the auspices of NYSERDA. Use is limited to conducting the official business of NYSERDA. Use for incidental and necessary personal purposes is permitted, provided that such use is in a limited amount and duration and does not conflict with the proper exercise of the duties of the employee. Any use, whether authorized or not, may be monitored, intercepted, recorded, read, copied, accessed, or captured in any manner, and used or disclosed in any manner, by authorized personnel without additional prior notice to users. Users have no legitimate expectation of privacy during any use of this system or in any data on this system. Use whether authorized or unauthorized, constitutes express consent for NYSERDA to monitor, intercept, record, read, copy, access or capture and use or discloses such information.*

*By clicking OK, you certify that you have read and accept the above terms and conditions.*

Execution of this certification indicates that (Contractor’s Employee) has read and acknowledged NYSERDA’s Acceptable Use Policy as set forth in NYSERDA’s Information Security Policies and Data Classification and Security Controls.

Non-compliance with this Certification may result in lost privileges to NYSERDA’s Networks and Systems, as well as potential Task Work Order and/or Agreement termination.

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Signature

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Company Name

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Date

**Exhibit G**

**CONTRACTOR CONFIDENTIALITY AGREEMENT**

For purposes of this document, the terms “Contractor(s)” shall include, but is not limited to, any contractor, temporary, leased employee, or staff augmentation contractor identified below.

“Confidential Information” as used in this Agreement shall mean any non-public or proprietary information, whether in tangible or intangible form, and whether disclosed prior to, on or after the date of this Agreement, that is disclosed either directly or indirectly, whether in writing, orally, electronically or by inspection of tangible objects, by or on behalf of NYSERDA to the receiving party or its representatives in furtherance of or in connection with the Purpose, including but not limited to, information and materials regarding research and clinical processes, methodologies and aims, the existence, status or content of licensing or collaboration negotiations, other agreements with third parties, information regarding facilities or financial or other business information, in each case that is clearly identified or labeled by NYSERDA as “Proprietary” or “Confidential” at the time of disclosure, and including all portions of documents, presentations, information, reports, materials, evaluations, and copies to the extent incorporating Confidential Information. Confidential Information may also include information obtained by NYSERDA from its collaborators, customers, suppliers, vendors and other third parties who have entrusted their confidential information to NYSERDA.

The Contractor as part of their contracted assignment will be provided information, regardless of whether the information is confidential, the contractor may only use the information for its intended purpose in accordance with the contracted assignment.

Contractors should read and abide by the Code of Conduct for NYSERDA Contractors, Consultants, and Vendors. When it is unclear which information is confidential, the Contractor should seek guidance from their supervisor prior to the information being disclosed.

In accepting my contracted assignment with NYSERDA, I understand that, during the course of my assignment, any of the information and data described in the first paragraph hereof may be disclosed to me. In order to ensure the confidentiality of such information, and as part of the consideration for being given the contractor assignment, I agree to the following:

1. I will not reproduce, make copies, disclose, or use, other than as may be required in the performance of my duties, any of the information or data described in the first paragraph hereof; both during the period of my assignment and thereafter, until such information or data shall have been publicly disclosed by a person other than me.
2. I understand that NYSERDA has the right to use and publish any and all of my work products which may be produced in the performance of my assignment at NYSERDA, both during the period of my assignment and any time thereafter.
3. I understand that any improper use of such information may result in action taken by NYSERDA against myself and my employer.

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 Signature

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Company Name

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1. Under this Agreement, the term disadvantaged communities also refer to hard to reach, underserved rural communities, and other areas with high levels of poverty and limited access to resources. [↑](#footnote-ref-2)
2. https://its.ny.gov/document/information-classification-standard [↑](#footnote-ref-3)
3. https://its.ny.gov/document/information-security-controls-standard [↑](#footnote-ref-4)
4. <http://www.nyserda.ny.gov/About/Board-Governance.aspx>

 [↑](#footnote-ref-5)
5. 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](http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx) [↑](#footnote-ref-6)