

**New York State Energy Research and Development Authority
("NYSERDA")**

AGREEMENT

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award: Cumulative Amount of Task Work Orders Issued
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, Rate Sheet;
- Exhibit F, Employment Policies and Procedures Applicable to Temporary and Leased Employees;
- Exhibit G, Certification for Access to NYSERDA's Internal Networks and Systems;
- Exhibit H, Confidentiality Agreement;
- Exhibit I, Article 15-A Contract Provisions (non-construction contract); and
- Exhibit J, Article 17-B (SDVOB) Contract Provisions (non-construction).

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

[CONTRACTOR]

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

Signature: _____

Signature: _____

NYSERDA Authorized Signatory

Name _____

Title _____

EXHIBIT A STATEMENT OF WORK

The Awarded Proposer is hereinafter referred to as “Contractor.”

The Contractor shall provide NYSERDA with Staff Augmentation Services. Each specific assignment shall be mini-bid, and shall specify the level and type services needed, as well as the project, initiative, or workstream to which the services will support.

Confidential and proprietary information shared with the Contractor while providing services is to be kept confidential by the Contractor. Such information is not to be shared with other parties or used by the Contractor for any purpose outside of the specific assignment as outlined in Exhibit B, Article VIII and Addendum A of the Sample Agreement.

TASKS

Task 1: Staff Augmentation Services

The Contractor shall provide services that include:

- Provide a low-cost source of diverse and well-qualified staff augmentation resources to support NYSERDA’s mission and programs;
- Enable a streamlined business process to quickly source and onboard staff augmentation resources;
- Enable project-based and full-time resources based on individual project need;
- Ensure staff augmentation resources have access to a computer, phone, and high-speed internet.

Project, initiative, or workstream details and specific standard operating procedures will be provided upon assignment.

Task 1 Deliverables

- Respond to mini-bids requesting staff augmentation services; and
- Provide qualified staff augmentation resources (resume, other needed documentation of qualifications as specific in each mini-bid, fully burdened rate, availability, and Right to Represent).

Task 2: Management of Well Qualified Competent Staff

The Contractor shall maintain a commitment to meet NYSERDA’s needs at the lowest possible cost, monitor and manage work assignments and keep staff current in their skills.

The Contractor shall provide all task management activities necessary for the completion of each Task Work Order, which shall include the following activities:

- Coordinate the work of the Contractor's employees that are undertaking tasks described in each Task Work Order;
- Ensure control over the Agreement and/or Task Work Order budgets and adherence to the task schedules and accomplishments;

- Efficiently and effectively manage the project administration process and communications between the various parties;
- Provide all reporting to NYSERDA as specified in the individual Task Work Orders and this Statement of Work;
- Facilitate training as needed to keep staff current in their skills; and
- Supervise routinely or ad-hoc, all field and remote work locations.

Task 2 Deliverables

- Prepare reports and task updates as defined in specific Task Work Order(s), and as requested by NYSERDA.

Task 3: Records Management

The Contractor shall provide NYSERDA with access to documents, personnel and other information necessary to conduct audits upon request during the terms of the Contract, and for up to six (6) years after the Contract term expires.

- Develop and submit to NYSERDA for review and acceptance a written document outlining accurate record management protocols and review processes;
- Assist with and/or perform scheduled and ad hoc reporting; and
- Ensure compliance with NYSERDA record management requirements. Personal, Private, Sensitive Information (PPSI) will be treated confidentially and managed according to NYSERDA PPSI standards.

Task 3 Deliverables

- Submit Record Management Protocol within 30 days of first Task Work Order Contract, and any updates as necessary, to the NYSERDA Project Manager.

TASK WORK ORDERS

For each assigned initiative, a Task Work Order will be developed. A NYSERDA point person will be designated to manage the specific training and work performed under the Task Work Order. Initiative details and specific standard operating procedures will be provided to the Contractor during Task Work Order development or upon start of work.

For each Task Work Order, the Contractor is expected to:

- Provide qualified individuals to complete the work as requested;
- Develop an approach and budget for review and approval by NYSERDA according to the task(s) assigned;
- Upon agreement by both NYSERDA and the Contractor, provide the required assistance within the agreed upon time frames.
- Submit required deliverables to NYSERDA for review and approval.
- Provide required documentation of expenditures by task based on the approved Task Work Order when seeking payment from NYSERDA.

The Task Work Order must assure that appropriate staff and resources will be available for the services requested as well as general day-to-day support of the initiative assigned.

If NYSERDA determines that the parties will be unable to reach agreement on the terms of the Task Work Order, NYSERDA may rescind the Task Work Order at its sole discretion.

When NYSERDA finds the terms of the proposed Task Work Order acceptable and has issued a Notice to Proceed on a Task Work Order, the Contractor shall carry out the work pursuant to the requirements of such Task Work Order. The work set forth in the Task Work Order shall, upon its issuance by NYSERDA, constitute Work to be performed by the Contractor under this Agreement.

NYSERDA will compensate Contractor for hours the Contractor's employee works on assignment as outlined in each Task Work Order, up to a maximum of 40hrs per week unless approved in writing by NYSERDA in advance. Travel may be reimbursed if approved in writing by NYSERDA in advance. No other costs will be reimbursed by NYSERDA. If Contractor staff is considered working full time on NYSERDA assignment, Contractor's staff cannot have other recurring obligations within their company, unless agreed upon by NYSERDA.

If Contractor's employees are required to take company training while on assignment at NYSERDA, the Contractor shall not bill for hours worked while receiving such training. On a quarterly basis, clear communication from the Contractor must be delivered to NYSERDA as to when training will occur during the next calendar quarter.

When NYSERDA office locations are closed for business due to designated holiday, Contractor's employees will not perform work on behalf of NYSERDA on those days. However, Contractors will be allowed to reallocate working hours during the same work week. Reallocation of hours must be approved in writing by NYSERDA in advance.

NYSERDA designated holidays are as followed:

- (i) New Year's Day
- (ii) Dr. Martin Luther King Jr. Day
- (iii) Lincoln's Birthday
- (iv) Washington's Birthday
- (v) Memorial Day
- (vi) Juneteenth
- (vii) Labor Day
- (viii) Indigenous People's Day (also known as Columbus Day)
- (ix) Thanksgiving Day
- (x) Christmas Day

Annual Performance reviews for the personnel supporting the Work carried out by the Task Work Orders will be conducted by the Contractor with feedback from NYSERDA.

Task Work Orders may be issued at any time during the Project Period.

The Contractor may submit an invoice for costs when the corresponding Notice to Proceed has been issued by NYSERDA. Should a Notice to Proceed not be issued for a certain Task Work Order, NYSERDA is under no obligation to reimburse the Contractor for any costs or expenses associated with that Task Work Order.

If NYSERDA finds that a Task Work Order must be modified, NYSERDA may issue a Task Work Order modification request. The Contractor shall then prepare a modification to the Task

Work Order. If the Contractor's modified Task Work Order is acceptable to NYSERDA, then NYSERDA may issue a Task Work Order Modification.

NYSERDA must be kept informed of milestones, delays or other occurrences in order to participate in any decision or to initiate any necessary action.

NYSERDA will review and approve the finalized tasks to ensure that all items included in the Task Work Order are satisfactorily completed and within the prescribed time frame. The Contractor shall not be accountable for delays caused by NYSERDA, NYSERDA participants, or other potential project co-funders such as a utility.

NYSERDA may request that any of the Contractor's Consultants be converted to permanent NYSERDA employee status. The normal NYSERDA interview and approval process will be followed. If the Contractor's Consultant and NYSERDA agree to terms, the Consultant may convert to NYSERDA employment with no fee charged to NYSERDA by the Contractor, if the Consultant has accrued at least one year of billable hours.

NYSERDA will indicate at the time of the request for a resource whether the candidate will be considered for insourcing. If so indicated, the resource will not be insourced prior to 6 months from their start date. In the Proposal, Proposers must outline the conditions, timelines and fees associated with converting a resource into a NYSERDA staff member.

NYSERDA reserves the right to end any specific Task Work Order or the Agreement as a whole at any time, with or without cause. If replacement resources are needed, NYSERDA may obtain replacement resources for that work via the selected Proposer, or another source contracted separately at NYSERDA's sole discretion.

A Task Work Order template will be developed by NYSERDA for use.

Additional Provisions for Contractor Employees Working On-Site at NYSERDA

1. Relationship of the Parties. It is understood and agreed that the personnel furnished by Contractor to perform the services stipulated in this TWO, including personnel who may perform such services at NYSERDA's offices, 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.

The relationship of the parties to this Agreement and TWO is that of independent contractors. Nothing in this TWO shall be construed as creating a partnership, joint venture, employment, agency, legal representation, or other relationship between NYSERDA and Contractor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this TWO.

2. Additional Screening Requirements for Assigned Employees. Contractor agrees that it shall perform or have performed, within the two years immediately preceding the placement of any employee, a background check; by virtue of making such placement, Contractor certifies that such background check on the employee has been performed. Contractor agrees that it will inform NYSERDA's Human Resources Department by phone (518.862.1090), simultaneously with or preceding such placement, if: (1) such background check reveals, with respect to the referred employee, (a) a felony conviction, or (b) any other job-related conviction, or (2) immediately upon its becoming aware that such individual has been convicted of such a crime. NYSERDA and Contractor will comply with all applicable federal, state and local laws and will consider the nature and gravity of the offense, the amount of time that has passed since the conviction and the nature of the duties of the assignment to be performed.

3. No Benefits. Contractor agrees that the personnel furnished by Contractor may be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code. Contractor acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and Programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or Programs. Contractor agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.

4. Insurance. The Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, for all personnel, Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

5. Notification of Claims/Events. 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 TWO should terminate for any reason.

6. Controlling Terms. The terms and conditions set forth in this TWO shall control in the event of any inconsistency between such terms and conditions and matters set forth in the Agreement.

7. 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>.

8. Additional Employment Policies and Procedures Applicable to Temporary and Leased Employees. The Contractor's staff shall sign and agree to abide by such policies and procedures as detailed in Exhibit E, NYSERDA-Employment Policies and Procedures Applicable to Contracted Resources as well as the Exhibit G, Contractor Confidentiality Agreement as amended and superseded and any other relevant policies and agreements that are applicable to the work being conducted.

1. NYSERDA RESPONSIBILITIES

NYSERDA will maintain overall management and control for all services including the selection, supervision, and coordination of the Contractor. The major responsibilities of NYSERDA are to:

- Assign initiatives/tasks to the Contractors based on cost, expertise, location, and workload to best support NYSERDA and the participants.
- Provide Contractor with administrative processes and standard operating procedures for each assigned initiative, subject to improvement with input from shared services provider(s).
- Monitor the progress of the Contractor through ongoing telephone contact, review of status reports and data monitoring activities, etc., identify problems and initiate corrective action.
- Provide review of deliverables to ensure that the deliverables meet all requirements.
- Ensure adherence to NYSERDA's established policies and procedures.
- Provide a NYSERDA point person for assistance.
- Provide initial and continual training on program/initiative rules & guidelines.
- Provide initial and continual training on program/initiative data management systems.

NYSERDA reserves the right to:

- Incorporate programmatic changes as needed, thus modifying or adding to the services outlined,
- Tailor proposed services within the bounds of the contract based on cost-effectiveness, performance, participation, or other considerations,
- Add other initiative areas and associated funding to the contract should other initiatives require support.

2. DELIVERABLES

The Contractor shall deliver:

- A specific Task Work Order for each assignment.
- Provide qualified staff as defined in the Task Work Order.
- Satisfactorily completed tasks and assignments as defined by a NYSERDA approved Task Work Order.
- Monthly invoices and appropriate supporting documentation to NYSERDA no later than the 10th of each month.

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 Exhibits A, B, C, D, E, F, G, H, I, and J hereto, all of which are made a part hereof as if set forth here in full.

Budget: Collectively, the budgets set forth in individual Task Work Orders consistent with the rates set forth in Exhibit A hereto.

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

Contract Administrator: NYSERDA's Director of Contract Management, Wendy M. MacPherson, 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 and the individual Task Work Orders issued pursuant to this Agreement.

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.

Task Work Order: A Task Work Order issued by NYSERDA pursuant to Exhibit A of this Agreement, specifically a Task Work Order Plan approved by NYSERDA.

Task Work Order Plan: The statement of work and budget for a project proposed by the Contractor.

Work: The Work described in the Exhibit A and in individual Task Work Orders issued pursuant to this Agreement (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. Annexed as Exhibit F is a list of personnel who will be available to perform Work under this Agreement, along with the rates that will apply for each such person during the term of this Agreement. 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 Task Work Orders as provided for under the Statement of Work shall serve in the capacities described therein. Any changes of Project Director or in persons described in Task Work Orders 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 or personnel 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 and the Task Work Orders issued pursuant to this Agreement.

Article IV

Payment

Section 4.01. Payment Terms. In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 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) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate as shown in Exhibit F or the actual wages paid to the employee and applicable at the time the Task Work Order is performed.

(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 for each Task Work Order. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs shall 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.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs, all at the fixed rate as shown in the budget for each Task Work Order. Contractor hereby warrants and guarantees, in accordance with Section 9.01(k) hereto, that its rates for the foregoing 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.

(d) Profit: The Contractor shall be paid a profit at a fixed rate, as shown in the Budget. The percentage for profit shall be applied only to Staff Charges incurred in the performance of the Statement of Work.

(e) Task Work Order Cost Cap: The Task Work Order budget must state a not-to-exceed cost cap or ceiling amount for each Task Work Order assignment. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Work Order without approval in writing by NYSERDA.

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 make reference to 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 4.03. 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 from NYSERDA under each Task Work Order issued pursuant to this Agreement shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to the Task Work Order. 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, the direct and indirect costs and expenses incurred by the Contractor in the course of its 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. 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 each Task Work Order.

Section 6.02. Acceptance of Work. The completion of each Task Work Order shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in the Task Work Order. Where the specified deliverable is in the form of report, acceptance of such report is contingent on Contractor complying with all its obligations set forth in the corresponding task and that the report be complete and sufficiently and accurately described.

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 \(NYS-S14-002\)](https://its.ny.gov/document/information-classification-standard)¹ and the [New York State Information Security Controls Standard](https://its.ny.gov/document/information-security-controls-standard)².





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,

¹ <https://its.ny.gov/document/information-classification-standard>

² <https://its.ny.gov/document/information-security-controls-standard>

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 \(NYS-S15-002\)](#) 
- [Security Logging Standard \(NYS-S14-005\)](#) 
- [Patch Management Standard \(NYS-S15-001\)](#) 
- [Encryption Standard \(NYS-S14-007\)](#) 

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.

Section 8.02. Treatment of Contract Information

(a) All Contract Information shall 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 any Projects for NYSERDA arising from this Agreement.

(b) Contractor agrees to transmit Contract Information only to its agents, employees, contractors, and professional advisors who need to know or receive the Contract Information for purposes of any Projects for NYSERDA arising from this Agreement.

(c) Contractor agrees to inform any of its agents, employees, contractors, and professional advisors who need to know or receive the Contract Information of the confidential nature of the Contract Information and who will agree to be bound by the terms and conditions of this Agreement, specifically with regard to the treatment of Contract Information.

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, and New York State Executive Orders in effect during the contract term, 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;³ 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

³http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.ashx?sc_database=web

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;
- (b) Professional liability/errors and omissions insurance covering the negligent acts, errors or omissions of the Contractor in the provision of professional services required under this Agreement, for damages arising from the services required under this Agreement; and
- (c) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

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

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

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

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

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

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

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

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

Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with

respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor). Articles VIII, IX, and X shall survive any termination of this Agreement.

(b) NYSERDA specifically reserves the right to terminate this agreement 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.

Section 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:

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

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

NYSERDA

Name: Wendy M. MacPherson

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: Wendy.MacPherson@nyserda.ny.gov

Personal Delivery: Reception desk at the above address

/CONTRACTOR/

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:

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <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.⁴

(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:

⁴ 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>

(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
Rate Schedule

The Contractor shall provide Staff Augmentation Services to NYSERDA.

For assignments that are longer than one year, NYSERDA will provide up to an 3% annual escalation on the agreed upon hourly rate for the Contractor's Employee on the TWO anniversary.

MULTIPLIER (including Profit/Fixed Fee):

SUBCONTRACTORS:

Note: The Contractor has agreed to a 0% markup on all subcontracted work.

Note: The Contractor has agreed to not charge any fee for background checks.

Note: The Contractor has agreed to the following cost savings:

Exhibit F

Policies and Procedures Applicable to Contracted Resources

The following policies and procedures are applicable to Contracted Resources while on assignment at NYSERDA. For purposes of this document, the terms “Contracted Resource(s)” shall include, but is not limited to, any contractor, temporary, leased contracted resource, or staff augmentation contractor identified below. By signing, the Contracted Resource agrees to abide by such policies and procedures.

EQUAL OPPORTUNITY

POLICY

NYSERDA prohibits discrimination in employment practices – including hiring, firing, promotion, compensation, and other terms, privileges, and conditions of employment against any individual on the basis of race (including traits historically associated with race), ethnicity, color, religion, sex (including pregnancy), sexual orientation, gender identity or expression, the status of being transgender, familial status, marital status, age, national origin, disability (including pregnancy related conditions, military or veteran status, genetic information or predisposition, reproductive health decision making (including the decision to use or access a particular drug, device, or medical service), the status of being a victim of domestic violence, known relationship or association with any member of a protected class, or any other basis prohibited by law. NYSERDA is committed to the principle that employment and personnel decisions be based on merit, qualifications and abilities, and expects all Contracted Resources to act in accordance with this Policy.

As part of NYSERDA’s Equal Employment Opportunity policy, NYSERDA will also take affirmative action as called for by applicable laws and Executive Orders to ensure that minority group individuals, females, disabled veterans, recently separated veterans, active-duty wartime or campaign badge d veterans, Armed Forces service medal veterans, and qualified disabled persons are introduced into our workforce and considered for promotional opportunities.

Contracted Resources can raise concerns and make reports and shall not be subjected to harassment, intimidation or any type of retaliation because they have (1) reported a violation of this policy; (2) assisted or participated in an investigation, compliance review, hearing or any other activity related to such a report or the administration of any federal, state or local law requiring equal employment opportunity; (3) opposed a discriminatory act or any act or practice made unlawful by any federal, state or local law requiring equal opportunity; or (4) exercised any other employment right protected by federal, state or local law or its implementing regulations.

Any Contracted Resource in a position of supervision, leadership or authority who becomes aware of conduct that may constitute a violation of this Policy must report such information to the Affirmative Action Officer Regional Team Leader. This obligation exists regardless of the desire of an individual to keep such information private and regardless of the individual’s assessment of the veracity of the claim.

Any contracted resource in a position of supervision, leadership or authority who becomes aware of conduct that may constitute a violation of this Policy must report such information to the Governor's Office of Employee Relations, Anti-Discrimination Investigations Division. This obligation exists regardless of the desire of an individual to keep such information private and regardless of the individual’s assessment of the veracity of the claim.

Any contracted resource, whether in a supervisory role or not, who witnesses or is personally subjected to harassment and/or discrimination is required to: (a) fill out a reporting form, which is available on

NYSERDA's SharePoint Intranet, Human Resources Forms Page, and (b) send it to the Governor's Office of Employee Relations, Anti-Discrimination Investigations Division (by email or mail):

Empire State Plaza
Agency Building 2
Albany, New York 12223
antidiscrimination@goer.ny.gov

The Governor's Office of Employee Relations can explain the investigative procedure and respond to any questions that you may have.

Reports will be investigated and resolved fairly, promptly and thoroughly. The privacy of those involved will be preserved to the extent possible under the law and consistent with a full and fair investigation and appropriate remedial or disciplinary action.

If there is a determination that remedial or disciplinary action is warranted, such action may include oral or written reprimand, transfer, education programs, fines, suspension, demotion or termination (of Contracted Resource or assignment).

The Affirmative Action Policy overseeing NYSERDA's employment practices is derived from relevant federal and State law, and from the Chair's and President and CEO's personal commitments.

POLICY REGARDING THE AMERICANS WITH DISABILITIES ACT

The State of New York and NYSERDA are committed to assuring equal employment opportunity for persons with disabilities, including pregnancy-related conditions. To this end, it is NYSERDA's policy to provide reasonable accommodation to a qualified person with a disability to enable such person to perform the essential functions of the position for which they are applying, or in which they are working. This policy is based on the New York State Human Rights Law, Sections 503/504 of the Federal Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act (ADA), and all applicable Executive Orders and Memoranda. The policy applies to all employment practices and actions. It includes, but is not limited to, recruitment, the job application process, examination and testing, hiring, training, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, and promotions. The Director of Human Resources is NYSERDA's Designee for Reasonable Accommodation (DRA).

To request an accommodation, let NYSERDA know that you need an adjustment or change in applying for positions or at work for a reason related to a medical condition. Current Contracted Resources may request an accommodation through either their supervisor or the DRA. If an contracted resource makes their request through the supervisor, the supervisor may handle and approve the request, but only after consultation with and approval by the DRA. However, if the determination requires a more complex analysis or agency expenditures, the supervisor shall forward the request to the DRA for handling.

Reasonable Accommodation Request Forms are posted on NYSERDA's SharePoint, Human Resources Forms page.

POLICY REGARDING RELIGIOUS OBSERVANCES OR PRACTICES

The State of New York and NYSERDA are committed to assuring equal employment opportunity for persons who engage in religious observances or practices. To this end, it is the State's policy to provide reasonable accommodation for religious observances or practices. This policy is based on the New York State Human Rights Law, the federal Civil Rights Act of 1964, Title VII, and all applicable Executive Orders and Memoranda. The policy applies to all employment practices and actions. It includes, but is not limited to, recruitment, the job application process, examination and testing, hiring, training, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment,

promotions, and other terms, condition or privileges of employment. The Director of Human Resources is NYSERDA's Designee for Reasonable Accommodation (DRA).

To request an accommodation, an individual need only let NYSERDA know that they need a change or adjustment related to a religious observance or practice. Current Contracted Resources may request a religious accommodation through either their supervisor or the DRA. If an contracted resource makes their request through the supervisor, the supervisor may handle and approve the request, with consultation with the DRA as needed. When the request cannot be granted, the supervisor shall forward the request to the DRA, to assure that the request is reviewed, documented, and resolved in accordance with policy and governing statutes.

Reasonable Accommodation Request Forms are posted on NYSERDA's SharePoint, Human Resources Forms page.

ANTI-HARASSMENT POLICY AND COMPLAINT PROCEDURE

ANTI- HARASSMENT POLICY

NYSERDA prohibits unlawful harassment in the workplace. Harassment based on race(including traits historically associated with race), ethnicity, color, religion, sex (including pregnancy), sexual orientation, gender identity or expression, the status of being transgender, familial status, marital status, age, national origin, disability (including pregnancy related conditions, military or veteran status, genetic information or predisposition, reproductive health decision making (including the decision to use or access a particular drug, device, or medical service), the status of being a victim of domestic violence, known relationship or association with any member of a protected class, or any other basis prohibited by law. In addition, retaliation against an individual who opposes discrimination or participates in a complaint proceeding is also a violation and will not be tolerated. The Anti-Harassment Policy applies to the workplace during all hours, to all work related social functions, whether on or off NYSERDA premises, and to business related travel.

Conduct prohibited by this Anti-Harassment Policy is prohibited in the workplace during all hours, at all work-related functions, whether on or off NYSERDA premises, during business related travel, and in each and every situation that may impact the work environment. This policy applies to all Contracted Resources, and prohibits harassment, discrimination and retaliation whether engaged in by a NYSERDA employee, supervisor or manager, or a third party not employed by NYSERDA (e.g., an outside vendor, consultant or client).

All Contracted Resources, and particularly those with supervisory responsibilities, are responsible for ensuring a work environment free from all forms of harassment, including sexual harassment. All Contracted Resources are expected to avoid any behavior or conduct that could be interpreted as harassment or sexual harassment.

NYSERDA considers conduct that violates this Anti-Harassment Policy to be a form of misconduct. If it is determined that a Contracted Resource violated NYSERDA's Anti-Harassment Policy, NYSERDA will take appropriate remedial action, up to and including termination of their assignment. Appropriate action will also be taken to deter any future harassment

In furtherance of its commitment to maintain a harassment free workplace, NYSERDA will provide this policy to all new Contracted Resources and post it prominently in all work locations (to the extent practicable). NYSERDA will also require participation in annual harassment prevention training.

If any Contracted Resource feels that they have witnessed or have been subject to any behavior that violates this Anti-Harassment Policy, they are required to report such in accordance with the reporting procedure below.

WHAT IS HARASSMENT?

Harassment is a form of discrimination and includes communicating, sharing or displaying written or visual material, making verbal comments and/or engaging in any other conduct, including physical conduct, which is demeaning or derogatory to an employee, applicant, contractor or visitor because of his or her: gender, race, color, religion, national origin, age, familial status, marital status, sexual orientation, pregnancy, disability, citizenship, veteran status or any other class protected by applicable federal, state or local laws, including material, comments or conduct intended as humor. The use of NYSERDA facilities, property or equipment to disseminate, duplicate or display such materials is prohibited by NYSERDA policy.

Harassment may include “microaggressions,” which are verbal, nonverbal, and environmental slights, comments, or actions, whether intentional or unintentional, that express or communicate hostile, derogatory, or negative messages to individuals based upon their marginalized group membership.

This policy prohibits not only behavior that constitutes unlawful harassment, but also other inappropriate or unprofessional behavior that may reasonably be considered offensive or otherwise inappropriate.

SEXUAL HARASSMENT

Although NYSERDA recognizes that working relationships often foster social relationships, it strongly discourages sexually or romantically intimate relationships between individuals where a direct supervisory relationship exists. If such a relationship exists or develops, both individuals are required to disclose such to the Director of Human Resources. In such cases, NYSERDA may take steps to eliminate such a supervisory relationship. If at any point a Contracted Resource who is or was engaged in a consensual personal relationship feels as if they are being subjected to unwelcome conduct in violation of this policy, the Contracted Resource is expected to report that conduct in accordance with the reporting procedure below.

Sexual harassment includes making unwelcome and unwanted sexual advances, unwelcome or inappropriate comments regarding physical appearance, requesting sexual favors in exchange for favorable treatment or continued employment, engaging in gender based verbal or physical conduct, or verbal or physical conduct of a sexual nature when: such conduct is made explicitly or implicitly a term or condition of employment; submission to or rejection of such conduct is used as a basis for any employment-related decision; such conduct has the purpose or effect of subjecting an individual to inferior terms, conditions or privileges of employment, because of their protected status; or such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. Sexual Harassment is not limited to male-female interaction.

No manager shall threaten or insinuate, either explicitly or implicitly, that a Contracted Resource's submission to or rejection of sexual advances will in any way influence any personnel decision regarding that Contracted Resource's employment, compensation, advancement, assigned duties, or any other condition of employment or career development.

EXAMPLES OF SEXUAL HARASSMENT

Depending on the circumstance, sexual harassment may include, but is not limited to:

- explicit sexual propositions;
- sexual innuendo;
- suggestive comments;
- statements regarding appearance or dress;

- sexually oriented "kidding" or "teasing;"
- "practical jokes;"
- jokes about gender-specific traits;
- obscene language or gestures;
- display of obscene or sexually suggestive printed or visual material (including emails, images and videos);
- physical conduct such as any touching, patting, pinching, or brushing against another's body; and
- obscene or sexually oriented or suggestive or obscene correspondence (including emails, text messages and social media posts).

These descriptions comprise only a partial list of conduct that may be considered sexual harassment.

Any questions about whether a particular behavior constitutes a violation of this policy should be referred to the Director of Human Resources or to the Office of Counsel.

OTHER FORMS OF PROHIBITED HARASSMENT

Prohibited harassment on the basis of race (including traits historically associated with race), ethnicity, color, religion, sex (including pregnancy), sexual orientation, gender identity or expression, the status of being transgender, familial status, marital status, age, national origin, disability (including pregnancy related conditions), military or veteran status, genetic information or predisposition, reproductive health decision making (including the decision to use or access a particular drug, device, or medical service), the status of being a victim of domestic violence, known relationship or association with any member of a protected class, or any other basis prohibited by law, includes behavior similar to sexual harassment such as:

- Verbal conduct such as threats, epithets, derogatory comments/whistles etc., pranks, intimidation, jokes or slurs;
- Visual content such as derogatory posters, photographs, videos, cartoons, drawings, or gestures;
- Written content such as emails, text messages and social media posts;
- Physical conduct such as assault, unwanted touching, violence or blocking normal movement; and
- Retaliation for reporting harassment or threatening to report harassment.

REPORTING PROCEDURE

NYSERDA's goal is to discourage inappropriate behavior at the source and as soon as possible. Contracted Resources are encouraged but not required to speak directly with persons engaging in behavior that makes them uncomfortable. Communicate politely, clearly and firmly to the offending party that the conduct is unwelcome, unwanted, offensive, intimidating, or embarrassing and ask that the conduct stop.

NYSERDA requires the reporting of all incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Any Contracted Resource who believes they have been subjected to, witnessed or have otherwise become aware of conduct in violation of this policy is required to:

- a. fill out a reporting form, which is available on NYSERDA's SharePoint Intranet, Human Resources Forms Page and submit it to Governor's Office of Employee Relations, Anti-Discrimination Investigations Division by email or mail.

This obligation to report exists regardless of the desire of an individual to keep such information private and regardless of the individual's assessment of the veracity of the claim.

Contact information is as follows:

Governor's Office of Employee Relations, Anti-Discrimination Investigations Division, Empire State Plaza, Agency Building 2, Albany, NY 12223; antidiscrimination@goer.ny.gov.

The Governor's Office of Employee Relations, Anti-Discrimination Investigations Division can explain the investigative procedure and respond to any questions that you may have.

All reported violations of this policy will be investigated and resolved fairly, promptly and thoroughly. The privacy of those involved will be preserved to the extent possible under the law, and consistent with a full and fair investigation and appropriate remedial or disciplinary action. When the investigation is completed, a determination regarding the reported concern will be made and communicated to the Contracted Resource who complained and to the alleged wrongdoer, though all details of the action(s) taken may not be disclosed.

If it is determined that this policy has been violated, NYSERDA will take effective remedial action commensurate with the circumstances which may include oral or written reprimand, transfer, education programs, fines, suspension, demotion or termination. Appropriate action will also be taken to deter any future harassment.

If it is concluded that a nonemployee has subjected a NYSERDA Contracted Resource to conduct in violation of this policy, prompt and effective action will be taken to stop the harassment and deter any future harassment.

PROHIBITION OF RETALIATION

NYSERDA will not retaliate and prohibits any form of retaliation against any Contracted Resource who opposes a discriminatory practice, in good faith reports a violation of this policy, or furnishes information or participates in any manner in an investigation of such. Retaliation includes any conduct, whether or not workplace or employment-related, directed at someone because they made such a report or participated in such an investigation, which might deter a reasonable worker from making or supporting a charge of discrimination or harassment. Any such retaliatory act violates this policy and will result in appropriate disciplinary action, up to and including termination of employment.

Anyone who believes they have been subjected to retaliation or is aware of retaliation directed at another Contracted Resource is expected to report such using the reporting procedure outlined above.

WHO CAN BE HELD LIABLE FOR DISCRIMINATION OR HARASSMENT?

Supervisors and employees may be held both individually and jointly liable for acts of discrimination and harassment under anti-discrimination and harassment laws.

EMERGENCY, FIRE SAFETY AND SECURITY

REPORTING AN EMERGENCY

In the event of an emergency situation, press "8" on any office phone, and then dial 911. Give the operator the following information: your name and the exact description and location of the incident you are reporting so proper emergency personnel and equipment can be dispatched to handle the situation.

If it is a fire condition, you should close doors closest to you in an attempt to contain it and leave the area by the nearest safe exit.

EVACUATION PROCEDURE

At the sound of the fire alarm:

1. Immediately terminate all telephone conversation.
2. Close all desk and file cabinet drawers.
3. Secure all monies, checks, etc., and other State funds of instruments if you are able to do so quickly (in a matter of seconds).
4. Take your coat and pocketbook and leave. Do not bring coffee cups, soda, etc.
5. Leave office lights on and close the door behind you.
6. Use stairways and not the elevator.
7. Calmly escort all visitors to safety with you.
8. Only disabled persons should use the elevator.
9. Leave the building. Assemble in areas far enough from the building to allow easy access by emergency personnel.
10. You can best assist in the evacuation by not attempting to fight a fire or handle an emergency. Personal safety is paramount. However, in the case of small, manageable fires, there are fire extinguishers located throughout the offices for use by personnel.

Contracted Resources must familiarize themselves with the location of fire exits near their workspace in the event of a fire or evacuation. NYSERDA shall conduct periodic evacuation drills, generally not less than semiannually, which shall be coordinated by the Facility Manager.

WEST VALLEY OFFICE

NYSERDA's Contracted Resources performing work at the Western New York Nuclear Service Center must complete worker orientation as provided by either the West Valley Demonstration Project or NYSERDA's West Valley Site Management Program, depending upon the location in which the work will be performed. This worker orientation includes site specific emergency and fire safety information, and should be completed prior to beginning any unescorted work.

BUILDING SECURITY AND ACCESS

Contracted Resources are not permitted to introduce, use or possess a firearm or deadly weapon on NYSERDA property or in NYSERDA offices as defined by New York State Penal Law Section 10.00.

Security cameras are installed at some NYSERDA locations for the safety and security of NYSERDA Contracted Resources.

Contracted Resources may be provided with a key or keycard for access to NYSERDA offices. Contracted Resources are prohibited from attempting to copy or duplicate keys or keycards. If keys or keycards are lost or stolen, Contracted Resources should see the Facility Manager for a replacement. All previous keycards will be deactivated to prevent unlawful access.

Any visitor(s) to NYSERDA should be directed to sign in at the reception desk and indicate to the receptionist who their appointment is with. That Contracted Resource will be contacted and should escort the visitor(s) to the area where business will be conducted. The visitor should then be escorted back to the reception area for proper exit from the building.

Visitors should not be invited to NYSERDA during off hours. If necessary for a visitor to be on premises

during off hours, s/he must be accompanied by a NYSERDA Contracted Resource at all times and sign in at the reception desk even though a receptionist is not present.

WORKPLACE VIOLENCE PREVENTION PROGRAM

PURPOSE

In accordance with New York State Labor Law, Section 27-b, “Duty of Public Employers to Develop and Implement Programs to Prevent Workplace Violence,” public employers are required to perform a workplace evaluation or risk evaluation at each worksite, and to develop and implement programs to prevent, minimize and respond to incidents of Workplace Violence. The law is designed to ensure that the risk of workplace assaults and homicides are regularly evaluated by employers and that workplace violence protection programs are implemented to prevent and minimize the hazard to public employees. The New York State Department of Labor (DOL) has issued regulations designed to implement Section 27-b, at 12 NYCRR Part 800.6. Both Section 27-b and DOL’s regulations require agencies and authorities to develop and implement a written workplace violence prevention program. This document constitutes NYSERDA’s written program.

POLICY

NYSERDA endeavors to ensure that its workforce is free from violence, threats of violence, harassment, intimidation, and disruption. The Authority will not tolerate any acts of violence in the workplace. NYSERDA is committed to the following:

- Fostering a non-hostile work environment and encouraging positive work relationships
- Reducing the risk of violence in the workplace and ensuring Contracted Resources’ personal safety
- Responding immediately and effectively to threats or acts of violence
- Promoting the resolution of conflict
- Providing regular training for all Contracted Resources on NYSERDA’s workplace violence prevention program

NYSERDA will take action against any conduct that violates contracted resource safety and will support any contracted resource who becomes a target of such behavior while at work.

NYSERDA will endeavor to prohibit domestic violence or abuse from intruding into the workplace and to ensure that our policies and procedures are responsive to the needs of and do not discriminate against the victims of domestic violence

New York State Department of Labor regulations define workplace violence as: any physical assault or acts of aggressive behavior occurring where a contracted resource performs any work-related duty in the course of their assignment including but not limited to:

- (i) An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee or contracted resource;
- (ii) Any intentional display of force which would give an employee or contracted resource reason to fear or expect bodily harm;
- (iii) Intentional and wrongful physical contact with a person without their consent that entails some injury;
- (iv) Stalking an employee or contracted resource with the intent of causing fear of material harm to the physical safety and health of such employee or contracted resource when such stalking has arisen through and in the course of employment or assignment.

PROCEDURES

It is the Authority's goal to minimize the opportunities for violence in the workplace. Accordingly, the Authority has adopted the following procedures:

- **Training** - All Contracted Resources are expected to attend annual training regarding Workplace Violence Prevention. All Contracted Resources are expected to be familiar with building alarm systems and the steps to maintain their personal safety.
- **Visitors** - All visitors are to sign in and wear a visitor badge. All visitors are to be escorted by an employee or contracted resource at all times. Contracted Resources should be alert to anyone loitering near the office for no apparent reason. Do not allow anyone to follow you into the building without checking with the receptionist - This is called tailgating. Contracted Resources should not hesitate to ask a person they do not recognize for her or his name and identification. Contracted Resources should report any suspicious persons or activities to your supervisor or manager and the Director of Human Resources.
- **Exterior entrances** - All exterior entrances are to be locked at all times from the outside except for the front door. No doors are to be propped open. No emergency exits are to be blocked.
- **Alarm systems** - Alarm systems will be checked at least every six months to ensure that they are in working order by the Facility Manager.
- **Company vehicles** - Contracted Resources are not to pick up strangers, hitchhikers or other individuals not well known to them in a company vehicle.
- **Prosecution** - Any individual engaging in violence against the Authority, its employees or its property will be prosecuted to the full extent of the law.
- **Discipline** - Any employee who engages in workplace violence is subject to discipline including immediate discharge. Employees are expected to cooperate with any investigation. Employees who fail or refuse to cooperate may be disciplined, which may include discharge. Any employee who provides false information or omits information during an investigation is subject to discipline including discharge.
- Responsibilities of Contracted Resources

All Contracted Resources are responsible for the following:

- Refraining from engaging in workplace violence
- Reporting to supervisors or managers and the Director of Human Resources any dangerous or threatening situations that occur in the workplace
- Bringing to the supervisor's or manager's and the Director of Human Resources' attention any off-premises circumstances that may affect workplace safety such as any court-issued orders of protection.

NYSERDA employees and Contracted Resources are required to immediately report any threatening, coercive or violent behavior. This includes instances where an employee is impacted by such conduct or witnesses the abuse of others. The obligation of prompt reporting is each employee's responsibility. It is essential to keeping the workplace safe for all. Under-reporting of threats and incidents of violence hinders efforts to increase safety.

In responding to threatening or violent behavior, no contracted resource should take any action that will compromise their own safety or the safety of others. No person, other than law enforcement personnel, should attempt to restrain, remove or forcibly disarm an armed or dangerous person.

In an emergency or a threatening situation in the workplace, the following guidelines are recommended:

<u>Situation</u>	<u>Action</u>
Emergency - immediate threat to your safety or to the safety of others.	<ol style="list-style-type: none">1. Secure your own safety2. Dial 911 and seek medical care if anyone is injured<ul style="list-style-type: none">• Provide exact location information (street address & floor of emergency)• Type of emergency3. Warn others who may be in danger

	4. Notify your supervisor or manager and the Director of Human Resources
Situations that do not represent an immediate threat	Report the situation to your supervisor or manager and the Director of Human Resources
Robbery	<p>In the event of a robbery, all money is to be given to the robber and Contracted Resources are to cooperate fully with the robber's demands.</p> <p>Once safe, call 911 and notify your supervisor or manager and the Director of Human Resources.</p>
Theft	In the event of theft of personal or company property, please report this immediately to the Director of Human Resources and to the Facilities Manager who will take appropriate action
Person says they intend to cause harm to self and/or others	Report immediately to Human Resources
Bomb threats	<ol style="list-style-type: none"> 1. Immediately notify your supervisor or manager and the Director of Human Resources so everyone can be evacuated safely 2. Evacuate to pre-arranged evacuation points 3. Dial 911 and seek medical care if anyone is injured <ul style="list-style-type: none"> • Note specific characteristics of the caller (such as gender, voice quality, accent, if any, background noise, etc.) and time of call • Provide specific information relevant to the bomb threat (such as location if stated, time the threat was received and in what manner; what type of explosive if specified, etc.) 4. Take headcount

Explosive material is extremely hazardous and should be handled by Hazardous Device Unit experts only. Do not attempt to handle. If you see what appears to be an explosive device or suspicious package in the workplace, leave the area and report it to the authorities immediately.

Responsibilities of Human Resources

The Director of Human Resources or designee is the Authority's Workplace Violence Prevention Program Administrator. The Director will investigate and coordinate the Authority's response to any report of prohibited conduct.

When a threat or act of violence is reported, Human Resources will promptly conduct a thorough fact-finding review, to be compiled into the NYSERDA Workplace Violence Incident Report located on NYSERDA's Human Resources SharePoint Page.

NYSERDA may utilize the resources of its contracted Employee Assistance Program (EAP) based on an assessment of the needs of individual employees, Contracted Resources or a group of workers. The services provided will be organized by the EAP using community resources and trained professionals where necessary.

Human Resources will review incidents and may obtain assistance from professional consultants to ascertain possibly dangerous conditions and recommend corrective action and changes in procedures or training.

NYSERDA Human Resources will arrange for training on the prevention of workplace violence including periodic training to update skills.

Training will cover the following topics:

- Requirements of the regulation
- Review of NYSERDA's policy and guidelines – where it is kept and how to obtain a copy
- Risk factors found and the most common causes of violence
- How individuals can protect themselves and review of the work controls, procedures, devices or practices individuals can use to protect themselves
- Awareness and recognition of warning signs
- Skills for resolving conflict and monitoring the climate of the workplace
- Procedures for obtaining crisis counseling, use of EAP and other resources

Prohibition Against Retaliation – An employee or contracted resource will not be subject to criticism, reprisal, retaliation, demotion, discrimination, disciplinary action, or other adverse action for making a good faith report of acts pursuant to this program.

POLICY REGARDING ALCOHOL AND CONTROLLED SUBSTANCES IN THE WORKPLACE

It is the policy of NYSERDA that Contracted Resources are prohibited from manufacturing, distributing, selling, attempting to sell, possessing, purchasing controlled substances, and from using non-prescribed controlled substances while at the workplace or while performing in a work-related capacity. Employees doing so will be subject to criminal, civil and disciplinary penalties. Such illegal acts, even if engaged in while off duty, may result in disciplinary action. An employee may possess and use a controlled substance which is properly prescribed for him or her by a physician. Employees are also prohibited from the use of or impairment from alcohol or controlled substances while on the job or on the work site at any time.

An employee may be required to undergo a confidential medical examination to ascertain the cause of impairment or disability when there exists a "reasonable suspicion," based on specific, reliable observations, that such impairment or disability is a result of the use of alcohol or a controlled substance. If alcohol or controlled substance use or impairment is found to exist, NYSERDA will determine the appropriate course of action, which may include disciplinary action, referral to the Employee Assistance Program, or the use of disability leave procedures.

The Federal Drug-Free Workplace Act of 1988, amended in 1994, requires that all agencies that have contracts with the United States Government that exceed \$100,000, and all agencies that receive Federal grants, maintain a drug-free workplace. If a contracted resource is involved in work on a contract or grant covered by this law, they are required to notify the Director of Human Resources in writing of any criminal drug statute conviction, for a violation occurring in the workplace or at a work site, not less than five days after the conviction. Agencies covered by this law must notify the Federal government of the conviction and must take personnel action against an employees convicted of a drug abuse violation.

Drug Addiction and Alcoholism under the Human Rights Law and Regulations.

An individual who is currently using drugs illegally is not protected under the disability provisions of the Human Rights Law. A test to determine the illegal use of drugs is not considered a medical test that is

governed by the Human Rights Law. The law protects individuals who are recovered or recovering drug addicts or alcoholics, and may protect alcoholics if the alcoholism does not interfere with job performance; intoxication or use of alcohol on the job is not protected. Alcoholism or drug dependency may qualify as a disability (see Section 4).

SMOKING POLICY

Smoking is prohibited inside NYSERDA's offices. Consistent with practices to improve indoor air quality promoted by NYSERDA, Contracted Resources and guests are encouraged, whenever practicable, to refrain from smoking near any entrance to NYSERDA's offices.

PUBLIC REPRESENTATION

An individual on assignment through a NYSERDA contract cannot reference NYSERDA as their employer. This includes publicly including on social media (e.g. LinkedIn, Facebook, etc.) as well as via email signature blocks. When handling external and internal matters, all Contractor staff must refer to themselves as "Independent Contractors".

My signature below indicates that I understand and agree to abide by the policies and procedures listed above. Violation of or failure to abide by these policies and procedures may result in termination of the Contracted Resource's assignment.

Print Name

Signature

Company Name

Date

Exhibit G

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](#) 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](#))
- 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 \(NYS-S14-002\)](#), and [NYS Information Security Controls \(NYS-S14-003\)](#). 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.

Print Name

Signature

Company Name

Date

Exhibit H

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.

Print Name

Signature

Company Name

Date

EXHIBIT I
Article 15-A (MWBE) Contract Provisions (non-construction)

I. General Provisions

- A. The New York State Energy and Research Development Authority (NYSERDA) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSERDA, to fully comply and cooperate with NYSERDA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to NYSERDA pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, NYSERDA hereby establishes an overall goal of XX% for MWBE participation, XX% for New York State-certified minority-owned business enterprise (“MBE”) participation and XX% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address:
<https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor’s outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by NYSERDA with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to NYSERDA within seventy-two (72) hours after the date of the notice by NYSERDA to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, NYSERDA may require the Contractor or subcontractor to adopt a model statement (see Attachment 1– Equal Employment Opportunity Policy Statement).
4. The Contractor’s EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph “E” of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

[PLEASE NOTE THAT THIS REQUIREMENT “C” IS ONLY APPLICABLE WHERE A STATE AGENCY EXPECTS TO ENTER INTO A STATE CONTRACT WITH A TOTAL EXPENDITURE IN EXCESS OF \$250,000. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT]

C. Attachment 3 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by NYSERDA.

WORKFORCE UTILIZATION REPORTS SHALL BE COLLECTED ON A MONTHLY BASIS FOR CONSTRUCTION CONTRACTS AND A QUARTERLY BASIS FOR ALL OTHER CONTRACTS. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT

D. Attachment 5 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by NYSERDA on a [MONTHLY/QUARTERLY] basis during the term of the Contract.
 2. Separate forms shall be completed by the Contractor and any subcontractors.
 3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan (Attachment 2)

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by NYSERDA, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to NYSERDA, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NYSERDA shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers (Attachment 6)

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS,

or a non-electronic method provided by NYSERDA. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSERDA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

- B. If NYSERDA, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, AGENCY] may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report (Attachment 4)

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to NYSERDA by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where NYSERDA determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to NYSERDA liquidated damages.

[PLEASE NOTE THAT WHILE ARTICLE 15-A REQUIRES THE INCLUSION OF LIQUIDATED DAMAGES IN THE CONTRACT, ARTICLE 15-A DOES NOT PROVIDE THE METHOD TO BE USED FOR CALCULATING LIQUIDATED DAMAGES. THEREFORE, THE CALCULATION SET FORTH IN THE NEXT PARAGRAPH IS JUST ONE OF A NUMBER OF ACCEPTABLE METHODS THAT MAY BE USED IN CALCULATING LIQUIDATED DAMAGES. PUNITIVE DAMAGES MAY NOT BE USED IN DETERMINING LIQUIDATED DAMAGES. NOTE: THIS LANGUAGE SHOULD BE DELETED FROM THE FINAL CONTRACT]

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSERDA, the Contractor

shall pay such liquidated damages to NYSERDA within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

Minority- and Woman-Owned Business Enterprise

NEW YORK
STATE OF
OPPORTUNITY

NYSERDA

I, _____, the (awardee/contractor) _____

agree to adopt the following policies with respect to the project being developed or services rendered at:

MINORITY- AND WOMAN-OWNED BUSINESS ENTERPRISE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

1. Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
2. Request a list of State-certified M/WBEs from NYSERDA and solicit bids from them directly.
3. Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
4. Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
5. Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
6. Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EQUAL EMPLOYMENT OPPORTUNITY

1. This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, ; will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination; and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
2. This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, .
3. At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, ; and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
4. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
5. This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 20____

Signature: _____ Print: _____

Minority- and Woman-Owned Business Enterprise

Consultant Name and Address	Contract Number	Contract Goals		
Telephone: _____ Federal ID No: _____		Contract Value: \$ _____ MBE _____ % – \$ _____ SDVOB _____ % – \$ _____ WBE _____ % – \$ _____		
List all MWBE/SDVOB Subcontractors Name, address, phone number, and email address for each subcontractor. (Check appropriate box if firm is a certified MBE/WBE/SDVOB)	Certifications/Designations	Estimated Start/End Date	Agreement Amount	Brief Description of Work to be Performed
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB	Start Date: _____ End Date: _____	\$ _____	
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB	Start Date: _____ End Date: _____	\$ _____	
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB	Start Date: _____ End Date: _____	\$ _____	
Prepared by: (please print) _____ Name _____ Phone _____ Title _____ Email _____ Signature _____ Date _____			MBE Sub Total \$ _____ % WBE Sub Total \$ _____ % SDVOB Sub Total \$ _____ % Grand Sub Total \$ _____ %	

ATTACHMENT 3 — STAFFING PLAN

Minority- and Woman-Owned Business Enterprise



Reporting Entity: ☐ Contractor ☐ Subcontractor

Contractor Name: _____

Contractor Address: _____

Contractor Number: _____

Preparer's Name: _____

Preparer's Title: _____

Date: _____

Preparer's Signature: _____

Subcontractor Name: _____

Occupation Classifications(SOC Major Group)	SOC Job Title	EEO Job Title	SOC Job Code	Minority %	Women %

Number of Employees and Hours Worked by Race/Ethnic Identification During Reporting Period																			
White				Black/African American				Hispanic/Latino				Asian/Native Hawaiian or Pacific Islander				Native American/Alaskan Native			
Male		Female		Male		Female		Male		Female		Male		Female		Male		Female	
# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours	# Employees	# Hours



Instructions for Submitting the Workforce Utilization Staffing Plan Report

The Workforce Utilization Report ("Report") is to be submitted on a **quarterly basis**, during the life of the contract, to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total workforce, information on the contractor's and/or subcontractor's total workforce shall be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to Doreen.Knudsen@nyserda.ny.gov within ten (10) days of the end of each quarter.

Instructions for Completing the Workforce Utilization Report

1. Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. Enter the number of the contract that the Report applies to along with the name and address of the contractor or subcontractor for which the Report has been prepared. A separate report form will be required for each contract.
3. Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report.
4. Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor's or subcontractor's total workforce.
5. Verify that job titles are provided under the column titled "SOC Job Title" for each employee whose work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the "EEO 1 Job Categories" "SOC Job Title" and "SOC Job Code" columns from the list of job categories, SOC titles, and SOC codes reflected on the attached Classification Guide.
6. In the first group of boxes, identify the number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. In the second group of boxes, identify the number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
8. Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact Doreen Knudsen by email at Doreen.Knudsen@nyserda.ny.gov.

ATTACHMENT 4 — COMPLIANCE REPORT

Minority- and Woman-Owned Business Enterprise



Contract Number: _____ Date: _____

PRIME CONTRACTOR INFORMATION

Company Name: _____

Address: _____

Telephone: _____ Federal ID# _____

Contract Award Amount: \$ _____

Brief Description of Work: _____

As evidence of (_____) progress toward achievement of the NYSERDA MBA and WBE goals, and in accordance with terms and conditions of contract No.____, the following information is here with submitted.

Signature/Title of Authorized Representative: _____

SUBMITTAL ITEMS

Provide a description of the work force to be utilized on the State contract, including the work force of any subcontractors, broken down by specified ethnic background, gender, and Federal occupational categories.

1. Provide the names, addresses and telephone numbers of each M/WBE you are actually using in compliance with your M/WBE goal.
2. Provide a brief description of work performed by the M/WBE, their scheduled dates for performance and current working status.
3. Provide a copy of your written agreement with the M/WBE. (A one-time request.)
4. In the event, you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
5. Provide the actual amounts of payments made to any M/WBES as of the date the work force utilization report is submitted. Documentation must include copies of canceled checks.
6. Provide the name, title and telephone number of person(s) responsible for submitting work force utilization reports.
7. Compliance Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

ATTACHMENT 5 — UTILIZATION REPORT

Minority- and Woman-Owned Business Enterprise



Contract Number: _____ Date: _____

PRIME CONTRACTOR INFORMATION

Company Name: _____

Address: _____

Telephone: _____ Federal ID# _____

Contract Award Amount: \$ _____

Brief Description of Work: _____

As evidence of (_____) progress toward achievement of the NYSERDA MBA and WBE goals, and in accordance with terms and conditions of contract No. ____, the following information is here with submitted.

Signature/Title of Authorized Representative: _____

SUBMITTAL ITEMS

1. If the work force of the contractor and/or subcontractors has changed since the last work force utilization report, provide
1) the total number of employees performing work on the State contract; and 2) the contractor's and all subcontractor's work force on the State contract broken down by specified ethnic background, gender, and Federal occupational categories.

If the contractor's and/or subcontractor's work force has not changed since the last work force utilization report, check here:

2. Work Force Utilization Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

ALTERNATIVE SUBMITTAL ITEMS

In the event that the Contractor cannot separate the workforce to be utilized in the performance of the NYSERDA contract from its total workforce, the Contractor shall submit, on a semi-annual basis:

1. The total workforce of the Contractor described categorically by: specified ethnic background, gender and the Federal occupational data.
2. The Contractor acknowledges that the overall goal of an equal employment opportunity program involves the implementation of procedures and methods for the identification, recruitment and employment of minority group members and women.

ATTACHMENT 6 — REQUEST FOR WAIVER

Minority- and Woman-Owned
Business Enterprise



Contract Number: _____ Date: _____

PRIME CONTRACTOR INFORMATION

Company Name: _____

Company Name: _____

Address: _____

Telephone: _____ Federal ID# _____

Contract Award Amount: \$ _____

Brief Description of Work: _____

I, (_____) hereby request a partial or total (circle one) waiver of my MBE and/or WBE goals as established in contract No. _____ I agree to attain _____ % MBE participations and _____ % WBE participation of the total contract price. To substantiate and demonstrate my good faith efforts, the following information is submitted for the authority's review and approval.

Signature/Title of Authorized Representative: _____

** If a partial waiver is requested, insert the appropriated percentage here, if it is a total waiver, put 0% in this spot*

SUBMITTAL ITEMS

1. Provide a statement setting forth your basis for requesting a partial or total waiver.
2. Provide all names of general circulation, trade association and M/WBE-oriented publications in which you solicited M/WBEs for the purposes of complying with your participation levels.
3. List all dates solicitations for M/WBE participation were published in any of the above publications.
4. List all M/WBEs appearing in the NYS Directory of certified vendors which were solicited for purposes of complying with your M/WBE participation levels.
5. Provide proof of all dates on which solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitations if an identical solicitation was made to all M/WBEs.
6. Provide copies of responses made by M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans or specifications made available to M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Contractor, and M/WBEs undertaken for purposes of complying with your M/WBE participation levels.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address and telephone number of contractor's representative authorized to discuss and negotiate this waiver request.
11. Have you explored or identified any other area where your company can implement an effective equal employment opportunity program to expand the employment opportunities of minority group members and women? If so, please provide the data supporting such efforts and the results.

Insert Evidence of Good Faith Effort here, or attach documentation of good faith effort to this form.

EXHIBIT J

Article 17-B (SDVOB) Contract Provisions (non-construction)

1. **General Provisions**

a. NYSERDA is required to implement the provisions of New York State Executive Law Article 17-B and Title 9, Subtitle G Part 252 of the New York Codes, Rules and Regulations (the “Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

b. The Contractor to the subject contract (“Contractor” and “Contract” or “Agreement” respectively, agrees to fully comply and cooperate with NYSERDA in the implementation of New York State Executive Law Article 17-B and the Regulations. These requirements include the promotion of opportunities for maximum feasible participation of certified service-disabled veteran-owned business enterprises (SDVOB) in the performance of NYSERDA contracts and among other things, that NYSERDA establish goals for maximum feasible participation of New York State Certified SDVOBs in the performance of New York State contracts. Contractor’s demonstration of “good faith efforts” pursuant to the Regulations shall be a part of these requirements.

c. Failure to comply with all of the requirements herein may result in a breach of contract, leading to the withholding of funds or other such actions as allowed by the Contract.

d. The Contractor further fully agrees to cooperate with NYSERDA in the implementation of such additional requirements as may be required by the Division of Service-Disabled Veterans’ Business Development located within OGS.

2. **Contract Goals by SDVOBs** NYSERDA's participation goals for this procurement are 6% for SDVOBs. This is in addition to required MWBE participation goals which are discussed in Attachments E.

3. **Participation Goals** The Contractor represents that it has reviewed and familiarized itself with the Regulations (see <http://ogs.ny.gov/About/Regs/docs/part252.pdf>) which are incorporated herein by this reference. Any conflicts between this Agreement and the Regulations shall be resolved in favor of the Regulations. The Contractor shall, in accordance with the Regulations, make good faith efforts and, in a manner that can be established in documentary form, solicit active participation by certified SDVOBs, as identified in the applicable state directory maintained by OGS (see http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf). Additionally, the Contractor is encouraged to contact the Division of Service-Disabled Veterans’ Business Development at 844-579-7570 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing SDVOBs on the contract. In furtherance thereof, the Contractor has submitted a completed SDVOB Utilization Plan (see **Attachment 8**) and/or a NYSERDA approved Waiver Form (see **Attachment 10**), which information sets forth NYSERDA’s and Contractor’s agreed upon participation goals during the performance of this Agreement.

4. **Compliance Reporting** In order to demonstrate compliance with the stated Contract goals set forth above, Contractor shall be required to submit compliance reports. Unless NYSERDA has granted a

total waiver or Contractor is a certified SDVOB with OGS and is responsible for 100% of the performance of this Agreement, the Contractor shall submit to NYSERDA an SDVOB Compliance Report on a quarterly basis in the form attached hereto as **Attachment 9**. The Contractor's failure to follow the applicable reporting requirements or failure to comply with the stated participation goals in the previous Section set forth above may result in NYSERDA's submission of a complaint to OGS Division of Service-Disabled Veterans' Business Development

5. **Waiver Requests** In Accordance with the Regulations, Contractor may submit, at any time prior to its request for final payment, a request to NYSERDA for total or partial waiver of the requirements of the SDVOB contract goal. NYSERDA may grant a partial or total waiver of the requirements of the Contract goals established hereunder. Prior to granting or denying a waiver, NYSERDA shall evaluate the Contractor's good faith efforts and may consider the factors set forth in the Regulations. If NYSERDA, upon review of the SDVOB Utilization Plan and updated Quarterly SDVOB Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, NYSERDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days. Such response may include a request for a partial or total waiver of SDVOB Contract goals. In the event NYSERDA refuses to grant a waiver, the proposer may file a complaint with NYSERDA in accordance with the Regulations and as stated below.

6. **Contractor and NYSREDA Complaints** If the Contractor becomes deficient with regard to its Utilization Plan as provided above, the Contractor may file a complaint with NYSERDA. The complaint should state the reasons for the complaint, together with a demand for relief and include the following information: (1) the Contractor's receipt of a written determination by NYSERDA that the contractor is not entitled to a partial or full waiver of the SDVOB goals; or (2) the Contractor's receipt of a written determination by NYSERDA that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals. NYSERDA shall provide the Contractor with an opportunity to be heard and shall conduct a review and shall render a determination regarding the merits of the complaint. Within 20 days of NYSERDA's determination that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with the SDVOB goals, NYSERDA may, after giving the Contractor an opportunity to be heard, make a determination that the Contractor has failed to meet the contract goals and assess such other damages as were identified in the Contract.

7. **Article 17-B Compliance Monitoring** NYSERDA is responsible for monitoring Contractor's compliance with the applicable Regulations. In that regard, NYSERDA may, at its discretion, notify the Contractor in writing of NYSERDA's intent to inspect relevant records and documents related to Article 17-B compliance. NYSERDA shall analyze and consider such records, documents and other data to determine whether the Contractor has made conscientious and active efforts to employ and utilize SDVOBs on the State contract.

8. **Violations** Any Contractor who willfully and intentionally fails to comply with the SDVOB contract goals and requirements contained in the Agreement and Regulations shall be liable to NYSERDA for damages as otherwise specified in the Agreement. Damages shall be calculated based on the actual cost incurred by NYSERDA related to NYSERDA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing SDVOB programmatic goals.

Article 17-B (SDVOB) Provisions (non-construction)

Attachment 7

New York State Law

Pursuant to New York State Executive Law Article 17-B, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified service-disabled veteran-owned business enterprises (SDVOB) in the performance of NYSERDA contracts. Executive Law Article 17-B and its associated regulations require, among other things, that NYSERDA establish goals for maximum feasible participation of New York State Certified SDVOBs in the performance of New York State contracts.

Contract Participation Goals by SDVOBs on NYSERDA procurements

In accordance with Article 17-B of the N.Y. Executive Law (“Article 17-B”) and its associated regulations, NYSERDA has established certain contract participation goals for certified SDVOBs. NYSERDA's participation goals for contracts awarded pursuant to this solicitation are **6%** for SDVOBs. This is in addition to required MWBE participation goals which are discussed in Attachments 1-6. The SDVOB participation goal is subject to the requirements of Article 17-B, and its implementing regulations as set forth in Title 9, Subtitle G Part 252 of the New York Codes, Rules and Regulations (the “Regulations”).

By submitting a proposal, the Proposer represents that it has reviewed and familiarized itself with the Regulations (see <http://ogs.ny.gov/About/Regs/docs/part252.pdf>) which are incorporated herein by this reference. Any conflicts between the solicitation and the Regulations shall be resolved in favor of the Regulations. Each proposer shall, in accordance with the Regulations, make good faith efforts and, in a manner that can be established in documentary form, solicit active participation by certified SDVOBs, as identified in the applicable state directory maintained by OGS.

(see http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf)

Additionally, proposers are encouraged to contact the Division of Service-Disabled Veterans' Business Development at 844-579-7570 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing SDVOBs on the contract.

Utilization Plan

NYSERDA requires every proposer to undertake good faith efforts to actively solicit SDVOB participation in connection with the potential award of a NYSERDA contract. An SDVOB Utilization Plan (see Attachment 2) must be submitted with every proposal.

Compliance Reporting

Contract compliance reports are required to be submitted for all contracts that require a Utilization Plan. See Attachment 3.

Waiver Requests

A proposer may request a total or partial waiver of the requirements of the SDVOB participation goal (see Attachment 4). Prior to granting or denying a waiver, NYSERDA will evaluate the proposer's good faith efforts and may consider the factors set forth in the Regulations. In the event NYSERDA refuses to grant a waiver, the proposer may file a complaint with NYSERDA in accordance with the Regulations.

Contractor Disqualification

If NYSERDA determines, after having given notice of deficiency, that a contractor has failed to submit an acceptable Utilization Plan or satisfactorily document its good faith efforts, NYSERDA may proceed with the next ranked bidder if NYSERDA has not received a request for a review of such finding from the

contractor. NYSERDA shall conduct such review providing the contractor with an opportunity to be heard and make a determination that confirms the contractor is disqualified or reaffirms that the contractor is qualified. Such determination shall constitute a final agency determination.

Contractor and NYSERDA Complaints

Subsequent to the award of a contract to a contractor that becomes deficient with regard to its Utilization Plan, the contractor may file a complaint with NYSERDA. The complaint should state the reasons for the complaint, together with a demand for relief and include the following information: (1) the contractor's receipt of a written determination by NYSERDA that the contractor is not entitled to a partial or full waiver of the SDVOB goals; or (2) the contractor's receipt of a written determination by NYSERDA that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals. NYSERDA shall provide the contractor with an opportunity to be heard and shall conduct a review and shall render a determination regarding the merits of the complaint. Within 20 days of NYSERDA's determination that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with the SDVOB goals, NYSERDA may after giving the contractor an opportunity to be heard, make a determination that the contractor has failed to meet the contract goals and assess such other damages as were identified in the contract.

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment 8

SDVOB Utilization Plan Form

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Proposal/Contract Amount \$ _____

Brief Description of Work _____

Prime Contractor SDVOB Status ☐ SDVOB ☐ Non-SDVOB

II. I, _____ HEREBY AGREE TO THE ____% CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE (SDVOB) GOAL AS SET FOR IN THIS SOLICITATION/CONTRACT. I FURTHER SUBMIT THE BELOW NYS CERTIFIED SDVOBs FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS SOLICITATION/CONTRACT.

NYS Certified SDVOBs

Name: _____

Address: _____

Phone: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

Name: _____

Address: _____

Phone: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

Name: _____

Address: _____

Phone: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

Name: _____

Address: _____

Phone: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

The Contractor shall undertake "good faith" efforts to actively solicit SDVOB participation in connection with its potential award of the NYSERDA contract.

- III. Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.
- IV. If the Contractor anticipates that it will not be able to meet the contract SDVOB participation levels, a waiver request must be submitted with the proposal (see Attachment 10).

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established SDVOB goal. I further declare that the utilization of SDVOBs for non-commercially useful functions may not be counted towards utilization of SDVOBs in the utilization plan.

Signature: _____

Name: _____

Title: _____

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

**Attachment 9
SDVOB Compliance Report Form**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

Prime Contractor SDVOB Status ☐ SDVOB ☐ Non-SDVOB

II. AS EVIDENCE OF CONTRACTOR'S PROGRESS TOWARD THE ACHIEVEMENT OF THE NYSERDA SDVOB GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT # _____, THE FOLLOWING INFORMATION IS SUBMITTED.

III. SUBMITTAL ITEMS

1. Provide the name, addresses and telephone number of each SDVOB you are actually using in compliance with your SDVOB goal.
2. Provide a brief description of the work being performed by the SDVOB, their scheduled dates for performance and current working status.
3. Provide a copy of your written agreement with the SDVOB (A one-time request)
4. In the event you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
5. Provide the actual amounts of payments made to any SDVOB as of the date of the completion of the utilization report
6. Provide the name, title and telephone number of the person responsible for submitting the work force utilization reports.
7. Compliance Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

IV. WAIVER REQUESTS

If you are unable to meet the SDVOB goal established in your contract, contact NYSERDA for information on how to apply for a partial or total waiver request of the SDVOB goal in your contract.

Signature: _____

Name: _____

Title: _____

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)
Attachment 10
SDVOB WAIVER FORM

Solicitation or Contract No.: _____ Date: _____

1. PRIME CONTRACTOR INFORMATION

Company Name: _____

Address: _____

Telephone No.: _____

Federal ID #: _____

Brief Description of Work:

2. I hereby request a **Partial** or **Total** (circle one) waiver of the certified SDVOB goals as established in the solicitation or contract identified above. To substantiate and demonstrate my good faith efforts the following information is submitted for the Authority's review and approval.

Signature of Authorized Representative

Print name and title Authorized Representative

1. Provide a statement setting forth the basis for requesting a partial or total waiver of the certified SDVOB goal established in the solicitation:
2. List the certified SDVOBs that were solicited in writing to provide bids for purposes of complying with the SDVOB goal requirements of the solicitation.
3. Provide proof of dates on which such solicitations were made in writing and copies of said solicitations as well as copies of responses you received.
4. Provide a description of any contract documents, plans or specifications that were made available to certified SDVOBs for purposes of soliciting their bids.
5. Provide the dates and manner in which the above documents were made available.
6. Provide information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs
7. Attach any documentation you have of negotiations between the contractor and the certified SDVOB undertaken for purposes of complying with the goal requirements in the solicitation.
8. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
9. Provide the name, title, address and telephone number contractor's representative authorized to discuss and negotiate this waiver request.

Waiver request is: ____ Granted ____ Denied

By: _____ Date: _____

NYSERDA may grant a partial or total waiver of the goal requirements established in the solicitation/contract upon the submission of a waiver form by a contractor documenting good faith efforts by the contractor to meet the goal requirements, and in consideration of the following factors:

1. The number and types of certified SDVOBS available to perform the work
2. The total dollar value of the contract and the scope of work to be performed
3. The project size and project term
4. The availability of other business enterprises located in the region qualified to do the work
5. The ability of certified SDVOBs located outside the region to perform the work
6. The extent to which the contractor's own actions contributed to its inability to meet the goal

In addition to the information provided by the contractor on this form, NYSERDA may also consider the following to determine whether the contractor has demonstrated good faith efforts:

1. Where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontractor or supplier opportunities in the contract
 2. The number of certified SDVOBs in the region that could, in the judgment of NYSERDA, perform work required by the contract
 3. The actions taken by the contractor to contact and assess the ability of certified SDVOBs located outside of the region in which the contract is to be performed to participate on the contract
 4. Whether the contractor provided relevant plans, specifications or terms and conditions to certified SDVOBs sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier
 5. The terms and conditions of any subcontractor or provision of suppliers offered to certified SDVOBs and a comparison of such terms and conditions of those offered in the ordinary course of the contractor's business
 6. Whether the contractor offered to make up any inability to comply with the certified SDVOB goals in the subject contract in other state contracts being performed or awarded to the contractor
 7. The extent to which the contractor's actions contributed to its inability to meet the goals
 8. Whether the contractor knowingly utilized one or more certified SDVOBs, in the performance of the contract, that contractor knew or reasonably should have known could not perform a commercially useful function
 9. Whether the contractor submitted compliance reports which identified certified SDVOBs that the contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned
 10. Any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.
-