

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

SAMPLE AGREEMENT

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period:
7. 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, Article 15-A (MWBE) Contract Provisions (non-construction); and
- Exhibit F, Article 17-B (SDVOB) Contract Provisions (non-construction).

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

[CONTRACTOR]

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

Signature: _____

Signature: _____

Name _____

Name
Title

Title _____

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth at Exhibit A hereto.

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

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

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

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

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

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

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

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

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

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

Performance of Work

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

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

Section 2.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better vesting in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment. If, after six (6) months following the later of (a) Contractor's completion of these obligations, (b) completion of the Work, or (3) the termination of this Agreement, NYSERDA has not removed any such equipment, it will be deemed abandoned and become the property of the Contractor. Any such removal of equipment by NYSERDA shall be at NYSERDA's expense.

Article III

Deliverables

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

Article IV

Payment

Section 4.01. Payment Terms. In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement. Subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D, payment will be made according to the Milestone Billing Events set forth in Exhibit A, Statement of Work.

Section 4.02. Payments

(a) Invoicing: Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event, the Contractor shall submit the identified deliverables, including documentation reasonably sufficient to demonstrate completion and evidence of the Contractor's cost share, if applicable, and may request payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work. The agreement number shown as Item 1 on page 1 of this Agreement, as well as the purchase order number, which will be generated and provided to the Contractor upon contract execution, should be referenced when submitting documentation of deliverables. Documentation shall be submitted electronically via email to the assigned Project Manager along with a statement "I hereby request that upon NYSERDA's approval of these deliverable(s), payment of the corresponding milestone payment amount be made in accordance with NYSERDA's Prompt

Payment Policy, as detailed in the NYSERDA agreement” or, if this project is managed through NYSERDA’s Salesforce application, via NYSERDA’s Salesforce Contractor Portal with the Contractor’s log-in credentials.

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

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

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

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 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. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action and shall take all reasonable steps to prevent its

Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

Article VI

Schedule; Acceptance of Work

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

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

Article VII

Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

Article VIII

Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information.

(a) 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.

Section 8.02. Representations.

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

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

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

Section 8.04. Assignment of Rights. The Contractor hereby irrevocably assigns, conveys and otherwise transfers to NYSERDA, and its respective successors and assigns, all rights, title and interests worldwide in and to the materials and all copyrights, trade secrets, patents, trademarks, service marks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether now known or hereafter to become known. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA, the Contractor hereby

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

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

Article IX

Warranties and Guarantees

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

- (a) all information provided, and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;
- (b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;
- (c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

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

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

(f) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

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

(h) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work;

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

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement;¹ and

(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.

¹<http://www.nyserda.ny.gov/About/Board-Governance.aspx>

Article X

Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

Article XI

Insurance

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

- (a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

Section 11.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

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

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

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

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

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

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

Section 12.02. Termination.

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

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

(c) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

12.03 Suspension or Termination for Non-Responsibility.

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

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

Article XIII

Independent Contractor

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

(b) Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to,

complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

Article XIV

Compliance with Certain Laws

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

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

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: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

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

Personal Delivery: Reception desk at the above address

[Contractor Name]

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

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

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

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

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Article XVI

Publicity

Section 16.01. Publicity.

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

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

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

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent

to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information

“confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.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 <http://www.ogs.ny.gov/about/regs/ida.asp>).

EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.²

(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

² This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserderda.ny.gov/About/New-York-State-Regulations.aspx>

Controller, marked “Attention: Accounts Payable,” at the Designated Payment Office.

(g)(1) “Receipt of an Invoice” means:

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

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

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

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

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

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

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

504.4. Payment Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

504.11. Court Action or Other Legal Processes.

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

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

Exhibit E
Article 15-A Minority and Women-Owned Business Enterprises (MWBE)
Contract Provisions (non-construction contract)

1. General Provisions.

(a) NYSERDA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-144 (“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 (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. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). 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”) or other applicable federal, state, or 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 withholding of funds or such other actions, liquidated damages pursuant to Section 9 of these provisions or enforcement proceedings as allowed by the Contract.

(d) The Contractor further agrees to fully cooperate with NYSERDA in the implementation of such additional reporting requirements as may be required by the Division of Minority and Women’s Business Development during the duration of this Agreement.

2. Equal Employment Opportunities.

(a) 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. If Contractor or Subcontractor does not have an existing EEO policy statement, Contractor or Subcontractor may adopt the model statement provided as **Attachment 1 – Minority- and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement**. Contractor hereby agrees that this policy shall remain in full force and effect during the performance of this Agreement.

(b) During the performance of this Agreement, Contractor agrees to the following:

(i) 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 programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document Contractor’s conscientious and active efforts to employ and utilize minority group members and women in its work force on this Agreement. For these purposes, affirmative action 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.

(ii) At the request of NYSERDA, 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.

(iii) Contractor shall state in all solicitations 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.

(iv) 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.

(c) Contractor shall include, in all subcontracts related to its performance of its obligations in this Agreement, the requirements set forth in Section 2(b) above, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with this Agreement.

(d) The provisions of this Section shall not be binding upon Contractors or its subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from this Agreement, as expressed by its terms.

(e) The requirements of this Section shall not apply to any employment outside New York State or application for employment outside New York State or solicitations or advertisements therefor, or any existing programs of affirmative action regarding employment outside New York State.

3. Contract Goals. For purposes of this procurement, NYSERDA hereby establishes the following goals for MWBE participation: 6% for Minority-Owned Business Enterprises ("MBE") participation and 6% for Women-Owned Business Enterprises ("WBE") participation.

4. Participation Goals. The Contractor represents that it has reviewed and familiarized itself with the regulations related to Article 15-A found at 5 NYCRR Parts 140-144 (see http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf), which regulations (the "Regulations") are hereby incorporated herein by this reference. Any conflicts between this Agreement and the Regulations shall be resolved in favor of the Regulations. 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 MWBE businesses as identified in the applicable state directory maintained by the NYS Empire State Development's Division of Minority and Women Business Development (see <https://ny.newnycontracts.com/>). Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract. In furtherance, thereof, the Contractor has submitted the following information to NYSERDA, which

information sets forth NYSERDA's and Contractor's agreed upon participation goals during the performance of this Agreement:

- (a) A completed MWBE Utilization Plan Form (see **Attachment 2**) and/or a NYSERDA-approved Waiver Form (see **Attachment 6**); and
- (b) A staffing plan of the anticipated workforce to be utilized by the Contractor during this Agreement, or in the case where the workforce to be utilized in the performance of this Agreement cannot be separated out from the Contractor's and/or its subcontractor workforce, information on the Contractor's and/or subcontractor's total workforce. The staffing plan or workforce data, as applicable, is broken down by ethnic background, gender and Federal occupational categories, or other appropriate categories specified by NYSERDA (see **Attachment 3**).

5. Compliance Reporting Requirements. In order to demonstrate compliance with the stated participation and staffing goals as set forth above, Contractor shall be required to submit compliance reports as follows:

- (a) Unless NYSERDA has granted a total waiver or Contractor is a certified MWBE with the Division and is responsible for one hundred percent (100%) of the performance of this Agreement, the Contractor shall submit to NYSERDA an MWBE Compliance Report on a quarterly basis in the form attached hereto as **Attachment 4**; and
- (b) Where the workforce to be utilized during the performance of this Agreement can be separated out from the Contractor's total workforce, the Contractor shall submit to NYSERDA on a quarterly basis, in the form attached hereto as **Attachment 5** (Workforce Employment Utilization Report): 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 or other appropriate categories specified by NYSERDA; or
- (c) In the circumstances where the workforce cannot be separated out from the Contractor's and/or subcontractor's total workforce, the Contractor shall submit to NYSERDA information related to the Contractor's total workforce data broken down by ethnic background, gender and Federal occupational categories on a semi-annual basis, or other appropriate categories specified by NYSERDA.

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 the NYS Empire State Development's Division of Minority and Women Business Development (the "Division") in accordance with the Article 15-A Disqualification and Dispute Resolution Procedures set forth herein.

6. Waiver of participation goal requirements. In accordance with the Regulations § 142.7(c), Contractor may submit, at any time prior to its request for final payment, a request to NYSERDA for partial or total waiver of the MWBE participation goals set forth above. Upon Contractor's submission of a waiver form, NYSERDA may grant a partial or total waiver of the requirements of the participation 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 §142.8. If NYSERDA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE 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 (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals. In the event NYSERDA refuses to grant Contractor a waiver, Contractor may file a complaint with the Division in accordance with the Article 15-A Disqualification and Dispute Resolution Procedures set forth herein. A waiver form is provided in **Attachment 6**.

7. Article 15-A 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 15-A 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 minority group members and women on the State contract.

8. Article Disqualification and Dispute Resolution Procedures. NYSERDA and Contractor hereby agree to be subject to and bound by the disqualification and dispute resolution procedures contained in Article 15-A of the Executive Law (including, without limitation, Sections 312(5), 313(8), 313(9) and 316), and in relevant sections of the Regulations (including, without limitation, Sections 142.12 and 143.6), as and where applicable.

9. Penalties. In accordance with the Regulations §142.13, Contractor hereby agrees that its willful and intentional failure to comply with the M/WBE requirements of Article 15-A as set forth in this Agreement shall create liability to NYSERDA for damages in an amount equal to NYSERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.

ATTACHMENT 1

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MWBE AND EEO POLICY STATEMENT

I, _____, the (a wardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

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:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

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.

Where feasible, divide the work into smaller portions to enhance participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

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.

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.

EEO

(a) 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.

(b) 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, .

(c) 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.

(d) 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.

(e) 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 _____, 2 _____

By _____

Print: _____ Title: _____

ATTACHMENT 2
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MWBE UTILIZATION PLAN FORM

Contract No. _____ Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____
Address _____
Telephone No. () _____ Federal ID # _____
Contract Award Amount \$ _____
Brief Description of Work _____
Prime Contractor M/WBE Status ☐ M/WBE ☐ Non-M/WBE

II. I, _____, HEREBY AGREE TO THE 6% MINORITY OWNED BUSINESS ENTERPRISE (MBE) GOAL AND THE 6% WOMEN OWNED BUSINESS ENTERPRISE (WBE) GOAL AS SET FOR IN THIS CONTRACT NO. _____. I FURTHER SUBMIT THE FOLLOWING NYS CERTIFIED M/WBES FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS CONTRACT.

Signature/Title of Authorized Representative

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

III. MBE SUBMISSIONS

For each MBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

IV. WBE SUBMISSIONS

For each WBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

V. Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.

VI. If the Contractor anticipates that it will not be able to meet the contract M/WBE participation levels, a written detailed explanation must be submitted with the bid or proposal.

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 M/WBE goal.

Name _____ Title _____

ATTACHMENT 3

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) STAFFING PLAN FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

II. I, _____ HEREBY SUBMIT THE FOLLOWING STAFFING PLAN.

Signature/Title of Authorized Representative

III. WORKFORCE DESCRIPTION

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.

I hereby declare that the above information is to the best of my ability and intention correct.

Name _____ Title _____

ATTACHMENT 4

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY MWBE COMPLIANCE REPORT FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work _____

II. AS EVIDENCE OF (_____) PROGRESS TOWARD ACHIEVEMENT OF THE NYSERDA MBE AND WBE GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO., THE FOLLOWING INFORMATION IS HEREWITH SUBMITTED.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. Provide the names, addresses and telephone numbers of each M/WBE you are actually using in compliance with your M/WBE goal.
- ii. Provide a brief description of work performed by the M/WBE, their scheduled dates for performance and current working status.
- iii. Provide a copy of your written agreement with the M/WBE. (A one-time request.)
- iv. In the event you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
- v. 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 cancelled checks.
- vi. Provide the name, title and telephone number of person(s) responsible for submitting work force utilization reports.
- vii. Compliance Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

ATTACHMENT 5

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
WORKFORCE UTILIZATION REPORT FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work _____

II. AS EVIDENCE OF (_____) PROGRESS TOWARD ACHIEVEMENT OF THE
NYSERDA MBE AND WBE GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF
CONTRACT NO. _____, THE FOLLOWING INFORMATION IS HEREWITH SUBMITTED.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. 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: ☐

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

IV. 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:

(i) The total workforce of the Contractor described categorically by: specified ethnic background, gender and the Federal occupational data.

(ii) 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

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY MINORITY WOMEN BUSINESS ENTERPRISE (MWBE) REQUEST FOR WAIVER FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____

Federal ID # _____

Brief Description of Work:

- II. I, (_____) HEREBY REQUEST A PARTIAL OR TOTAL (Circle One) WAIVER OF MY MBE AND/OR WBE GOALS AS ESTABLISHED IN CONTRACT NO. _____
I AGREED TO ATTAIN 6% MBE PARTICIPATION AND 6% 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

III. 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.

Exhibit F
Article 17-B Service-Disabled Veteran-Owned Business Enterprises (SDVOB)
Contract 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 <https://ogs.ny.gov/Veterans/default.asp>)

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 Contract 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: <https://ogs.ny.gov/Veterans/default.asp>

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 6% 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 Contract 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 Contract 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 wavier 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.