Business Partners: Building Performance and HVAC Program
Request for Proposal (RFP) 1713
$ 1,200,000 Available

Proposals Due: November 16, 2009 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) seeks to competitively select an implementation contractor to support the **New York Energy $mart Business Partners: Building Performance and Heating, Ventilation and Air-Conditioning (HVAC) Program (the Program).** The Program goal is to support HVAC contractors, distributors, and energy service businesses interested in working with NYSERDA to increase the availability, promotion, and sales of energy efficient building performance and HVAC products and services for the commercial and industrial sector. The proposer(s) selected through RFP 1713 will help NYSERDA implement a statewide strategy to address the mid-market needs of the Building Performance and HVAC industry. Strategies to consider include, but are not limited to: targeted outreach; recruitment; statewide field support; program training; sales training and support; quality assurance; measurement and verification; monitor, track and report incentives; leveraging partnerships with trade associations; integration with local, state, regional, and national efforts; recognition of Program leaders; and guidance and assistance to participating Business Partners to help realize the energy efficiency goals of New York State.

NYSERDA understands that separate contracts may be necessary to effectively serve both the Implementation Services and Technical and Field Support Services elements of this solicitation. Thus, teaming arrangements are encouraged to fulfill the needs of this RFP where one contract is awarded to the prime contractor with support from subcontractors. The contract will be for a two-year period, with options to renew at NYSERDA's discretion.

Proposal Submission: Proposers must submit eight (8) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 1713
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Judy Stasack at (518) 862-1090, ext. 3492 or jas@nyserda.org. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or vwf@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Judy Stasack (Designated Contact) at (518) 862-1090, ext. 3492 or jas@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

*Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at www.nyserda.org

I. Introduction

NYSERDA has offered a number of distinct upstream and mid-market programs for suppliers and providers of energy efficient products and services. The programs have supported targeted market development efforts in lighting, building performance, unitary HVAC, motors, and other emerging technologies. Through these efforts, NYSERDA has built a strong network of more than 1,000 businesses. Maintaining market relationships with these Business Partners is extremely important in achieving the energy efficiency goals within New York State. The **New York Energy $martK** Business Partners Program (Business Partners Program) supports Business Partners and guides them toward NYSERDA incentive programs as appropriate. The Business Partners Program is designed to increase market visibility and strengthen the overall impact of the targeted market development efforts within commercial and industrial businesses.

The **New York Energy $mart℠ Business Partners: Building Performance and HVAC Program** (the Program) was established to: (1) encourage the installation of energy-efficient HVAC systems, including early replacement of inefficient package HVAC systems (unitary and split system); (2) expand use of fault detection and diagnostics (FDD) and integrated controls equipment for HVAC systems; (3) increase market penetration of building performance energy monitoring systems, existing building commissioning (EBCx) practices and monitoring-based commissioning (MBCx) practices within commercial facilities; and (4) expand awareness of preventative maintenance procedures and benefits. There are four types of mid-market Business Partners to be targeted by this program: (1) HVAC distributors; (2) HVAC contractors; (3) EBCx providers; and (4) energy management and controls services (EMCSs) providers.

The proposer(s) selected through this RFP will actively recruit targeted mid-market actors to become Business Partners in the Program and will use strategies and services customized to support them in overcoming industry-specific barriers to obtain Program goals. Strategies and services to be considered may include, but are not limited to: targeted outreach; recruitment; statewide field support; program training; sales training and support; quality assurance; measurement and verification; monitor, track and report incentives; leverage partnerships with trade associations; integration with local, state, regional, and national efforts where appropriate; recognition of Program leaders; and guidance for and assistance to partners to maximize utilization of the Business Partners Program services and offerings.

NYSERDA recognizes that market transformation strategies may differ per region in New York State, with the New York City market requiring a different strategy from the rest of the State. Proposer(s) may respond to this RFP for Program Implementation or Technical and Field Support Services, or both, with a detailed regional approach that considers varying regional market needs for the proposed element(s) of the Program. Teaming arrangements are encouraged to fulfill the needs of this RFP where one contract is awarded to the prime contractor with support from subcontractors. However, NYSERDA reserves the right to select only one element (Program Implementation or Technical and Field Support Services) from a proposal that responds to both elements of the RFP, if it determines that one contract for each element may provide the best portfolio of services.

Services will be focused within the SBC Territory, the electric utility service areas of: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation; National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

Program activities will be supported by additional NYSERDA efforts through 1) incentives to support manufacturers and distributors to promote stocking and decrease first cost of energy efficiency equipment and 2) Workforce Development training incentives to support technical training and curriculum development in the HVAC and building performance industry.

II. Program Requirements

A. General Description

NYSERDA seeks to recruit, equip, mobilize, and support stakeholders in the HVAC, controls/systems, and building commissioning industries (Business Partners). This can be accomplished through, but not limited to, the following activities: (1) Providing field support, program training, sales training and marketing support; (2) incentives to promote energy efficiency improvements; and (3) establishing productive relationships with stakeholder associations, alliances, unions, trade periodicals, specialty consultants such as sales trainers and niche marketing firms. The proposal must detail a strategy to assist NYSERDA in supporting its Business Partners in achieving the Program goals outlined in Section II-B. Proposer(s) are expected to provide evidence that they understand how the many factions and institutions operating in the HVAC, controls, and building commissioning industries are organized, interact, communicate, and compete.

A NYSERDA project manager will be responsible for overseeing the selected proposer(s)'s efforts. The selected proposer(s) will be required to coordinate with other NYSERDA programs, project managers, and contractors.

Proposer(s) are encouraged to respond to this RFP to provide either 1) Program Implementation Services, or 2) Technical and Field Support Services, or both. While this is a statewide effort, all proposals must outline a detailed regional approach that considers varying regional market needs for the proposed Program Element(s). The statewide plan should also include a specific, detailed plan for targeting New York City.

B. Building Performance and HVAC Program Goals

The proposed scope of work must, at a minimum, address the following program goals:

1. Encourage the installation of energy-efficient HVAC systems, including early replacement of inefficient package HVAC systems;
2. Expand use of FDD and controls equipment for HVAC systems;
3. Increase market penetration of building performance energy monitoring systems, EBCx practices and MBCx practices within commercial facilities;
4. Expand awareness of preventative maintenance procedures and benefits;
5. Recruit Business Partners to effectively deliver or show direct influence on a minimum of 100 million square feet, and meet or exceed minimum resource acquisition goals of 45 gigawatt hours, and 9 megawatts of energy and demand savings over the next 2 years; and
6. Coordinate with relevant NYSERDA customer-focused efforts and incentive programs to engage building owners in HVAC and whole-building energy efficiency projects.

C. Targeted Mid-market Business Partners

The proposed scope of work must, at a minimum, address recruitment and support of the following targeted mid-market actors:

1. "Distributors": HVAC and control supply businesses may participate as a Business Partner. To do so, these entities must maintain a HVAC/controls specialist on staff, must execute a Business Partner Participation Agreement, and must complete the Program training.

2. "HVAC Contractors" or "Contractors": HVAC and electrical contractors or other businesses that perform HVAC installation and/or maintenance services may participate as a Business Partner. To do so, these entities must execute a Business Partner Participation Agreement and must complete the Program training.

3. "Existing Building Commissioning Providers": Businesses providing a systematic process for investigating, analyzing, and optimizing the performance of building systems in existing buildings through the identification and implementation of facility improvement measures and ensuring their continued performance may participate as a Business Partner. To do so, these entities must execute a Business Partner Participation Agreement and must complete the Program training.

4. "Energy Management and Controls Services Providers": Businesses involved in controlling and monitoring energy consumption and usage in a building for the purposes of improving the performance of HVAC systems, continuous commissioning, or reduction in energy consumption may participate as a Business Partner. To do so, these entities must execute a Business Partner Participation Agreement and must complete the Program training.

D. Program Elements

The proposed scope of work must, at a minimum, include the following activities supporting one or both of the Program Elements: 1) Program Implementation Services, or 2) Technical and Field Support Services. Proposer(s) are encouraged to include suggestions and justifications for additional strategies that assist NYSERDA in supporting its Business Partners in achieving the Program goals outlined in Section II-B.

1) Program Implementation Services

Attract New Business Partners. The Program strategy shall include active recruitment to the Program for each of the *four types of mid-market actors targeted in this solicitation:* (1) HVAC distributors; (2) HVAC contractors; (3) EBCx and (4) EMCS providers.

Program Training. This training shall outline the Program guidelines and available resources for participating Business Partners. Program training shall also include a full summary of all current Program incentive offerings. Proposer(s) should outline a strategy for continually updating recruited Business Partners with current incentive offerings. Proposer(s) should provide a plan for providing and coordinating statewide training to best advance energy efficient HVAC and building performance improvement opportunities.

Industry Training. Proposer(s) should detail plans to leverage existing training offered through manufacturers and others to provide Business Partners with training including, but not limited to, Spec and Sell Training and awareness/training on the Air-Conditioning Contractors of America (ACCA) Quality Installation Standard. Proposer(s) should also detail plans for providing additional training on the standardized maintenance protocol and operations and maintenance best practices protocol to be developed (see "Quality Assurance Services" below).

Marketing Materials and Strategies to Benefit Business Partners. The awarded Contractor will support content development of NYSERDA marketing materials including, but not limited to, NYSERDA fact sheets, case studies, end-user, and contractor marketing pieces and coordinate activities with NYSERDA

marketing efforts. National efforts, including but not limited to U.S. Environmental Protection Agency (EPA) marketing materials, should be leveraged, as appropriate. Activities shall be coordinated with the other NYERDA implementation contractors to provide the participating Business Partners with marketing support, as appropriate.

Monitoring, tracking, and reporting of NYSERDA incentives. NYSERDA has set aside $2,100,000 for incentives to be offered to support mid-market Business Partners participating in the Program. It is expected that the awarded Contractor will monitor, track, and report all related incentive activities. The awarded Contractor will make recommendations to NYSERDA for incentive payments, and NYSERDA will review and issue payment to the participating Business Partner, as appropriate.

Reporting and Metrics Management. Measuring Program success and tracking Program activities is necessary for understanding the effectiveness of the Program. The proposal should provide a plan for project tracking, metrics collection, and measurement and verification of Program activities to measure Program success. Final metrics will be determined by NYSERDA at time of contract.

Market Transformation Strategies. Comprehensive strategies to transform the Building Performance and HVAC market, with regional consideration, shall be provided, with explicit descriptions explaining how each strategy will assist in achieving Program goals outlined in this solicitation.

Establish And Support A Program Advisory Group. A Program Advisory Group (PAG) consisting of experts in the sectors targeted by the program should be convened prior to program launch, and conferred with throughout the term of the program. Proposals should provide both a plan and budget to ensure that the PAG's deliberations, opinions and recommendations will be recorded and given due consideration in program design and implementation.

2) Technical and Field Support Services

Field Support Services. Field support has been a successful component of NYSERDA's prior program efforts. Targeted field support, including circuit-riding, where appropriate, should be proposed statewide.

Sales Training and Support. This training shall include Spec and Sell Training as well as compelling business case scenarios and appropriate Sales Training to help Business Partners position their services within specific targeted markets.

Quality Assurance Services. Proposer(s) should provide strategies that will be used to ensure quality installations of all systems implemented by participating Business Partners, including use of ACCA Quality Installation Guidelines for unitary HVAC equipment. The awarded contractor will develop a standardized maintenance protocol and operations and maintenance best practices protocol for participating Business Partners to follow for use with their customers. Proposer(s) should review available research and protocol, including but not limited to the report at the following link, to develop protocol: http://www.neep.org/initiatives/RTU_Report_DFTA_Final_32509.pdf

Establish And Support A PAG. A PAG consisting of experts in the sectors targeted by the program should be convened prior to program launch, and conferred with throughout the term of the program. Proposals should provide both a plan and budget to ensure that the PAG's deliberations, opinions and recommendations will be recorded and given due consideration in program design and implementation.

E. Funding and Geographic Coverage

There is $1.2 million available for the **New York Energy $mart Business Partners: Building Performance and HVAC Program,** under this solicitation. NYSERDA reserves the right to adjust funding based on Program success, funding source approval requirements, availability of new funds, or other factors addressing the Program. NYSERDA reserves the right to incorporate Program changes as needed.

Services will be focused on facilities within the SBC Territory, the electric utility service areas of: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

F. Contracting

This Program shall not serve as a marketing vehicle for any specific firm. Current NYSERDA contractors are eligible under this RFP; however, the proposer(s) selected through this RFP will not be permitted to use customer leads that are developed while performing services under this contract to participate in other NYSERDA programs (i.e. FlexTech). Include a listing of all current contracts with NYSERDA and how conflict between contracts will be avoided.

III. Proposal Requirements

Proposers must submit eight (8) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Request for Proposal. A completed and signed Proposal Checklist (Attachment A) must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will not be accepted.

Proposals that include teaming arrangements must designate one party as the prime contractor**.** Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. A single staple in the upper left hand corner is preferred. Text font size should be no smaller than 11 and care should be taken not to exceed page limits provided. Double sided printing is encouraged. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will negatively influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFP number, and the page number.

A. Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k

Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws is available at: http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of $15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist (Attachment A) including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form (Attachment B). Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

B. Proposal Format

Please clearly identify which of the Program Elements you are responding to within the proposal.
You may respond to one or both of the Program Elements: 1) Program Implementation Services, or 2) Technical and Field Support Services**.**

Executive Summary (two page limit)

- Summarize the proposed effort.

Introduction and Background (three page limit)

- Discuss the rationale for the proposed approach.
- Identify all entities/team members collaborating in the proposal.
- Identify the major goals and objectives of the proposed approach and strategy.

Statement of Work (ten page limit)

- The Statement of Work should be a detailed plan of how the proposer will accomplish the objectives.
- The Statement of Work should clearly articulate a set of tasks consistent with requirements indicated in Sections II-B, -C and -D in this solicitation.
- The Statement of Work will also serve as the primary contractual document that identifies the deliverables. It is an action document that specifically delineates each step or procedure required to accomplish the objectives. Therefore, each action should be identified, indicating who will perform it, how it will be performed, timing, deliverables, and its anticipated result(s). Proposals should be realistic, clear, and specific.

Outcome and Benefits (five page limit)

- Describe the anticipated impacts of the proposed effort, both in terms of energy and non-energy impacts.
- Explain how the proposal's approach is comprehensive and why the proposer is in the best position to undertake this effort.
- Explain how the approach is unique and why it will work compared to other approaches.
- Define the economic benefit to New York State, as well as the data collection and evaluation plans that will measure success.
- Explain what metric information (market penetration, number of sites, projects recruited for implementation services, etc.) are recommended to determine success.

Proposer Qualifications (seven page limit)

- Identify all team members (name, business address, telephone number), including the party who will assume the ultimate responsibility for success and their qualifications to undertake the proposed work.
- Provide a list of specific HVAC, controls, and building commissioning organizations and individuals with whom you plan to work/coordinate/collaborate during the execution of your proposed program and how you propose to work with them.
- Attach resumes of key personnel in an appendix (will not count towards page limitations).
- Address how you are poised to weather the current economic situation.
- Provide an organization chart displaying relevant staff and define their roles and responsibilities.
- Describe each area in enough detail to convey your depth of industry knowledge.

Work Schedule and Staffing Plan (four page limit)

- Prepare a work schedule highlighting tasks and major milestones in terms of weeks or months after execution of the Agreement.

- Define an appropriate and realistic schedule consistent with the Statement of Work for task deliverables, including progress reports (*e.g.*, monthly quarterly, etc) and a final report, and incorporate them into the work schedule.
- The schedule should allow time for approval of tasks by NYSERDA.
- The work schedule should also include a staffing plan which indicates the roles, responsibilities, and anticipated hours allocated to all key personnel. Note that hours allocated in the work schedule must be consistent with those in the budget.

Budget

- A budget, including all cost elements, must be provided. This must be a task-based budget that shows cost details including direct and indirect costs, production, overhead, labor, and subcontractors, if applicable, related to each task. The intent must be to define the cost and emphasis of individual tasks in relation to others.
- The Proposal must also provide budget estimates for materials, equipment, and travel. A Contract Pricing Proposal Form should be submitted with each proposal (see Attachment C).
- Attach supporting documentation to support indirect cost (overhead) rate(s) included in your proposal as follows:
  1) Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projections; based on federal government or other independently-approved rates).
  2) If rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval.
  3) If rate(s) is based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculation should provide enough information for NYSERDA to evaluate and confirm that the rate(s) is consistent with generally accepted accounting principles for indirect costs.

NYSERDA reserves the right to audit any indirect rate presented in the proposal and to make adjustment for such difference. Requests for financial statements or other needed financial information may be made if deemed necessary.

Letters of Commitment

Include letters of commitment from any subcontractors, co-funders, or other organization to be directly involved in the project.

NYSERDA reserves the right to direct limitations or expansions of these proposed services within the bounds of the proposal based on cost-effectiveness and other related considerations.

IV. PROPOSAL EVALUATION

Eligible proposals, meeting solicitation requirements, will be reviewed by a Technical Evaluation Panel (TEP) consisting of NYSERDA, a Department of Public Service staff member, and selected outside reviewers. The TEP will review the written proposals, score and rank the proposals. The highest ranked proposer will be recommended for contract negotiations. The TEP will review the written proposals using the Evaluation Criteria below in order of importance. The Program Implementation Services and the Technical and Field Support Services program elements will be evaluated independently of each other by the same TEP.

Qualifications of Proposer and Experience

Does the proposer have the necessary background and experience in New York State? Does the proposer demonstrate sufficient, relevant experience? Does the proposer demonstrate the ability to reach large customers? Does the proposer show a balance of technical, operations, marketing, administrative or other expertise necessary

to accomplish the objectives? Is there depth to the proposing team where full implementation responsibility does not fall on one individual? Does the proposer demonstrate in depth knowledge of and existing relationships with key stakeholders? Does the proposer have previous experience in the conduct and delivery of sector services? Does the proposer clearly demonstrate a history of past energy-related work? Is the proposer poised to weather the current economic situation?

Strategy and Overview
Will the proposed approach maximize the potential for NYSERDA to achieve Program goals? Is the proposed strategy feasible? Does the proposed strategy address the unique regional characteristics in New York State? Is the Statement of Work comprehensive, realistic, and consistent with the proposal requirements? Is the proposed strategy likely to recruit the largest, cost-effective energy savings opportunities?

Measuring and Reporting Effectiveness
How does the reporting plan effectively track Program activities? Is the reporting plan reasonable and appropriate for the tasks? Is the metrics tracking plan sufficient to demonstrate Program success? Does the proposal include a plan to measure success?

Cost
Is the overall cost reasonable? How cost-effective is the proposal based on the strategy and overview included? Are allocations of task hours justifiable? Are the billing rates reasonable and appropriate? Is there documentation in support of the indirect cost rates? Does the proposal team describe the ability to use junior and senior staff as appropriate to be cost effective while achieving Program success?

Other
Does the proposal leverage added value opportunities? Does the proposer have past experience or familiarity with NYSERDA and its programs? Does the proposal clearly define the economic benefit to New York State? The proposer who possess, or can obtain through cooperative or joint ventures, the following capabilities will be favored under this RFP:

- The ability to dedicate staff as appropriate.
- The ability to deliver service effectively and economically.
- Other factors deemed appropriate by NYSERDA.

V. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2) (d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to accept it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

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

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of $100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See,* ST-220-TD (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. *See,* ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Contract Award –NYSERDA anticipates making one or more awards under this solicitation. The contract term will be a two year period with the option to renew at NYSERDA's discretion. NYSERDA reserves the right not to award any contracts in one or more Program elements. NYSERDA also reserves the right to award only one Program element to a proposer or teaming arrangement who has proposed for both Program elements. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support

applications. NYSERDA expects to notify proposers in approximately twelve (12) weeks from the proposal due date whether their proposal has been selected to receive an award.

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

Disclosure Requirement - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

V. ATTACHMENTS

Attachment A - Proposal Checklist
Attachment B - Disclosure of Prior Findings of Non-Responsibility Form
Attachment C - Contract Pricing Proposal Form
Attachment D – Sample Agreement

NYSERDA

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT A - PON No. 1713 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date November 16, 2009	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Federal Tax Identification #/Social Security			
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip

THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:

Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) __ Yes __ No
(NYSERDA anticipates considering only specifically listed exceptions in negotiations.)

Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) __ Yes __ No

Are you a Minority or Women-Owned Business Enterprise? __ Yes __ No

Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? __ Yes __ No

Are you submitting the required number of copies? (See proposal instructions.) __ Yes __ No

Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? __ Yes __ No
(if yes, explain on separate page)

ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?

Executive Summary ___ Introduction and Background ___ Statement of Work ___ Outcome and Benefits ___ Proposer Qualifications ___ Work Schedule and Staffing Plan ___ Budget ___ Letters of Commitment ___	Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Exceptions to Terms & Conditions (if applicable) Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form

AUTHORIZED SIGNATURE & CERTIFICATION

I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I the undersigned am authorized to commit my organization to this proposal.

Signature	Name
Title	Organization
Phone	

NOTE: This completed form **MUST** be signed and attached to the front of all copies of your proposal.

ATTACHMENT B
Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number: RFP 1713 Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an "X")		Yes
		No
Was the basis for the finding of non-responsibility due to due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")		Yes
		No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")		Yes
		No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		

Basis of Finding of Non-responsibility: (Add additional pages as necessary)

Has any Government al Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an “X”) (Please indicate with an “X”)		Yes
		No
If you answered yes, please provide details below.		
Government Agency or Authority:		
Date of Termination or Withholding of Contract:		
Basis of Termination or Withholding: (Add additional pages as necessary) Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate. By:_____ Date:_____ Signature Name:_____ Title:_____		

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Contract Pricing Proposal Form

Attachment C

New York State Energy Research and Development Authority Contract Pricing Proposal Form	Solicitation/Contract No.	Page
Contractor:	Name of Proposed Project:	
Address:		
Location (where work is to be performed):	NYSERDA funding:	
	Total Project Cost:	

Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)			
11. Fee or Profit (If allowable) Rate:					
12. Total Estimated Project Cost					

This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.

Typed Name and Title:	Signature:	Date:

Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months? ____ Yes ____ No If yes, identify:

Supporting Schedule - Contract Pricing Proposal Form		
Element No.	Item Description	Amount

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

Your cost proposal may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided.

A. GENERAL

The schedule must be submitted on NYSERDA's Contract Pricing Proposal Form.

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

(Title each supporting schedule and cross-reference it to the item number on the Contract Pricing Proposal Form)

1a. DIRECT MATERIALS - PURCHASED PARTS

Provide the following information for each proposed item with an estimated unit cost in excess of $15,000.

- Description of item
- Proposed vendor
- Quantity needed
- Unit cost
- Basis for cost (i.e., catalog, prior purchase, quote, etc.)
- Total cost
- Evidence of a competitive selection process in accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement.

1b. OTHER DIRECT MATERIALS

In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, for all items in excess of $5,000, provide whatever information would be necessary to understand what is being obtained, how it is being obtained, what it will cost and how the estimated cost was determined with justification for all items.

2. MATERIALS OVERHEAD (also applicable to other Indirect Rate categories: 4. LABOR OVERHEAD and 10. G&A EXPENSE)

- If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
- If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising the proposed period of contract performance.
  - A description (chart or other) of the organization of the indirect cost center.
  - The budget of indirect costs, by account, for each proposed indirect expense rate.
  - The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
  - Actual incurred rates for the prior three years, including actual base and pool amounts.

3. DIRECT LABOR

a. Commercial Enterprises

(1) Attach supporting schedules showing:
- o Each category or type of labor being estimated
- o Applicable labor rates per hour (straight-time)

(2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.

b. Educational Institutions
Provide the following for each calendar year of the contract:

(1) For individuals not on an "actual hours worked" basis:
- o individual's name
- o annual salary and the period for which the salary is applicable (preferably in weeks)
- o the proportionate time to be charged to this effort.

(2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)

4. LABOR OVERHEAD (Same as Instructions for 2. MATERIALS OVERHEAD)

5. OUTSIDE SPECIAL TESTING
   a. Describe the effort.
   b. Provide the units of time (hours, days, weeks), cost rates, and the vendor.
   c. In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.

6. EQUIPMENT
   Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.
   - o vendor
   - o model number
   - o quantity
   - o competitive selection process
   - o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
   - o description of the use or application (NYSERDA dedicated, contract dedicated, other)

7. TRAVEL
   a. NYSERDA will accept as a direct charge only that travel required to perform the statement of work.
   b. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
   c. Identify and support any other special transportation costs required in the performance of this project.

8. OTHER DIRECT COSTS
   a. Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
   b. Provide cost details for the amounts estimated (hours or units, rates, etc.)
   c. If any internal service center rates are applied, provide details similar to that required in Instruction #B.
   d. For computer costs identify the make, model and type of computer, hours of service and appropriate rates, and whether the machine is company owned or leased.

9. SUBCONTRACTORS/CONSULTANTS
   a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
   b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

10. GENERAL & ADMINISTRATIVE (G&A) EXPENSE (Same as instructions for 2. MATERIALS OVERHEAD)

11. FEE OR PROFIT
List the rate proposed for profit. No fee or profit is allowed under product development, demonstration or other certain cost-sharing projects.

New York State Energy Research and Development Authority
AGREEMENT

1. Agreement Number:

2. Contractor:

3. Contact:

4. Award Date:

5. Project Period:

6. Federal ID:

7. Total Amount of Award: $

8. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, Web Addendum.

9. ACCEPTANCE

CONTRACTOR

By _____

Name _____

Title _____

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____
Jeffrey J. Pitkin
Treasurer

STATE OF)
) SS.:
COUNTY OF)

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

_____
Notary Public

EXHIBIT A

STATEMENT OF WORK

[To be developed by the Contractor.]

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.

Agreement: The Notice of Award and Agreement and Exhibits A, B, C, D, and E hereto, all of which are made a part hereof as though herein set forth in full.

Budget: The Budget set forth in Exhibit A hereto.

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

Contractor: The Contractor identified in Item 2 of page one of the Agreement.

Effective Date: The effective date of this Agreement shall be the date appearing in Item 4 of page one of the Agreement.

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.

Proprietary Data: Technical Data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) are not already available to NYSERDA without obligation concerning their confidentiality.

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.

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

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

Article II

Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of 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. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

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. Compensation. In consideration for this Agreement and as full compensation for the costs for 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 the actual cost incurred as set forth in the Budget up to a maximum amount set forth in Item 7 of page one of the Agreement subject to the provisions and restrictions contained herein. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

(a) Staff Charges: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.

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

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate federal guidelines or generally accepted accounting principles.

Furthermore, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds paid to NYSERDA by third parties for the purposes of this Agreement.

Section 4.02. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown in Item 1 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

(a) Staff charges: for each employee, the name, title, number of hours worked, hourly rate and labor extension;

(b) Direct charges: all direct costs shall be itemized on the invoice and supported by documentation, such as vendor invoices, travel vouchers or other documentation; and

(c) Indirect charges: indirect cost rates and method by which rates are applied.

The Contractor shall be notified by NYSERDA in accordance with Section 5.04.4 (b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with such invoice.

In accordance with and subject to the provisions of such Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA's share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

Section 4.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other 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. 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 previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Item 7 of page one of the Agreement.

Section 4.05. 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 4.06. 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 the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 7 of page one of the 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 4.08. Audit Adjustment. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 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 an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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 under $25,000, 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 B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without prior written notification to the Contract Administrator as long as this Agreement remains in effect.

Article VI

Schedule

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in Exhibit A, Statement of Work.

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 there from, 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

Intellectual Property Rights

Section 8.01. Rights in Materials.

(a) As between NYSERDA and the Contractor, all materials produced pursuant to this agreement shall be the property of NYSERDA. Title to any and all now known or hereafter known tangible and intangible intellectual property rights in such materials, including but not limited to copyrights, trademarks, and service marks, is with and shall remain with NYSERDA. For purposes of this Article, the term “materials” means everything produced pursuant to this Agreement for the purpose of marketing NYSERDA’s programs, including, but not limited to, all images, text, sounds, and music contained in any media whatsoever.

(b) The Contractor may not take any action, including signing any agreement, that has the effect of restricting or limiting in any way NYSERDA’s absolute ownership and use of the materials unless it receives prior written approval from NYSERDA.

Section 8.02. Representations.

(a) All advertising 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 advertising 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 advertising 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 advertising 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 advertising 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 advertising 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 advertising materials including, without limitation, the right to use in any way whatsoever the advertising materials and the Contractor retains no rights to use the advertising materials and agrees not to challenge the validity of the copyright ownership by NYSERDA in the advertising materials. In the event that any development of any advertising 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.

The Contractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the Contract Administrator

Article IX

Warranties and Guarantees

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

(a) it is financially and technically qualified to perform the Work;

(b) 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;

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

(d) 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 construction and design standards and best engineering practices;

(e) 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;

(f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or the NYSERDA's rights hereunder;

(g) 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; and

(h) Contractor certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

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 the 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 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) 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) Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of $500,000 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 $500,000 in respect of claims arising out of property damage in any one accident or disaster.

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 this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event 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

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 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 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 30 days prior written notice to the Contractor. In such event, compensation 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 therefore).

(b) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

(c) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a was intentionally false when made. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. 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 shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers,

employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Technical 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 Technical Communications regarding any media interview in which the Work is referred to or discussed.

(b) The Contractor shall not use NYSERDA’s corporate name, logo, identity, any affiliation, or the service mark **New York Energy $mart ®**, and any related logo, without NYSERDA’s prior written consent.

Section 15.02. Notices. 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 deemed to have been sufficiently given for all purposes hereunder when delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, (I) if to NYSERDA, at 17 Columbia Circle, Albany, New York 12203-6399 or at such other address as NYSERDA shall have furnished to the Contractor in writing, and (ii) if to the

Contractor, at _____, or such other address as the Contractor shall have furnished to NYSERDA in writing.

Section 15.03. 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.

EXHIBIT C

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 attached agreement, contract, license, lease, amendment, modification or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than NYSERDA, whether a contractor, licensor, licensee, lessor, lessee or any other party):

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

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

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

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

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

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

made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

13. 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:

- 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).

- 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).

- 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.

14. INTELLECTUAL PROPERTY RIGHTS

(a) Rights in Materials.

(i) As between NYSERDA and the Contractor, all materials produced pursuant to this agreement shall be the property of NYSERDA. Title to any and all now known or hereafter known tangible and intangible intellectual property rights in such materials, including but not limited to copyrights, trademarks, and service marks, is with and shall remain with NYSERDA. For purposes of this Article, the term "materials" means everything produced pursuant to this Agreement for the purpose of marketing NYSERDA's programs, including, but not limited to, all images, text, sounds, and music contained in any media whatsoever.

(ii) The Contractor may not take any action, including signing any agreement, that has the effect of restricting or limiting in any way NYSERDA's absolute ownership and use of the materials unless it receives prior written approval from NYSERDA.

(b) Representations.

(i) 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.

(ii) 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.

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

(d) 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.

The Contractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the NYSERDA Contract Administrator.

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability. (a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:

(1) under the Eminent Domain Procedure Law;

(2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;

(3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or

(5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section 504.2 Definitions. As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Authority" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.

(c) "Contractor" means any person, partnership, private corporation, or association:

(1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

(2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other

improvements for, or on behalf of, the Authority pursuant to a contract; or

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

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

(e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

(g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.

(h) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.

(i) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(1) "Receipt of an invoice" means:

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

(a) the date on which a proper invoice is actually received in the designated payment office during normal business hours; or

(b) the date by which, during normal business hours, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

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

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

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the Authority.

(b) The Authority shall notify the contractor within 15 calendar days after receipt of an invoice of:

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

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

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

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, the Authority shall make payment, consistent with any such correction or

resolution and the provisions of this Part.

Section 504.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

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

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

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

(d) If appropriated funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the Authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

Section 504.7 Sources of funds to pay interest. Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

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

Section 504.11 Court action or other legal processes.

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

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

Section 504.12 Amendments. These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.

EXHIBIT E

WEB-RELATED CONTRACT ADDENDUM

Addendum to Agreement between **New York STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY** ("NYSERDA") and the _____ ("the Contractor"). This Addendum is made a part of the Agreement to which it is attached.

Section 1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The Contractor has been informed that NYSERDA intends to use the equipment supplied and work performed under this Contract for ***[specify particular purpose of NYSERDA]*** and that NYSERDA is relying on the Contractor's skill and judgement to select or furnish equipment suitable for that purpose. The Contractor warrants that the equipment and work performed will be fit for the particular purpose of NYSERDA.

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

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

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

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

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

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

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

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

Section 3. Proprietary Rights.

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

(B) Assignment of Rights. Except as provided in subsection (C) of this section, Contractor hereby irrevocably assigns, conveys and otherwise transfers to NYSERDA, and its respective successors and assigns, all rights, title and interests worldwide in and to the Contractor Content, Data, and Documentation and all copyrights, trade secrets, patents, trademarks, service marks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether now known or hereafter to become known. In the event the Contractor has any rights in and to the Contractor Content, Data, and Documentation 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 Contractor Content, Data, and Documentation 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 Contractor Content, Data, and the Documentation including, without limitation, the right to use in any way whatsoever the Contractor Content, Data, and Documentation. The Contractor retains no rights to use the Contractor Content, Data, and Documentation except as stated in subsection (E) of this section and agrees not to challenge the validity of the copyright ownership by NYSERDA in the Contractor Content, Data, and Documentation. In the event that any development work under this Agreement is to be performed by a subcontractor, the Contractor agrees to include the provisions contained in this subsection in any such subcontract.

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

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

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

[choose and insert one "(F)" below, as appropriate]

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

or

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

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

Section 4. Confidentiality.

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

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

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

Section 5. Accessibility. The Contractor shall comply with the New York State Office for Technology (OFT) Policy and Standards "Accessibility of State Agency Web-based Intranet and Internet Information and Applications". Questions concerning this policy may be directed to OFT, Strategic and Executive Services (SES) Bureau (518) 473-0234, attn: Accessibility Program Manager. Or visit OFT at www.oft.state.ny.us.

Section 6. Termination. In the event this Agreement is terminated by NYSERDA pursuant to the provisions of Article XII, NYSERDA will have the right, in addition to all of its other rights, to require the Contractor to deliver all of the Contractor's completed work and work in progress, including all originals and copies thereof, as well as any other materials provided to the Contractor by NYSERDA or third parties, or created by the Contractor under this Agreement. Any payments made pursuant to Articles IV and XII of this Agreement shall be deemed payment in full for all of such work in progress, including full payment for all source code, object code, documentation, notes, graphics, and all other materials and work relating to the portion of the Web Site Content and the assignment or licenses of rights relating to the Web Site Content which has been completed as of the time of termination. Subject to the Contractor's obligations under the provision of this Addendum addressing Termination during Web Site Content Hosting, the Contractor shall remove all copies of the Web Site Content from servers within its control and use reasonable efforts to remove any reference to NYSERDA or the Web Site Content from any site which caches, indexes or links to the Website.

This Addendum shall survive termination of this Agreement.

Section 7. Portability Requirement. The Contractor shall develop the Web Site Content in such manner that a fully functional site can be reestablished from the Contractor's servers to the servers of NYSERDA or the servers of a specific third party designated by NYSERDA within 3-5 business days without losing functionality or operation.

Section 8. Creative Control. The parties acknowledge that NYSERDA possesses final creative control over all content including that which is developed by Contractor.

Section 9. Conflicts. To the extent that any provision of this Addendum conflicts with any provision of the balance of the Agreement, the provisions contained in this Addendum shall control.

Section 10. Subcontractor Contracts. The Contractor shall cause each subcontractor which is to perform work to be performed pursuant to this Addendum and those provisions of the Statement of Work related to Web Site Content or a Web Site to execute a contract regarding confidentiality and assignment of rights prior to each such individual or company's commencement of services thereunder. Such subcontracts shall (in addition to any provisions required pursuant to Article V): (a) include a full assignment of all rights to NYSERDA, (b) include a waiver of any moral or similar rights, (c) be freely assignable, and (d) contain restrictions on use and disclosure at least as protective of NYSERDA's interests as those contained in this Addendum. The Contractor shall submit to NYSERDA's Contract Administrator for review and approval any subcontracts(s) for work to be performed pursuant to this Addendum and those provisions of the Statement of Work related to a Web Site. All provisions of Article V not specifically in conflict with this Section shall continue to apply.