Applications accepted continuously through December 29, 2017 by 5:00 PM Eastern Time*

Summary of Revisions

1. The RFP has been renamed "New Construction and Codes Partner Services."

2. The RFP has been revised to invite firms wishing to deliver design and technical assistance, high quality energy modeling and analysis, and quality assurance services to NYSERDA's Commercial, Multifamily, and Low-rise Residential New Construction Programs to apply.

3. Partners providing these services to the Commercial New Construction Program will be considered eligible modeling entities under PON3308: Commercial Tenant Program.

4. The technical criteria for Applicants wishing to provide support services to the Commercial New Construction program has been modified such that sample projects must demonstrate energy cost savings that exceed ASHRAE 90.1-2007 Appendix G by at least 25%. The technical criterion to be considered as a Deep Energy Savings or Zero-Net-Energy technical services provider has been removed, however Applicants are encouraged to submit sample projects that demonstrate the ability of the firm to influence Deep Energy Savings or Zero-Net-Energy projects. Applicants who provide sample projects with energy cost savings that exceed ASHRAE 90.1-2007 Appendix G by at least 40% will be identified by NYSERDA's website as capable of providing Deep Energy Savings and Zero-Net-Capable technical services.

5. The technical criteria have been modified to add the requirements for the Multifamily and Low-rise Residential New Construction Programs.

6. Applicants wishing to provide services to the Multifamily New Construction Program may submit Passive House projects that meet the technical criterion contained herein.

7. Attachment B: New Construction and Codes Partner Services Application has been modified to allow Applicants to choose to provide services to any or all of the New Construction Programs. The Application also identifies steps to be taken by previously approved Energy Modeling Partners and Low-rise Residential New Construction Providers who wish to work in the other Programs.

8. Attachment E: Sample Agreement and Statement of Work has been modified to remove the sample Task Work Order, modify the Statement of Work, and add exhibits that include the processes, terms and conditions for all three New Construction Programs.

Applications accepted continuously through December 29, 2017 by 5:00 PM Eastern Time*

New Construction and Codes Partners
NYSERDA seeks firms interested in assisting NYSERDA with delivering design and technical assistance, high quality energy modeling and analysis, and quality assurance services to significantly increase the performance of buildings and their energy systems to reduce overall greenhouse gas emissions. Partners will deliver these services to building owners, developers and leaseholders. Partners will receive agreements with NYSERDA with initial expiration dates of June 30, 2018 that will allow them to perform technical services for customers. Agreements will contain two two-year options to renew at NYSERDA's discretion.

Summary of Programs Served by Partners
Partners approved via this solicitation will be eligible to provide services under several NYSERDA programs including the Commercial, Multifamily and Low-rise Residential New Construction Programs. In addition, approved Partners will be considered eligible modeling entities under PON3308: Commercial Tenant Program. Partners will be expected to assist customers wishing to participate in these programs by providing design and technical assistance, high quality energy modeling and analysis, and quality assurance services for energy efficiency improvements in building designs and substantial renovations to tenant spaces. Firms will be required to demonstrate their modeling expertise as well as their ability to influence building owners, developers and leaseholders to achieve significant energy savings.

In alignment with NYSERDA's Clean Energy Fund proposal, future program initiatives that require similar technical support services for deep-energy-savings and zero-net-energy projects and code development may be added to the programs for which Partners will be eligible to participate.

Application Submission
Applications will be accepted continuously through December 29, 2017 or until funds are fully committed, whichever happens first. Applicants may apply by mail, electronically, or online when available.

Submittal by Mail: Send two (2) clearly labeled, completed and signed application forms, one of which must contain an original signature, to:

Jillina Baxter, RFP3036
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Submittal Electronically (preferred): Instructions for submitting electronically are located as Attachment F to this RFP. When submitting electronically, application documents must be in either PDF or MS Word format with a completed and signed Application Checklist, Partner Application package with all required documentation, and Disclosure of Prior Findings of Non-Responsibility form. Application PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. All electronic files must be named using the applicant's entity name in the title of the document. Applications may be submitted electronically by following the link for electronic submissions found on this RFP's webpage, located in the "Current Opportunities" section of NYSERDA's website (http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx

No communication intended to influence this procurement is permitted except by contacting Designated Contacts as follows:

- Commercial New Construction Program Partners: Marilyn Dare, (518) 862-1090, ext. 3348, marilyn.dare@nyserda.ny.gov and Kristin Maki, ext. 3069, kristin.maki@nyserda.ny.gov
- Low-rise Residential and Multifamily New Construction Program Partners: Lori Borowiak, ext.3004, lori.borowiak@nyserda.ny.gov and Patrick Fitzgerald, ext. 3385, patrick.fitzgerald@nyserda.ny.gov
- Commercial Tenant Program Partners: Sophie Cardona, ext. 3590, Sophie.cardona@nyserda.ny.gov.

Contacting anyone other than these Designated Contacts (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 offeror, and (2) may result in the proposer not being awarded a contract.

Technical questions should be directed the Designated Contacts listed above. All Contractual questions should be directed to: Venice Forbes, ext. 3507 or venice.forbes@nyserda.ny.gov.

Application Review
Applications will be reviewed at least bi-weekly (i.e., every two weeks), and applicants will be notified of acceptance or rejection within 4 weeks after a complete application is received (see Section III - Application requirements for details).

*Late, incomplete, or unsigned applications will be returned. If changes are made to this solicitation, notification will be posted on NYSERDA's website at www.nyserda.ny.gov.

I. Introduction

A. Goals

The goal of this offering is to expand the market of firms that provide design and technical assistance, high quality energy modeling and analysis services, and quality assurance. An emphasis is being placed on expanding standard design and modeling practices to achieve Deep Energy Savings and Zero-Net-Energy or Zero-Net-Capable projects that are replicable and will lead to a transformation in the design and delivery of new construction projects in New York State.

B. Objectives

NYSERDA's objectives in offering this opportunity are:

1) to provide a single point-of-entry for firms interested in working with NYSERDA on multiple sector new construction and tenant retrofit programs;
2) to help the market identify qualified energy modeling firms capable of providing technical and design assistance and reliable and credible energy models to influence design decisions and maximize energy savings; and
3) expand the capacity of these firms to engage building owners and developers to achieve deep energy savings and zero-net-energy or zero-net-capable new construction projects.

C. Technical Support Services:

Firms accepted as Partners will engage building owners and design teams to achieve energy-efficient tenant retrofits, and support beyond Code and Deep Energy Savings, Zero-Net-Energy or Zero-Net-Capable new construction projects. These activities may vary depending on the sector and program, but may include:

- Scoping meetings, integrated design services, and charettes;
- Scope development and budgetary estimates for technical support services;
- Evaluation of building systems;
- Modeling services;
- Coordination with design teams, NYSERDA, and firms as designated by NYSERDA;
- Consideration of green building services and environmental impacts to reduce energy and greenhouse gas emissions;
- Performance validations;
- Quality assurance;
- Other related areas or services as directed by NYSERDA.

II. Program Requirements - Applicable NYSERDA Programs

Firms are invited to apply to provide technical support services to any or all of the following NYSERDA programs, however the potential for the Applicant to serve any program will be evaluated individually:

A. ***Commercial New Construction***: The services and the associated cost-share structures under which NYSERDA reimburses the Partners (also known as "Energy Modeling Partners") for design and technical assistance to customers in the Commercial New Construction Program are described in Exhibit F to the Standard Agreement and Sample Statement of Work (Attachment E) and **PON 1601 Rev1 - New Construction Program Technical and Financial Support** [PDF].

> ***NOTE:*** Firms approved as Partners to the Commercial New Construction Program will be **immediately eligible** to apply and provide modeling services for the Commercial Tenant Program**.** Program and application details are described in **PON3308 – Commercial Tenant Program.**

B. ***Multifamily New Construction***: The services and activities provided by Partners for mid- and high-rise Multifamily New Construction projects are described in Exhibit G to the Standard Agreement and

Sample Statement of Work (Attachment E) and **PON 3319 – Multifamily New Construction Program (MF NCP)**.

C. ***Low-rise Residential and Multifamily New Construction***: Partners who are RESNET-accredited Providers will be eligible to deliver required technical support and quality assurance services associated with the Low-rise Residential and Multifamily New Construction Programs as described in Exhibit G to the Standard Agreement and Sample Statement of Work (Attachment E), **PON 2309 – Low-rise Residential New Construction Program (LR NCP)**, and **PON 3319 – Multifamily New Construction Program (MF NCP)**.

III. Application Requirements

In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), additional forms must be completed and filed with proposals: (1) a signed copy of the Application Checklist (Attachment A) including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form (Attachment C). Failure to include a signed copy of the Application Checklist referenced in this solicitation may disqualify your proposal.

The Application package for each program consists of the following documents:

1. Application Checklist,
2. Partner Application with all required documentation (described in the tables on Pages 5, 6 and 7),
3. the Disclosure of Prior Findings of Non-Responsibility form, and
4. the Project Personnel and Billing Rates Form.

IV. Application process

Applications may be submitted at any time until December 29, 2017 by mail, electronically, or online, when available. Applications will be reviewed at least bi-weekly (i.e., every two weeks) by NYSERDA to determine if the items provided satisfactorily meet the qualifications and documentation requirements. NYSERDA reserves the right to accept or deny any application.

Current Energy Modeling Partners

Firms already approved as "Energy Modeling Partners" under the Commercial New Construction Program may apply to provide services under the other Programs identified herein. Successful firms will have their contracts modified accordingly. The Application describes the necessary steps to be taken.

Current Low-rise Residential New Construction RESNET-accredited Providers ("Provider")

Providers previously approved under PON2309 must submit the Application package described in Section III above with the exception of the RESNET-accredited Provider Signature Form and associated documents previously submitted under PON2309. Upon receipt by NYSERDA of the Application package, the Provider will receive a Contract Agreement with Exhibit G (see Attachment E for a sample) which will replace the previously executed Partnership Agreement. The Application describes the necessary steps to be taken. The Provider may also indicate if they are seeking to provide services under the other Programs identified herein.

V. Accepted Applications and Partner Designations

All firms must submit applications and receive explicit approval by NYSERDA to participate in the applicable program(s). Selection to serve one program does not imply an equal opportunity to serve other programs.

1. Commercial New Construction Partner Designations

Partner status designations for Commercial New Construction are described in Exhibit F to the Standard Agreement and Sample Statement of Work (Attachment E).

2. Multifamily New Construction Partner Status Designations

Partner status designations for Multifamily New Construction are described in Exhibit G to the Standard Agreement and Sample Statement of Work (Attachment E),

3. Low-rise Residential New Construction Partner Status Designations

Partner status designations for Low-rise Residential New Construction are described in Exhibit G to the Standard Agreement and Sample Statement of Work (Attachment E).

VI. Rejected Applications

Firms whose applications to a program are rejected may request a de-briefing and may reapply. Firms whose applications are rejected twice may not reapply until 12 months after the initial application date.

VII. Contracting Process for Accepted Applications

Approved Partners will enter into a standard contract agreement with a Statement of Work (Attachment E) and the Exhibits pertaining to the Program to which the Partner was approved to serve (Attachment E, Exhibits F and G). Work conducted under the Agreement will be defined by either a project specific Task Work Order (TWO) or a separate vehicle, depending on the Program to which the Partner is providing services.

Approved Applicants with models demonstrating energy cost savings that exceed ASHRAE 90.1-2007 Appendix G by 40% or more prior to renewables or Tier 3 of the Multifamily New Construction Program will be listed on NYSERDA's website as capable of providing Deep Energy Savings and Zero-Net-Capable technical services.

VIII. Description of Project Processes

A) Commercial New Construction Project Processes

The Commercial New Construction Project process is described in Exhibit F of Attachment E, Standard Agreement and Sample Statement of Work.

B) Multifamily New Construction Project Processes

The Multifamily New Construction Project process is described in Exhibit G of Attachment E, Standard Agreement and Sample Statement of Work.

C) Low-rise Residential New Construction Project Processes

The Low-rise Residential New Construction Project process is described in Exhibit G of Attachment E, Standard Agreement and Sample Statement of Work.

New Construction and Codes Partner Application: Required Documentation

Required Documentation From All Applicants
☐ **REFERENCES:** Two letters of reference with contact information;
☐ **ORGANIZATIONAL CHART:** Organization chart or matrix depicting the personnel and/or the staff position that will provide services to NYSERDA;
☐ **PERSONNEL RESUMES:** One-page resumes for the P.E. or R.A., where applicable, modeler, and key personnel who will be directly involved in providing Technical Services;
☐ **RATE SCHEDULE:** A completed Project Personnel and Billing Rates Form (Attachment D)[1] and Supporting Documentation for Indirect/Direct Rates.[2]
Commercial New Construction Program
☐ Submit evidence that a current staff member is a New York State Licensed Professional Engineer (P.E.) **OR** a Registered Architect (R.A.) with at least 3 years of commercial/multifamily energy efficiency experience (i.e., new construction projects, delivered performance contracts, executed energy audits, Combined Heat and Power (CHP) projects, demand response, etc.);
☐ Submit evidence that a current staff member or named sub-contractor has: • at least 3 years of energy modeling experience, **AND** • has either an energy modeler certification (e.g., ASHRAE BEMP, AEE BESA) **OR** evidence of at least two commercial or multifamily energy models since 2009 validated by an independent third party (e.g., LEED, NYSERDA, utility program, etc.)
☐ Submit **Two** commercial or multifamily projects **managed by the applicant** with narratives, technical details and backup documentation (i.e., input and output modeling files, third party verification, etc.) demonstrating the ability to influence the design of buildings. Each project's proposed building performance rating must exceed the baseline building performance rating **by at least 25%**[3] prior to renewables, calculated according to **ASHRAE 90.1-2007 Appendix G,** using a computer simulation model, and validated by an independent third party. Applicants may elect to submit projects based on another version of the ASHRAE 90.1 Appendix G performance rating method, however additional validated and independent documentation must be provided demonstrating performance rating equivalency with ASHRAE 90.1-2007 Appendix G. For projects that otherwise meet these criteria but have not been third party validated, input and output modeling files must be submitted to allow comprehensive validation by NYSERDA.

[1] Clearly indicate hourly salary rate ranges for each title classification proposed under the agreement with NYSERDA and other overhead multipliers you propose to use for the duration of the agreement with NYSERDA (initial expiration date of June 30, 2018). Provide rates and multiplier for services to be provided from date of application. These shall be independent annual rates. The multiplier stated shall include all overhead, profit and other costs. **Do not provide fully burdened rates in the chart.**

[2] Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projects; based on federal government or other independently-approved rates). If rate(s) is/are approved by an independent organization, such as the federal government, provide a copy of such approval. If rate(s) is/are 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) are 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 adjustments for such differences. Requests for financial statements or other needed financial information may be made if deemed necessary.

[3] Approved Applicants with models demonstrating energy cost savings that exceed ASHRAE 90.1-2007 Appendix G by 40% or more (prior to renewables) or Tier 3 of the Multifamily New Construction Program will be listed on NYSERDA's website as capable of providing Deep Energy Savings and Zero-Net-Capable technical services.

Multifamily New Construction Program
☐ Submit evidence that a current staff member is: • a New York State Licensed Professional Engineer (P.E.) or a Registered Architect (R.A.) with at least 3 years of commercial/multifamily energy efficiency experience (i.e., new construction projects, delivered performance contracts, executed energy audits, Combined Heat and Power (CHP) projects, demand response, etc.); **OR** • a Certified Passive House Consultant **OR** Certified Passive House Designer with at least 3 years of commercial or multifamily energy efficiency experience as described above; **OR** • a Certified Energy Manager (CEM) with at least 5 years of commercial/multifamily energy efficiency experience as described above.
☐ Submit evidence that a current staff member or named sub-contractor has: • at least 3 years of energy modeling experience, **AND** • has either an energy modeler certification (e.g., ASHRAE BEMP, AEE BESA), **OR** evidence of at least two commercial or multifamily energy models since 2009 validated by an independent third party (e.g., LEED, NYSERDA, PHIUS[4], PHI[5], utility program, etc.).
☐ Submit **Two** multifamily projects **managed by the applicant** with narratives, technical details and backup documentation (i.e., input and output modeling files, etc.) demonstrating the ability to influence the design of buildings where: • the project's proposed building performance rating exceeds the baseline building performance rating by **at least 25%**[6] prior to renewables, calculated according to **ASHRAE 90.1-2007 Appendix G**, using a computer simulation model, and validated by an independent third party; **OR** • if the project's proposed building performance rating was based on another version of the ASHRAE 90.1 Appendix G performance rating method, additional validated and independent documentation demonstrates performance rating equivalency with ASHRAE 90.1-2007 Appendix G; **OR** • the maximum primary energy demand meets or exceeds 6200 kWh/person/yr prior to renewables, when calculated following PHIUS+ standards[6]; **OR** • the maximum primary energy demand meets or exceeds 38 kBtu/SF/yr prior to renewables, when calculated following PHI standards[6]; **OR** • the requirements of ENERGY STAR Certified Homes Version 3.1[7] are met or exceeded. • For models that otherwise meet the above-stated criteria but have not been third party validated to any of the above standards, backup documentation must be submitted to allow comprehensive validation by NYSERDA.

[4] PHIUS = Passive House Institute US, http://www.phius.org

[5] PHI = Passive House Institute, http://www.passivehouse.com

[6] Approved Applicants with models demonstrating energy cost savings that exceed ASHRAE 90.1-2007 Appendix G by 40% or more (prior to renewables) or Tier 3 of the Multifamily New Construction Program will be listed on NYSERDA's website as capable of providing Deep Energy Savings and Zero-Net-Capable technical services.

[7] Version 3.1, ENERGY STAR National Program Requirements

New Construction and Codes Partner Application: Required Documentation

RESNET-accredited Providers to serve the Low-rise Residential & Multifamily New Construction Programs
☐ Submit: ☐ A detailed outline of the Provider's organizational structure which identifies those individuals who will provide the necessary technical support and oversight of affiliate Raters, including the Quality Assurance Designee(s), Quality Assurance Delegate(s), RESNET certified trainer(s), and management; including resumes for each individual; ☐ The Provider's Communications Plan for ensuring affiliate Raters maintain knowledge of, and any changes made to, the EPA's ENERGY STAR Certified Homes program, RESNET, or NYSERDA's Low-rise Residential or Multifamily New Construction Programs; ☐ The Provider's Quality Assurance (QA) Plan, which complies with RESNET's QA requirements as well as all Program requirements, including the requirements listed in Article 4 of Exhibit G to the Standard Agreement and Sample Statement of Work (Attachment E); ☐ A copy of the Provider's template contractual agreement with affiliate Rater(s) which references the minimum required qualifications for serving as an affiliate Rater and delineate the rights and responsibilities of both the affiliate Rater and the Provider serving either NYSERDA Program. ☐ Submit **Two (2)** projects, **either performed by the Applicant or produced by a Rater under the Applicant's Providership**, with narratives, technical details and backup documentation (i.e., energy modeling files from modeling software meeting US EPA and RESNET standards, e.g. REMRATE) that meet or exceed the requirements of ENERGY STAR Version 3.1[8].

[8] Version 3.1, ENERGY STAR National Program Requirements

IX. 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 except it from disclosure, including a written statement of the reasons why the information should be accepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx. However, 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
625 Broadway
Albany, NY 12207

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

Empire State Development
Minority and Women's Business Development Division
625 Broadway
Albany, NY 12207

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 new procurement lobbying requirements which can be found at http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html . The attached Application 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.ny.gov/pdf/current_forms/st/st220td_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 perspective contractor prior to contacting and filed with NYSERDA. *See,* ST-220-CA (available at http://www.tax.ny.gov/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf .

Contract Award - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify applicants in approximately 4 weeks from the receipt of an application whether your application 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.

X. Attachments:

Attachment A: New Construction and Codes Partner Services Application Check List (Mandatory)
Attachment B: RFP3036 New Construction and Codes Partner Services Application (Mandatory)
Attachment C: Disclosure of Prior Findings of Non-Responsibility Form (Mandatory)
Attachment D: Project Personnel and Billing Rates Form (Mandatory)
Attachment E: Standard Agreement, Sample Statement of Work, and Exhibits F and G: Terms and Conditions for Commercial, Residential and Multifamily New Construction Technical Services
Attachment F: Instructions for Electronic Submission

ATTACHMENT A

NEW CONSTRUCTION AND CODES PARTNER SERVICES

APPLICATION CHECKLIST (MANDATORY)

Company:	**Date:**		
Address:	**City** 3	**State** 4	**Zip**
Federal Tax Identification Number:	**By checking this box, I certify that the TIN submitted is not a social security number. (If your TIN is your social security number, please leave information blank and contact NYSERDA.)**		
Primary Contact:	**Title:** **Phone:** **Fax:** **Email:**		
Secondary Contact :	**Title:** **Phone:** **Fax:** **Email:**		

The Prime Contractor must sign this form below and answer the following questions:

1)	Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) **(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)**	☐ YES	☐ NO
2)	Do you wish to have any information submitted in your application package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page "confidential" or "proprietary" (For additional information regarding this, please refer to the section entitled "Proprietary Information" in the solicitation document).	☐ YES	☐ NO
3)	Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg)	☐ YES	☐ NO
4)	Are you a Minority or Women-Owned Business Enterprise?	☐ YES	☐ NO
5)	Does your application contain Minority or Women-Owned Business enterprises as subcontractors?	☐ YES	☐ NO
6)	Is Primary Contact a New York State-licensed Professional Engineer (P.E.) or Registered Architect (R.A.) with at least 5 years energy efficiency experience?	☐ YES	☐ NO
7)	Is the Sub-Consultant, if applicable, a New York State-licensed Professional Engineer (P.E.) or Registered Architect (R.A.) with at least 5 years energy efficiency experience?	☐ YES	☐ NO
8)	Does Primary Contact or other personnel have 3 years energy modeling experience?	☐ YES	☐ NO
9)	Does the Sub-Consultant, if applicable, have 3 years energy modeling experience?	☐ YES	☐ NO

Required Items: Prime Contractor	**Sub-Contractor Company**
☐ 1) Project Narratives	☐ 1) References
☐ 2) References	☐ 2) Organizational Chart/Matrix
☐ 3) Organizational Chart/Matrix	☐ 3) Personnel resumes
☐ 4) Personnel resumes	☐ 4) Project Personnel Billing Rates Form
☐ 5) Project Personnel Billing Rates Form	

I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the 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	Date

Note: This completed form **MUST** be signed and attached to the front of your application.

NEW YORK STATE OF OPPORTUNITY. | NYSERDA

RFP3036: ATTACHMENT B

Rev September 2016

NEW CONSTRUCTION AND CODES PARTNER SERVICES APPLICATION

COMPANY NAME **DATE**

Federal Tax Identification #

IDENTIFY NYSERDA PROGRAM(S) FOR WHICH YOU WISH TO PROVIDE SERVICES:[1]

☐ [1]**COMMERCIAL NEW CONSTRUCTION (PON1601 Rev 1)** **[Existing EMP contract number:]**

☐ **MULTI-FAMILY NEW CONSTRUCTION (PON3309)** **[Existing MPP[2] NC Partner? ____ Yes]**

☐ [1]**RESNET-ACCREDITED PROVIDER FOR LOW-RISE RESIDENTIAL (PON2309) and MULTIFAMILY NEW CONSTRUCTION** **[Existing LR NC Provider? ____ Yes]**

Note to previously approved Energy Modeling Partners or Low-rise Residential New Construction Providers -
If additional staff or sub-contractors will be providing services, list them below.
Otherwise, go to page 2, "Regional Areas/Counties Served"

Primary Contact

First Name [1] Last Name [2]

Title - Primary Contact

Address

City State Zip

Primary Contact - Email

Phone Fax

Secondary Contact

First Name Last Name

Title – Secondary Contact

Address

City State Zip

Secondary Contact Email

Phone Fax

[1] ***Note to previously approved Energy Modeling Partners or Low-rise Residential New Construction Providers -*** Check your program box and provide the requested information. Indicate if you wish to apply to other Programs.
[2] MPP = Multifamily Performance Program

NEW CONSTRUCTION AND CODES PARTNER SERVICES APPLICATION

Sub-Contractor Information

Will you be using a sub-contractor? Yes If Yes, complete the following:

Company Name

First name Last Name

Title

Address

City State Zip

Email

Phone Fax

REGIONAL AREAS / COUNTIES SERVED

Specify the Region(s) or specific Counties in which the Company proposes to serve customers. Customers will be provided lists of Partners available in their areas. More than one Region or County may be selected provided the Company can demonstrate the ability to provide services.

Region A:	Western New York and Southern Tier	Region B:	North Country and Central New York	Region C:	Downstate and Metropolitan New York
☐	**All Counties in Region**	☐	**All Counties in Region**	☐	**All Counties in Region**
☐	Allegany	☐	Albany	☐	Bronx
☐	Cattaraugus	☐	Broome	☐	Columbia
☐	Chautauqua	☐	Cayuga	☐	Delaware
☐	Chemung	☐	Chenango	☐	Dutchess
☐	Erie	☐	Clinton	☐	Greene
☐	Genesee	☐	Cortland	☐	Kings
☐	Livingston	☐	Essex	☐	New York
☐	Monroe	☐	Franklin	☐	Orange
☐	Niagara	☐	Fulton	☐	Putnam
☐	Orleans	☐	Hamilton	☐	Queens
☐	Ontario	☐	Herkimer	☐	Richmond
☐	Schuyler	☐	Jefferson	☐	Rockland
☐	Seneca	☐	Lewis	☐	Sullivan
☐	Steuben	☐	Madison	☐	Westchester
☐	Tioga	☐	Montgomery	☐	Ulster
☐	Tompkins	☐	Oneida		
☐	Wayne	☐	Onondaga		
☐	Wyoming	☐	Oswego		
☐	Yates	☐	Otsego		
		☐	Rensselaer		
		☐	Saratoga		
		☐	Schenectady		
		☐	Schoharie		
		☐	St. Lawrence		
		☐	Warren		
		☐	Washington		

New Construction and Codes Partner Application Checklist: Required Documentation (Pages 5 and 6)

Professional and Modeling Experience:

Provide the required documentation and evidence for each Program the Applicant wishes to serve, demonstrating the professional credentials and experience of the primary contact, any sub-contractors, and staff who will be working on NYSERDA related projects.

Work Sample Details:
For each Program the Applicant wishes to serve, provide project narratives and supporting technical details with backup documentation (i.e., input and output modeling files, etc.) that demonstrate the ability of the Prime Contact to influence the design of buildings that meet or exceed the requirements noted in the following table.

A work sample may be for new construction or a substantial renovation and must include the following:

- ☐ A narrative (not to exceed 10 pages) that describes the project background, scope of work and budget, design process, initial goals for the project, measures and alternatives presented to the customer, and results of the technical assistance provided to the customer, including the resulting efficiency.
- ☐ Calculations, modeling files and data to support the energy savings findings described in the narrative.
- ☐ List of personnel who worked on the project including but not limited to customer interface, reviewer, energy modeler, etc.

Approved Applicants with models demonstrating energy cost savings that exceed ASHRAE 90.1-2007 by 40% or more (prior to renewables) or that meet or exceed Tier 3 of the Multifamily New Construction Program will be listed on NYSERDA's website as capable of providing Deep Energy Savings and Zero-Net-Energy design and technical services.

ACCEPTANCE OF STANDARD AGREEMENT:

Applicant Company accepts all terms and conditions in the Sample Agreement, Attachment E.

☐ YES ☐ NO

If certain terms and conditions are not accepted, the firm must define these exceptions by attaching a document identifying all exceptions. Please note: NYSERDA will only consider exceptions specifically listed in the application during contract negotiations.

☐ Document containing all exceptions (if applicable)

AUTHORIZED SIGNATURE AND CERTIFICATION:

I certify that the provided information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, and that the application 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-(6)(b) of the State Finance Law. I understand that this application may be disqualified if the application requirements are not met. I, the undersigned, am authorized to commit my organization to this application.

X _____

Name
Title

Required Documentation From All Applicants
☐ **REFERENCES:** Two letters of reference with contact information;
☐ **ORGANIZATIONAL CHART:** Organization chart or matrix depicting the personnel and/or the staff position that will provide services to NYSERDA;
☐ **PERSONNEL RESUMES:** One-page resumes for the P.E. or R.A., where applicable, modeler, and key personnel who will be directly involved in providing Technical Services;
☐ **RATE SCHEDULE:** A completed Project Personnel and Billing Rates Form (Attachment D)[1] and Supporting Documentation for Indirect/Direct Rates.[2]
Commercial New Construction Program
☐ Submit evidence that a current staff member is a New York State Licensed Professional Engineer (P.E.) **OR** a Registered Architect (R.A.) with at least 3 years of commercial/multifamily energy efficiency experience (i.e., new construction projects, delivered performance contracts, executed energy audits, Combined Heat and Power (CHP) projects, demand response, etc.);
☐ Submit evidence that a current staff member or named sub-contractor has: • at least 3 years of energy modeling experience, **AND** • has either an energy modeler certification (e.g., ASHRAE BEMP, AEE BESA) **OR** evidence of at least two commercial or multifamily energy models since 2009 validated by an independent third party (e.g., LEED, NYSERDA, utility program, etc.)
☐ Submit **Two** commercial or multifamily projects **managed by the applicant** with narratives, technical details and backup documentation (i.e., input and output modeling files, third party verification, etc.) demonstrating the ability to influence the design of buildings. Each project's proposed building performance rating must exceed the baseline building performance rating **by at least 25%**[3] prior to renewables, calculated according to **ASHRAE 90.1-2007 Appendix G,** using a computer simulation model, and validated by an independent third party. Applicants may elect to submit projects based on another version of the ASHRAE 90.1 Appendix G performance rating method, however additional validated and independent documentation must be provided demonstrating performance rating equivalency with ASHRAE 90.1-2007 Appendix G. For projects that otherwise meet these criteria but have not been third party validated, input and output modeling files must be submitted to allow comprehensive validation by NYSERDA.

[1] Clearly indicate hourly salary rate ranges for each title classification proposed under the agreement with NYSERDA and other overhead multipliers you propose to use for the duration of the agreement with NYSERDA (initial expiration date of June 30, 2018). Provide rates and multiplier for services to be provided from date of application. These shall be independent annual rates. The multiplier stated shall include all overhead, profit and other costs. **Do not provide fully burdened rates in the chart.**

[2] Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projects; based on federal government or other independently-approved rates). If rate(s) is/are approved by an independent organization, such as the federal government, provide a copy of such approval. If rate(s) is/are 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) are 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 adjustments for such differences. Requests for financial statements or other needed financial information may be made if deemed necessary.

[3] Approved Applicants with models demonstrating energy cost savings that exceed ASHRAE 90.1-2007 Appendix G by 40% or more (prior to renewables) or Tier 3 of the Multifamily New Construction Program will be listed on NYSERDA's website as capable of providing Deep Energy Savings and Zero-Net-Capable technical services.

Multifamily New Construction Program
☐ Submit evidence that a current staff member is: • a New York State Licensed Professional Engineer (P.E.) or a Registered Architect (R.A.) with at least 3 years of commercial/multifamily energy efficiency experience (i.e., new construction projects, delivered performance contracts, executed energy audits, Combined Heat and Power (CHP) projects, demand response, etc.); **OR** • a Certified Passive House Consultant **OR** Certified Passive House Designer with at least 3 years of commercial or multifamily energy efficiency experience as described above; **OR** • a Certified Energy Manager (CEM) with at least 5 years of commercial/multifamily energy efficiency experience as described above.
☐ Submit evidence that a current staff member or named sub-contractor has: • at least 3 years of energy modeling experience, **AND** • has either an energy modeler certification (e.g., ASHRAE BEMP, AEE BESA), **OR** evidence of at least two commercial or multifamily energy models since 2009 validated by an independent third party (e.g., LEED, NYSERDA, PHIUS[4], PHI[5], utility program, etc.).
☐ Submit **Two** multifamily projects **managed by the applicant** with narratives, technical details and backup documentation (i.e., input and output modeling files, etc.) demonstrating the ability to influence the design of buildings where: • the project's proposed building performance rating exceeds the baseline building performance rating by **at least 25%**[6] prior to renewables, calculated according to **ASHRAE 90.1-2007 Appendix G**, using a computer simulation model, and validated by an independent third party; **OR** • if the project's proposed building performance rating was based on another version of the ASHRAE 90.1 Appendix G performance rating method, additional validated and independent documentation demonstrates performance rating equivalency with ASHRAE 90.1-2007 Appendix G; **OR** • the maximum primary energy demand meets or exceeds 6200 kWh/person/yr prior to renewables, when calculated following PHIUS+ standards[6]; **OR** • the maximum primary energy demand meets or exceeds 38 kBtu/SF/yr prior to renewables, when calculated following PHI standards[6]; **OR** • the requirements of ENERGY STAR Certified Homes Version 3.1[7] are met or exceeded. • For models that otherwise meet the above-stated criteria but have not been third party validated to any of the above standards, backup documentation must be submitted to allow comprehensive validation by NYSERDA.

[4] PHIUS = Passive House Institute US, http://www.phius.org

[5] PHI = Passive House Institute, http://www.passivehouse.com

[6] Approved Applicants with models demonstrating energy cost savings that exceed ASHRAE 90.1-2007 Appendix G by 40% or more (prior to renewables) or Tier 3 of the Multifamily New Construction Program will be listed on NYSERDA's website as capable of providing Deep Energy Savings and Zero-Net-Capable technical services.

[7] Version 3.1, ENERGY STAR National Program Requirements

RESNET-accredited Providers to serve the Low-rise Residential & Multifamily New Construction Programs
☐ Submit: ☐ A detailed outline of the Provider's organizational structure which identifies those individuals who will provide the necessary technical support and oversight of affiliate Raters, including the Quality Assurance Designee(s), Quality Assurance Delegate(s), RESNET certified trainer(s), and management; including resumes for each individual; ☐ The Provider's Communications Plan for ensuring affiliate Raters maintain knowledge of, and any changes made to, the EPA's ENERGY STAR Certified Homes program, RESNET, or NYSERDA's Low-rise Residential or Multifamily New Construction Programs; ☐ The Provider's Quality Assurance (QA) Plan, which complies with RESNET's QA requirements as well as all Program requirements, including the requirements listed in Article 4 of Exhibit G to the Standard Agreement and Sample Statement of Work (Attachment E); ☐ A copy of the Provider's template contractual agreement with affiliate Rater(s) which references the minimum required qualifications for serving as an affiliate Rater and delineate the rights and responsibilities of both the affiliate Rater and the Provider serving either NYSERDA Program. ☐ Submit **Two (2)** projects, **either performed by the Applicant or produced by a Rater under the Applicant's Providership**, with narratives, technical details and backup documentation (i.e., energy modeling files from modeling software meeting US EPA and RESNET standards, e.g. REMRATE) that meet or exceed the requirements of ENERGY STAR Version 3.1[8].

[8] Version 3.1, ENERGY STAR National Program Requirements

Attachment C

RFP 3036

Disclosure of Prior Findings of Non-responsibility Form
(Mandatory)

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

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information?	☐	Yes
	☐	No

If you answered yes, please provide details:

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

Signature:_____

Date:_____

Print Name:_____

Title:_____

ATTACHMENT D
PROJECT PERSONNEL AND BILLING RATES FORM

DIRECT PERSONNEL COSTS:

(Sample) Title Classification	Not to exceed Hourly Rate Range							
	Year 1		Year 2		Year 3		Year 4	
	Min	Max	Min	Max	Min	Max	Min	Max
Principal								
Senior Project Manager								
Project Manager								
Engineer								
Junior Engineer								
Analyst								
Administrative Support								

MULTIPLIER:

PROFIT / FIXED FEE:

DIRECT NON-PERSONAL SERVICE COSTS:

Direct non-personal service costs will be allowed and reimbursed at cost for project related expenses. Items not listed but necessary to complete the work must be pre-approved by NYSERDA:

Travel
Supplies
Postage

Laboratory Tests
Test Equipment Rentals
Computer Services

Overnight Mail
Report Reproduction/Outside Printing
Subcontracts

Attachment E
Sample Agreement and Scope of Work

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

AGREEMENT

1. Agreement Number:

2. Contractor:

3. Project Director:

4. Effective Date:

5. Total Amount of Award:

6. Project Period: [Effective date – June 30, 2018]

7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement;
- Exhibit E, Rate Schedule;
- Exhibit F, Commercial New Construction Support Services; and
- Exhibit G, Residential and Multifamily New Construction Support Services.

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

[CONTRACTOR]	**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**
By _____	By _____
Name _____	Cheryl M. Glanton Director of Contract Management
Title _____	

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
NEW CONSTRUCTION AND CODES PARTNER SERVICES
STATEMENT OF WORK

1.0 GENERAL

The New Construction and Codes Partner (hereafter, the "Contractor") will deliver support services on new construction projects to building owners, developers and leaseholders for the following sectors:

1. Commercial New Construction
2. Multi-family New Construction Program
3. Low-rise Residential New Construction Program

Under the terms and conditions of this Agreement, the Contractor shall provide support services on new construction projects to eligible NYSERDA Customers at the request or direction of NYSERDA. The term "Customer" is used throughout this Agreement to include all interested parties. Support services may include but are not limited to: beyond code, deep energy savings and zero net energy design services, passive house design services, building energy use simulation modeling, specialized green building assistance, and quality assurance.

2.0 NEW CONSTRUCTION AND CODES PARTNER SERVICES

Partner services for each sector are described below.

A. Services on Behalf of NYSERDA

The Contractor may be asked to provide services on behalf of NYSERDA. Such requests may be on either a competitive or single source basis. Upon NYSERDA direction, the Contractor shall provide a cost-not-to-exceed estimate to carry out the services. Costs for these services will be paid by NYSERDA. A Task Work Order (TWO) will be issued under this Agreement for any services requested by NYSERDA. No work shall commence until a Notice to Proceed and approved TWO and Purchase Order Number are issued to the Contractor.

B. Commercial New Construction

If the Contractor is selected to perform work for the Commercial New Construction Sector, all work will be conducted under the terms of this Agreement and Exhibit F.

C. Multifamily New Construction

If the Contractor is selected to perform work for the Multifamily New Construction Sector, all work will be conducted under the terms of this Agreement and Exhibit G.

D. Low-rise Residential New Construction

If the Contractor is selected to perform work for the Low-rise Residential New Construction Sector, all work will be conducted under the terms of this Agreement and Exhibit G.

E. Task Assignments and Regional Coverage

The Contractor will provide support services in designated regional areas. The designated regional areas shall include the following counties (*as identified in the New Construction and Codes Partner Services Application*):

Region A: Western New York and Southern Tier:
Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, Yates.

Region B: North Country and Central New York:
Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Warren, Washington

Region C: Downstate and Metropolitan New York:
Bronx, Columbia, Delaware, Duchess, Greene, Kings, New York, Orange, Putnam, Queens, Richmond, Rockland, Sullivan, Westchester, Ulster

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and Exhibits A, B, C, D, and E hereto, all of which are made a part hereof as if set forth here in full.

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

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

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

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

Contractor: The Contractor identified in Item 2 on the first page of this Agreement.

Customer: An individual, a business, an organization or other entity who is a customer of NYSERDA.

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

Final Report: The Final Reports as described in Section 6 of Exhibit A.

Notice to Proceed: The Notice described in Section 3(i) of Exhibit A.

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

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

Progress Reports: The Progress Reports as required by the individual Task Work Orders issued pursuant to this Agreement.

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

Statement of Work: The Statement of Work attached hereto as Exhibit A and the individual Task Work Orders issued pursuant to this Agreement.

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

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

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

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

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

Article II

Performance of Work, Project Personnel

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all work (the "Work") necessary to carry out Task Work Orders issued by NYSERDA for the implementation of the Statement of Work, attached hereto as Exhibit A (including the furnishing of personnel and the procurement of equipment, supplies and other items necessary in connection therewith) and subject to the terms therein. The Work shall include on-site engineering assistance, training and materials, technical analysis and support, implementation assistance services, and other technical services as requested by NYSERDA. The Work shall be carried out with diligence and skill to the satisfaction of NYSERDA. The Contractor agrees to cooperate with NYSERDA in carrying out the Work, and to review and act upon NYSERDA recommendations, in order to assure the Work's expeditious and satisfactory conduct and completion. The Contractor also agrees to meet with NYSERDA at such times as NYSERDA may reasonably request, and at other times specified in Task Work Orders, to discuss the progress of the Work and any other matters that may arise.

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 Task Work Orders shall serve in the capacities described therein for the conduct of the Work described therein. Any changes of Project Director or in persons described in Task Work Orders shall be subject to the prior written approval of NYSERDA. Annexed as Exhibit E is a list of personnel that will be available to perform Work under this Agreement along with the rates that will apply for each such person during the term of this Agreement. If the Contractor wishes to employ personnel not listed on Exhibit E to complete any Task Work Order hereunder, the Contractor must obtain the written approval of NYSERDA. The approvals set forth in this Section shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director or personnel shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in NYSERDA to all equipment purchased by the Contractor under this Agreement. Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better vesting in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment.

Article III

Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A and the Task Work Orders issued pursuant to this Agreement.

Article IV

Payment

Section 4.01. Payment Terms. Compensation will be based on the Contractor's staff charges and indirect costs plus allowable direct charges (collectively, "Contractor fees"). Contractor fees for a project must be fully described in each Task Work Order Plan budget and must be approved by NYSERDA. The Task Work Order Plan budget must state a not-to-exceed cost cap or ceiling amount for each project. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Work Order Plan without approval in writing by NYSERDA. The Contractor shall not be compensated for time spent in the preparation of any Task Work Order Plan.

The Task Work Order issued by NYSERDA will state NYSERDA's funding obligation. For projects in which NYSERDA is not directly paying 100% of the Contractor's fees, the Contractor itself must negotiate a payment schedule and collect fees from all other parties directly. NYSERDA will be responsible for its share of the project costs only.

(a) Staff Charges. To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate set forth in each Task Work Order and within the ranges set forth in Exhibit E or the actual wages paid to the employee and applicable at the time the Work is performed. Such billing rates shall not be increased during the term hereof without the written consent of NYSERDA.

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

(c) Indirect Costs: The Contractor shall be reimbursed for NYSERDA's pro rata share of fringe benefits, overhead, general and administrative (G&A), and other indirect costs, all at the fixed

rate as set forth in Exhibit E. The Contractor hereby warrants and guarantees, in accordance with Section 9.01(k) hereto, that its rates for the foregoing indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

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

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

Section 4.02. Progress Payments. Unless otherwise specified in the Notice to Proceed for an individual Task Work Order, the Contractor may submit invoices for progress payment no more than once each month for Work performed. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to invoices@nyserda.ny.gov. Such invoices shall make reference to the Agreement number shown in Item No. 1 on page one of this Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Task Work Order budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Task Work Order budget that are within the ranges set forth in Exhibit E. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

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, 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. Release by the Contractor. The acceptance by the Contractor of final payment from NYSERDA under each Task Work Order issued pursuant to this Agreement shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to the Task Work Order and this Agreement.

Section 4.04. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three

years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance under this Agreement.

Section 4.05. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.04 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.04 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States, not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and 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 less than $50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are

obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in a Task Work Order as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

Article VI

Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. It is understood and agreed that the delivery of the draft and final versions of the Final Report by the Contractor shall occur in a timely manner and in accordance with the requirements of the Task Work Order schedule.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of the Final Report and all other deliverables as defined in the Task Work Order Plan.

Section 6.03. Option to Renew. NYSERDA shall have an option to renew this Agreement, at NYSERDA's discretion, for Two (2) additional 2 year periods, upon the same terms and conditions as this Agreement, prior to the expiration of the initial term or any subsequent renewal.

Article VII

Force Majeure

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

Article VIII

Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information.

(a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.

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

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

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

Article IX

Warranties and Guarantees

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

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

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

(c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

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

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

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

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

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

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

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

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

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 Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XI

Insurance

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

(a) 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.

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

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

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

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

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

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

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

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

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

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

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

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

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

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

Section 12.02. Termination.

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

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

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

12.03 Suspension or Termination for Non-Responsibility.

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

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

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or

privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

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

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

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

NYSERDA
Name: Cheryl M. Glanton
Title: Director of Contract Management
Address: 17 Columbia Circle, Albany, New York 12203
Facsimile Number: 518-862-1091
E-Mail Address: Cheryl.Glanton@nyserda.ny.gov
Personal Delivery: Reception desk at the above address

[Contractor]
Name:
Title:
Address:
Facsimile Number:
E-Mail Address:

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

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

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

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

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

Article XVI

Publicity

Section 16.01. Publicity.

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

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

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the

Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

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

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

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

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

8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

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

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or

[2] This is only a summary; the full text of Part 504 can be accessed at: http://www.nyserda.ny.gov/en/About/~/media/Files/About/Contact/NYSERDARegulations.ashx)

services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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

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

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

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

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

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

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

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

504.4. Payment Procedures.

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

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

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

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

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

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

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

504.9. Notice of Objection. Contractor may object to any action taken by

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

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

504.11. Court Action or Other Legal Processes.

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

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

Exhibit E
Rate Schedule

PROJECT PERSONNEL & RATES

DIRECT PERSONNEL COSTS:

Sample Title Classifications	Not to Exceed Hourly Rate Range		Not to Exceed Hourly Rate Range		Not to Exceed Hourly Rate Range	
	Min.	Max.	Min.	Max.	Min.	Max.
Principal Investigator						
Technical Specialist						
Senior Project Manager						
Project Manager						
Senior Engineer/Architect						
Engineer						
Analyst						
Administrative Support						

MULTIPLIER:

Profit / Fixed Fee:

DIRECT NON-PERSONAL SERVICE COSTS:

Direct non-personal service costs will be allowed and reimbursed at cost for project related expenses. Items not listed but necessary to complete the work must be pre-approved by NYSERDA:

Travel	Laboratory Tests	Overnight Mail
Supplies	Test Equipment Rentals	Report Reproduction/Outside Printing
Postage	Computer Services	Subcontracts

Exhibit F

Commercial New Construction Support Services

Terms and Conditions

Commercial New Construction Support Services
Terms and Conditions

1. **Titles:**
   The New Construction and Codes Partner approved to provide Commercial New Construction Support Services may be known as the "Energy Modeling Partner," or "EMP".

2. **Commercial New Construction Process:**
   The Commercial New Construction Process, from customer application to compensation to the Energy Modeling Partner (EMP), is as follows:

   A. **Customer Application:** To receive whole building or custom measure technical assistance and incentives, customers must apply to NYSERDA before work commences, preferably no later than time of schematic design.

   B. **Outreach Project Consultant:** Upon receipt of a customer application, an outreach project consultant (OPC) is assigned to the project at no cost to the customer. OPCs are under contract to NYSERDA to assist applicants with project needs. The OPC coordinates the activities of the EMP, reviews scopes of work and studies, and is available to answer questions from the customer. OPCs also conduct scoping meetings and charrettes in conjunction with the EMP.

   C. **Customer and the Energy Modeling Partner:** Customers select an EMP from a list maintained by NYSERDA. If they wish to use a firm not on the list, that firm must follow the terms of this solicitation to apply and be placed on the NYSERDA list of firms able to provide new construction technical services.

   D. **Scoping Meetings and Task Work Orders:** OPCs will coordinate and schedule a scoping meeting between the customer and the EMP. After the initial scoping visit and meeting with prospective customers on specific projects, the EMP will prepare a Task Work Order (TWO) describing the scope of services and measures to be evaluated and a fee proposal for that project. All TWOs and their corresponding not-to-exceed budgets must be submitted following NYSERDA guidelines and approved by NYSERDA prior to work commencing.

   E. **Compensation**: Compensation for each TWO will be based on the EMP's hourly rates plus allowable expenses to an upset maximum dollar amount. All work assignments will be managed by NYSERDA. Time spent on the initial scoping visit and preparation of the scope of work may be included in the fee proposal. Travel expenses may also be included at a reasonable cost of generally no more than 3% of the total budget for each project. The TWO will identify the total cost of the project, but NYSERDA will only be responsible for its cost-share, as described in PON 1601 Rev1 - New Construction Program Technical and Financial Support [PDF]. EMPs will enter into agreements with the customer for the customer's share of the project cost.

3. Partner Services and Project Process:

All work for the Commercial New Construction Program will be conducted under this Agreement and will be defined by a project-specific written TWO for each project or service. Costs for project-related services are cost-shared between NYSERDA and the Customer. All Program-specific TWOs must be submitted following NYSERDA's program guidelines and using NYSERDA provided templates.

The project process is as follows:

(a) EMP will assist in bringing Customers, projects or services into the Commercial New Construction Program and any successor programs identified by NYSERDA.

(b) Alternatively, should Customers contact NYSERDA or an Outreach Project Consultant (OPC) regarding technical support services, NYSERDA or the OPC will provide the Customer with a list of EMPs for the Customer's geographic region.

(c) A Customer application will be assigned to an OPC and an EMP will be approved for the project.

(d) The EMP will confer and coordinate with the OPC prior to a scoping meeting or charette with the Customer to identify and discuss strategies and methods of analysis to be used. NYSERDA and the EMP shall confer as to the appropriateness of the Customer's request for analysis and possible alternatives.

(e) All scoping meetings require an EMP site visit unless otherwise approved by NYSERDA. Scoping meetings are scheduled by OPCs and may include, but are not limited to, the following attendees: EMP, Customer, customer design team, construction team, NYSERDA Project Manager (PM), and OPC if appropriate. The EMP shall identify and discuss opportunities to incorporate energy efficiency and sustainability with the Customer's design teams. The EMP will use the results of the scoping meeting to develop a project scope.

(f) When requested by the Customer, the EMP shall provide design and technical support services for customers pursuing deep energy savings building design, where the predicted energy cost savings exceed designated baselines by at least 40%; or, when requested by the Customer, provide design and technical support services for customers pursuing Zero Net Energy or Zero Net Capable building design, defined as a building designed such that the energy generated by onsite renewable resources matches the building energy consumption. Such services will be identified in the TWO and may include, but are not limited to: integrated design charrettes, conceptual energy modeling, parametric analyses of systems, cost control strategies, conferring with the design team on alternative systems or measures, project delivery methods, etc.

(g) The EMP shall submit a firm cost estimate (not-to-exceed budget), schedule and proposed TWO to accomplish a definitive effort within the terms of this Exhibit. After a scoping meeting with the Customer, the EMP shall prepare a written proposed TWO according to NYSERDA's guidelines, which shall describe and define the scope of services, the energy efficiency measures and systems to be evaluated, the deep energy savings or zero net energy project steps to be undertaken, if applicable, and the budget and schedule for providing a technical report that

identifies the measures, estimated savings and estimated incentives the Customer may be eligible to receive under the Commercial New Construction Program.

All project TWOs shall be written on a time and materials basis with a not-to-exceed cost cap. All rates shall be consistent with those in Exhibit E of this Agreement. All cost estimates should be reasonable cost estimates.

(h) The OPC will review and approve the TWO or request changes that may be appropriate. The OPC will then forward the TWO to NYSERDA for review and approval. If documentation is found to be unacceptable, NYSERDA may request that the EMP make any changes to the TWO and resubmit or NYSERDA may make any changes it deems necessary.

(i) Following NYSERDA's review and approval of the TWO, NYSERDA will send the TWO to the Customer with a notice that the Customer must agree to enter into a contract with the EMP. Upon receipt of the Customer's signed agreement, NYSERDA shall issue a Notice to Proceed to the EMP incorporating the terms of the TWO.

   i. Once NYSERDA has issued a Notice to Proceed with the TWO and a Purchase Order number, the EMP shall carry out the work pursuant to the requirements of such TWO.
   ii. If NYSERDA, in its sole discretion, determines that the parties will be unable to reach agreement on the terms of a TWO, NYSERDA may rescind its TWO request. NYSERDA reserves the right to cancel projects that do not conform to program rules, or are otherwise not able to proceed under the guidelines of the program.
   iii. The EMP is not guaranteed payment if work is begun prior to receipt of a fully-executed TWO, Notice to Proceed, and Purchase Order number issued by NYSERDA.

(j) If NYSERDA or the EMP finds that a TWO must be modified, NYSERDA may approve a TWO amendment request. The EMP shall then prepare a modification or amendment to the TWO according to current program rules. If the EMP's modified TWO is acceptable to NYSERDA, NYSERDA may issue a TWO amendment incorporating the terms of the EMP's modified TWO.

(k) Using generally accepted architectural and engineering practices, the EMP shall provide architectural and engineering assistance as needed to evaluate components having an effect on energy efficiencies and energy consumption by review and analysis of identified measures. The EMP shall identify, present, discuss and analyze potential energy efficiency improvements, and shall review and analyze options presented to various components of building design, construction and use; and perform other similar support activities to the Customer and design teams;

   i. Measures may include control systems, various types of Heating, Ventilation and Air Conditioning (HVAC) systems, lighting, motors, transformers, variable speed drives, envelope systems, insulation, windows, materials, process equipment, productivity improvements and other building systems and components having an effect on electrical and fossil fuel energy consumption or on the energy use of a building or a class of buildings;

(l) The EMP shall conduct energy analyses and whole building energy performance analysis through detailed energy calculations, using computer-assisted building modeling tools such as Energy Plus, eQUEST, or other NYSERDA approved computer modeling software. These models may include energy-code compliant designs, baseline building designs and interactive building designs;

(m) The EMP shall provide basic building or facility data in a report format, which will include at least one year's cost and consumption of each energy source (if applicable);

(n) The EMP shall perform a quality review and certify the energy efficiency calculations and recommendations identified in the TWO, the final energy analysis reports, and the inspection reports;

(o) The EMP shall prepare or review cost estimates to determine and verify costs between standard design and the proposed energy-efficient design based upon all electric and fossil fuel measures being considered. This should be accomplished, at a minimum, by a combination of past experience, direct vendor quotes and through cost data publications (*e.g.*, R.S. Means Company, Inc.);

(p) The EMP shall calculate benefit/cost ratios using NYSERDA's screening tool and report templates for proposed measures to determine their cost effectiveness and, eligibility for program incentives, if available;

(q) The EMP shall calculate the potential energy performance and energy cost savings benefits from the implementation of energy efficient equipment.

(r) When requested by the Customer, the EMP shall provide Green Buildings services, specifically performing computer modeling and materials analysis to optimize building energy performance and to assess conformance with U.S. Green Buildings Council Standards (LEED) or other similar technical assistance services required by NYSERDA;

(s) When requested by NYSERDA, the EMP will assist NYSERDA in identifying and developing case studies of successful projects;

(t) When requested by NYSERDA, the EMP will provide analysis of load shaping and peak-reducing energy management methods;

(u) When requested by NYSERDA, the EMP will provide guidance for waste management and pollution prevention (*e.g.,* NOx or SOx) by delineating emissions reduction levels derived from identified building improvements.

(v) Prior to the Technical Report submission, an interim report review with the Customer must take place so that the design and construction process may be informed by the preliminary findings of the EMP's work. The NYSERDA PM may also attend.

(w) The EMP shall submit the technical report along with the supporting documentation listed in Section 7 of this Exhibit. NYSERDA will ensure that all measures included in the TWO are satisfactorily completed and that the report was submitted within the prescribed time frame. The EMP shall not be held accountable for delays caused by NYSERDA, a Customer, or other potential project co-funders such as a utility company.

However, if delays occur in the delivery of project reports that are not caused by NYSERDA or a Customer, NYSERDA will reject invoices for reports that are overdue. If a report is overdue and does not have an approved extension request in place, based on the due dates stated in the TWO and the Notice to Proceed, NYSERDA reserves the right to refuse payment of up to 10% of the project budget.

(x) No agreement between the EMP, NYSERDA, and a Customer will obligate NYSERDA to the Customer for additional contract services. Furthermore, the provision of technical support services shall in no way be taken as an endorsement of, or prevent subsequent work, performed by the EMP.

4. <u>EMP Responsibilities</u>

The EMP is responsible for undertaking the following activities:

(a) Drive consideration of integrating beyond-code energy solutions into the project.

(b) The EMP may use a subcontractor to provide services, however the use of the subcontractor must be approved by NYSERDA.

(c) The EMP must provide information about all individuals that will provide services under this Agreement. Any staff changes must be reported to NYSERDA for approval. All EMP staff members participating in scoping meetings or having substantial direct interaction with NYSERDA Customers must be approved for this role by NYSERDA, and be LEED (Leadership in Energy & Environmental Design) Accredited prior to or within 90 days of execution of this Agreement. NYSERDA may require an interview with individual EMP staff.

(d) Prepare each project TWO for review and approval by NYSERDA, according to the level of service being provided;

(e) Negotiate the scope and cost of the TWO with NYSERDA, the Customer, and any other co-funding entity;

(f) Provide the required assistance within the required time frame, upon issuance of a Notice to Proceed, a Purchase Order number, and a TWO by NYSERDA;

(g) Ensure technical accuracy of all projects and use generally accepted current engineering practices;

(h) Keep NYSERDA and the OPC informed of each project's status and confer with NYSERDA on substantive issues;

(i) Make changes to the TWO or any required reports when requested by NYSERDA or the OPC in a timely manner according to program guidelines;

(j) Participate in NYSERDA-scheduled EMP calls, project scoping meetings, interim and final report delivery meetings, Deep Energy Savings, Zero-Net Energy, and LEED charrettes as needed.

(k) Provide, when requested, on-site follow-up assistance to discuss recommendations, answer questions, and facilitate implementation;

(l) Assist NYSERDA with the collection of data for purposes of program evaluation and promotion;

(m) Provide NYSERDA with basic energy and facility data for each project;

(n) Assist NYSERDA in implementing strategies to control costs;

(o) Provide effective quality assurance on EMP responsibilities and deliverables;

(p) Participate in any required training and become competent in using NYSERDA's Custom and Whole Building Report Templates, Whole Building Incentive Calculator and any other tools deemed necessary by NYSERDA for the successful completion of EMP deliverables;

(q) On EMP's own initiative, keep up-to-date on new technologies and industry tools, and take advantage of relevant educational opportunities, in order to provide continuous improvement in services offered by and to NYSERDA.

5. Partner Status

The Partner Status is determined by the EMP's experience with NYSERDA's Commercial New Construction Program.

(a) If the EMP provided technical services under NYSERDA's Commercial New Construction Program (PON1601), the EMP will be considered an "Approved EMP" and will not be limited to the number of open active projects.

(b) If the EMP did not provide technical services under PON1601, the EMP will be considered a "Provisional EMP" and will be limited to two open active projects until two projects have been successfully completed (i.e., the final technical report has been approved by NYSERDA). Upon the successful completion of two projects, the EMP will be considered an "Approved EMP."

(c) The EMP may be placed on Probationary status if the EMP fails to adhere to the project processes and EMP responsibilities outlined herein. Probationary status may be assigned to the EMP for any reason deemed sufficient by NYSERDA including, but not limited to, the following:

i. The EMP repeatedly: submits inaccurate Task Work Orders requiring editorial, mathematical or substantive corrections, or uses an incorrect template.
ii. The EMP repeatedly: submits inaccurate Technical Reports requiring editorial, mathematical or substantive corrections; uses incorrect templates or calculators; uses inaccurate or unjustifiable modeling assumptions; fails to comply with the program guidelines; uses incorrect program templates and calculators.
iii. Failure to comply with invoicing requirements.
iv. Failure to request report extension requests in a timely manner.
v. Failure to deliver TWOs and technical reports on time.

While in Probationary status, the EMP will be allowed to complete any active projects. If the EMP cures its deficiencies and successfully completes its active projects, the EMP will be removed from Probationary status. While in Probationary status, the EMP will remain on NYSERDA's EMP List, however the EMP will be limited to one new project assignment. If any project, active or new, is <u>not</u> successfully completed, the EMP may be prohibited from completing any other work in progress, as determined by NYSERDA, and will be removed from NYSERDA's EMP List. However, if any active and new projects are successfully completed, the Probationary status will be removed.

6. Invoicing

(a) The EMP shall invoice NYSERDA for NYSERDA's share of the cost of services performed for the Customer under the terms of an approved TWO.

(b) Invoices shall contain all identifying information as required by NYSERDA including the Project ID number, if applicable, Purchase Order number, Contract number, total TWO budget, NYSERDA's share of the budget, and the balance remaining of NYSERDA's cost share, the report due date, and any other appropriate identification as deemed necessary by NYSERDA.

(c) The EMP shall provide required documentation of expenditures by task based on the approved TWO. Invoices shall reference all tasks itemized in the TWO and give information pertaining to the percent completion of specific tasks outlined in the TWO for which services are being billed. This may be shown in a graphical representation or other suitable format.

(d) The EMP shall make timely and accurate requests for payment, no more frequently than monthly, directly relating invoiced items to tasks outlined in the TWO budget. Invoices must not be submitted for payment prior to the NYSERDA Purchase Order date of issue for the project being invoiced.

(e) Cancelled projects that may have already received a Notice to Proceed from NYSERDA, for which a portion of the TWO has been completed, may be invoiced for the work performed. Any incomplete deliverables or complete deliverables must be submitted to NYSERDA when invoicing. Any remaining balance on the TWO, for which work was not performed, may not be invoiced.

(f) **Final invoices for technical assistance services must be submitted to NYSERDA within 90 days of the date of the Customer Offer Letter or within 30 days of the date of project cancellation.**

7. **NYSERDA Responsibilities**
Under this Agreement, NYSERDA will:

(a) Develop program materials and provide EMPs with administrative procedures, guidelines, and periodically provide clarifications or additional guidelines in the form of program advisories;

(b) Provide EMPs with training on program requirements, modeling guidelines, templates, and other training topics, as necessary;

(c) Coordinate resources and maximize service delivery;

(d) Establish guidelines for Customer incentives, if available;

(e) Direct OPC activities;

(f) Closely coordinate with other existing energy-efficiency service programs to reduce overlap;

(g) Provide supporting broad-based marketing, outreach, evaluation and follow-up services;

(h) Ensure adherence to NYSERDA policies and program procedures;

(i) Process applications from Customers and process and ensure timely payments of incentives to Customers;

(j) Market services to various Customer groups and organizations, identify potential Customers and make service referrals to a list of EMPs;

(k) Assist EMPs in developing TWOs with Customers;

(l) Monitor the progress of each EMP through ongoing telephone contact, review of status reports, field monitoring activities, etc., for the purpose of meeting Customer needs, identifying problems and initiating corrective action;

(m) Provide technical review of project reports and deliverables to ensure that the deliverables conform to the TWO that governs the analysis;

(n) Provide completed reports to the Customer under NYSERDA cover and letterhead;

(o) Promote the availability of technical assistance and other services to Customers;

(p) Maintain databases of Customers, technologies, and energy and dollar savings resulting from the services, reports, case studies, fact sheets, and newsletter articles, program decision log, and program advisories;

(q) Disseminate technical and financial-related energy-efficiency information to EMPs;

(r) Process properly documented payment reimbursement requests; and

(s) Conduct various program evaluations.

8. **Deliverables**

The following deliverables shall be provided by the EMP:

(a) A specific written TWO for each project to be conducted.

(b) Upon request the EMP must provide NYSERDA with brief periodic progress reports describing the work performed during a specified reporting period on a specific project. Such reports shall describe any difficulties encountered during the specified reporting period.

(c) **Technical Report:** If required by the TWO, the EMP shall prepare a detailed technical report, using the NYSERDA-provided Custom and Whole Building Report Templates, describing the measures and modeling results performed on a project. The Technical Report shall comply with the requirements set forth in the TWO, the Notice to Proceed, and program guidelines. All appropriate documents, which may include layout drawings, graphs, modeling files, and tabulations of data and references, shall be included in the submittal, according to the current reporting procedures established by NYSERDA. Those requirements are detailed in the Operations Manual previously provided to the EMP.

i. The EMP shall submit to NYSERDA's PM or OPC one copy of a draft of the Technical Report, the incentive calculator, the report template, and the modeling files not later than the date specified in the TWO.

ii. NYSERDA or the OPC shall provide its comments to the EMP within 30 working days after receipt of such draft. The EMP shall prepare the Technical Report in final form satisfactory to NYSERDA reflecting NYSERDA's comments.

iii. Within 15 working days after receipt of NYSERDA's comments, the Contractor shall resubmit the Technical Report to NYSERDA's PM or the OPC. The number and format of copies submitted shall be as specified by NYSERDA. NYSERDA requires that the Technical Report be prepared in conformance with current NYSERDA templates and guidelines. The procedure is detailed in the Operations Manual.

(d) At all times throughout the program process, communication between the EMP and Customer must be maintained. EMP's failure to understand changes to design or other changes to projects as they emerge, may incur costly overruns or expenses not formerly anticipated in the TWO. Any costs including those costs associated with re-scoping projects or amending TWOs or inefficient efforts spent not resulting in useable final deliverables, may be deemed by NYSERDA to be the responsibility of the EMP.

9. **Final Reporting**

If requested by NYSERDA, a final report shall be prepared and submitted at the conclusion of the Agreement. The final report shall include, at a minimum:

(a) A listing of all projects and services conducted under the Agreement;

(b) A description of all non-NYSERDA sponsored follow up work conducted by the EMP initiated by a project or source conducted under this Agreement; and

(c) A discussion of the benefits or shortcomings with the way the projects or services were conducted under this Agreement.

10. **Contractor Representations and Limitations**

The EMP is an independent contractor performing work for NYSERDA. In all Customer interactions and presentations (oral and written), the EMP shall clearly describe its involvement in with NYSERDA as that of an independent contractor. Refer to Exhibit B, Article XIII, Section 13.01.

Only NYSERDA may approve applications from Customers for participation in the program and commit to payments for approved incentives, if available. The EMP shall not offer or infer any commitment for an incentive or program service to a Customer.

All marketing materials of the EMP bearing NYSERDA's logo or referencing NYSERDA or the program must be approved by NYSERDA.

Exhibit G

Residential and Multifamily New Construction Support Services

Terms and Conditions

Exhibit G
Residential & Multifamily New Construction Support Services
Terms and Conditions

Table of Contents

Article 1 Partnership Requirements 50
Section 1.1 General Partner Requirements 50
Section 1.2 MF NCP Partner Orientation 50
Section 1.3 RESNET-accredited Providers: Policy Management 50
Section 1.4 RESNET-accredited Providers: Monthly Reports for LR NCP and MF NCP 50
Section 1.5 RESNET-accredited Providers: Additional Requirements for LR NCP and MF NCP 51
Article 2. Consumer Relations 52
Section 2.1 Consumer Inquiries 52
Section 2.2 Consumer Referrals 52
Section 2.3 Timely Communication 52
Article 3. Business Practices and Related Requirements 52
Section 3.1 Professional Conduct 52
Section 3.2 Professional Courtesy 52
Section 3.3 Service Levels to Residential and Multifamily Projects 52
Section 3.4 Residential and Multifamily New Construction Program Representations 53
Section 3.5 Insurance 53
Section 3.6 Contract Compliance 53
Section 3.7 Dispute Resolution and Indemnification 53
Section 3.8 Survival 53
Article 4. Quality Assurance and Quality Control 53
Article 5. Partner Status Designations 54

New York State Energy Research and Development Authority's (NYSERDA) Residential and Multifamily New Construction Programs (Programs) encourage the construction of residential homes and multifamily buildings that operate energy efficiently, are durable and comfortable, and provide a healthier environment for their occupants. Incentives are available to builders and multifamily developers to support the achievement of increased levels of energy performance, up to and inclusive of homes and multifamily buildings that are designed and constructed to achieve net zero energy performance.

This Terms and Conditions Agreement ("Agreement") establishes the terms and conditions to be met by individuals or entities offering services in support of builder's or developer's participation in the Low-rise Residential New Construction Program (LR NCP) which is formally published as Program Opportunity Notice (PON) 2309, or the Multifamily New Construction Program (MF NCP) which is formally published as PON 3319. Those individuals or entities offering the required services and support are herein referred to as "Partner(s)".

In order for a builder or developer to access the technical support and incentives offered through LR NCP or MF NCP, they must hire and utilize a Partner per the respective Program's requirements. The Partner shall strive to ensure builders or developers are sincere in their engagement, and willing to make a bona fide commitment to achieve the minimum performance thresholds required by LR NCP or MF NCP. The Partner agrees to affirm each building for which incentives will be sought through either Program has met all requirements, and Partners shall not knowingly support builders or developers that do not intend to complete the project and meet the relevant Program requirements. NYSERDA agrees to provide technical, financial, and marketing support to Partners, which may include limited financial assistance for NYSERDA-approved training and continued education; the opportunity to respond to leads generated from NYSERDA's large-scale public awareness campaigns; use of approved NYSERDA marketing materials which can be customized to include the Partner's logo and other company information; and opportunities to participate in other NYSERDA pilot programs or initiatives.

This Agreement is completely voluntary and may be terminated with written notice at any time and for any reason by either NYSERDA or the Partner. By executing this Agreement, the Partner agrees to play an active role in LR NCP or MF NCP by providing high quality and professional services. The Partner understands and agrees to all terms and conditions outlined in this Agreement, and any LR NCP or MF NCP Announcements electronically distributed or posted by NYSERDA are incorporated herein by reference.

NYSERDA reserves the right to limit the Partner's activity in either Program, including limiting the number of projects undertaken by the Partner at any point in time or restricting activity to a particular building size or type. Any such limitation will be based, in part, on the Partner's past performance, including quality of the Partner's submissions and meeting, or failing to meet LR NCP or MF NCP guidelines or requirements. Partners with no or limited experience in a Program will be subject to limitations on the number of projects accepted into that Program, and possibly on the size or type of projects, until an acceptable performance history has been established.

The Partner acknowledges that failure to follow a Program's guidelines, requirements or procedures may result in a loss of applicable incentives, may result in an increased level of Quality Control and Quality Assurance of the Partner's work, and may lead to actions outlined in Section 5 of this Agreement, including termination of this Agreement.

NYSERDA reserves the right to make changes to the LR NCP and MF NCP upon notice to the Partner. Such notification shall be sent to the Partner by e-mail and subsequently published within the appropriate section of PON 2309 or PON 3319. In all cases, or at any time, NYSERDA's failure to enforce any provisions of this Agreement shall not constitute a waiver of such provisions, nor does it limit NYSERDA's ability to enforce such provisions in the future.

Article 1. Partnership Requirements

Section 1.1 General Partner Requirements

Applicants seeking to serve as Partners to either or both LR NCP or MF NCP are prohibited from representing themselves as Partners or representing that they are eligible to serve projects unless and until this Agreement has been fully executed, and emailed notification has been received by the Partner from NYSERDA.

Section 1.2 MF NCP Partner Orientation

Partners selected through RFP 3036 to serve projects participating in MF NCP will be provided orientation on the associated requirements and protocols, which must be completed prior to providing service to an MF NCP project.

Section 1.3 RESNET-accredited Providers: Management & Oversight

RESNET-accredited Providers serving either LR NCP or MF NCP must maintain current copies of the following documentation, and furnish upon request:

1. A detailed outline of the Providers organizational structure which identifies those individuals who will provide the necessary technical support and oversight of affiliate Raters, including the Quality Assurance Designee(s), Quality Assurance Designee Delegate(s), RESNET-certified trainer(s), and any related management role; including a resume` for each listed individual;
2. The Provider's plan for ensuring affiliate Raters maintain knowledge of, and any changes made to, the EPA's ENERGY STAR Certified Homes program, RESNET, or NYSERDA's Program;
3. The Provider's Quality Assurance (QA) Plan, which complies with RESNET's QA requirements as well as all Program requirements, as described in Article 4 of this Agreement.
4. A copy of the Provider's template contractual agreement with affiliate Rater(s) which references the minimum required qualifications for serving as an affiliate Rater and delineate the rights and responsibilities of both the affiliate Rater and the Provider serving either NYSERDA Program.

Section 1.4 RESNET-accredited Providers: Monthly Reports for LR NCP and MF NCP

Monthly Reports must be submitted to NYSERDA and NYSERDA's Program Implementer for each program the Provider is serving. Monthly reports may be aggregated for both LR NCP and MF NCP into one report, if the Provider is serving both programs. Reports should be received no later than the 14th day of each month for activities occurring in New York State through the end of the previous month, in the NYSERDA-approved format, and include the following information:

1. A list of all fully certified Raters and Certification-in-Process Homer Energy Raters (CIP Raters) currently affiliated with the Provider and providing services in New York State;
2. All supervised Ratings completed by affiliate CIP Rater(s) during the previous month must be listed by home address, identifying the CIP Rater, the Provider's supervisory staff member, the date the supervised Rating occurred and, if applicable, the Builder or Developer, and the project's status in the Program;
3. All confirmed Home Energy Ratings completed during previous month must be listed by home address, identifying the affiliate Rater, Builder or Developer, date of the Confirmed Rating, Home Energy Rating System (HERS) Index, any participation in other NYSERDA programs, if

known, and the affiliate Rater's and Provider's summarized observations regarding concerns or cause(s) for non-compliance;

4. All RESNET and Program Field and File QA inspections conducted during the previous month must be listed by home address, identifying the affiliate Rater, Builder or Developer, date of inspection, QA inspector's name, HERS Index and shall include a detailed narrative of observations including compliance, remediation, as well as concerns or cause(s) for non-compliance;
5. Activities or actions taken as a result of deficiencies uncovered during field QA inspections should be identified in the Monthly Report, including:
   i. Technical support provided to the affiliate Raters by the Provider;
   ii. Dispute resolution activities associated with any issues identified during the reporting period, unresolved issues identified during previous reporting period(s), and the process for achieving satisfactory resolution of either shall be clearly identified;
   iii. Field inspection reports for activities completed during the reporting period, demonstrating that the Provider's QA inspection activity levels satisfy the required percentage based on final Ratings submitted;
6. RESNET-accredited Providers serving either LR NCP are strongly encouraged to submit, in their Monthly Reports, a Pipeline Report which identifies both inquiries and potential projects known to affiliate Raters. Relevant information regarding the potential projects should be provided, to the best of the Rater's knowledge. This information will be used in Program development activities, as well as directing Quality Control and Quality Assurance activities. Once an initial plan review or rating has been completed for these projects, they should be reported under the "Monthly Activity" tab in the Rater report.

Section 1.5 RESNET-accredited Providers: Additional Requirements for LR NCP and MF NCP

1. Home Energy Ratings

Home Energy Ratings must be completed in accordance with RESNET's *2006 Mortgage Industry National Home Energy Rating System Standards* including all updates as adopted by RESNET's Board of Directors; EPA's ENERGY STAR Certified Homes Program requirements, including completion of all relevant checklists; and PON 2309.

2. Home Energy Rating Certificate

A Home Energy Rating Certificate (HERC), must be generated by the Provider for the confirmed Home Energy Rating of every dwelling unit through use of RESNET-accredited software which has the capability to evaluate and auto-generate reports including indication of compliance with the relevant version of the Energy Conservation Construction Code of New York State (ECCCNYS). www.resnet.us/programs/software/directory.htm provides a list of RESNET-accredited software. The HERC must reflect the results of the confirmed Home Energy Rating and the heading must identify it as a Confirmed Rating. The Provider shall provide a copy of the HERC to the Builder for every confirmed Home Energy Rating; The HERC shall indicate that the home, or dwelling units for multi-unit buildings, complies with the applicable version of the Energy Conservation Construction Code of New York State.

3. Building File Upload

The Provider is required to submit complete modeling software files associated with each Home Energy Rating to NYSERDA's designated database for every dwelling unit served by an affiliate Rater, if Program incentives will be sought. NYSERDA and NYSERDA's Implementation Contractor will provide reasonable technical support to assist the Provider's fulfillment of these modeling software file submission requirements.

4. Sampling

Sampling protocols may be applied by a Rater if their affiliate Provider is a RESNET-accredited Home Energy Sampling Provider, and must comply with protocols specified in Chapter 6 of the

RESNET Standards. If sampling is utilized on a project, the data associated with the sampled units must be included within the Incentive Application submission and include a description of the sampling controls that were inspected and/or tested for, the unit type breakdown, and the sampling rate of each type of unit. Sampling is not allowed for any required health and safety testing. Additional sampling requirements are detailed in the LR NCP Low-rise Performance Supplement. Additionally, the ENERGY STAR Thermal Enclosure System Rater Checklist must be completed for each dwelling unit that receives LR NCP support.

5. Coordination with LR NCP Builders

The Provider shall ensure that the affiliate Rater coordinates with the LR NCP Builder to ensure the Builder's LR NCP Incentive Application associated with confirmed Home Energy Ratings are completed electronically and submitted to NYSERDA for payment. To be eligible to receive any Program incentives associated with that dwelling unit, submission of the Incentive Application must be made within sixty (60) days of the affiliate Rater's confirmed Home Energy Rating. Exception to this sixty (60) day limitation: Incentive Applications for multi-unit projects should be submitted in accordance with the completion schedule identified in the NYSERDA-approved Low-rise Residential New Construction Project Application, and NYSERDA's commitment letter for the project.

Article 2. Consumer Relations

Section 2.1 Consumer Inquiries

The Partner shall promptly and appropriately respond to any Program inquiries or referrals.

Section 2.2 Consumer Referrals

The Partner may choose to receive Program referrals via the NYSERDA website, and shall make every reasonable effort to encourage participation in this program. When providing Program services to these referrals, the Partner shall do so in accordance with all aspects of RFP 3036, as well as PON 2309 and PON 3319, including this Agreement.

Section 2.3 Timely Communication

The Partner shall respond to consumer inquiries in a timely manner, and ensure prompt and accurate reporting, when requested by NYSERDA, regarding any resulting actions.

Article 3. Business Practices and Related Requirements

The Partner is expected to be an ambassador for NYSERDA and the Residential and Multifamily New Construction Programs. Any conduct to the contrary will result in disciplinary action. Under this Agreement, each Partner commits to promoting LR NCP and MF NCP and the mission of improving the energy performance, durability, comfort, and safety of newly constructed residential and multifamily housing. All Partners shall remain in full compliance with the terms of this Agreement including the following business practices:

Section 3.1 Professional Conduct

The Partner shall treat all consumers fairly and deliver promised services in a timely, competent, professional, and reasonable manner. The Partner shall not engage in behavior that adversely impacts NYSERDA, tarnishes NYSERDA's service marks, and/or diminishes the profession or service in the eyes of the public.

Section 3.2 Professional Courtesy

The Partner and all its employees shall conduct themselves in a professional, respectful, and reasonable manner when interacting with any NYSERDA staff and representatives of NYSERDA's Program Implementation Contractors.

Section 3.3 Service Levels to Residential and Multifamily Projects

Partners that have not been actively involved with a project within the past twelve (12) months may have their company profile and information removed from NYSERDA's website Resource Locator Map until they submit a project and become reengaged with either LR NCP or MF NCP.

Section 3.4 Residential and Multifamily New Construction Program Representations

The Partner shall not engage in unfair or inaccurate representations of NYSERDA, or NYSERDA's Program Implementer Contractors, and affiliates.

a) Partner

The Partner shall properly and accurately represent the relationship of the Partner and its subcontractor(s) to the State of New York, NYSERDA, and to NYSERDA's Program Implementation Contractors. This relationship shall be that the Partner is independent of and voluntarily participating in the LR NCP or the MF NCP.

The Partner shall not represent itself as working for or certified by, the State of New York, NYSERDA, or the Program Implementation Contractors. The Partner shall not represent that the services it provides, or the materials it uses, are in any way endorsed or approved by the State of New York, NYSERDA, or the Program Implementation Contractors.

b) Non-Participating Subcontractor

A non-participating subcontractor of a Partner shall not represent itself as a LR NCP or MF NCP Partner or as able to offer Program services and benefits. Additionally, any subcontractor of a Partner shall not represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or the Program Implementation Contractors.

Section 3.5 Insurance

The Partner shall maintain, at its own cost, general liability insurance coverage of at least $1 million and produce evidence of such upon request by NYSERDA or its Program Implementer.

Section 3.6 Contract Compliance

It is the sole responsibility of the Partner to ensure that all contracts and subcontracts used in the execution of providing Program services are written in full compliance with applicable federal, state, and/or local law(s).

Section 3.7 Dispute Resolution and Indemnification

If any Partner, or subcontractor, becomes involved in a contractual or business practices dispute with respect to LR NCP or MF NCP activities, the Partner(s) shall work to settle the dispute amicably utilizing fair and reasonable dispute resolution practices.

The relationship between the Partner and the project developer/builder are independent from NYSERDA or the Program Implementation Contractors. Any disputes or contract issues which may arise between Partners and their clients are the sole responsibility of those Partners to resolve. NYSERDA and the Program Implementation Contractor have no responsibility to provide dispute resolution assistance. Regardless of the nature of, or parties involved in, the dispute and any resolution, the Partner(s) shall hold NYSERDA and its Program Implementation Contractors harmless from any legal action arising from work associated with the LR NCP or the MF NCP.

The Partner(s) 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, attorney's 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 Partner(s) under this section shall survive any expiration or termination of this agreement.

Section 3.8 Survival

All provisions of Article 3 survive termination of this Agreement.

Article 4. Quality Assurance and Quality Control

The goals of the Quality Assurance and Quality Control (QA/QC) processes are to verify that buildings built with Program support meet all LR NCP or MF NCP requirements while maintaining healthy and safe living conditions for the occupants. The QA/QC function of the Programs include

field inspections, technical and administrative review. QA/QC activities are a crucial part of the LR NCP and the MF NCP providing NYSERDA and the Partner with valuable information related to compliance with the Program's technical requirements.

The Partner shall not inhibit or discourage homebuyers or project Applicants from participating in the Program's QA/QC processes and, if requested, shall provide project-related information in a timely manner.

Specific to RESNET-accredited Providers, the Provider's Quality Assurance (QA) Plan submitted with Application to RFP 3036 must be kept current and resubmitted to NYSERDA when updated. The QA Plan, which complies with RESNET's QA requirements as well as all Program requirements, includes the following:

a. Description of the Provider's sampling methodology used to establish on-site inspection activities, including frequency of visits for each affiliate Rater's projects.
b. Site inspection, documentation, and reporting protocols;
c. Sample on-site inspection report, and copies of all standard forms;
d. Protocol for review and approval of any submission by affiliate Raters regarding deviation from RESNET, EPA, or Program standards or requirements, in particular to accommodate perceived conflicts with NYS or local building code;
e. Protocol to ensure all Home Energy Ratings performed in New York State by affiliate Raters are reported to the Provider, NYSERDA, and the EPA, whenever ENERGY STAR labeling, Program support, or Program incentives are sought;
f. Dispute resolution policy;
g. **Providers serving the LR NCP:** In addition to the one percent on-site field evaluation required by RESNET, Providers must perform RESNET compliant[3] on-site field evaluations of their affiliate Raters at the minimum additional rate of two percent, to achieve a combined three percent on-site field evaluation of all confirmed Home Energy Ratings completed annually with Program support. Tier 2 projects shall always be prioritized over Tier 1 projects for on-site field evaluations. Additionally, one percent of all on-site field evaluations shall be performed on Tier 3 projects when available. In accordance with the RESNET Standards, round up the next whole number when the percentage calculation yields a decimal point when determining the number of onsite evaluations to complete for a rater[4]. At minimum, one on-site field evaluation per year will be completed for each affiliate Rater with the following exceptions: The Provider's affiliate Raters who do not perform Home Energy Ratings in New York State but serve the Provider in another capacity in New York State, such as their QA Designee or QA Designee Delegate, are exempt from the minimum on-site QA requirement;

Article 5. Partner Status Designations

The Partner shall be classified in one of the participation status designations listed below which will apply to LR NCP and MF NCP participation when applicable. Each designation shall be subject to limitations, or requirements associated with that designation, as detailed below. NYSERDA reserves the right to modify the definition, limitations, and requirements of the participation status designations at any time. NYSERDA retains sole discretion for determining the Partner's progression into and through each status designation. In all cases, NYSERDA's written decision is final.

[3] If the number of required field QA inspections exceeds the number of units available for field QA as per RESNET requirements (903.4.2.4 through 903.4.2.4.2.3 of the RESNET Standards – Advisory Version), one field QA per every 33 units of multifamily development shall count toward the annual field QA requirement quota after all units available for field QA as per RESNET requirements are included.

[4] E.g. 101 homes x 3% = 3.03 means that 4 onsite evaluations shall be completed.

Section 5.1 Provisional

New Partners are automatically assigned the participation status of 'Provisional' upon acceptance into the program. Partners serving the LR NCP and MF NCP as RESNET-accredited Providers will remain as such for, at a minimum, the first six (6) months of their program participation. Partners serving the MF NCP will remain Provisional until their first Stage 1 Modeling Submittal is reviewed and accepted by NYSERDA.

At this point, NYSERDA and its representatives shall review the Partner's performance and make a determination of the Partner's future status designation. NYSERDA may change the Partner's status to Full, extend their Provisional status, place the Partner on Probation, or choose to Terminate the Partner's Agreement.

If NYSERDA decides to extend the Provisional status designation for a Partner, the conditions of that extension may result in limitations to the Partner's ability to perform additional work under LR NCP or MF NCP. The Provisional Partner's name will be displayed on the NYSERDA website's Resource Locator Map, but potential clients must be informed of any limitation to serve new Applicants.

Projects completed by the Partner while on Provisional status may be subject to enhanced QA/QC oversight.

Section 5.2 Full

A Partner which is not operating under any of the other status designations, and which meets all requirements of the Programs, abides by the conditions of this Agreement, and provides quality services utilizing industry best practices shall have the status designation of Full.

Full Partners are entitled to all applicable LR NCP or MF NCP incentives.

The Full Partner's name will be displayed on the NYSERDA Website Resource Locator Map.

Projects completed by the Partner while on Full status are subject to standard QA/QC oversight.

Section 5.3 Probationary

The status designation of Probationary may be imposed based on the Partner's failure to adhere to Program policies and procedures as outlined in this Terms and Conditions Agreement or other applicable documents listed in PON 2309 and PON 3319.

A Partner may be assigned to the Probationary Partner status for any reason deemed sufficient by NYSERDA, including, but not limited to the following:

- Partner displays a pattern of failing to meet submission deadlines and guidelines.
- Partner consistently repeats deficiencies in work product.
- Partner fails to address issues identified during QA/QC review.
- Non-Compliance with LR NCP Program Requirements, Policies and Procedures, as outlined in this Agreement, PON 2309, and by Program Announcements.
- Partner repeatedly submits incomplete project Applications for MF NCP.
- Building Performance Plan submittals for MF NCP are consistently deficient due to:
    - Failure to adhere to Program requirements and/or PON 3319; or,
    - Failure to adhere to Simulation Guidelines or generally accepted analysis practice; or,
    - Generally being of such poor quality that technical review is not considered possible.

- MF NCP Partner regularly submits inspection documentation that cannot be approved by NYSERDA due to misrepresentation of progress, installations not meeting MF NCP prerequisites, or other MF NCP requirements.

LR NCP Partners on Probation will be given a list of items that must be addressed.

MF NCP Partners on Probation will be eligible to serve only projects currently under contract under PON 3319. Partners on Probation will not be allowed to submit MF NCP applications for new projects. If a Partner on Probation has no active projects, NYSERDA may choose to allow the Partner to submit one new application to MF NCP on behalf of a project Applicant in order to demonstrate improvement.

The names of Partners on Probation will not be displayed on the NYSERDA website's Resource Locator Map.

Projects completed by the Partner while on Probation may be subject to enhanced QA/QC oversight.

Section 5.4 Inactive

A Partner which voluntarily decides to end participation in either LR NCP or MF NCP will be placed in 'Inactive' status. A Partner in 'Inactive' status has relinquished all privileges associated with participation, including access to incentives. The Partner must immediately remove any Program references from any of their company's materials, inclusive of all marketing or advertising. To resume participation, the 'Inactive' Partner will need to reapply to RFP 3036 and be determined eligible.

Section 5.5 Terminated

If the Partner is assigned the status of 'Terminated', the Partner forfeits eligibility to submit applications for new projects. NYSERDA has sole discretion in determining whether to terminate the Partner.

Grounds for Partner Termination shall include, but are not limited to:

- The Partner is on Probation status and has been either unresponsive to, or failed to adequately fulfill, the terms of its Probation.
- The Partner has failed to adhere to Program requirements, policies and procedures as outlined in this Agreement, PON 2309, PON 3319, or Program announcements.
- The Partner has submitted false or fraudulent documentation at any time, during any phase of participation in the Program.
- The Partner has misrepresented the Programs, their relationship to the Programs, or information about the Programs, to potential or existing project Applicants or other stakeholders.
- The Partner misrepresents a project to NYSERDA or Implementation Contractor staff.
- NYSERDA receives legitimate and serious complaint(s) about the Partner from current or prospective Program Applicants or stakeholders.

Terminated Partners are ineligible for all Residential and Multifamily New Construction Programs incentives. The Terminated Partner may be prohibited from completing program-work in progress, as determined by NYSERDA. The Terminated Partner must immediately remove any Program references from any of their company's materials, inclusive of all marketing or advertising.

The names of Terminated Partners will not be displayed on the NYSERDA website's Resource Locator Map.

Project Applicants or RESNET Home Energy Rating Systems (HERS) Raters currently under contract with a Terminated Partner will be notified that the Partner has been terminated and will be provided options for remaining in the Programs.