

Attachment E
New York State Energy Research and Development Authority
SAMPLE AGREEMENT

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period:
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement;
- Exhibit E, Article 15-A Contract Provisions (non-construction contract); and
- Exhibit F, WEB-RELATED CONTRACT ADDENDUM.

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

CONTRACTOR - TBD

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

Signature: _____

Name: _____

Title: _____

Signature: _____

Jeffrey J. Pitkin

Treasurer

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

Exhibit A
Statement of Work

To be determined

SAMPLE

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 noted therein, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth in individual Task Work Orders consistent with the rates set forth in the Rate Schedule Exhibit noted on Page One.

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 the Exhibit A, Statement of Work, if applicable.

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

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

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

Statement of Work: The Statement of Work attached hereto as Exhibit A, including Work defined in individual Task Work Orders.

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 written Task Work Order issued by NYSERDA pursuant to Exhibit A of this Agreement, specifically an approved work scope and budget.

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

Article II

Performance of Work

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

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

notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

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

Article III

Deliverables

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

Article IV

Payment

Section 4.01. Payment Terms- In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the actual costs incurred as set forth in individual Task Work Order Budgets up to a maximum amount set forth in Item 5, Page One of this Agreement for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYSERDA's payments shall be on a reimbursement basis, and shall be paid only to the extent that Cash-based Expenses are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

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

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

personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

(c) Compensation. Compensation will be based on the Contractor's Rate Schedule for NYSERDA set forth in Exhibit E. Contractor fees for a Task Work Order assignment must be fully set forth in each Task Work Order budget and must be approved by NYSERDA. The Task Work Order budget must state a not-to-exceed cost cap or ceiling amount for each Task Work Order assignment. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Work Order without approval in writing by NYSERDA.

Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to invoices@nyserda.ny.gov. Such invoices shall make reference to the Agreement number shown at Item 1 on Page One of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and Other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Task Work Order Budget or Rate Schedule. Invoices shall 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, or (ii) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

Section 4.03. Release by the Contractor. The acceptance by the Contractor of final payment related to each specific Task Work Order shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to that Task Work Order.

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, Contractor's performance under this Agreement.

Section 4.05. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of Page One of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.06. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this

Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and 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 the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

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

Article VI

Schedule

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

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

Section 6.03. Option to Renew. NYSERDA shall have an option to renew this Agreement, at NYSERDA's discretion, for Two (2) additional 1 year periods, upon the same terms and conditions as this prior to the expiration of the initial term or any subsequent renewal term.

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 Materials.

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

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

Section 8.02. Representations.

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

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

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

Section 8.04. Assignment of Rights. The Contractor hereby irrevocably assigns, conveys and otherwise transfers to NYSERDA, and its respective successors and assigns, all rights, title and interests worldwide in and to the materials and all copyrights, trade secrets, patents, trademarks, service marks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether now known or hereafter to become known. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA, the Contractor hereby unconditionally and irrevocably waives the enforcement of all such rights, and all claims and causes of action of any kind with respect to any of the foregoing against NYSERDA, its distributors and customers, whether now known or hereafter to become known and agrees, at the request and expense of NYSERDA and its respective successors and assigns, to consent to and join in any action to enforce such rights and to procure a waiver of such rights from the holders of such rights. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA and cannot be waived, the Contractor hereby grants to NYSERDA, and

its respective successors and assigns, an exclusive, worldwide, royalty-free, perpetual license to reproduce, distribute, modify, publicly perform and publicly display, with the right to sublicense through multiple tiers of sublicensees and assign such rights in and to the materials including, without limitation, the right to use in any way whatsoever the materials and the Contractor retains no rights to use the materials and agrees not to challenge the validity of the copyright ownership by NYSERDA in the materials. In the event that any development of any materials under this Agreement is to be performed by a subcontractor, the Contractor agrees to include the provisions contained in this section in any such subcontract.

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

Article IX

Warranties and Guarantees

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

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

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

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

(d) any Work product furnished with respect to performance of the Work shall be in accordance with sound and currently accepted professional construction and design standards and best engineering practices applicable to the Work;

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

(f) 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;

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

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

(i) 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; <http://www.nyserda.ny.gov/About/Board-Governance.aspx>

(j) 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; and

(k) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Article X

Indemnification

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

Article XI

Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled

Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

(a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;

(b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and

(c) be reasonably satisfactory to NYSERDA in all other respects.

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

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

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

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

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all, or any part of, the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop

Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

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

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

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

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

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

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

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

Section 12.02. Termination.

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

(including, to the extent requested by NYSEDA, 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) NYSEDA 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) NYSEDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

Section 12.03 Suspension or Termination for Non-Responsibility.

(a) Suspension. NYSEDA, 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 NYSEDA 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 NYSEDA officials or staff, this Agreement may be terminated by NYSEDA at the Contractor's expense where the Contractor is determined by NYSEDA to be non-Responsible. In such event, NYSEDA 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: Chery.Glanton@nyserda.ny.gov

Personal Delivery: Reception desk at the above address

Contractor - TBD

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, Section 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/About/New-York-State-Regulations.aspx>).

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

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

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

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

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

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by

the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

504.4. Payment Procedures.

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

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

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

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

504.11. Court Action or Other Legal Processes.

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

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

SAMPLE

Exhibit E
Article 15-A Contract Provisions (non-construction contract)

1. General Provisions.

(a) NYSERDA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-144 (“Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(b) The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSERDA, to fully comply and cooperate with NYSERDA in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBES”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state, or local laws.

(c) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section 9 of these provisions or enforcement proceedings as allowed by the Contract.

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

2. Equal Employment Opportunities.

(a) The Contractor shall submit an EEO policy statement to NYSERDA within seventy two (72) hours after the date of the notice by NYSERDA to award the Contract to the Contractor. If Contractor or Subcontractor does not have an existing EEO policy statement, Contractor or Subcontractor may adopt the model statement provided as **Attachment 1 – Minority- and Women-Owned Business Enterprises And Equal Employment Opportunity Policy Statement**. Contractor hereby agrees that this policy shall remain in full force and effect during the performance of this Agreement.

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

(i) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document Contractor’s conscientious and active efforts to employ and utilize minority group members and women in its work force on this Agreement. For these purposes, affirmative action shall apply in the areas of

recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(ii) At the request of NYSERDA, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status; and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

(iii) Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(iv) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

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

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

3. Contract Goals. For purposes of this procurement, NYSERDA hereby establishes the following goals for MWBE participation: **15** % for Minority-Owned Business Enterprises ("MBE") participation and **15** % for Women-Owned Business Enterprises ("WBE") participation.

4. Participation Goals. The Contractor represents that it has reviewed and familiarized itself with the regulations related to Article 15-A found at 5 NYCRR Parts 140-144 (see http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf), which regulations (the "Regulations") are hereby incorporated herein by this reference. Any conflicts between this Agreement and the Regulations shall be resolved in favor of the Regulations. Contractor shall, in accordance with the Regulations, make good faith efforts and, in a manner that can be established in documentary form, solicit active participation by certified MWBE businesses as identified in the applicable state directory maintained by the NYS Empire State Development's Division of Minority and Women Business

Development (see <http://www.empire.state.ny.us/MWBE/directorySearch.html>). Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract. In furtherance thereof, the Contractor has submitted the following information to NYSERDA, which information sets forth NYSERDA's and Contractor's agreed upon participation goals during the performance of this Agreement:

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

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

- (a) Unless NYSERDA has granted a total waiver or Contractor is a certified MWBE with the Division and is responsible for one hundred percent (100%) of the performance of this Agreement, the Contractor shall submit to NYSERDA an MWBE Compliance Report on a quarterly basis in the form attached hereto as **Attachment 4**; and
- (b) Where the workforce to be utilized during the performance of this Agreement can be separated out from the Contractor's total workforce, the Contractor shall submit to NYSERDA on a quarterly basis, in the form attached hereto as **Attachment 5** (Workforce Employment Utilization Report): 1) the total number of employees performing work on the State contract, and 2) the Contractor's and all subcontractor's work force on the State contract broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by NYSERDA; or
- (c) In the circumstances where the workforce cannot be separated out from the Contractor's and/or subcontractor's total workforce, the Contractor shall submit to NYSERDA information related to the Contractor's total workforce data broken down by ethnic background, gender and Federal occupational categories on a semi-annual basis, or other appropriate categories specified by NYSERDA.

The Contractor's failure to follow the applicable reporting requirements or failure to comply with the stated participation goals in the previous Section set forth above may result in NYSERDA's submission of a complaint to the NYS Empire State Development's Division of Minority and Women Business Development (the "Division") in accordance with the Article 15-A Disqualification and Dispute Resolution Procedures set forth herein.

6. Waiver of participation goal requirements. In accordance with the Regulations § 142.7(c), Contractor may submit, at any time prior to its request for final payment, a request to NYSERDA for partial or total waiver of the MWBE participation goals set forth above. Upon

Contractor's submission of a waiver form, NYSERDA may grant a partial or total waiver of the requirements of the participation goals established hereunder. Prior to granting or denying a waiver, NYSERDA shall evaluate the Contractor's "good faith efforts" and may consider the factors set forth in the Regulations §142.8. If NYSERDA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, NYSERDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals. In the event NYSERDA refuses to grant Contractor a waiver, Contractor may file a complaint with the Division in accordance with the Article 15-A Disqualification and Dispute Resolution Procedures set forth herein. A waiver form is provided in **Attachment 6**.

7. Article 15-A Compliance Monitoring. NYSERDA is responsible for monitoring Contractor's compliance with the applicable regulations. In that regard, NYSERDA may, at its discretion, notify the Contractor in writing of NYSERDA's intent to inspect relevant records and documents related to Article 15-A compliance. NYSERDA shall analyze and consider such records, documents and other data to determine whether the Contractor has made conscientious and active efforts to employ and utilize minority group members and women on the State contract.

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

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

Exhibit F
WEB-RELATED CONTRACT ADDENDUM

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

Section 1. Definitions.

- A) **Contractor Content** refers to the dynamic web pages and static content, developed under this Agreement and includes, but is not limited to text HTML (Hyper-Text Markup Language), image, audio, video, server and browser based scripts and programs, and other presentation materials and computer files designed to be presented to a web browser by a web server using standard Internet protocols and accessible through a URL (Universal Resource Locator) address.
- B) **Contractor Tools** means the software tools of general application, whether in the public domain, or owned or licensed to the Contractor, which are used to develop the Web Site.
- C) **Data** includes, *[fill in or state “none”]*
- D) **Documentation** means the documentation for all materials necessary to develop, implement, and maintain a fully functional Web Site as developed by Contractor.
- E) **Error** means any failure of the Web Site (i) to meet the specifications in the Statement of Work or the Section of this Addendum addressing hosting requirements and/or (ii) to operate with the hardware or software owned or licensed by the selected Internet Service Provider.
- F) **Final Version** means a non-copy protected and unencrypted digital master of the final version of the Web Site, recorded in executable form on the specified medium with any necessary supporting software and data, as to which all development work hereunder has been completed and which meets all requirements of the Statement of Work.
- G) **Licensed Content** includes, *[fill in or state “none”]*
- H) **Licensed Software and Tools** includes, *[fill in or state “none”]*
- I) **NYSERDA Content** includes, but is not limited to text, HTML, image, audio, video, server and Browser based scripts and programs and other presentation materials provided by NYSERDA.
- J) **Open Source Software and Tools** includes, *[fill in or state “none”]*
- K) **Public Domain** means property rights that are held by the public at large.
- L) **Server Environment** means the Web Site Content, Open Source Software and Tools, and Licensed Software and Tools that make up the presentation layer, business logic layer, and persistence layer.
- M) **Web Site Content** includes the Contractor Content, NYSERDA Content, Licensed Content and all Data presented in the Web Site.

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

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

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

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

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

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

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

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

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

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

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

Section 3. Proprietary Rights.

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

(B) Assignment of Rights. Except as provided in subsection (C) of this section, Contractor hereby irrevocably assigns, conveys and otherwise transfers to NYSERDA, and its respective successors and assigns, all rights, title and interests worldwide in and to the Contractor Content, Data, and Documentation and all copyrights, trade secrets, patents, trademarks, service marks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in and to the Contractor Content, Data, and Documentation that cannot be assigned to NYSERDA, Contractor hereby unconditionally and irrevocably waives the enforcement of all such rights, and all claims and causes of action of any kind with respect to any of the foregoing against NYSERDA, its distributors and customers, whether now known or hereafter to become known and agrees, at the request and expense of NYSERDA and its respective successors and assigns, to consent to and join in any action to enforce such rights and to procure a waiver of such rights from the holders of such rights. In the event Contractor has any rights in and to the Contractor Content, Data, and Documentation that cannot be assigned to NYSERDA and cannot be waived, Contractor hereby grants to NYSERDA, and its respective successors and assigns, an exclusive, worldwide, royalty-free, perpetual license to reproduce, distribute, modify, publicly perform and publicly display, with the right to sublicense through multiple tiers of sublicensees and assign such rights in and to the Contractor Content, Data, and the Documentation including, without limitation, the right to use in any way whatsoever the Contractor Content, Data, and Documentation. Contractor retains no rights to use the Contractor Content, Data, and Documentation except as stated in subsection (E) of this section and agrees not to challenge the validity of the copyright ownership by NYSERDA in the Contractor Content, Data, and Documentation. In the event that any development work under this Agreement is to be performed by a subcontractor, Contractor agrees to include the provisions contained in this subsection in any such subcontract.

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

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

to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other rights thereon with the same legal force and effect as if executed by Contractor.

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

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

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

or

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

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

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

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

Section 4. Confidentiality.

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

(B) Restrictions on Use. Contractor agrees that except as authorized in writing by NYSERDA:
(i) Contractor will preserve and protect the confidentiality of all Confidential Information; (ii) Contractor will not disclose to any third party, the existence, source, content or substance of the Confidential

Information or make copies of Confidential Information; (iii) Contractor will not deliver Confidential Information to any third party, or permit the Confidential Information to be removed from Contractor's premises; (iv) Contractor will not use Confidential Information in any way other than to develop or maintain the Web Site or perform its obligations under the Statement of Work as provided in this Agreement; (v) Contractor will not disclose, use or copy any third party information or materials received in confidence by Contractor for purposes of work performed under this Agreement.

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

Section 5. Accessibility. Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by the contractor and the results of such testing must be satisfactory to NYSERDA before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

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

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

[Hosting section to be included only if Statement of Work includes Hosting services]

Section 8. Hosting.

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

(i) Availability. The Web Site shall be publicly available to users a minimum of ___% of the time during any 24 hour period, ___% of the time during any 7 day period, and ___% of the time during any 30 day period; and there will be no period of interruption in public accessibility to the Web Site that exceeds __ continuous hours. ***[Project Manager must fill in blanks and/or rewrite to specify what level of site availability is required (conversely, how long can the site be "down" and during what times).]***

(ii) Response Time. The mean response time for server response to all accesses to the Web Site shall not exceed more than seven (7) seconds during any one hour period.

(iii) Bandwidth. The bandwidth representing the Web Site's connection to the Internet shall be operating at capacity no more than two hundred and forty (240) minutes in any 24 hour period.

(iv) Security. Contractor shall comply with New York State Office of Cyber Security and Critical Infrastructure Coordination, Cyber Security Policy P03-002, Information Security Policy, including but not limited to prevent unauthorized access to restricted areas of the Web Site and any databases or other sensitive material generated from or used in conjunction with the Web Site; and Contractor shall notify NYSERDA as soon as possible of any known security breaches or holes. Questions concerning this policy may be directed to the NYS Office of Cyber Security & Critical Infrastructure Coordination (CSCIC), (518) 474-0865, attn: Director. Or visit CSCIC at www.cscic.state.ny.us.

(v) Inapplicability of Force Majeure. The foregoing standards shall apply regardless of the cause of the interruption in service, even if the interruption in service was beyond the control of the Contractor, except in the case of unknown virus and physical destruction of the server environment.

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

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

(D) Server Logs. Contractor shall configure its web servers to capture standard visitor log information needed to provide detailed traffic/site performance reports for the Web Site. Contractor shall provide such traffic/site performance reports to NYSERDA on a monthly basis.

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

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

Website. This Addendum shall survive termination of this Agreement.

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

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

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

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

APPENDIX NO.1

INTERNET PRIVACY POLICY

1. Introduction

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

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

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

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

- (i) *User* client hostname. The hostname or Internet Protocol address of the *user* requesting access to a *state agency website*.
- (ii) HTTP header, "*user agent*." The *user agent* information includes the type of browser, its version, and the operating system on which that the browser is running.
- (iii) HTTP header, "*referrer*." The *referrer* specifies the web page from which the *user* accessed the current web page.
- (iv) System date. The date and time of the *user's* request.
- (v) Full request. The exact request the *user* made.
- (vi) Status. The status code the server returned to the *user*.
- (vii) Content length. The content length, in bytes, of any document sent to the *user*.
- (viii) Method. The request method used.
- (ix) Universal Resource Identifier (URI). The location of a resource on the server.
- (x) Query string of the URI. Anything after the question mark in a URI.
- (xi) Protocol. The transport protocol and the version used.

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

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

Cookies

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

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

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

Information Collected When You E-mail this Website or Complete a Transaction

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

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

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

Information and Choice

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

Disclosure of Information Collected Through This Website

The collection of information through this website and the disclosure of that information are subject to the provisions of the Internet Security and Privacy Act. NYSERDA will only collect *personal information*

through this website or disclose *personal information* collected through this website if the *user* has consented to the collection or disclosure of such *personal information*. The voluntary disclosure of *personal information* to NYSERDA by the *user*, whether solicited or unsolicited, constitutes consent to the collection and disclosure of the information by NYSERDA for the purposes for which the *user* disclosed the information to NYSERDA, as was reasonably ascertainable from the nature and terms of the disclosure.

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

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

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

Retention of Information Collected Through this Website

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

Access to and Correction of Personal Information Collected Through this Website

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

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

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

In the event that NYSERDA has collected *personal information* pertaining to a *user* through the

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

Confidentiality and Integrity of Personal Information Collected Through this Website

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

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

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

Disclaimers

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

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

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

Contact Information

For questions regarding this Internet privacy policy, please contact:

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

Definitions

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

Personal Information shall have the meaning set forth in subdivision 5 of section 202 of the State

Technology Law.

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

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

This Policy last updated June 10, 2002

APPENDIX NO. 2

DISCLAIMER

DISCLAIMER OF WARRANTY

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

DISCLAIMER OF LIABILITY

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

DISCLAIMER OF ENDORSEMENT

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

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

USE OF SITE AND MATERIALS; UNAUTHORIZED ALTERATIONS

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

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