



NY Green Bank
A Division of NYSERDA

NY Green Bank

Request for Proposals CRM, Transaction Pipeline & Portfolio Management Platform

RFP No. 5

Due Date for Proposals:
March 29, 2016
by 5:00 p.m. EST

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1 Introduction

1.1 NY Green Bank Background

NY Green Bank (“**NYGB**”) is a division of the New York State Energy Research and Development Authority (“**NYSERDA**”) and a \$1.0 billion state-sponsored specialized financial entity. NYGB is dedicated to partnering with private sector capital providers to overcome current obstacles in clean energy financing markets, mobilize and leverage private capital and accelerate the deployment of clean energy projects. NYGB offers various forms of debt and equity financial products including credit enhancement, warehousing/aggregation (shorter-term) and asset loans and investments (longer-term). NYGB is a part of Governor Andrew M. Cuomo’s statewide plan to scale up clean energy, enhance New York State’s competitiveness for clean energy businesses, and make energy systems more resilient and reliable pursuant to the “Reforming the Energy Vision” (“**REV**”) strategy. This includes a number of ambitious goals for New York State, including having 50% of the State’s energy generation supplied from clean energy sources by 2030.

NYGB is committed to being market focused and market responsive. Private sector participants — including financial institutions and other third party capital providers, as well as developers, energy service companies (“**ESCOs**”), project and property owners/operators, equipment manufacturers, and others — work with NYGB to identify market barriers and financing gaps for otherwise economically and technically feasible projects. NYGB’s target clients and partners are entities that are experienced and achieving success in clean energy markets but whose ability to accelerate clean energy deployment is effectively limited by capital constraints for the type of projects being considered. NYGB works to structure its participation in investments to make viable transactions that would not otherwise be possible in current commercial markets. For more information, please see: www.greenbank.ny.gov.

1.2 Objectives of this RFP

NYGB requires a third-party platform that will support NYGB’s customer relationship management (“**CRM**”) and transaction pipeline and portfolio management. The scope of services is described in detail in [Section 2](#) and more generally throughout this Request for Proposals (“**RFP**”). NYGB seeks an initial three-year agreement with an option to renew for an additional three-year term from a leading provider of a platform built specifically for structured private equity investments and financing arrangements. The selected provider must bring to NYGB a robust, secure platform with industry leading technology, efficient and effective processes, the ability to customize systems and fields to meet NYGB’s needs set out in this RFP, as well as a highly competent implementation and support team that is dedicated to the NYGB account. Proposed pricing must be specifically outlined so that NYGB is in a position to evaluate and select a service provider where the proposed offering represents an acceptable value proposition.

1.3 Eligibility Criteria

If your firm is interested in responding to this RFP (as such, a “**Respondent**”) please first ensure that all of the following minimum eligibility criteria are met. Proposals that are received but do not clearly meet all the eligibility criteria will not be considered for further evaluation.

Respondents must have:

- (a) The ability to provide a platform of the nature specified, to achieve the requirements outlined in [Section 2](#);
- (b) A minimum five-year track record in the full range of services sought;
- (c) A minimum of 25 investment entities (broadly comparable to NYGB, i.e., hybrid funds, business development companies, private equity or non-trading specialty finance companies) that use the

Respondent's platform for transaction management, workflow management and traditional CRM;

- (d) A platform built specifically for the investment community with minimal customization needed in deployment "out of the box";
- (e) A platform that ties in seamlessly with Microsoft Office®, specifically Microsoft Outlook®;
- (f) A platform which allows users to access and add data through both web and mobile devices;
- (g) A platform that can support up to 50 employees;
- (h) A platform which allows for the configuration of specific views and access/security for different user types;
- (i) A platform which would allow NYGB to track and audit data changes by user and date;
- (j) A platform which allows for the "on demand" creation of customized reports, including querying of historical data for any necessary time periods;
- (k) A platform which has the capability to transfer data to NYSERDA's centralized data warehouse through the use of daily FTP downloads of files containing specific data points pre-determined during the implementation of the platform; and
- (l) A platform that can comply and be compatible with [NYSERDA's Information Technology Security Requirements](#) and [NYSERDA's Data Classification Policy](#).

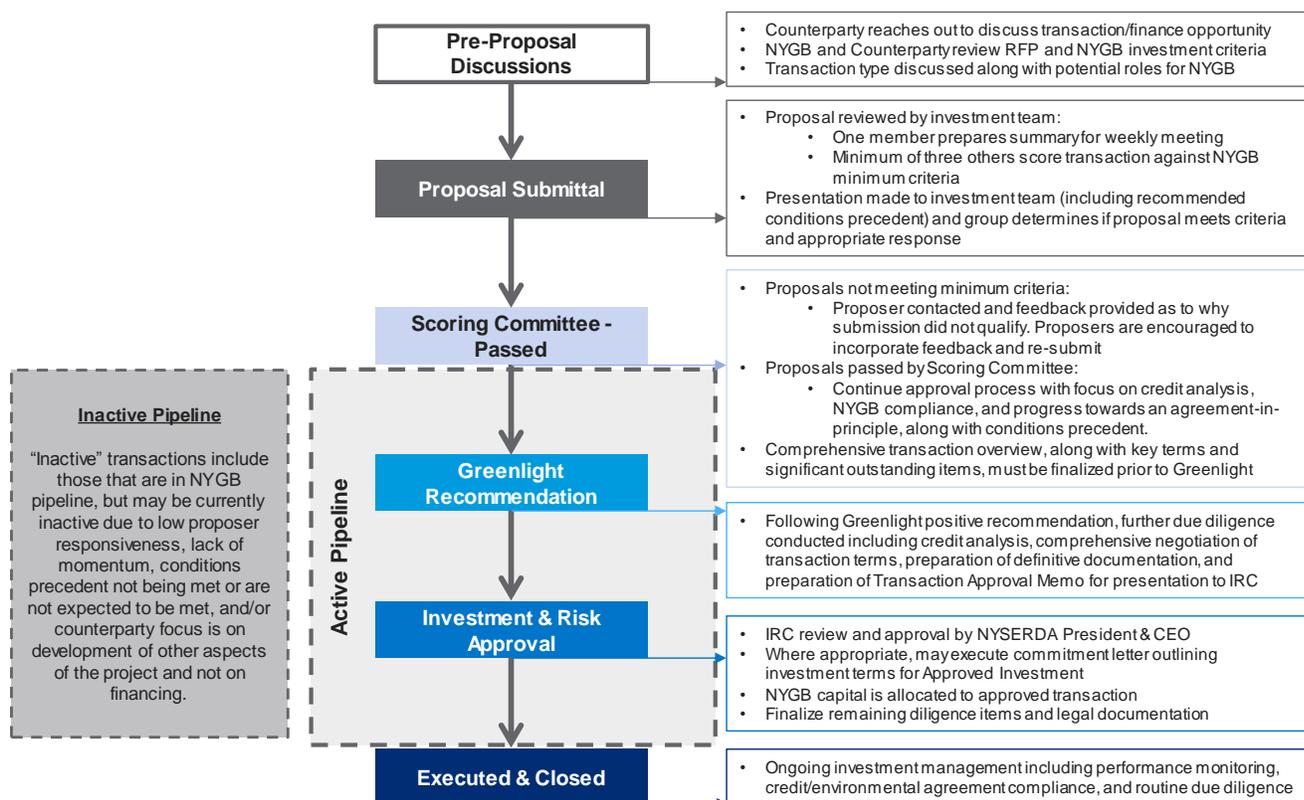
2 Scope of Services

2.1 Background

Currently, NYGB manages pipeline, portfolio and individual investments, workflow and internal and external reporting with the use of Microsoft Excel® workbooks. The workbooks contain information about transaction status, transaction details including investment amounts, contacts, locations, energy production and savings, amongst many others. The workbooks capture key items and status related to transactions within NYGB's transaction process as shown in [Figure 1](#).

Although this workbook-based approach satisfies external reporting requirements, the workbooks do not efficiently give a satisfactory holistic view of NYGB's pipeline, portfolio and individual transactions to NYGB's management, investments and operations teams.

Figure 1. NYGB Typical Transaction Process



NYGB currently tracks financial, operational and workflow management related data associated with each individual transaction in NYGB’s pipeline and proposal. Although much of this data is customary for transaction management, NYGB must track and report data associated with NYGB transactions and (for some data) in the aggregate, to ensure that NYGB delivers on its mission and mandate, including certain environmental, clean energy and economic benefits in New York State. Therefore, it is a priority for NYGB that this data, via corresponding user defined fields (“UDFs”), are captured accurately and efficiently throughout NYGB’s investment process to satisfy all periodic public and internal reporting requirements.

At this time, there are ~70 individual UDFs, containing: free form text, defined text (i.e., dropdown lists), and numerical values. NYGB seeks to aggregate, combine and analyze this data in the same manner that Pivot Tables in Microsoft Excel® allow NYGB to manipulate this data today. [Table 1](#) provides an example of some of the specific UDFs collected for each individual transaction in NYGB’s pipeline and portfolio. NYGB adheres to strict quarterly and annual public reporting schedules and must provide details on proposals received, transactions in negotiation and closed investments. For further information regarding NYGB’s public reports, please see: <http://greenbank.ny.gov/About/Public-Filings>.

Table 1. Example of NYGB Specific UDFs

UDF	Data Type	Data Example
Bid Identifier	Numerical	0116
Transaction Name	Text - Free Form	[Solar Developer Counterparty]
Technology Type 1	Text – Defined (Dropdown List)	Renewable Energy
Technology Subtype 1	Text – Defined (Dropdown List)	Solar PV Systems
Estimated Lifetime greenhouse gas emission reductions (metric tons) – Minimum	Numerical	150,000
Estimated Lifetime greenhouse gas emission reductions (metric tons) – Maximum	Numerical	200,000
Cumulative clean energy generated (MWh) – Actual	Numerical	528,000

Given that NYGB invests in a variety of different transaction structures and technology types and in cases where NYGB invests directly in energy projects (versus entities developing energy projects), NYGB will also track and monitor additional information related to a particular closed transaction, including: location(s) of underlying energy projects and specific financial and operational covenants applicable in the transaction.

2.2 Future State

NYGB seeks a full-service platform that will assist NYGB in managing its growing pipeline and portfolio of transactions, maintaining a centralized contacts database, and addressing ongoing and ad-hoc reporting needs on NYGB’s pipeline and portfolio for both internal and external stakeholders. The scope of services is outlined below and should be read in conjunction with [Figure 1](#) and [Table 1](#).

For all the purposes of this RFP, the universe of transactions which the desired platform will be capable of dynamically managing and tracking include those which are prospective, active, dormant, and closed, as well as which may not ultimately proceed to closing for any reason.

- (a) Management and reporting of NYGB’s pipeline and portfolio of transactions:
 - i. Tracking potential leads (pre-proposal discussion) and transactions in negotiation, together with closed transactions, in all cases throughout the entire lifecycle of NYGB’s typical investment process;
 - ii. Tracking key UDFs for every proposal, transaction and investment (e.g., key contacts, technology, geography, end-user customer segment, financial, energy, and environmental metrics);
 - iii. Document storage and retention within platform throughout NYGB’s typical investment process; and
 - iv. Customizable reporting capabilities (i.e., weekly active pipeline reports, monthly management dashboards, aggregated reports for public reporting, and query-building).
- (b) Management and reporting of NYGB’s marketing and industry events: tracking key events and contacts.

- (c) Establishment of a centralized contacts database of all NYGB stakeholders (i.e., potential leads, transaction entities, financial entities, legal entities, engineering firms) that can be easily and efficiently added to or otherwise amended over time.
- (d) Seamless integration with, and support of, a web-portal for NYGB's prospective clients and partners to submit investment proposals and key attributes through NYGB's website with information (and proposal documents) to be fed directly into the platform.

3 Proposal Content & Format

This Section discusses the general terms and guidelines that must be followed by all Respondents to complete an RFP submission. Respondents are cautioned to carefully read and follow the procedures required by this RFP as any deviation from these instructions may be cause for rejection without the submitted proposal being further considered or reviewed by NYGB.

For the purposes of evaluation, proposals should not be excessively long or submitted in an elaborate format. Proposals should be 20 pages or less, plus all required forms as instructed. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the Respondent, the RFP number, and the page number. The proposal must be in the following format:

Form A: Proposal Checklist

Form B: Disclosure of Prior Findings of Non-Responsibility

Part I: Executive Summary

Part II: Technical Proposal

Part III: Fee Proposal

Part IV: Exceptions to NYGB's Standard Agreement (as applicable), if any

3.1 Form A: Proposal Checklist

Please attach this to the front of your proposal.

3.2 Form B: Disclosure of Prior Findings of Non-Responsibility

See [Section 5.5](#) and [Section 5.6](#) for details.

3.3 Executive Summary

Provide a brief description of the overall approach and work effort.

3.4 Technical Proposal

Respondents should submit a proposal that describes the proposed approach to performing the work, providing and implementing the platform and accomplishing the objectives identified in [Section 1.3](#) and [Section 2](#) of this RFP. Where appropriate, Respondents are encouraged to include schematics and diagrams that provide both conceptual and technical descriptions of the proposed solution. The approach should address, at a minimum, the following:

- (a) Technology platform (including, without limitation, multi-dimensional nature of platform, security, storage etc.);
- (b) Implementation process (i.e., system development, validation rules, on-boarding, training);

- (c) Integration process (i.e., migrating NYGB's existing data, transferring data to NYSERDA's data warehouse, testing);
- (d) Service and support model (i.e., system upgrades, on-going and ad-hoc training);
- (e) Estimated timeline for implementation; and
- (f) Team profile.

In addition, please provide reference information (name, position, phone number and email address) of a minimum of three (3) clients which most closely resemble NYGB's business model and are currently using the platform in a manner similar to that proposed by NYGB and reflected in this RFP.

3.4.1 Use of Subcontractors

NYGB prefers to make one award under this RFP to a firm capable of providing all or substantially all required solutions and services as a "one-stop-shop." However, Respondents may propose to use a subcontractor(s) to provide a complete submission meeting all requirements under this RFP, provided that the respondent team is considered organized and effective at providing solutions to NYGB in a seamless manner. Any permitted subcontractors will be subject to all the Terms and Conditions outlined in [Section 5](#) of this RFP. Any proposal involving the use of subcontractors must provide a clear and detailed delineation of the proposed roles and responsibilities of all the parties required to meet NYGB's needs as set out herein, including a designated day-to-day single point-of-contact for overall administration.

3.5 Fee Proposal

The Fee Proposal must describe the nature, extent, calculation and incidence of fees for performing the work and providing the solutions and services described in this RFP, comprising a resource schedule consistent with the level of effort identified in the Technical Proposal. Proposers must address their fees specifically in two parts:

3.5.1 Implementation & Post-Implementation Consulting Fees:

Any services and fees which are to be remunerated according to agreed hourly rates will be subject to [NYGB's Standard Agreement](#). Please note that any implementation and post-implementation fees that exceed \$25,000 (in aggregate) will trigger the application of New York State's minority and women-owned business enterprise ("**M/WBE**") participation requirements for the implementation/service portion of the solutions sought under this RFP. If the M/WBE requirements will apply to your proposal, please review the relevant requirements prior to submittal, which are outlined in [NYGB's Standard Agreement, Exhibit E](#). To the extent that the M/WBE provisions apply to your proposal, compliance therewith must be demonstrated if your firm is selected as a preferred provider, as a condition precedent to executing any contract.

Proposed fees relating to the implementation and post-implementation consulting portion should include:

- (a) Fully loaded hourly rates to be used for the development and implementation; and
- (b) Fully loaded hourly rates for post-implementation support.

The Fee Proposal should include the elements reflected in the following table (expanded as necessary to reflect any additional work products needed), together with a clear description of all key assumptions and qualifications to which the proposed fees may be subject.

Stage	Number of Hours	Rate Per Hour	Total Fee
Scoping			
Field Customization			
Reporting & Dashboard Customization			
Data Collection & Migration			
Workflows & Activities			
Beta Testing			
Final Platform Review			
User Onboarding & Training			
Web Portal Development			
Ongoing Post-Implementation Support			
Total Estimated Implementation & Post-Implementation Costs			

3.5.2 Licensing, Onetime & Annual Fees:

For software-related licensing, storage, and security, NYGB will consider contracting using the Respondent’s standard contract, if applicable.

The Fee Proposal could include the elements reflected in the following table, but can be expanded as necessary based on any additional services which are considered to be needed.

Type	Fee
Annual Fee for One Full License	
Annual Fee for One Super-User License	
Annual Fee for One Mobile License	
Storage (specify amount of storage)	
Annual Security Fee	

3.6 Exceptions to NYGB’s Standard Agreement (If Applicable)

NYGB will use [NYGB’s Standard Agreement](#) to contract for the implementation portion of the proposal of any preferred providers designated through the RFP process. NYGB reserves the right to limit any negotiations to exceptions to standard terms and conditions in the [NYGB’s Standard Agreement](#) to those specifically identified by the Respondent. Proposers should keep in mind that acceptance of all standard terms and conditions (as applicable) will generally result in a more expedited contracting process. Please review [NYGB’s Standard Agreement](#) and include any exceptions and/or comments to specific terms as part of your firm’s RFP response.

4 Proposal Evaluation

4.1 Proposal Evaluation Criteria

Each proposal will be evaluated using the following factors:

- (a) Technical Proposal: Respondent's technical expertise by technology platform, implementation, integration and onboarding/training process, and service and support model, including:
 - i. The quality of each Respondent's response to this RFP regarding the specifics of the technology platform, implementation, integration, service and support model, estimated timing of implementation and team; and
 - ii. Experience in current coverage of clients which are broadly comparable in size and type of business to NYGB.
- (b) Full Service Solution: Ability to meet all services/solutions requested as described in the detailed Scope of Services provided in [Section 2](#).
- (c) Fees: Respondent's total fees and capacity to tailor fees to NYGB's needs, including Respondent's:
 - i. Anticipated cost of services broken out into detailed component parts reflecting both one-time implementation and post-implementation consulting costs;
 - ii. Ongoing licensing costs, upgrades, services and product support; and other non-consulting fees associated with the platform; and
 - iii. Overall price competitiveness.
- (d) Other: NYGB will also evaluate Respondent's overall organization and quality of the proposal, including cohesiveness, conciseness, and clarity of response.

4.2 Other

NYGB also reserves the right to correct any arithmetic errors, to accept or reject any of a Respondent's employees assigned to provide services on this project and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the Respondent.

5 Terms & Conditions

5.1 Selection Process & Contract Award

Proposals that are complete and meet all the requirements set out in this RFP will be reviewed by a Technical Evaluation Panel ("TEP") consisting of personnel from NYSERDA, NYGB, as well as selected external evaluators. A two-phase evaluation format may be used, with Respondents whose written proposals were most favorably reviewed being invited to NYGB's office in New York City to give an oral presentation about specific aspects of their proposal and a demonstration of their platform. Presentations and demonstrations will be reviewed by the TEP and, possibly other NYGB personnel. Final rankings will be made by the TEP based on written proposals and oral presentations/demonstrations. The highest ranked Respondent will be recommended for contract negotiations.

NYGB will make one award under this RFP to a firm capable of providing all solutions (either directly or in combination with subcontractors pursuant to [Section 3.4.1](#)). NYGB may award a contract based on initial applications without discussion, or following limited discussion, negotiations, or interviews. Each proposal

should be submitted using the most favorable cost and technical terms. NYGB may request additional data or material to support applications.

5.2 Designated NYGB Contact

Name	Role	Email
Amrita Patil	Operations & Finance	amrita.patil@greenbank.ny.gov

No communication intended to influence this procurement is permitted except by contacting the Designated Contact at the email address above. Contacting anyone other than this Designated Contact (either directly by the Respondent or indirectly through a lobbyist or other person acting on the Respondent's behalf) in an attempt to influence the procurement may result in a Respondent:

- a) Being deemed a Non-Responsible Offeror; and/or
- b) Not being awarded a contract.

5.3 Additional Information & Changes to RFP

Additional information may become available and be provided to Respondents subsequent to the issuance of this solicitation. Respondents are required to consider such information in their responses. Any changes to, and questions and answers concerning, this solicitation will be posted on NYGB's website at <http://greenbank.ny.gov/Opportunities/Service-Providers> under "RFP No. 5: CRM, Transaction Pipeline & Portfolio Management Platform".

5.4 Proprietary & Confidential Information

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

5.5 Disclosure Requirements

The Respondent shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a Respondent is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similar governing body. If an indictment or conviction should come to the attention of NYGB after the award of a contract, NYGB may exercise its stop-work right pending further investigation, or terminate the agreement. The Respondent may be subject to penalties for violation of

any law which may apply in the particular circumstances. Respondents must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or New York State.

Respondents must identify any existing business relationship(s) they, or any of their affiliates, have with NYGB or its parent organization, NYSERDA. To the extent any such relationship(s) exist, Respondents must identify benefits that may be associated with the combination and coordination of the existing business relationship(s) with those contemplated in this RFP.

5.6 State Finance Law Sections 139-j & 139-k

NYGB is required to comply with State Finance Law Sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at:

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>.

- (a) [Form A](#) requires a signature certifying that the Respondent will comply with State Finance Law Sections 139-j and 139-k; and
- (b) [Form B](#) includes a disclosure statement regarding whether the Respondent has been found non-responsible under Section 139-j of the State Finance Law within the previous four years.

5.7 Tax Law Section 5-a

NYGB is obliged to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYGB having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (“**T&F**”) whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with T&F to collect New York State and local sales and compensating use taxes. T&F has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at:

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf).

Prior to contracting with NYGB, the prospective contractor must also certify to NYGB that it has filed such certification with T&F. T&F has created a second form that must be completed by a prospective contractor prior to contracting and filed with NYGB. See ST-220-CA (available at

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). T&F has developed guidance for contractors which is available at: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

These forms are not required at the time each Respondent’s proposal is due under this RFP.

5.8 Limitation

This solicitation does not commit NYGB to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYGB reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when NYGB considers such course to be in its best interest, in its sole discretion.

5.9 Governing Law

This RFP is governed by the laws of the State of New York.

5.10 New York Executive Law Article 15-A

NYSERDA is required under the law to promote opportunities for maximum feasible participation of certified M/WBE and the employment of minority group members and women in the performance of NYSERDA contracts. The M/WBE participation goals and obligations of the selected Contractor are set forth in [NYGB’s Standard Agreement, Exhibit E](#).

6 Key Dates & Instructions to Submit Proposals

6.1 Critical Dates, Activities & Deadlines

Critical dates, related activities and deadlines relating to the RFP are set forth below. NYGB may change these dates at its sole discretion and convenience, without liability.

Activity	Description	Date(s)
1. Release RFP	Email, Online & NY State Contract Reporter	Friday, March 4, 2016
2. Respondents Submit Proposals	See Section 6.4	Tuesday, March 29, 2016 by 5:00 p.m. EST
3. Notification if selected for oral presentation/ demonstration of platform	Email/Telephone	By Monday, April 11, 2016
4. Oral presentations/platform demonstrations from Respondents selected for further evaluation, if required	In Person, NYGB Offices, NYC	April 2016
5. Notification if selected for contract negotiation	Email/Telephone	By Friday, May 6, 2016

6.2 Due Date

All proposals must be submitted by **Tuesday, March 29, 2016 at 5:00 p.m. EST**. Late proposals, or proposals that are not complete in addressing all the required aspects as set out in this RFP will not move forward to evaluation.

6.3 Format

A proposal should not be excessively long or submitted in an elaborate format. Proposals should be 20 pages or less, plus [Form A](#) and [Form B](#).

6.4 Electronic Submission

Respondents must submit proposals electronically. Faxed, hand-delivered or e-mailed proposals will not be accepted.

6.4.1 Electronic Submission Instructions

Please read the following instructions before submitting a proposal. Proposals may be submitted electronically by following the link for electronic submissions found on this RFP's webpage, which is located in the "Service Providers" section of the NYGB website:

<http://greenbank.ny.gov/Opportunities/Service-Providers>.

1. Submit one proposal for each session.
2. Enter your e-mail address and click the "Validate Email" button.
3. You will receive an automatic email containing a link to validate your email address. Click the link to be taken back to the contracting opportunity to begin the online submission process.
4. Upload as many files as needed, one at a time.

5. The electronic file names should include the proposing entity's name in the title of the document. The character limit is 100 characters.
6. You may submit Word, Excel, Zip, or PDF files. Individual files should be less than 1 GB file size.
7. PDF files must be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
8. After clicking the "Upload File" button, a list of your files will appear on the web page. You can delete files from this list if needed.
9. After all necessary files have been uploaded; review the list of documents to ensure that your proposal is complete and accurate.
10. Click the "Submit Proposal button."
11. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
12. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
13. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address of the Primary Contact listed on the Proposal Checklist.

6.4.2 Important Reminder

The electronic proposal system closes promptly at 5.00 p.m. EST on the due date of the solicitation. Files in process or attempted for submission after 5.00 p.m. EST will be locked out of the system. Please allow at least 15-30 minutes to submit proposals.

6.4.3 Electronic Submission Error

If after you click "Submit Proposal" you discover that the document(s) you submitted are incomplete or inaccurate, follow these instructions:

1. Start the process over again and resubmit the entire proposal. You will receive another confirmation e-mail.
2. Immediately forward both confirmation e-mails (original and resubmission) to proposals@nyserda.ny.gov with the subject line of "Resubmittal | RFP No.5: CRM, Transaction Pipeline & Portfolio Management".
3. NYGB will accept the second submission as your proposal. The first submission will be disregarded.
4. If you need help with this electronic proposal submission process, please notify NYGB's designated contact (see [Section 5.2](#)) and contact Roseanne Viscusi at roseanne.viscusi@nyserda.ny.gov or 518-862-1090 ext. 3418.

Required Forms

Form A: Proposal Checklist

THE PRIME CONTRACTOR MUST <u>SIGN THIS FORM BELOW</u> and ANSWER THE FOLLOWING QUESTIONS:			
		YES	NO
Propose Title:		Due Date: March 29, 2016, 5:00 p.m. EST	
Primary Contact (Prime Contractor):		Title:	
Company:		Phone:	Fax:
		Email:	
<input type="checkbox"/> By checking this box, I certify that the TIN number submitted is not a social security number. If your tax ID number is your social security number please leave information blank and contact NYSERDA.		Federal Tax Identification Number:	
Address:	City:	State or Province:	Zip:
Secondary Contact:		Title:	
Company:		Phone:	Fax:
		Email:	
Address:	City:	State or Province:	Zip:
Do you accept all Terms & Conditions in NYGB's Standard Agreement ? (If no, please explain separately) Note: NYGB may or may not accept any of the listed exceptions; NYGB reserves the right to limit any negotiations to exceptions specifically identified herein.			
Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page "confidential" or "proprietary" (For additional information regarding this, please refer to Section 5.4 in the solicitation document).			
Have you been indicted/convicted for a felony within the past 5 years? (If yes, explain on separate page)			

	YES	NO
Are you a Minority or Women-Owned Business Enterprise?		
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors?		
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (If yes, explain on separate page)		
ON WHAT PAGE(S) IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?		
		Page(s)
1. Form A: Proposal Checklist		
2. Form B: Disclosure of Prior Findings of Non-Responsibility		
3. Exceptions to NYGB's Standard Agreement (if applicable)		
4. Indictment/Conviction of Felony (if applicable)		
5. NYSERDA Contracts Awarded (if applicable)		
6. Prior and/or Competing Proposals (if applicable)		
AUTHORIZED SIGNATURE & CERTIFICATION		
<p>I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.</p>		
Name:	Signature:	
Title:	Organization:	
Phone:	Email:	

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

Form B: Disclosure of Prior Findings of Non-Responsibility

Disclosure of Prior Findings of Non Disclosure RFP No. 5: CRM, Transaction Pipeline & Portfolio Management Platform		
Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Name and Title of Person Submitting this Form:		
	YES	NO
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an "X")		
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")		
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")		
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		
Basis of Finding of Non-responsibility: (Add additional pages as necessary)		
	YES	NO
Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information? (Please indicate with an "X")		
If you answered yes, please provide details below.		
Government Agency or Authority:		

Disclosure of Prior Findings of Non Disclosure
RFP No. 5: CRM, Transaction Pipeline & Portfolio Management Platform

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (Add additional pages as necessary)

Offeror certifies that all information provided to NYGB (a division of NYSERDA) with respect to State Finance Law §139-k is complete, true, and accurate.

By: _____ Date: _____

Signature

Name: _____ Title: _____

Appendices

NYSERDA's Information Technology Security Requirements

NYGB's data cannot leave or be stored outside of the United States, in addition, Respondents must be able to follow the security guidelines outlined below:

NYS-POS-002 New York State Information Technology Policy, Information Security:

https://www.its.ny.gov/sites/default/files/documents/enterprise_information_security_policy_v5.0_0.pdf

S14-007: New York State Information Technology Standard, Encryption:

https://www.its.ny.gov/sites/default/files/documents/enterprise_information_security_policy_v5.0_0.pdf

S14-013: New York State Information Technology Standard, Account Management/Access

Control:

https://www.its.ny.gov/sites/default/files/documents/enterprise_account_management_access_control_standard.docx.pdf

NYSERDA's Data Classification Policy

NYSERDA produces, collects, and uses many different types of data in fulfilling its mission. Laws and institutional policy mandate privacy and protection of certain types of data, and NYSERDA's need to manage risks to its constituents and to its reputation requires the protection of other information. Classifying data is the first step in determining the appropriate level of control required for a given type of data or information asset.

Data classification focuses on the data elements. A data element is the container for a type of data, rather than the data itself (e.g., the data element "NAME" or "STREET ADDRESS" rather than the data contained in that element, such as "John Smith" or "123 Main Street"). During classification, data elements that appear together may be classified in data groupings (e.g., an application form, whether electronic or paper). Data elements collected and maintained together create information assets (e.g., a program database or a file cabinet). Information assets or groups of data with multiple data elements, such as reports, contracts, business data bases, etc., shall be classified based upon the classification level of the most sensitive or restricted individual data element contained therein.

The classification of data is a detailed process with specific technical requirements. This standard is applicable to NYSERDA staff, contractors, and other affiliates, which have access to or manage NYSERDA information.

NYSERDA Classification Schema for Confidentiality

While maintaining compliance with the NY State Standard for classification, NYSERDA will apply its own data-classification schema to more specifically describe the restrictions required for data classified as "High Confidentiality". The NYSERDA classification schema shall include both "Confidential – Restricted" and "Confidential – Private" to designate different types of "High Confidentiality" based upon identity theft and privacy risk and business need for access.

NYSERDA shall use "Internal Use Only" to designate Moderate Confidentiality and "Public" to designate Low Confidentiality.

Information Classification

Information classification is based on three principles of security: (a) confidentiality; (b) integrity; and (c) availability. For each principle, information can be classified as low, moderate, or high based on the

potential impact. Impact levels are defined as limited, serious and severe or catastrophic. For purposes of classification, limited impact shall be deemed to include no impact.

Low = Limited impact that would:

- cause a degradation in mission capability to an extent and duration that NYSERDA is able to perform its primary functions, but the effectiveness of the functions is noticeably reduced;
- result in minor damage to NYSERDA or third party assets;
- result in minor financial loss; or
- result in minor harm to individuals.

Moderate = Serious impact that would:

- cause a significant degradation in mission capability to an extent and duration that NYSERDA is able to perform its primary functions, but the effectiveness of the functions is significantly reduced;
- result in significant damage to NYSERDA or third party assets;
- result in significant financial loss; or
- result in significant harm to individuals that does not involve loss of life or serious life threatening injuries.

High = Severe or catastrophic impact that would:

- cause a degradation in or loss of mission capability to an extent and duration that NYSERDA is not able to perform one or more of its primary functions;
- result in major damage to NYSERDA or third party assets;
- result in major financial loss; or
- result in catastrophic harm to individuals involving loss of life or serious life threatening injuries.

Table 2: Information Asset Classification Matrix

	INFORMATION CLASSIFICATION CATEGORIES		
	LOW	MODERATE	HIGH
<p>CONFIDENTIALITY</p> <p>Consider impact of unauthorized disclosure on factors such as:</p> <p>Health & Safety</p> <p>Financial Loss</p> <p>Mission/Programs</p> <p>Public Trust</p>	<p>The unauthorized access or disclosure of information would have limited or no impact to the organization, its critical functions, workforce, business partners and/or its customers.</p>	<p>The unauthorized access or disclosure of information would have serious impact to the organization, its critical functions, workforce, business partners and/or its customers.</p>	<p>The unauthorized access or disclosure of PPSI or other information would have a severe or catastrophic impact on the organization, its critical functions, workforce, business partners and/or its customers.</p>

	LOW	MODERATE	HIGH
INTEGRITY Consider impact of unauthorized modification or destruction on factors such as: Health & Safety Financial Loss Mission/Programs Public Trust	The unauthorized modification or destruction of information would have limited or no impact to the organization, its critical functions, workforce, business partners and/or its customers.	The unauthorized modification or destruction of information would have serious impact to the organization, its critical functions, workforce, business partners and/or its customers.	The unauthorized modification or destruction of information would have a severe or catastrophic impact on the organization, its critical functions, workforce, business partners and/or its customers.
AVAILABILITY Consider impact of untimely or unreliable access to information on factors such as: Health & Safety Financial Loss Mission/Programs Public Trust	The disruption of access to or use of information would have limited or no impact to the organization, its critical functions, workforce, business partners and/or its customers.	The disruption of access to or use of information would have serious impact to the organization, its critical functions, workforce, business partners and/or its customers.	The disruption of access to or use of information would have a severe or catastrophic impact on the organization, its critical functions, workforce, business partners and/or its customers.

The information classification process includes the following steps:

1. Identifying information assets
2. Classifying information assets by confidentiality, integrity, and availability (CIA)
3. Determining controls based upon the classification
4. Additional Steps

Step 1. Identification of Information Assets

Identification of information assets involves creating an inventory of all information assets in NYSERDA. The following items need to be considered when constructing this inventory:

Determining the information owner (in NYSERDA’s data governance system this role shall be called data owner and the terms are used interchangeably.)

Determining the information custodian

Identifying information assets

Step 1.1 Grouping of Information Assets

In order to facilitate the classification of information assets and allow for a more efficient application of controls, it may be desirable to group information assets together. It is important to establish that the grouping of assets for classification is appropriate. A broad grouping may result in applying controls unnecessarily as the asset must be classified at the highest level necessitated by its individual data elements. For example, if a Human Resources unit decides to classify all of their personnel files as a single information asset and any one of the files contains a name and social security number, the entire grouping would need to be protected with the controls for a confidentiality of high.

A narrow grouping allows for more precise targeting of controls. However, as there are more information assets to classify, this increases the complexity of the classification and the management of controls. Using the previous example, classifying the multitude of personnel files (e.g., appointment letters, timecards, position classifications, holiday waivers) as individual information assets requires specifying the set of controls for each classification.

In the case of a system (e.g., database, data warehouse, application server), it may be easier to apply controls if the system is classified as a single entity. However, costs may be reduced by applying controls to individual elements (e.g., field, record, application). Therefore, it is important that NYSERDA evaluate the difference between the two scenarios to identify the most appropriate solution when determining the grouping of information assets for classification.

Step 1.2 Determining the Data Owner¹

Responsibility for the classification and control of an information asset must be assigned to an individual in a managerial position. If multiple individuals are found to be “owners” of the same information asset, a single owner must be designated by a higher level of management. The data owner is responsible for determining the information’s classification and how and by whom the information will be used. Owners must understand the uses and risks associated with the information for which they are responsible. Each owner must exercise due diligence with respect to the proper classification of data in order to prevent improper disclosure and improper access.

Step 1.3 Determining the Information Custodian

Information custodians are people, units, or organizations responsible for implementing the authorized controls for information assets based on the classification level. An information asset may have multiple custodians. Based on the data owner’s requirements, the custodian secures the information, applying safeguards appropriate to the information’s classification level. Information custodians can be from within NYSERDA or from third parties (e.g., another state entity or non-State entity). If the custodian is a third party, a formal, written agreement must specify the responsibilities between the custodian’s organization and NYSERDA regarding who owns the information. An information custodian may also be the data owner.

Step 1.4 Identifying Information Assets

¹ Information Owner and the Data Owner are equivalent.

For each information asset in their control, the data owner must identify at a minimum:

- Source of the information asset (e.g., unit, agency)
- Use of the information asset (i.e., purpose/business function)
- Business processes dependent on the information asset
- Users/groups of users of the information asset

Step 2. Classification of Information Assets

Owners must answer the following question to determine the classification of their information assets. Is it appropriate to recruit and work with subject matter experts who have specific knowledge about the information asset? The Performance & Market Standards (“**P&MS**”) department and Information Security Officer may also be called upon to advise and assist the data owner in determining the classification.

Step 2.1 Information Asset Classification Questions

Information assets are classified according to confidentiality, integrity, and availability. Each of these three principles of security is individually rated as low, moderate, or high. For example, an information asset may have a confidentiality level of “high”, an integrity level of “moderate”, and an availability level of “low” (i.e., HML).

Below are the state-specified model questions. Unless otherwise indicated, the answers to each question must indicate the impact level (i.e., none or limited (low), serious (moderate) or severe or catastrophic (high).

Confidentiality Questions:

1. Does the information include or contain PPSI (Personal, Private or Sensitive Information)? Y/N
2. What impact does unauthorized access or disclosure of information have on health and safety?
3. What is the financial impact of unauthorized access or disclosure of information?
4. What impact does unauthorized access or disclosure of information have on NYSERDA’s mission?
5. What impact does unauthorized access or disclosure of information have on the public trust?
6. Is confidentiality mandated by law or regulation? If yes, determine the impact of unauthorized access or disclosure of information.
7. Is the information intended for limited distribution? If yes, determine the impact of unauthorized access or disclosure of information.
8. Is the information publically available? Y/N

If the answer to question 1 above is “Yes” or if any of the other answers are “severe or catastrophic”, the confidentiality rating is high. If the answer to question 1 above is “No” and if any of the other answers are “serious” but none are “severe or catastrophic”, the confidentiality rating is moderate. If the answer to question 1 above is “No” and if all of the other answers are “limited” or “none”, the confidentiality rating is low.

Integrity Questions:

1. Does the information include medical records? Y/N
2. Is the information (e.g., security logs) relied upon to make critical security decisions? Y/N
3. What impact does unauthorized modification or destruction of information have on health and safety?
4. What is the financial impact of unauthorized modification or destruction of information?

5. What impact does the unauthorized modification or destruction of information have on NYSERDA's mission?
6. What impact does unauthorized modification or destruction of information have on the public trust?
7. Is integrity addressed by law or regulation? If yes, determine the impact of unauthorized modification or destruction of information.
8. Is the information (e.g., financial transactions, performance appraisals) relied upon to make business decisions? If yes, determine the impact of unauthorized modification or destruction of information.

If the answer to question 1 or 2 above is "Yes" or if any of the other answers are "severe or catastrophic", the integrity rating is high. If the answer to question 1 and 2 above is "No" and if any of the other answers are "serious" but none are "severe or catastrophic", the integrity rating is moderate. If the answer to question 1 and 2 above is "No" and if all of the other answers are "limited" or "none", the integrity rating is low.

Availability Questions:

1. Is availability of the information essential for emergency response or disaster recovery? Y/N
2. This information needs to be provided or available:
 - (a) As time permits - LOW
 - (b) Within 1 to 7 days - MODERATE
 - (c) 24 hrs. per day/7 days a week - HIGH
3. What is the impact to health and safety if information were not available when needed?
4. What is the financial impact if information were not available when needed?
5. What is the impact to NYSERDA if information were not available when needed?
6. What is the impact to the public trust if the information were not available when needed?

If the answer to question 1 is "Yes" or if any of the other answers are "severe or catastrophic" or "high", the availability rating is high. If the answer to question 1 above is "No" and if any of the other answers are "serious" or "moderate" but none are "severe or catastrophic" or "high", the availability rating is moderate. If the answer to question 1 above is "No" and if all of the other answers are "limited", "low" or "none", the availability rating is low.

Step 3. Determination of Controls

Once the information is classified, the classification can be used to determine baseline controls. A listing of baseline controls for each type of classification can be found in Appendix A - Information Security Control Charts.

Step 4. Additional NYSERDA Steps

Using the State-specified model questions as the minimum standard, NYSERDA shall develop additional NYSERDA-specific questions to assist in proper classification and balance required controls and NYSERDA's operational need to have access to specific data. These questions shall be developed by the Director of P&MS and approved by the Information Security Officer and Chief Information Officer.

As mentioned above, for data requiring High-Confidentiality, NYSERDA shall further divide the classification into two sub-categories to assist NYSERDA as defined below.

1. Confidential - Restricted

This relates to data that is NYS High Confidentiality and NYSEDA has determined to tightly restrict access within NYSEDA due to personal privacy, potential for identity theft or legal requirements. Most PPSI will be classified and controlled in this manner. Examples are HIPPA protected health data, Social Security Numbers and Bank Account Numbers.

2. Confidential - Private

This relates to data that is NYS High Confidentiality and NYSEDA has determined to make it available as required for proper functioning of NYSEDA programs and operations. Examples are the names of participants in low income programs and company proprietary data provided by applicants to receive NYSEDA funding.

Controls

NYSEDA shall apply the appropriate level of control to protect data at all times - as data is being collected, once it has been collected, and as data is being transmitted or provided to internal and external stakeholders. In general, control requirements relating to integrity and availability will be applied systemically at the information asset level. By contrast, control requirements relating to confidentiality, expressed in terms of the NYSEDA Classification Schema for Confidentiality, are more likely to be applied at the data user level.

NYSEDA has developed minimum standard control requirements for the protection of each classification of data when being used or handled in a specific context (e.g. Social Security Numbers sent in an email message). Please note that NYSEDA control standards are not intended to supersede any regulatory or contractual requirements for handling data. Some specific data sets such as payroll, insurance or financial account data, may have requirements in addition to the minimum standard requirements.

NYSEDA shall publish a control plan for each identified Information Asset and standard data sharing rules to be applied to each group of data or individual data field that is classified as NYS Medium or High Confidentiality.

Each NYSEDA department/unit is responsible for implementing, reviewing, and monitoring internal policies, practices, etc. to assure compliance with this standard.

All NYSEDA personnel are responsible for maintaining the confidentiality, integrity, and availability of NYSEDA information to facilitate the effective and efficient conduct of NYSEDA business.

In addition, the following responsibility designations identify roles and responsibilities related to information classification at NYSEDA.

The Information Security Officer (ISO) and the Director of P&MS are responsible for the State Entity duties enumerated in the NY State Information Technology Standard: Information Security Controls. The primary function of the ISO is to ensure compliance with the requirements below and to monitor and audit accordingly. The primary function of the Director of PMES is to maintain and improve the system to support compliance including system design, training and development of procedures. Duties which are unique to either the ISO or Director of P&MS are labeled as such below:

Developing, implementing, and maintaining the NYSEDA data classification program in consultation with NYSEDA Executive Management/Stakeholders/Business Units, enabling the data owners, information custodians, and other key individuals to make appropriate decisions regarding the security classification and protection of data (Director of P&MS Implements and ISO verifies).

Building agency-wide compliance with NYSERDA's data-classification program (Director of P&MS Implements and ISO verifies).

Developing, implementing, and maintaining the processes and procedures for properly labeling media (electronic or paper based) commensurate with the classification of the information (Director of P&MS Implements and ISO verifies).

Developing, in conjunction with the NYSERDA Business Units, the necessary controls of access to applications, commensurate with classification of the information processed by the system or application (Director of P&MS Implements and ISO verifies).

Overseeing the development and implementation of a centralized data-classification repository (Director of P&MS primary).

Taking the appropriate actions (e.g., Incident Response Management) if non-public information is lost or disclosed to unauthorized parties — or is suspected of being lost or disclosed to unauthorized parties (ISO determines appropriate actions, Director of P&MS will report any violations to ISO).

Working with the business units to develop mitigating security strategies when exceptions or waivers are deemed necessary (ISO makes determinations, Director of P&MS will assist as a technical resource).

A Data Owner must be identified for each NYSERDA information asset. Data Owners are responsible for maintaining appropriate security measures commensurate with any applicable federal or state statutes or regulations governing the data. Authority for implementing security measures may be delegated (e.g., to the Information Custodian), although accountability and responsibility remain with the identified Data Owner.

The Data Owners are the persons in the Business Unit responsible and accountable for the information asset, are at the manager or executive level, and are non-IT staff.

The Data Owners are responsible and accountable for the following areas (the Data Owners can delegate authority in these areas, but accountability remains with them):

1. Assigning the appropriate data classification to information under their jurisdiction;
2. Determining the means (e.g., a process, event, or date) by which the information can be reclassified;
3. Determining to whom and under what conditions access is granted;
4. Identifying and documenting the controls required to maintain the confidentiality, integrity, and availability of the information commensurate with its classification level (e.g., written agreements with IT and end users, procedures, etc.);
5. Verifying that the identified security controls are in place and functioning properly;
6. Verifying that access to the information is based on the "least-access" principle;
7. Verifying that all legal requirements for access, disclosure, retention, archiving, and expungement of information are satisfied;
8. Verifying that whenever any data is transferred to another entity (e.g., another state agency or contractor), the entity is educated/informed of the proper handling, storage, disseminating, and disposal of the data via an executed MOU/MOA or other written agreement;
9. Reviewing periodically, and at a minimum annually, to confirm the classification of, or reclassifying, information assets of which they are the owner;
10. Reviewing, annually, the master data-classification records for accuracy;
11. Reviewing for appropriateness the actions of those granted access to information of which they are the owner;
12. Acting on security violations against their information assets and immediately notifying the Information Security Officer (ISO); and

13. Notifying the ISO if non-public information is lost or disclosed to unauthorized parties — or is suspected of being lost or disclosed to unauthorized parties.

The Information Technology department functions as NYSERDA's Information Custodian. An Information Custodian (IC) must be identified for each NYSERDA information asset. An IC can be a person, a unit, or an organization responsible for implementing the authorized controls for information assets based on the classification level set forth by the Data Owner. The IC is able to take the necessary actions to secure the information by applying controls appropriate to the information's classification level. An IC can either be internal to NYSERDA or from a third party (e.g., another state entity or a non-state-entity). It is recommended that a service level agreement exist between the IC and the Data Owner, so the parties understand their respective responsibilities.

Data Users (also referred to as Information End Users) fall into two categories:

1. NYSERDA Data Users – Authority staff, contractors, and other affiliates who, as part of their job responsibilities, are authorized users of NYSERDA information.
2. Business partner Data Users – NYSERDA business partners, who include but are not limited to, various state and local government entities, voluntary agencies, and other business partners, that are authorized users of NYSERDA information.

NYSERDA Data Users are responsible for accessing and using the information only for the intended purpose, as defined by the Data Owner; for maintaining the confidentiality, integrity, and availability of the information, as required by the owner; and for familiarizing themselves and complying with applicable NYSERDA security policies.

Business Partner Data Users are governed by agreements specifying their responsibility to handle the information in a secure manner and in compliance with all applicable statutes and regulations.

Data Users are required to report a suspected or actual violation of NYSERDA policies and standards to the ISO in writing.

Data Users are also responsible for notifying the IO and the ISO if non-public information is lost or disclosed to unauthorized parties — or is suspected of being lost or disclosed to unauthorized parties.

NYGB's Standard Agreement

Special Note: All items referenced in this Section refer only to other items found herein and not to items in the remaining RFP materials.

Agreement

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period: 3 years from the Effective Date
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; and
- Exhibit D, Prompt Payment Policy Statement
- Exhibit E, New York State Executive Law Article 15-A

8. ACCEPTANCE. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY OR ON BEHALF OF NY GREEN BANK ("NYGB").

CONTRACTOR

**NEW YORK GREEN BANK, a division of the
NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY**

By _____

By _____

Name _____

Caroline Angoorly

Title _____

Chief Operating Officer

NY Green Bank

EXHIBIT A: Statement of Work

Objective: Contractor shall perform in accordance with specific direction provided by NYGB staff in supporting the implementation, training and on-going maintenance of a proprietary CRM and transaction pipeline and portfolio management. In addition, the contractor will work with NYGB to develop and implement a customized web portal to capture transactions proposals and directly feed into the CRM platform.

[The specifics tasks related to the Statement of Work will be determined by NYGB and chosen Respondent]

RATE:

Contractor's rate is \$/hr plus reimbursement of out of pocket expenses at cost. Refer to Exhibit B, Article IV, Section 4.01 (b) Direct Charges for terms pertaining to out of pocket expense(s).

EXHIBIT B: General Contract Provisions, Terms and Conditions

Article I

Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth at Exhibit A hereto.

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

Contract Information: Information, whether written or oral, and regardless of form or characteristic, used in connection with the performance of this Agreement, or otherwise related to NYGB or relating to a third party interacting with NYGB.

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

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

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

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

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

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

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 NYGB. 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 NYGB, the requested change in Project Director shall be considered approved. In the event that NYGB requires additional time for considering approval, NYGB 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.

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 NYGB'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, NYGB shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement for the cost elements identified in the Budget to be funded with NYGB funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYGB's payments shall be on a reimbursement basis, and shall be paid only to the extent that Cash-based

Expenses are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, and the following:

(a) 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 Budget 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.

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 NYGB, "Attention: NYGB Operations & Finance," or submitted electronically to financeops@greenbank.ny.gov with a copy to [●]. Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred and shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Budget. NYGB may adjust amounts payable to correlate the proportion of NYGB's funding share paid to the proportion of the Work completed.

Section 4.03. Final Payment.

Upon final acceptance by NYGB of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYGB may require. The Contractor shall be notified by NYGB in accordance with Section 504.4(b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with the invoice.

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

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

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

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYGB to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYGB shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYGB 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 NYGB on the basis of any audit of the Contractor by NYGB, NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Performance

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the

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

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

Article VI

Schedule: Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements conveyed to Contractor by NYGB.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYGB in writing of all deliverables requested by NYGB in accordance with Exhibit A, Statement of Work.

Article VII

Force Majeure

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

Article VIII

Contract Information; Confidentiality

Section 8.01. Rights in Contract Information. All Contract Information shall be the sole and exclusive property of NYGB. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement; and nothing herein or otherwise implied shall constitute any broader grant or license.

Section 8.02. Confidentiality. The Contractor agrees that to the extent it receives or is given any Contract Information, the Contractor will at all times keep all Contract Information and the deliverables (as referenced in Section 3.01 hereof) strictly confidential; which shall include, without limitation, not disclosing the same, or knowingly permitting the same, to be disclosed to any person other than NYGB employees or NYGB-specified parties and at all times taking reasonable steps to ensure that this obligation is fulfilled. In addition, Contractor will at all times keep the content of the deliberations of NYGB, including all written, oral and other communications (irrespective of form, including electronic) strictly confidential; which shall include, without limitation, not disclosing the same, or knowingly permitting the same, to be disclosed to any person other than NYGB employees or NYGB-specified parties and at all times taking reasonable steps to ensure that this obligation is fulfilled.

Section 8.03. Destruction. Upon completion of the Contractor's performance with NYGB, the Contractor shall destroy, by shredding, permanent deletion or other method ensuring complete destruction, all Information then in his/her possession provided by NYGB, whether in paper, electronic or other form. Contractor shall not retain any copies thereof.

Section 8.04. Survival. The provisions of this Article VIII shall survive the expiration or earlier termination of this Agreement.

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 NYGB in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

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

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

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

(e) 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 NYGB's rights hereunder;

(f) 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;

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

(h) 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;² and

(i) 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.

(j) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYGB, 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. Indemnity. The Contractor shall protect, indemnify and hold harmless NYGB, 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 NYGB, NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's willful, criminal, intentional, reckless, or grossly negligent misconduct.

Article XI

Insurance

Intentionally Omitted

²<http://www.nyserda.ny.gov/About/Board-Governance.aspx>

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

(a) NYGB 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, NYGB 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 NYGB decides the facts justify such action, NYGB 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 NYGB 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 NYGB 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 NYGB, 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) NYGB 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) NYGB shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

12.03 Suspension or Termination for Non-Responsibility.

(a) Suspension. NYGB, 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 NYGB 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 NYGB officials or staff, this Agreement may be terminated by NYGB at the Contractor's expense where the Contractor is determined by NYGB to be non-Responsible. In such event, NYGB 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 or NYGB nor make any claim, demand or application for any right or privilege applicable to NYSERDA or NYGB, 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 or NYGB'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 NYGB'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 or NYGB, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA, NYGB, or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYGB 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 and/or NYGB in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA and/or NYGB 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 NYGB 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 NYGB 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:

NY Green Bank
A Division of NYSERDA
1359 Broadway, 19th Floor
New York, NY 10018-7842
Personal Delivery: Reception desk at the above address

CONTRACTOR

Name:

Address:

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 NYGB 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.

EXHIBIT C: Standard Terms & Conditions for all NYGB Agreements

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

The Parties agree to be bound by the following clauses, to the extent applicable, 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.

2. INTENTIONALLY OMITTED.

3. INTENTIONALLY OMITTED.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither it 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 the 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 following execution of the Agreement, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYGB 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. NYGB and the Contractor shall each have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYGB'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 NYGB with regard to this Agreement, any other agreement, including any agreement for a term commencing before the term of this Agreement, plus any amounts due and owing to NYGB for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. Nothing herein is intended to limit the Contractor's rights to common law and statutory rights of set-off.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, the Contractor and NYGB acknowledge and agree that all information, in any format, submitted to NYGB shall be subject to and treated in accordance with the NYS Freedom of Information

Law (“**FOIL**,” Public Officers Law, Article 6). Pursuant to FOIL, NYGB 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 or Applicable Law specifically requires otherwise, the Contractor should submit information to NYGB in a non-confidential, non-proprietary format. FOIL does provide that NYGB may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format that the Contractor considers a proprietary and/or confidential trade secret, the Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, the Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of the 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 NYGB without obligation concerning its confidentiality. In the event of a FOIL request, it is NYGB’s policy to consider records as marked above pursuant to the trade secret exemption procedure set out in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYGB 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 NYGB’s Regulations, Part 501 <http://www.NYGB.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 NYGB’s obligation to pay any invoices submitted by the Contractor pursuant to this Agreement, the Contractor shall provide to NYGB 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 the 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 any direct conflict between any express terms of the Agreement (including any and all attachments thereto and amendments thereof) and the express 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 NYGB'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**"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon NYGB's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify NYGB, in writing, of each and every change of address to which service of process can be made. Service by NYGB to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If following the effectiveness of this Agreement, NYGB 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 before submission of the Contractor's proposal to NYGB, convicted of a felony, under the laws of the United States or Territory of the United States, then NYGB may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYGB 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 Services.

14. INTENTIONALLY OMITTED.

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

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

NYS Department of Economic Development

Division for Small Business

625 Broadway

Albany, New York 12207

Telephone: 518-292-5200

Fax: 518-292-5884

<http://www.esd.ny.gov>

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

NYS Department of Economic Development

Division of Minority and Women's Business Development

625 Broadway

Albany, New York 12207

Telephone: 518-292-5200

Fax: 518-292-5803

<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, the Contractor certifies 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, in connection with this Agreement, 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 in connection with this Agreement 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. The Contractor is hereby notified that if its 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, NYGB 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 parties 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) Before entering into such an agreement, the Contractor is required to provide NYGB with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- (c) Before any renewal period (if applicable) under the agreement, the Contractor is required to provide NYGB with a completed Form ST-220-CA.

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

NYGB 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: NYGB Prompt Payment Policy Statement

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYGB's regulations, which consists of NYGB's policy for making payment promptly on amounts properly due and owing by NYGB under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.³

(b) This Exhibit applies generally to payments due and owing by NYGB to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYGB 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 D shall have the same meaning as set out 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 NYGB 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 NYGB's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "**Payment**" means payment properly due and owing to the Contractor pursuant to the terms 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 NYGB 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 NYGB not to be liable for interest pursuant to Section 504.6.

(f) "**Proper Invoice**" means a written request for Payment that is submitted by the Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered by such Contractor, in such form, and supported by such other substantiating documentation, as NYGB may reasonably require; and addressed to NYGB's Controller, marked "Attention: Accounts

³ 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>

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, NYGB 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 NYGB for the portion working, completed or delivered, NYGB will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services by the Contractor are working, completed or delivered.

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

504.3. Prompt Payment Exhibit. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYGB 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 NYGB.

(b) NYGB 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 NYGB fails to notify the 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 NYGB 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, NYGB 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. NYGB has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit D, 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 NYGB 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 NYGB and the date when NYGB 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 NYGB or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYGB 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, NYGB 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, before 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 Agreement, has completed the inspection, advised NYGB 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 NYGB, 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 NYGB.

504.6. Interest Eligibility and Computation. If NYGB fails to make Prompt Payment, NYGB 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 NYGB pursuant to this 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 (other than indemnification obligations of NYGB pursuant to the Agreement), notwithstanding that NYGB may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. The Contractor may object to any action taken by NYGB pursuant to this Exhibit D that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYGB. Such notice shall be signed and dated and concisely and clearly set out the basis for the objection and be addressed to the Chief Operating Officer, NYGB, at the notice address set out in this Agreement. The Chief Operating Officer of NYGB, or his or her designee, shall review the objection for purposes of affirming or modifying NYGB's action. Within fifteen (15) working days of the receipt of the objection, the Chief Operating Officer, or his or her designee, shall notify the Contractor either that NYGB'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 NYGB pursuant to this Exhibit D 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 D 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 NYGB to make an interest payment to the Contractor pursuant to this Exhibit D 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 NYGB after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

EXHIBIT E: Article 15-A 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 ("M/WBEs"). 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:

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.

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.

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.

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 M/WBE 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 M/WBE 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 M/WBEs 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 M/WBE 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 M/WBE with the Division and is responsible for one hundred percent (100%) of the performance of this Agreement, the Contractor shall submit to NYSERDA an M/WBE 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 NYSEERDA 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 NYSEERDA. 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 NYSEERDA'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 NYSEERDA for partial or total waiver of the M/WBE participation goals set forth above. Upon Contractor's submission of a waiver form, NYSEERDA may grant a partial or total waiver of the requirements of the participation goals established hereunder. Prior to granting or denying a waiver, NYSEERDA shall evaluate the Contractor's "good faith efforts" and may consider the factors set forth in the Regulations §142.8. If NYSEERDA, upon review of the M/WBE Utilization Plan and updated Quarterly M/WBE 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, NYSEERDA 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 M/WBE Contract Goals. In the event NYSEERDA 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. NYSEERDA is responsible for monitoring Contractor's compliance with the applicable regulations. In that regard, NYSEERDA may, at its discretion, notify the Contractor in writing of NYSEERDA's intent to inspect relevant records and documents related to Article 15-A compliance. NYSEERDA 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. NYSEERDA 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 NYSEERDA for damages in an amount equal to NYSEERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.

ATTACHMENT 1: M/WBE and EEO STATEMENT

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

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

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

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

Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

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

Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, ; will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination; and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, ; and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2016

By _____

Print: _____ Title: _____

ATTACHMENT 2: NYSERDA M/WBE UTILIZATION PLAN FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

Prime Contractor M/WBE Status M/WBE Non-M/WBE

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

Signature/Title of Authorized Representative

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

III. MBE SUBMISSIONS

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

IV. WBE SUBMISSIONS

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

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

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

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established M/WBE goal.

Name _____ Title _____

ATTACHMENT 3: NYSERDA MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) STAFFING PLAN FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

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

Signature/Title of Authorized Representative

III. WORKFORCE DESCRIPTION

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

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

Name _____ Title _____

ATTACHMENT 4: NYSDERDA (M/WBE) COMPLIANCE REPORT FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work _____

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

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

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

ATTACHMENT 5: NYSERDA WORKFORCE UTILIZATION REPORT FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work _____

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

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

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

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

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

IV. ALTERNATIVE SUBMITTAL ITEMS

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

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

ATTACHMENT 6: NYSERDA M/WBE REQUEST FOR WAIVER FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____

Federal ID # _____

Brief Description of Work:

- II. I, (_____) HEREBY REQUEST A PARTIAL OR TOTAL (Circle One) WAIVER OF MY MBE AND/OR WBE GOALS AS ESTABLISHED IN CONTRACT NO. _____ I AGREED TO ATTAIN 15% MBE PARTICIPATION AND 15% WBE PARTICIPATION OF THE TOTAL CONTRACT PRICE. TO SUBSTANTIATE AND DEMONSTRATE MY GOOD FAITH EFFORTS, THE FOLLOWING INFORMATION IS SUBMITTED FOR THE AUTHORITY'S REVIEW AND APPROVAL.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

1. Provide a statement setting forth your basis for requesting a partial or total waiver.
2. Provide all names of general circulation, trade association and M/WBE-oriented publications in which you solicited M/WBEs for the purposes of complying with your participation levels.
3. List all dates solicitations for M/WBE participation were published in any of the above publications.

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