COOPERATIVE AGREEMENT
No: / NYSERDA No. 134848

BETWEEN
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
AND RGGI, INC.

This COOPERATIVE AGREEMENT ("Agreement") is entered into by and between the
New York State Department of Environmental Conservation ("Department") having its principal
place of business at 625 Broadway, Albany, NY 12233 and the New York State Energy Research
and Development Authority having its principal place of business at 17 Columbia Circle,
Albany, New York 12203-6399 ("NYSERDA") (collectively referred to as the "State"); and the
Regional Greenhouse Gas Initiative, Inc. ("RGGI, Inc."), a Delaware not-for-profit corporation
having its principal place of business at 90 Church Street, New York, New York, 10007
(collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, as of the date of this Agreement, the states of Connecticut, Delaware,
Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont (the
"Participating States") have each established regulatory programs to implement the Regional
Greenhouse Gas Initiative ("RGGI") a multi-state greenhouse gas control program for carbon
dioxide emissions from certain electric power plants;

WHEREAS, on July 12, 2007, RGGI, Inc. was incorporated in the State of Delaware as a
non-profit corporation formed to serve as the sole regional organization for purposes of: (a)
providing technical and scientific advisory services to the Participating States in the development
and implementation of a multi-state greenhouse gas control program, or its successor, under
RGGI, (b) reducing air pollutants that contribute to climate change; and (c) performing other
charitable or scientific functions related to the reduction of greenhouse gas emissions or the
increase in carbon sequestration on behalf of the Participating States;

WHEREAS, New York State has established its carbon dioxide cap and trade program in
6 NYCRR Part 242 (the "CO2 Budget Trading Program") pursuant to the Department's obligation
to prevent and control air pollution, as set out in the Environmental Conservation Law (ECL) at
Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-
2103, and 71-2105. The State established its CO2 Allowance Auction Program in 21 NYCRR Part
507 (the "Auction Program"). The general powers of NYSERDA to conduct the Auction Program
are set out in the Public Authorities Law Sections 1850, 1851, 1854 and 1855.

WHEREAS, pursuant to the CO2 Budget Trading Program and the Auction Program
(collectively the "Programs") the State is working with the Participating States to: (a) stabilize and
reduce anthropogenic emissions of CO2, a greenhouse gas, from CO2 budget sources in an
economically efficient manner; (b) maintain the existing CO2 Allowance Tracking System
("COATS") or another electronic system to track CO2 emissions, CO2 allowances and CO2 Offset
allowances ("Tracking System"); (c) conduct a multi-state auction that provides for the periodic
auctions of CO₂ allowances (the “Regional Auction”); and (d) maintain a program that provides compliance flexibility by awarding CO₂ offset allowances to projects that reduce and/or sequester emissions of greenhouse gases (the “Offset Program”) and meet certain requirements of the CO₂ Budget Trading Program.

WHEREAS, RGGI, Inc. shall administer the duties listed below and shall perform all duties in compliance with the terms and conditions contained in this Agreement.

WHEREAS, the State is authorized to execute this Agreement on behalf of New York State; and

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. Term

1.1 The term of this Agreement shall be two (2) years commencing on the final date of execution of the Agreement unless otherwise renewed in accordance Article 1.2 below or terminated in accordance with Article 5.

1.2 This Agreement may be amended or extended for two (2) additional one year periods upon mutual written consent of the Parties.

ARTICLE 2. RESPONSIBILITIES AND SCOPE OF SERVICES

2.1 Through separate agreement in accordance with applicable law and regulations, the State agrees to provide RGGI, Inc. annual funding to implement the activities described in section 2.2 of this Article. Such annual funding shall be calculated by RGGI, Inc. and shall equal the New York State proportionate share of the costs, in accordance with an annual budget approved by the RGGI, Inc. Board of Directors. As of the date of this Agreement, the RGGI, Inc. Board of Directors approved an annual budget, attached hereto as Appendix A. The Parties agree that revenues received by the sale of CO₂ Allowances shall represent the sole source of monies to be used to meet the State’s obligations to pay its proportionate share of allocated costs.

2.2 RGGI, Inc. shall conduct the following activities and any administrative or support services necessary to effectuate such activities:

(a) Implementation and Maintenance of a Tracking System: RGGI, Inc. shall design, develop and maintain the Tracking System consistent with the CO₂ Budget Trading Program and in accordance with the Scope of Work, attached hereto as Appendix B.

(b) Implementation of a Regional Auction: RGGI, Inc. shall administer the Regional Auction consistent with the CO₂ Budget Trading Program and Auction Program and conduct multi-state auctions in accordance with the Scope of Work attached hereto as Appendix B.
(e) Implementation of an Offset Program: RGGI, Inc. shall provide services to administer the Offset Program consistent with the CO₂ Budget Trading Program and in accordance with the Scope of Work attached hereto as Appendix B.

(d) Implementation of a Market Monitor Program: RGGI, Inc. shall provide services to administer the Market Monitor Program in accordance with the Scope of Work attached hereto as Appendix B.

(e) Reporting: By the 15th day of January, April, July, and October of each year during which this Agreement is in effect, or upon request, RGGI, Inc. shall provide the Department and NYSERDA a detailed report of the activities undertaken by RGGI, Inc. or its subcontractors to meet its responsibilities under this Agreement during the preceding calendar quarter including, without limitation. This report shall include a description of any travel and speaking engagements conducted by any employees of RGGI, Inc. during the course of their duties for RGGI, Inc.

(f) Contractors: In accordance with RGGI, Inc.'s Certificate of Incorporation, which is attached hereto as Appendix C, and in order to fulfill its obligations under this Agreement, RGGI, Inc. may enter into contracts with any person, firm, association, corporation or body politic for the purposes of fulfilling its obligations under this Agreement. Any contract entered into by RGGI, Inc. must be in writing and shall be consistent with and subject to the provisions of this Agreement. RGGI, Inc. shall, prior to entering into any contract or contract renewal for the purposes of fulfilling its obligations under this Agreement, consult with the State regarding any potential conflicts of interest or other issues that might impact the ability of the State to implement the Programs. Contracts shall not relieve or discharge RGGI, Inc. from any duty, obligation, responsibility or liability arising under this Agreement. RGGI, Inc. shall provide the Department and NYSERDA copies of all such contracts. Neither the Department nor NYSERDA shall be bound by any provisions contained in a contract to which it is not a party. The Department and NYSERDA shall also have access to any reports, financial records, prepared by the contractors for RGGI, Inc.

(g) Maintenance of Records:

1. RGGI, Inc. shall keep, maintain and preserve at its principal offices, through the term of this Agreement and for a period of seven additional years thereafter, full and detailed books, accounts, and records pertaining to the performance of its obligations, including without limitation, all bills, invoices, payrolls, subcontracting records and other data related to the indirect and direct costs and expenses incurred by RGGI, Inc. in the course of such performance under this Agreement.

2. All documents generated or accepted in performance of this Agreement shall be confidential and shall not be released to anyone without prior authorization by the Department and NYSERDA, unless directed by a court of competent jurisdiction.
3. All documents generated or received by RGGI, Inc. in performance of this Agreement shall be made available to the Department and NYSERDA upon request. RGGI, Inc. agrees to respond promptly to requests by the other Parties for copies of documents generated or received by RGGI, Inc.

(h) Independent Contractor: The status of RGGI, Inc. under this Agreement shall be that of an Independent Contractor and not that of an agent, and in accordance with such status, RGGI, Inc. and its respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the State of New York nor make any claim, demand or application for any right or privilege applicable to New York State, including, without limitation, rights or privileges derived from workers’ compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

(i) No Policy Role or Regulatory Authority: RGGI, Inc’s activities under this Agreement shall not include any policy role or decision-making authority regarding policy matters of the State, including without limitation the State’s positions in response to federal policies, the State’s decisions regarding any future changes to the Programs, and the State’s interaction with other states that may be considering becoming a participant in RGGI. RGGI, Inc. shall also have no regulatory authority under this Agreement, including without limitation authority to enforce the Programs and authority to interpret any provisions of the Programs. All such policy roles, decision-making authority, and regulatory authority shall remain with the State under this Agreement.

(j) 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, or strikes.

2.3 Compliance with Laws: The Parties agree to comply with the provisions of all State and Federal laws, local statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 3. PROJECT MANAGEMENT AND NOTICES

3.1 All notices, submissions, correspondence and other communications specifically provided for or required under this Agreement shall be made by hand-delivery, electronic mail or by First Class Mail to the person and addresses listed below, or their successors. Any notice shall be deemed delivered and received when submitted in writing in person
or when delivered by another appropriate method evidencing actual receipt by the Department, NYSERDA, or RGGI, Inc.

3.2 Contact information for RGGI, Inc.: c/o Executive Director, 90 Church Street, New York, NY 10007.

3.3 Contact information for the Department of Environmental Conservation: Laura Stevens, Division of Air Resources; Jonathan Binder, Chief, Energy and Climate Change Section, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany New York 12233.

3.4 Contact information for NYSERDA: Frank Ciampa, Program Manager; Cathy Beebe, Project Manager, NYSERDA, 17 Columbia Circle, Albany, NY 12203.

ARTICLE 4. INDEMNIFICATION

4.1 RGGI, Inc. shall protect, indemnify and hold harmless the State, the Department and NYSERDA from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) imposed upon or incurred by or asserted against the State, the Department and NYSERDA resulting from, arising out of or relating to RGGI, Inc.’s performance of this Agreement. The obligations of RGGI, Inc. under this clause shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

ARTICLE 5. TERMINATION and SEVERABILITY

5.1 This Agreement may be terminated by any of the Parties by giving the others 30 days advance written notice of such intent and the reasons thereof. None of the Parties shall enter into or otherwise create new obligations relative to this Agreement following receipt of such notice, without the written consent of the other Parties. All Parties agree to enter into good faith negotiations to resolve any differences and provide for an orderly closure of this Agreement if agreement cannot be reached.

5.2 If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if the invalid, illegal or unenforceable part were not contained therein.
ARTICLE 6. ENTIRE AGREEMENT/CHANGES

6.1 This Agreement together with any Appendices annexed hereto contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior agreements or understanding regarding such subject matter, or any portion thereof.

ARTICLE 7. EXECUTORY CLAUSE.

7.1 Nothing in this Agreement shall act to oblige the Department beyond those monies lawfully appropriated and available for this Agreement.
SIGNATURES

In WITNESS WHEREOF, the individuals listed below are authorized to sign and execute this Cooperative Agreement between the respective Parties, on the date appearing below their respective signatures.
Regional Greenhouse Gas Initiative, Inc.

By: 

Name: Andrew J. Wnek

Title: Executive Director

Dated: December 20, 2018
New York State Department of Environmental Conservation:

By: ____________________________
   Nancy W. Lussier

Name: ____________________________

Title: Director of Management and Budget Services

Dated: ____________________________
   FEB - 8 2019
New York State Energy Research and Development Authority

By: [Signature]

Name: Jeffrey J. Pitkin

Title: Treasurer

Dated: 1/28/19
## Appendix A

### 2019 Operating Budget

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>Salaries &amp; Wages</td>
<td>$677,985.00</td>
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<tr>
<td>Fringe Benefits</td>
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<td>% of Fringe Benefits to Salary</td>
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<td>Subtotal Personnel Costs</td>
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### Other than Personnel Costs (OTPC)

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<th>Item</th>
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| Subtotal Direct Operating Expenses                           | $1,365,424.00|

### Indirect Contractor Expenses

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<td>Auctions</td>
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<td>Auction Platform Upgrade</td>
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| Total Direct and Indirect Expenses                          | $2,520,924.00|
Appendix B
Regional Greenhouse Gas Initiative, Inc.

Scope of Work in Support of New York State’s Implementation of the CO2 Budget Trading Program and Auction Program

Regional Greenhouse Gas Initiative, Inc. (“RGGI, Inc.”) will provide program implementation and program development services, as outlined in this scope of services, to the State of New York to support the State’s participation in the Regional Greenhouse Gas Initiative (RGGI) and the implementation of CO2 Budget Trading Program and Auction Program. RGGI, Inc., a non-profit organization incorporated in the State of Delaware, was formed expressly to provide technical implementation and program development support services to signatories of the RGGI Memorandum of Understanding (the “participating states”), signed December 20, 2005, as amended.

Overview

RGGI, Inc. will provide services to support implementation of the New York State CO2 Budget Trading Program in the following ten areas:

I. Update, maintain and operate a regional CO2 allowance tracking system (COATS), or another tracking system for CO2 allowances, for use by the State in administering the New York State CO2 Budget Trading Program and the counterpart programs in other participating states;

II. Update, maintain and operate a regional allowance auction platform, for use by the State in administering the New York State CO2 Budget Trading Program and Auction Program, and the counterpart programs in other participating states;

III. Update and maintain model offsets consistency applications and model offsets monitoring and verification submittal forms, suitable for customization by the State for use in administering the offsets component of the New York State CO2 Budget Trading Program;

IV. Update and maintain generic and category-specific guidance documents detailing the requirements for offset projects under New York State CO2 Budget Trading Program, suitable for use by the State to support administration of the offsets component of the Program;

V. Maintain an operation of an accreditation process for the accreditation of independent verifiers of offset projects, suitable for use by the State to support administration of the offsets component of the New York State CO2 Budget Trading Program;

VI. Market monitoring services for monitoring of both allowance auction conduct and outcomes and monitoring of the secondary allowance market;
VII. Provision of program development support services on an as-requested basis, including but not limited to evaluation of additional offset categories, the development of technical recommendations related to specific New York State CO2 Budget Trading Program elements, and electricity sector or macroeconomic modeling or other analyses and technical support for evaluation and consideration by the State;

VIII. The Project Term shall be as stated in this Scope of Work;

IX. Maintain a database of program participants from each participating state, update the database at least once a year, and share with all state program participants;

X. Designate a Project Manager responsible for ensuring timely delivery of all deliverables including project reporting tasks as outlined.

I. CO2 Allowance Tracking System

RGGI, Inc. shall provide services to support emissions and allowance tracking for the New York State CO2 Budget Trading Program ("Tracking System"). Such services shall be performed in two distinct phases: a) Program and Systems Development and Deployment; b) Annual Program Implementation and Support. In any area where services are requested, all deliverables will be presented to the State in draft form for review and ultimate approval by the State.

I-A. Program and Systems Development and Deployment

Program Development

RGGI, Inc. shall develop an overall program implementation plan. To the extent necessary, any subcontractors engaged by RGGI, Inc. shall have strong working knowledge of 40 CFR Part 75 and U.S. EPA's data system to ensure that the program implementation strategy takes into account the timeliness, data processing requirements, and data availability limitations associated with U.S. EPA's emissions reporting, tracking, analysis, and data storage procedures.

Tracking Data System Requirements Collection

RGGI, Inc., in consultation with the State, shall host and maintain the Tracking System to support the emissions and allowance tracking and compliance aspects, as well as the offsets component, of the New York State CO2 Budget Trading Program. The Tracking System shall track allowance prices, as reported, applicable price triggers, and appropriate offsets limits.

RGGI, Inc. shall continue to utilize or provide similar functionality of U.S. EPA's Emissions and Allowance Tracking System as a starting point for defining these requirements. These requirements shall include, but not be limited to, functionality, security, reports, public access, and user interface.
Tracking System Design

RGGI, Inc., in consultation with the State, shall host and maintain the Tracking System, including a data model, user interface and functionality to support emissions inventory management, allowance trading, compliance and program analysis, and user security. RGGI Inc. shall coordinate the operation of the Tracking System with the administration of a regional allowance auction platform. RGGI, Inc. shall also: (1) work with any independent third party hired by the State to verify the Tracking System software is functioning properly including potential redress; (2) if directed by the State, to publicly-post appropriate information about the Tracking System; and (3) to work with the State to use ongoing experience to continuously improve the Tracking System.

Tracking System Development

RGGI, Inc. shall develop software code for the Tracking System. In the event a Tracking System other than the existing COATS is utilized, RGGI, Inc. shall develop a test plan and perform extensive quality assurance and unit and integrated testing for all Tracking System functionality. RGGI, Inc. shall document and provide all testing scenarios to the State. RGGI, Inc. shall deploy an alpha version of the application on a platform for testing and acceptance by the State. Following acceptance of the alpha product, RGGI, Inc. shall provide a beta version of the Tracking System for beta users selected by the State and RGGI, Inc., including industry users and representatives from each participating state. Finally, RGGI, Inc. shall deploy the final version of the program. As part of the system development, RGGI, Inc. shall develop system documentation, user manuals, and other training tools.

Tracking System Hosting

To support the Tracking System Internet application and database in a secure data environment, RGGI, Inc. shall contract with a third-party vendor to establish dedicated hosting for the database. This will also serve as the environment for any alpha and beta testing. Using preliminary research on the capability and cost associated with a variety of hosting options, to include all appropriate security requirements for Application Service Providers (ASPs), RGGI, Inc. shall refine this analysis and subcontract with the selected ASP. Prior to executing any subcontract, RGGI, Inc. shall provide all relevant information relating to capability, cost, and subcontract terms for the recommended ASP and two alternatives, to the State for approval. The successful subcontracted ASP will have acceptable plans, to be reviewed by both the State and RGGI, Inc., for loss or disaster recovery and business continuance.

Emissions Data Tracking and Processing Development

RGGI, Inc. shall maintain the process and supporting data management tools and software for the State to use the emissions data reported to U.S. EPA under 40 CFR Part 75 for purposes of determining source compliance with the requirements of the New York State CO2 Budget Trading Program. The procedures relating to this task area shall be developed by RGGI, Inc. and any necessary coordination or agreement with U.S. EPA regarding use and access to the emissions data shall be resolved. RGGI, Inc. shall also develop a detailed plan for
accomplishing this task. To the extent possible, RGGI, Inc. shall use existing emissions management routines to accomplish this objective.

The end result shall be the establishment by RGGI, Inc. of emissions data management tables consistent with the Tracking System design, so that the emissions values for the compliance period are available to the State for true-up purposes.

**Offsets Module**

RGGI, Inc. shall provide a Tracking System software platform that includes an offsets module to track offset project status, including project submittals, approvals, and supporting documentation, and maintain CO₂ allowances awarded to approved offset projects. RGGI, Inc. shall coordinate with the appropriate representatives of the State to support administration of the offsets component of the New York State CO₂ Budget Trading Program to ensure that the offsets applications and submittal materials used by the State align with the capabilities and needs of the Tracking System.

The offsets module of the Tracking System shall have the functionality to track and monitor offsets project status details, such as the status of consistency applications and monitoring and verification submittals, as well as provide for public access to project documentation supporting such applications and submittals.

**Tracking System Reports**

The Tracking System software provided by RGGI, Inc. shall include a reports module to provide system users with reports of system data. These shall include, but may not be limited to: account allowance transfer reports, account holdings reports, CO₂ emissions reports, offsets reports, and source compliance summary reports.

**I-B. Program Operation**

In the program operation phase of the project, RGGI, Inc. shall provide ongoing implementation and operational support for the Tracking System, including the tasks outlined below.

**Allowance Program Management**

Consistent with the implementation plan, RGGI, Inc. shall provide implementation support to the State for all program activities relating to source management, allowance allocations to compliance and general accounts, and trades for both general and compliance accounts. This shall include the activity necessary to support the assignment of allowances to appropriate accounts following the successful completion and State approval of all allowance auctions, as well as the population of user accounts after State award of each offset allowance.
Emissions Data Management and Analysis

Consistent with the implementation plan, RGGI, Inc. shall perform all data management and quality assurance tasks necessary to ensure the availability of annual CO2 emissions data from all affected units. RGGI, Inc. shall prepare and send communications to the account representatives for affected sources relating to the interim, draft, and final emissions values. RGGI, Inc. shall work with the State to identify and resolve any issues relating to the submission of emissions data, and the accuracy and completeness of the data. To the extent requested by the State, RGGI, Inc. shall contact industry representatives directly to resolve any outstanding issues. RGGI, Inc. shall document all issues, their resolution, and all contacts with industry representatives.

Allowance Reconciliation (True-up)

RGGI, Inc. shall assist the State with the compliance assessment for the New York State CO2 Budget Trading Program. The tracking System shall support data entry of compliance certifications required by the program and the identification of allowances to be deducted during the compliance process. This assessment shall factor in appropriate offsets limits as a function of a source's reported emissions. These limits will be adjusted appropriately to address the price trigger mechanisms in the participating states' regulations. RGGI, Inc. shall prepare draft and final compliance reports and will provide information to the State's staff contacts regarding possible non-compliance. Consistent with paragraph (i) of section 2.2 of the Agreement, all decisions regarding compliance with the CO2 Budget Trading Program, and all enforcement authority for the Program, shall remain with the State and not RGGI, Inc.

User Technical Support

RGGI, Inc. shall provide technical support to industry, the State, and public users of the Tracking System. RGGI, Inc. shall record all technical support requests, inquiries, or other occurrences in a log that identifies the nature of the request or events, requestor, respondent, response provided, date(s) and time(s) of response, and amount of chargeable time expended on the request and response. Records shall be provided to the State's Project Manager on a periodic basis, or on demand, as requested.

As necessary, RGGI, Inc. shall provide assessments and recommendations relating to performance of the system based on the technical support levels and user feedback. RGGI, Inc. shall not be responsible for interpretation of the State's regulations, and/or interpretation of actions taken by the State in enforcement of those regulations.

System and Database Support

RGGI, Inc. shall be responsible for all aspects of Tracking System maintenance and database support and management. This shall include the database maintenance, ongoing database quality assurance activities, management of all user accounts and security, coordination and monitoring of the Application Service Provider support activities, database, security, and application performance, and all other tasks designed to ensure high system availability and
performance. RGGI, Inc. shall provide reports to the State's Project Manager on all routine activities and on any events or technical issues that will affect the operation or performance of the system. RGGI, Inc. shall oversee all data backup and audit procedures to ensure the ongoing integrity of the data.

II. Allowance Auction Platform

RGGI, Inc. shall maintain the platform for the auctioning of allowances. RGGI, Inc. shall provide auction services in three general areas: pre-auction, auction implementation, and post-auction. In any area where services are requested, all deliverables will be presented the State in draft form for review and ultimate approval by the State.

II-A. Pre-auction Services

Consultation

RGGI, Inc. shall work with State staff to maintain the draft standard allowance purchase and sales agreement that is comparable to those developed by other participating states. In addition, from time to time, RGGI, Inc. may be asked to provide general consultation to the State on auction design. This may include consultation on auction activity procedures and auction closing procedures.

Auction Notices

RGGI, Inc., in consultation with the State and consistent with the requirements of the CO₂ Budget Trading Program and the Auction Program, shall maintain documents and associated information necessary to inform auction participants about details of each auction. Each notice of auction shall provide a description of the auction format that will be used, the quantities of allowances to be auctioned, and all applicable participation requirements. Such information shall be made available on the RGGI, Inc. website (www.rggi.org), created, maintained, and hosted by RGGI, Inc. specifically dedicated to RGGI auctions. RGGI, Inc. shall prepare for, host, and facilitate at least one auction participant conference prior to each auction, which shall include an option for participants to call in, as well as receive and respond to written questions submitted by conference participants.

Participant Qualification

RGGI, Inc., in consultation with the State, shall assist in the maintenance of all qualification application materials and documents. RGGI, Inc. shall manage, under the direction of the State, the application process, including receiving and reviewing each qualification application to determine completeness and accuracy of the information submitted. RGGI, Inc. shall be responsible for collecting and managing, though a third party, all auction financial security submissions and/or escrow accounts. RGGI, Inc., in consultation with the State, shall be responsible for notifying bidders of their qualification status and maintaining a database of all qualified bidders.
Auction Documentation and Training

To prepare for each auction, RGGI, Inc. shall create and distribute auction materials, such as participation instructions, final auction procedures and manuals, as well as the distribution of user codes and passwords to qualified auction participants. In addition, RGGI, Inc. shall be responsible for training auction participants in the use of the auction software platform.

II-B. Auction Implementation Services

Auction Platform

RGGI, Inc. shall maintain and administer, on behalf of the State, an online auction platform capable of accommodating an auction in all of the following formats:

- A sealed bid, uniform price auction
- An ascending price, multiple-round auction

Furthermore, the online auction platform shall be capable of managing allowance purchase limits based on specifications provided by the State, and simultaneous auctions of current vintage year allowances and future vintage year allowances. Such platform shall be capable of tracking bidding activity and must provide for audit level documentation of such activity, in accordance with auction monitoring protocols to be established by RGGI, Inc. in consultation with the State.

II-C. Post-auction Services

RGGI, Inc. shall, on behalf of the State, arrange for and facilitate the transfer of funds from successful bidders to an account designated by the State and arrange for the return of financial security to bidders. RGGI, Inc. shall also be responsible for coordinating with the operation of the Tracking System for the transfer of allowances, at the direction of the State, to the compliance or general accounts of the winning bidders. RGGI, Inc. shall also be required to: (1) work with any independent third party hired by the State to verify the results of the auction, including potential redress; (2) if directed by the State, to post appropriate information about auction results; and (3) to work with the State to use ongoing auction experience to continuously improve subsequent auctions.

III. Model Offset Consistency Applications and Monitoring and Submittal Documents

RGGI, Inc. shall maintain existing model offset consistency applications and model monitoring and verification report submittal forms for each eligible offset category under the CO2 Budget Trading Program, suitable for customization by the State.
RGGI, Inc. shall maintain existing model application and submission materials to facilitate monitoring of the State’s offset project approval process by market observers and other participating states. All materials shall be consistent with the CO2 Budget Trading Program.

RGGI, Inc. shall design model application and submission materials for any future additional offset project category established pursuant to the CO2 Budget Trading Program. The application and submission materials shall be more specific than the Model Rule criteria with regard to required documentation. In developing these materials, RGGI, Inc. shall coordinate with the development of the Tracking System to ensure that the applications and submittal materials align with the capabilities and needs of the Tracking System. RGGI, Inc. shall develop the following specific application and submittal materials for any future additional offset project categories:

- RGGI, Inc. shall develop general consistency application materials, including application instructions
- RGGI, Inc. shall develop category-specific consistency application materials, including application instructions, for each eligible offset project category. Consistency application forms shall call for required documentation in a format that will facilitate regulatory agency evaluation of the project against the Model Rule requirements.
- RGGI, Inc. shall develop monitoring and verification submittal forms, including submittal instructions, for each eligible offset project category (see Model Rule section XX-10.5 and section XX-10.7). Monitoring and verification report submittal forms shall call for required documentation in a format that will facilitate regulatory agency evaluation of the project against the Model Rule requirements. The materials shall be more specific than the Model Rule criteria with regard to required documentation.

IV. Model Offset Guidance Documents

RGGI, Inc. shall maintain existing model generic and category-specific offset project guidance documents suitable for customization by the State.

RGGI, Inc. shall develop model generic and category-specific offset project guidance documents suitable for customization by the State for any future additional offset project category established pursuant to the CO2 Budget Trading Program. The model guidance developed by RGGI, Inc. shall be detailed and easily understandable by project developers (including small businesses or other parties that may lack experience in carbon offset markets) and by regulatory agency staff, regarding submittal requirements and evaluation of specific offset projects against the Model Rule requirements. Materials shall be designed to reduce project developer time in meeting submittal requirements, to the extent practicable, and regulatory agency staff time in reviewing projects.

The model guidance documents developed by RGGI, Inc. shall explain the intent and letter of the RGGI Model Rule provisions and address any ambiguities in the Model Rule provisions, or provisions that may require clarification as to how they apply to specific types of
projects. Any interpretive material shall be consistent with the Model Rule criteria and shall be reviewed with the appropriate representatives of the State and the participating states.

While the Model Rule offset provisions are very detailed, and the current eligible categories are limited, many different types of projects may be eligible under the existing Model Rule requirements. Therefore, questions about the applicability of specific Model Rule requirements to individual offset projects are certain to arise. RGGI, Inc. shall identify project scenarios that address questions that are likely to arise in the course of the offset application and approval processes, based on the expertise of RGGI, Inc. staff, other offset program experience, and communication with the appropriate representatives of the State and the participating states.

RGGI, Inc. shall develop and maintain the following specific guidance document materials:

- RGGI, Inc. shall develop and maintain a single, comprehensive model generic guidance document that provides an overview of Model Rule Subpart XX-10 and the process for application and approval of offset projects, submittal of monitoring and verification reports, and the award of offset allowances.
- RGGI, Inc. shall maintain six (6) category-specific model guidance documents, for each of the eligible offset categories in the Model Rule. These shall explain, step-by-step, the process, including information submittal requirements and format, by offset category, for consistency applications, approval of offset projects, and submittal of monitoring and verification reports as required in Model Rule sections XX-10.3, XX-10.4, XX-10.5, and XX-10.7.

V. Accreditation Process and Training Program for Independent Verifiers of Offset Projects

RGGI, Inc. shall maintain a process for the accreditation of independent offset project verifiers and a related training program, consistent with the requirements the CO₂ Budget Trading Program, that can be customized and used by the State in accrediting independent offset verifiers.

RGGI, Inc. shall maintain a formalized accreditation process and training program for independent verifiers that meet the requirements of the RGGI Model Rule and CO₂ Budget Trading Program, including the following:

- A process for the accreditation of independent verifiers, including review of qualifications of candidate verifiers
- A process for evaluation of candidate verifier conflicts-of-interest (COI)
- A training course for candidate verifiers (including supporting training materials)
- Application materials for accreditation
RGGI, Inc. shall maintain a formalized process that can be customized for use by the State to support on-going State review of potential verifier conflict-of-interest situations, including the following:

- Submittal forms for accredited verifier disclosure of potential COI information to be submitted and reviewed by regulatory agencies prior to the verifier engaging in work with an offset project developer.

- Guidance materials to support regulatory agency staff review of COI.

These materials shall provide a review of existing greenhouse gas independent verifier accreditation standards and processes used by other voluntary and mandatory greenhouse gas management or regulatory programs, and incorporate, if appropriate, elements of these into the materials developed for the State. RGGI, Inc. shall provide a brief evaluation of the standards and processes reviewed.

VI. Market Monitoring

RGGI, Inc. will provide market monitoring services in three general areas: monitoring and auditing of allowance auctions, monitoring of relevant secondary allowance market activity, and provision of consultative services addressing market monitoring.

VI-A. Monitoring and Auditing of RGGI Allowance Auctions

RGGI, Inc. will provide professional monitoring of all RGGI regional allowance auctions, some of which may involve a subset of the RGGI participating states and may or may not include allowances submitted for auction by the State. RGGI, Inc. will develop data collection methods, metrics, and analytic techniques for monitoring auction performance and thresholds for identifying any collusion, market power, and/or market manipulation that may impact the efficiency and performance of the RGGI auctions.

VI-B. Monitoring of Secondary Market Behavior

RGGI, Inc. will monitor all relevant publicly available data and indicators of market behavior (available through both public and private sources) in the secondary allowance market that may be expected to significantly impact the performance of RGGI auctions and the secondary allowance market.

VI-C. Consultative Services

RGGI, Inc. will provide expert advice to the State regarding how any aspects of the auction process should be altered in order to improve the performance and efficiency of the RGGI auctions and ensure the functioning of a fair and competitive primary (auctions) and secondary allowance market.
VII. Program Development and Implementation Support

RGGI, Inc. shall provide program development support to the State on an as-requested basis to facilitate State consideration of potential modifications to and/or expansion of the New York State CO2 Budget Trading Program. Such services may include but are not limited to electricity sector modeling, macroeconomic modeling, projections or other analyses to support RGGI Program Review, potential program changes, or responses to federal policies or requirements. Consistent with paragraph (i) of section 2.2 of the Agreement, all program development support services performed by RGGI, Inc. under the Agreement shall be in the nature of technical support, and shall not provide any policy role, decision-making authority, or regulatory authority to RGGI, Inc.

RGGI, Inc. shall also serve as facilitator for discussion amongst the states, including by scheduling and convening meetings and teleconferences amongst staff representatives of the participating states. In that role, RGGI, Inc. shall facilitate discussions regarding program development and implementation amongst state staff, but not lead or direct state staff regarding any policy or regulatory matter.

VIII. Project Term

The project term of this Agreement shall be two (2) years commencing on the final date of execution of the Agreement. The project term may be extended for an additional two (2) one-year terms through an Agreement amendment.

IX. Participating State Staff Database

RGGI Inc. shall create and maintain a database of program participants from each participating state. The state contacts database shall contain the names, titles, email address, and phone number(s) of all state staff involved in the RGGI program. The state contact database shall be updated at least once a year or more frequently to reflect changing staff and roles. RGGI, Inc. will share the state contact database with all state staff participating in the RGGI program.

X. Project Reporting

RGGI, Inc. shall designate a Project Manager, who shall be the one point of contact with the State. The Project Manager shall be responsible for monitoring and ensuring progress for all tasks and subtasks, and for ensuring timely delivery of all deliverables outlined in this scope of work. The RGGI, Inc. Project Manager shall be responsible for all projects reporting to the State.

RGGI, Inc. shall submit quarterly progress reports every three months, or upon request, to the State during the project term. These progress reports shall outline the status of progress in providing the deliverables specified in the scope of work, including identification of all completed/not completed work during the preceding three-month period for every major task identified in the scope of work. These progress reports shall also note any problems encountered
by RGGI, Inc. and their actual or proposed resolution. At the end of the project term, RGGI, Inc. shall prepare and submit a draft final report that provides a description and summary of all major work tasks and submitted deliverables. The draft final report shall be revised within 60 days to address all State comments, and RGGI, Inc. shall submit a final report addressing all such comments. These reports shall include a description of travel taken by RGGI, Inc. employees in performance of their duties, including the location, length, and a description of how the cost of any such travel is being funded. The reports shall also include a description of any speaking engagements or conference attendance by RGGI, Inc. employees, including a contact person for the event, an agenda of the event, and a description of how any cost is being funded.

In any area where deliverables will be provided, such deliverables shall be presented to the State in draft form for review and ultimate approval by the State.
CERTIFICATE OF INCORPORATION

OF

REGIONAL GREENHOUSE GAS INITIATIVE, INC.

Under Section 102 of the
General Corporation Law
of the State of Delaware

Carter Ledyard & Milburn LLP
2 Wall Street
New York, New York 10005
(212) 732-5200
CERTIFICATE OF INCORPORATION
OF
REGIONAL GREENHOUSE GAS INITIATIVE, INC.

Section 1. Name. The name of the corporation is Regional Greenhouse Gas Initiative, Inc. The corporation is hereinafter referred to as "the Corporation".

Section 2. Registered Office and Agent. The address of the Corporation's registered office in the State of Delaware is 271 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

Section 3. Purpose. The exclusive purpose for which the corporation is formed is to provide technical and scientific advisory services to the States of the United States that are Signatory States in the development and implementation of a multi-state cap and trade program, known as the Regional Greenhouse Gas Initiative (or its successor), to reduce air pollutants that contribute to climate change, and to perform any other charitable or scientific function related to the reduction of greenhouse gas emissions or the increase in carbon sequestration on behalf of the Signatory States.

The Corporation is a non-stock, non-profit corporation. The purposes for which this organization is organized are exclusively religious, charitable, scientific, literary and/or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended (the "Code"), or the corresponding provisions of any future United States Internal Revenue law.

Section 4. Powers. In order to facilitate the attainment of its goals, the Corporation shall have the general and specific powers enumerated in Sections 121 and 122 of the Delaware General Corporation Law, together with, but not in any way limited to, the following other powers:

(a) To solicit, collect, accept, hold, invest and administer contributions, gifts, bequests, devises, benefits of trusts (but not to act within the State of Delaware as trustee of any trust) and property of any and every kind whatsoever without limitation as to amount or value, and to use the income or principal thereof in the furtherance of the purposes of the Corporation;

(b) To sell, transfer, exchange, or otherwise deal with its property, and to hold, invest and reinvest its property and to apply the income and principal thereof in furtherance of its purposes and objects;

(c) To enter into, make, perform and carry out contracts for any corporate purpose, without limitation as to amount, with any person, firm, association, corporation or body politic;

(d) To do any and all acts and exercise any and all powers herein set forth, either as principal, agent, contractor or otherwise and either alone or in conjunction with any other person, firm or corporation, including any governmental agency;
(c) To the extent permitted by law, to exercise its rights, powers and privileges, to hold meetings of its directors and any committees appointed by the Board of Directors, to have one or more officers and to keep its books in any part of the world;

(f) Alone, or in cooperation with or through other organizations or persons, to do any and all lawful acts and things that may be necessary, useful, suitable or proper, for the furtherance, accomplishment or attainment of the purposes of the Corporation;

(g) Nothing herein contained shall be deemed to authorize or permit the Corporation to carry on any activity, exercise any power or do any act that a corporation formed under the General Corporation Law, as the same now exists or may hereafter be amended, may not at the time lawfully carry on or do;

(h) Notwithstanding any other provisions of these articles, the Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(3) of the Code or the corresponding provision of any future United States Internal Revenue law.

Section 5. Conduct. The Corporation shall not be conducted or operated for profit, and no part of the net earnings of the Corporation shall inure to the benefit of any member or private individual, nor shall any of such net earnings or any of the profits or assets of the Corporation be used other than for the purposes of the Corporation; provided that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 3 hereof.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation (except to the extent otherwise permitted under Section 501(h) of the Code), nor shall the Corporation participate in, or intervene in (including by the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office, and the Corporation shall not exercise any powers or engage in any activities or do any act that might impair its status as a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code.

Section 6. Liquidation. In the event of the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary or by operation of law, the property or other net assets of the Corporation, or any net proceeds thereof, shall be distributed to such non-profit organizations, which shall have received notice of recognition of exemption from Federal income taxation under Section 501(c)(3) of the Code; as the Board of Directors shall determine; and no member, director, or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the State of Delaware for the county in which the principal office of the Corporation is then located, exclusively for such purposes, or to such organization or organizations, as such Court shall determine, which are organized and operated
exclusively for such purposes.

Section 7. Private Foundation Rules. In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute such amounts for such period at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code; and the Corporation shall not (i) engage in any act of self-dealing which is subject to tax under Section 4941 of the Code; (ii) retain any excess business holdings which are subject to tax under Section 4943 of the Code; (iii) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (iv) make any taxable expenditures which are subject to tax under Section 4945 of the Code or corresponding provisions of any subsequent federal tax laws.

Section 8. Stock and Membership. The Corporation shall not have authority to issue any capital stock. The conditions of membership in the Corporation, the rights and obligations of its members and the classification of members, if any, shall be as provided in the By-laws.

Section 9. Incorporator. The name and mailing address of the incorporator is as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clifford P. Case, III</td>
<td>Carter Ledyard &amp; Milburn LLP</td>
</tr>
<tr>
<td></td>
<td>2 Wall Street</td>
</tr>
<tr>
<td></td>
<td>New York, New York 10005</td>
</tr>
</tbody>
</table>

Section 10. Management of Foundation and Initial Directors. The Corporation shall be managed by its Board of Directors as provided in its By-laws. The names and addresses of the persons who are to serve as the initial directors of the Corporation, until their successors are elected and qualify, are as follows:

<table>
<thead>
<tr>
<th>Name and Title</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gina McCarthy, Commissioner</td>
<td>Connecticut Department of Environmental Protection</td>
</tr>
<tr>
<td></td>
<td>79 Elm Street</td>
</tr>
<tr>
<td></td>
<td>Hartford, CT 06106</td>
</tr>
<tr>
<td>Anne C. George, Commissioner</td>
<td>Connecticut Department of Public Utility Control</td>
</tr>
<tr>
<td></td>
<td>10 Franklin Square</td>
</tr>
<tr>
<td></td>
<td>New Britain, CT 06051</td>
</tr>
<tr>
<td>John A. Hughes, Secretary</td>
<td>Delaware Department of Natural Resources and Environmental Control</td>
</tr>
<tr>
<td></td>
<td>89 Kings Highway</td>
</tr>
<tr>
<td></td>
<td>Dover, DE 19901</td>
</tr>
<tr>
<td>Name</td>
<td>Organization</td>
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<td>-----------------------</td>
<td>-------------------------------------------------------------------</td>
</tr>
<tr>
<td>Arnetta McRae</td>
<td>Delaware Public Service Commission</td>
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<td></td>
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<tr>
<td>David Littell</td>
<td>Maine Department of Environmental Protection</td>
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<td></td>
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<tr>
<td>Kurt Adams</td>
<td>Maine Public Utilities Commission</td>
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<tr>
<td>Shari T. Wilson</td>
<td>Maryland Department of the Environment</td>
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<tr>
<td>Steven B. Larsen</td>
<td>Maryland Public Service Commission</td>
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<tr>
<td>Arleen O'Donnell</td>
<td>Massachusetts Department of Environmental Protection</td>
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<tr>
<td>Philip Giudico</td>
<td>Massachusetts Division of Energy Resources</td>
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<tr>
<td>Thomas S. Burack</td>
<td>New Hampshire Department of Environmental Services</td>
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<tr>
<td>Clifton Below</td>
<td>New Hampshire Public Utilities Commission</td>
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<tr>
<td>Lisa P. Jackson</td>
<td>New Jersey Department of Environmental Protection</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Organization</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------------------------------------</td>
</tr>
<tr>
<td>Jeanne M. Fox</td>
<td>New Jersey Board of Public Utilities</td>
</tr>
<tr>
<td>Alexander B. Grannis</td>
<td>New York Department of Environmental Conservation</td>
</tr>
<tr>
<td>Patricia L. Acampora</td>
<td>New York Department of Public Service</td>
</tr>
<tr>
<td>W. Michael Sullivan</td>
<td>Rhode Island Department of Environmental Management</td>
</tr>
<tr>
<td>Andrew C. Dzykewicz</td>
<td>Rhode Island Office of Energy Resources</td>
</tr>
<tr>
<td>Jeffrey Wennberg</td>
<td>Vermont Department of Environmental Conservation</td>
</tr>
<tr>
<td>James Volz</td>
<td>Vermont Public Service Board</td>
</tr>
</tbody>
</table>

**Section 11. By-Laws.** The Board of Directors may make, alter or repeal the By-laws of the Corporation, subject only to such limitations, if any, as may from time to time be imposed by the By-laws.

**Section 12. Exoneration of Directors.** To the fullest extent permitted by the General Corporation Law of the State of Delaware, no director of the Corporation shall be personally liable to the Corporation for monetary damages for breach of fiduciary duty as a director.

**Section 13. Indemnification of Directors and Officers.** To the fullest extent permitted by the General Corporation Law of the State of Delaware, the Corporation may from time to time indemnify any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation, and any other person whom it shall have power to indemnify, from and against any and all expenses, liabilities or other matters, all as more fully
provided in the By-laws.

Section 14. Amendments. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner provided by law, and all rights conferred herein on members, directors, and officers are subject to this reserved power; except that any amendment, alteration, change, or repeal which reduces or limits the exculpation or indemnification of the persons referred to herein, or which adversely affects (from the point of view of the director) any limitation on the personal liability of a director, shall apply prospectively only and shall not be given retroactive effect.

Section 15. General. As used herein, references to the General Corporation Law refer to such law as in effect as of the date hereof and as amended from time to time, or corresponding provisions of subsequent laws, and references to “law” or “laws” refer to such laws as in effect as of the date hereof and as hereafter amended.

THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, makes this certificate, hereby declaring and certifying that this is the act and deed of the undersigned and that the facts herein stated are true, and accordingly has hereunto set such person’s hand on July 12, 2007.

[Signature]

Name: Clifford P. Case, III
Title: Incorporator
Address: Carter Ledyard & Milburn LLP
         2 Wall Street
         New York, New York 10005
# Purchase Order

New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany NY 12203  
United States

**Supplier:** 0000038438  
Regional Greenhouse Gas Initiative, Inc.  
90 Church St  
New York NY 10007-2919

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<tr>
<td>Buyer</td>
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<td>Cathy Beebe</td>
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**Ship To:**  
17 Columbia Circle  
Albany NY 12203  
United States

**Bill To:**  
17 Columbia Circle  
Albany NY 12203  
United States

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<tr>
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<th>Y</th>
<th>Tax Exempt ID:</th>
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<td>Mfg ID</td>
<td>Quantity UOM</td>
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<tr>
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**Schedule Total**  
829,356.00

**Contract Line:** 1  
**Release:** 1

**Item Total**  
829,356.00

**Total PO Amount**  
825,356.00
New York State Energy Research and Development Authority
("NYSERDA")

AGREEMENT

1. Agreement Number: 135181

2. Contractor: Regional Greenhouse Gas Initiative, Inc.

3. Project Director: Andrew J. McKeon

4. Effective Date: January 1, 2019

5. Total Amount of Award: $829,256

6. Project Period: January 1, 2019 - December 31, 2019

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.

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

Regional Greenhouse Gas Initiative, Inc.

Signature: 
Name: Andrew J. McKeon
Title: Executive Director

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Signature: 
Name: Jeffrey J. Pitkin
Title: Treasurer
STATE OF  

COUNTY OF  

On the 24th day of January in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Andrew Michnov, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

JAN GOORSKY  
Notary Public, State of New York  
No. 01GO4659910  
Qualified in Westchester County  
Commission Expires April 30, 2019

Notary Public
EXHIBIT A

STATEMENT OF WORK

Regional Greenhouse Gas Initiative Funding Agreement

NYSERDA Project Number 135181

Background/Objectives

To provide NYSERDA and NYSDEC with technical and administrative support services related to the Regional Greenhouse Gas Auctions and Initiatives.

The Contractor is defined as:
Regional Greenhouse Gas Initiative, Inc.
Andrew J. McKeon
Executive Director
90 Church Street, 4th Floor
New York, NY 10007
T: (212) 417-7345
andrew.mckeon@rungi.org

The Project Site(s) is/are defined as: N/A

Subcontractor(s) is/are defined as:
Jon Harvey
Strategic Account Sales Manager
EnerNOC, Inc.
1215 19th Street, NW,
Washington, DC 20036
T: (202) 467-4182
M: (703) 795-8927
jon.harvey@enernoc.com
Chris MacCracken
Principal
ICF International
9300 Lee Highway
Fairfax, Virginia 22031
T: (703) 934-3277
chris.maccracken@icfi.com

Susan Blackmoor
Senior Analyst
General Dynamics Information Technology
Federal Civil Division
650 Peter Jefferson Pkwy, Suite 300
Charlottesville, VA 22911
T: (434)951-2328
Susan.blackmoor@gdit.com

TASK 0 – PROJECT MANAGEMENT, SCOPE OF WORK AND PROGRESS REPORTING

Responsibility
The Contractor shall be responsible for the timely completion of all the tasks requested by NYSERDA and NYSDEC per the 2019 Cooperative Agreement. The Contractor shall provide all project management activities necessary for the performance of the Agreement in accordance with the terms therein.

Agreement Number: 135181
Amount not to exceed $829,256
Term: one year
Agreement Number: 135181  
Amount: not to exceed $829,256  
Term: one year

**FUNDING AGREEMENT**

THIS AGREEMENT dated January 1, 2019, and incorporating Exhibits A, B and C, which are made part hereof, by and between the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY ("NYSERDA"), a New York public benefit corporation having its principal office and place of business at 17 Columbia Circle, Albany, New York 12203-6399 and REGIONAL GREENHOUSE GAS INITIATIVE, INC. ("RGGI, Inc.") , a non-stock, non-profit corporation formed under the Delaware General Corporation Law having its principal office and place of business at 90 Church Street, New York, New York 10119, ("the Parties").

WHEREAS, the Regional Greenhouse Gas Initiative ("RGGI") was established as a result of an invitation from New York State to the governors of Northeast and Mid-Atlantic states to develop a specific proposal for a regional carbon dioxide cap and trade program for carbon dioxide emissions allowances for certain electric power plants; and

WHEREAS, the Governors of nine states have agreed to work to implement RGGI, consisting of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont ("Participating States"); and

WHEREAS, RGGI Participating States have agreed that carbon dioxide emissions allowances ("Allowances") should be allocated for consumer benefit or strategic energy purpose, where such consumer benefit or strategic energy purposes include the use of the allowances to promote energy efficiency, to directly mitigate electricity ratepayer impacts, to promote renewable or non-carbon-emitting energy technologies, to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential, and/or to fund administration of the program; and

WHEREAS, RGGI, Inc. was thereby created and incorporated to serve as the sole regional organization for the purpose of providing technical support and administrative infrastructure for RGGI program implementation, including as components the creation of the infrastructure for a regional allowance auction platform, a common emissions allowance tracking system, and a consistent and credible offsets application and review process; and

WHEREAS, in providing such technical support and administrative infrastructure RGGI, Inc. incurs costs ("Operating Costs"), on the understanding that each of the Participating States will provide or reimburse to RGGI, Inc. such Participating State’s proportionate share of such Operating Costs, such proportion being determined by the number of Allowances held by such Participating State; and

WHEREAS, the RGGI, Inc. Board of Directors ("Board") convenes, from time-to-time, to consider, act upon and adopt items and business regarding RGGI, Inc., including annual budgets setting forth the approved Operating Costs for each annual period, and setting forth the proportionate share of such Operating Costs allocable to each of the Participating States, and the Board having adopted an annual budget for year 2019 (the "Current Budget"), a copy of which is reproduced at Attachment A; NOW, THEREFORE, the Parties agree as follows:
ARTICLE 1: FUNDING/PAYMENT

1.1 Operating Costs

RGGI Inc. shall submit to NYSERDA, in advance, on an annual basis, a request for payment for the Operating Costs which it expects will be incurred in each of the months covered by such request. The request shall be in summary form showing anticipated Operating Costs, in accordance with the Current Budget.

Operating Costs include staff and overhead costs, and costs incurred in performance of the following activities: (1) initiate and conduct periodic auctions of CO₂ allowances, including but not limited to the purchase and installation of software, and/or the retention of auction services from a third-party; (2) the retention of services through a third party for market monitoring; (3) the maintenance of the common emissions allowance tracking system; (4) the development of offsets administration materials and the creation and implementation of an offset verifier accreditation process; (5) management of the funds consisting of proceeds from the sale of Allowances through auctions conducted by RGGI, Inc. or its contractor; (6) reimbursable travel expenses, if any, properly payable in accordance with Attachment B hereto; and (7) such other services or activities as may be approved by the Board, in due course.

Upon receipt of each request for payment, on condition that the listed Operating Costs in such request are in accordance with the Current Budget and Attachment B, and reflecting any credit that may apply, in accordance with Section 2.3, NYSERDA shall pay RGGI Inc. for the listed Operating Costs. NYSERDA shall withhold retainerage. NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA’s share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

1.2 Payment Instructions

Payments under this Agreement may be made by electronic fund transfer or check. Payments by check shall be payable to "RGGI, Inc.", having its principal office and place of business at 90 Church Street New York, New York 10119. Electronic fund transfer payments by NYSERDA to RGGI, Inc shall be made to the following account:

Bank Name: HSBC  
Title: Regional Greenhouse Gas Initiative (RGGI), Inc.  
ABA#: 021001088  
Account#: 717762165

Refunds, if by check, shall be payable to "NYSERDA" and delivered to the attention of Treasurer at 17 Columbia Circle Albany New York 12203. Refunds, by electronic fund transfer, to NYSERDA shall be made to the following account:

Bank Name: Bank of America  
Title: MAC30  
ABA#: 021000322  
Account#: 601-0316543
ARTICLE 2: RESPONSIBILITIES

2.1 RGGI, Inc. shall at all times manage all Auction Proceeds in accordance with the protocols, directives and restrictions contained in Attachment C.

2.2 RGGI, Inc. shall use funds received from NYSERDA only for the purposes stated in this Agreement.

2.3 At least once in each calendar quarter, RGGI, Inc. shall submit to NYSERDA a report of its expenditures for Operating Costs covering each full month in the preceding completed quarter. Such report shall reconcile the actual expenses for Operating Costs against the estimates contained in the request for payment, and shall provide a net credit to be applied against subsequent requests for payment of Operating Costs to the extent that actual expenses were less than the estimates.

2.4 RGGI, Inc. shall provide to NYSERDA copies of all contracts, including all amendments thereto, entered into by RGGI, Inc. for the purposes of completing the activities listed in subsection 1.1.

ARTICLE 3: PROJECT MANAGEMENT

3.1 Cathy Beebe is the designated NYSERDA Project Manager for this Agreement. Communications and questions of a technical nature should be routed to NYSERDA’s Project Manager at 17 Columbia Circle, Albany, NY 12203. Nicole Singh shall be the designated contact for RGGI, Inc.

ARTICLE 4: MAINTENANCE OF RECORDS

4.1 RGGI, Inc. shall keep, maintain, and preserve at their principal offices throughout the term of this Agreement with NYSERDA and for a period of seven additional years thereafter, full and detailed books, accounts, and records pertaining to the performance of its obligations hereunder, including without limitation, all bills, invoices, payrolls, subcontracting records and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by RGGI, Inc. in the course of such performance.

ARTICLE 5: AUDIT

5.1 NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of RGGI, Inc. where they are then being kept, maintained and preserved pursuant to Article 5. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of RGGI, Inc. by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.
ARTICLE 6: INDEMNIFICATION

6.1 RGGI, Inc. shall protect, indemnify and hold harmless NYSERDA from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA resulting from, arising out of or relating to the performance of this Agreement. The obligations of RGGI, Inc. under this clause shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

ARTICLE 7: TERMINATION

7.1 This Agreement may be terminated by NYSERDA at any time during the term of this Agreement, with or without cause, upon 30 days prior written notice to RGGI, Inc.; RGGI, Inc. shall be entitled to allowable costs through the effective date of such termination. In such event, following the effective date of such termination, compensation shall be reconciled for allowable costs incurred prior to the effective date of termination, which reconciliation shall include amounts previously paid to RGGI, Inc., credits due to NYSERDA under Section 2.3, if any.

ARTICLE 8: SET-OFF RIGHTS

8.1 NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to RGGI, Inc. under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement.

ARTICLE 9: ENTIRE AGREEMENT/CHANGES

9.1 This Agreement together with any Attachments annexed hereto contains the entire agreement of the parties with respect to the subject matter thereof, and supersedes all prior agreements or understandings regarding such subject matter, or any portion thereof.

9.2 This Agreement may be amended or supplemented only by a written instrument signed by duly authorized representatives of both parties.

9.3 This Agreement shall be governed by and construed in accordance with the laws of New York State.

9.4 The Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
## 2019 Operating Budget

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<th>Personnel</th>
<th>Budget</th>
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<tr>
<td>Salaries &amp; Wages</td>
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<td>Fringe Benefits</td>
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<td>% of Fringe Benefits to Salary</td>
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### Other than Personnel Costs (OTPC)

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<td>Occupancy Expenses</td>
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<td>Furniture and Fixtures - Equipment</td>
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### Subtotal Direct Operating Expenses

**$1,385,424.00**

### Indirect Contractor Expenses

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<tr>
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<th>Budget</th>
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<tr>
<td>Auctions</td>
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<td>Auction Platform Upgrade</td>
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<td>Marketing Monitor - Consulting</td>
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<td>Technical Analysis and Evaluation</td>
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<td><strong>Subtotal Indirect Contractor Expenses</strong></td>
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### Total Direct and Indirect Expenses

**$2,520,924.00**
OPTIONAL TRAVEL REIMBURSEMENT PROCESS

1.0 Introduction

This Optional Travel Reimbursement Process policy (Policy) governs the reimbursement of Directors, of Regional Greenhouse Gas Initiative, Inc. (the Corporation), Agency Heads and state agency staff for travel expenses incurred while promoting the purpose of the Corporation and ensuring its good governance.

As defined in its Articles of Incorporation, the purpose of the Corporation is:

"to provide technical and scientific advisory services to the States of the United States that are Signatory States in the development and implementation of a multi-state cap and trade program, known as the Regional Greenhouse Gas Initiative (or its successor), to reduce air pollutants that contribute to climate change, and to perform any other charitable or scientific function related to the reduction of greenhouse gas emissions or the increase in carbon sequestration on behalf of the Signatory States."

All travel reimbursed under the Policy shall be conducted to promote the mission of the Regional Greenhouse Gas Initiative. It is the intent of the Corporation that travel be used judiciously and conducted at the lowest practical cost. This Policy is designed to meet the Internal Revenue Service definition of an accountable plan. As a result, expenses and reimbursements that conform to this Policy are not reported as taxable income to the individual.

2.0 Purpose

The primary purpose of this Policy is to reimburse Directors, Agency Heads, their designees and state agency staff for travel to attend meetings of the Board of Directors of the Corporation. In addition, it is understood that Directors, Agency Heads and state agency staff may receive reimbursement, as funds allow, for other travel related to the mission of the Corporation, including but not limited to, meetings of participating state Agency Heads, meetings of the participating state agency Staff Working Group, and meetings with non-participating state and federal agencies to develop and promote cap and trade programs for greenhouse gas emissions.

3.0 Conformity

All travel reimbursed by RGGI, Inc. shall conform with applicable state and federal regulations.

3.1 State Travel Rules

In all cases, travel expenses reimbursed by RGGI, Inc. under this Policy shall be in conformity with any applicable existing state policies. If a participating state’s applicable policies are more stringent than this Policy, then the employees of that participating state shall have the
responsibility to ensure that they follow the more restrictive components of their state travel policy.

3.2 IRS Rules
The Corporation shall make reimbursements in a manner which conforms with its status as a not for profit organization under section 501(c)3 of the IRS Code. In particular, Corporation funds shall not be used to reimburse expenses for travel which seeks to influence legislation.

4.0 Travel Accounts
Reimbursement for travel will come from funds that states pre-pay to the Corporation. The exact method of pre-payment may be determined by each state. States may also decline to participate in this process entirely.

4.1 Funding
Each Participating State will have the option to contribute funds to reimburse the travel that Directors and/or staff conduct according to this Policy. States that choose not to contribute funds will not receive travel reimbursement. Although travel costs will vary based upon geographic location, frequency of meetings, and number of travelers, the estimated annual cost of travel for each Director is $6,000.

4.2 Accounting
The Corporation will track funds received and travel expenses incurred on a state by state basis separately from other budget items. In no case will one state pay travel expenses for any other state’s employees.

4.3 Reporting
The Corporation will present reports on each state’s payments and incurred expenses at least once each calendar year to the Agency Heads of that participating state. In addition, payments and disbursements will be reported in the Corporation’s public Audited Financial Statements and may be disclosed through public record requests.

5.0 Approval and Reimbursement Process

1) A Travel Approval Form (see Appendix 1) on behalf of each traveler must be submitted to RGGI, Inc. at least one day prior to travel. Travel Approval Forms should state the purpose of travel, the name of the traveler, estimated amounts for each expense category, and be signed and approved by the appropriate Director or Agency Head.

2) In order to receive reimbursement, travelers must submit a Request for Reimbursement Form to RGGI, Inc. (see Appendix 2) detailing the exact amounts of travel expenditures accompanied by receipts. This form must be signed by the traveler and approved by the state appropriate Director or Agency Head. Request for Reimbursement forms must be submitted within 30 days of completed travel.

3) In the event that a traveler incurs costs using both state and personal funds, the traveler should complete separate Request for Reimbursement Forms and itemize expenses accordingly.
6.0 Traveler Responsibilities

Business travel expenses will be paid by the Corporation only if they are reasonable, necessary and in accordance with this Policy. Individuals who incur business travel expenses should neither gain nor lose personal funds as a result of their business travel as long as it is in accordance with this Policy. The traveler is responsible for submitting all forms related to his/her travel within 30 days of returning. The traveler is also responsible for ensuring compliance with RGGI, Inc. requirements. All business travel expenses require dated, original receipts or invoices for all expenses.

7.0 Reimbursements — General

All reimbursements under this Policy will be for payments already made by state agencies and/or individual Directors, Agency Heads, designees and staff.

7.1 Transportation Tickets
Passenger copies of transportation tickets are required. For electronic tickets, obtain proof of payment from the travel agent or obtain a passenger coupon at the ticket counter.
Transportation receipts should include dates, destinations and amounts.

For air travel, travelers must purchase the lowest-priced tickets available for the time and locations required using a commercial discount air fare or customary standard (coach or equivalent) airfare. Travelers should make reservations as soon as travel plans are finalized to obtain advance purchase discounts. RGGI, Inc. will reimburse travelers for additional meals and lodging associated with a longer stay if such costs are less than the airfare savings resulting from an earlier arrival or later departure.

For travelers using railroads, buses or other commercial vessels RGGI, Inc. will pay the cost of the lowest class available for the trip.

7.2 Automobile Expenses
Charges for the following automobile-related expenses are allowed: tolls, ferries, parking, bridges, tunnels, and liability and physical damage insurance coverage for driving in foreign countries. Reimbursement for mileage will be according to state-specific guidelines, not to exceed limits set by the IRS. Tickets for traffic or parking violations will not be reimbursed.

7.3 Other Forms of Travel
Itemized receipts with the date and location of purchase must be provided for all taxes and public transportation.

7.4 Lodging
Hotel bookings should be for the lowest cost room-rate option using all applicable discounts according to state-specific guidelines.

The traveler will not be reimbursed for a hotel deposit or guarantee penalty if he/she fails to make a cancellation notification unless there is extreme extenuating circumstances (for example, a canceled flight). Such circumstances must be documented on the expense report.
7.5 Local Travel
In general, trips totaling less than 50 miles one way do not qualify for reimbursement for an
overnight stay.

7.6 Non-Business Days
Expenses incurred over weekends, holidays and other necessary layover days may be covered
only if they fall between business travel days. The only exception is when travel is at a lower
total cost if the traveler stays over a weekend or state recognized holiday. This case must be
explicitly justified on the travel expense report.

7.7 Travel Expenses of Family and Friends
Additional expenses of a spouse, family or others accompanying the business traveler are not
reimbursable.

7.8 Telephone, Fax, Copying, Printing, Internet
Travelers will be reimbursed for telephone, fax, copying, printing and computer connection costs
that are reasonable and necessary for conducting RGGI, Inc. business.

7.9 Meals
RGGI, Inc. will reimburse a traveler for meal and incidental expenses incurred during RGGI,
inc.-related travel based on actual expenses according to state-specific guidelines. RGGI, Inc.
may directly arrange and pay for meals at meetings out of its operating budget. These meals
are not eligible for reimbursement.

9.7 REIMBURSEMENT METHOD
The Corporation will issue checks payable to the individual or agency identified in the
Reimbursement Request Form.

10.0 DOCUMENTATION

10.1 Meal Receipts
Original restaurant receipts, when required, must include all of the following information:

(a) The name and location of the restaurant.

(b) The date and amount of expense.

Gratuities up to 20% of the base amount are reimbursable provided that they are shown on the
credit card receipt or restaurant receipt.

10.2 Required Receipts
Receipts for lodging are always required. All other expenses require dated, original receipts to
be submitted with a completed Reimbursement Request Form.

10.3 Lost Receipts
The traveler is responsible for collecting replacement receipts for lodging and travel expenses.
RGGI, Inc. expects that a good faith effort will be made by travelers to collect and retain all
required receipts.
11.0 REVIEW
In the event that any individual request for reimbursement or a pattern of reimbursements appear to be inconsistent with the purpose of this Policy, the Chair and the Treasurer of the Corporation will be advised and will determine what, if any, additional information may be required.

12.0 AMENDMENTS
The Corporation’s Executive Committee shall have the ability to make exceptions and amendments to this Policy by resolution which shall be recorded in the minutes of the Committee.
**Travel Approval Form**

This form is to be completed by the traveler and submitted to the relevant Agency Head for signature. It should be transmitted to RGGI, Inc. at least 1 day prior to travel.

Name of Traveler: ________________________________

State Agency of Traveler: __________________________

Please explain the purpose of travel: __________________________

Dates of Travel: __________________________

Please identify the meeting host and location: __________________________

Please itemize expected expenses (attach additional sheets if necessary):

<table>
<thead>
<tr>
<th>Expense</th>
<th>Expected Cost</th>
<th>Purpose/Notas</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Please list the total expected cost of this trip: __________________________

This travel is approved with the expectation that the expenses for it will be reimbursed by RGGI, Inc. from funds pre-paid by the state of _____ according to the Optional Travel Reimbursement Process.

Approved: __________________________

Date: __________________________
Auction Proceeds Account Protocol

This memo outlines the proposed procedures for management of RGGI auction proceeds.

1) Financial security will be deposited into an account established at the New York Bank of Mellon in the name of "RGGI Inc. as agent for the Signatory States of the Regional Greenhouse Gas Initiative", or at such other bank as the Board of Directors of RGGI Inc may designate with appropriate notice to all state agencies. There are two important aspects of this account. First, the account will be used exclusively for management of auction proceeds and funds will not commingle with RGGI, Inc. operational or program funds. Second, the name of the account legally separates the auction proceeds from the assets of RGGI, Inc. Any creditors of RGGI, Inc. would have no legal claim to auction proceeds.

2) Funds held in the account will be held in cash.

3) The transfer of funds will occur in the first instance by an Automated Clearinghouse transaction (ACH) transaction. ACH requires the upload of an excel spreadsheet file as a basis for issuing payment to multiple parties at once. World Energy will create that excel spreadsheet and provide it to RGGI, Inc. After review for accuracy, RGGI, Inc. will transmit the excel spreadsheet according to the controls described below.

4) The capability to execute an ACH transaction will be controlled by the Bank's Telecash system.

5) RGGI, Inc. will configure its Telecash profile to require three steps for file import processing. The three steps will be entry (upload of the spreadsheet), review, and release.

6) Each step will require a separate user, each with their own user id and password to the Telecash system.

7) Six individuals will be provided with a user-id and password. The six individuals will be: the RGGI, Inc. Chairman, Treasurer, Secretary, First Vice Chair and Second Vice Chair and Executive Director. These user ids and passwords will be kept strictly confidential.
8) Any combination of three of the six individuals named in paragraph 7 above can together execute an ACH transaction. However, it is expected that the Treasurer, Chair and the Executive Director will act in the first instance. It is further expected that the Executive Director will act in a support capacity to the Board’s Officers and will be trained in using the electronic banking interface.

9) Each state will receive proceeds from each auction in proportion to its share of the total number of allowances offered for sale in each auction.

10) Flow of Funds and Authorizations
    a) Receipt of financial security: Mellon evaluates source of all deposits and screens based on Homeland Security guidelines. Funds are not “received” until cleared.
    b) Financial settlement: cash deposits by bidders or RGGI, Inc.
        execution of LOC.
    c) ACH transaction to return cash to bidders who “lost” or who used less financial security than they had posted.
    d) ACH transaction to transfer funds to a bank account designated by each state selling allowances in that auction.
    e) ACH transaction to transfer any accumulated interest to RGGI, Inc.
    f) Account will return to zero balance before financial security for next auction is received.

11) Should a transaction to one or more parties fail as a result of faulty information provided by the party, RGGI, Inc. will resubmit the transaction for processing with corrected information one time.

12) Should a party not have a bank account compatible with ACH transactions, or should a party experience a second ACH failure, the Executive Director will present a memo to that effect to at least two of the authorized persons identified in paragraph 7 above detailing the name of the party, amount of the transaction, and reason for the failure. The Executive Director will obtain signatures on this memo from the two authorized persons.

13) The signed memo will be presented to Mellon Bank for preparation of a cashier check and a copy kept on file with RGGI, Inc. for audit purposes.
EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth at Exhibit A hereto.

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

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

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

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

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

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law Section 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 NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

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

**Article III**

**Deliverables**

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

**Article IV**

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

Section 4.02. Payments

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

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

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

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Contractor’s performance under this Agreement.
Section 4.06. **Maximum Commitment.** The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. **Audit.** NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

**Article V**

**Assignments, Subcontracts and Performance**

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

Section 5.02. **Subcontract Procedures.** Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor’s original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than $50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor’s proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to
make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA’s Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

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

**Article VI**

**Schedule: Acceptance of Work**

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

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

**Article VII**

**Force Majeure**

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

**Article VIII**
Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information; Confidentiality.

(a) NYSERDA shall have the right to use, duplicate, or disclose Contract Information, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Contractor shall have the right to use Contract Information for its private purposes, subject to the provisions of this Agreement.

(c) NYSERDA shall have no rights to any Proprietary Information.

(d) No information shall be treated by NYSERDA as confidential unless such information is clearly so marked by Contractor at the time it is disclosed to NYSERDA; see Exhibit C regarding NYSERDA’s obligations under the Freedom of Information Law. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, be considered confidential or Proprietary Information.

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

Article IX

Warranties and Guarantees

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

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

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

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

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

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

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

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

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

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

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement (http://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf); and

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

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

Article X

Indemnification

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

Insurance

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

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

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

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

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

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

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

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof.

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

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

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

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

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

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

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

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

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

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

Section 12.02. Termination.

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

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

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

Section 12.03 Suspension or Termination for Non-Responsibility.

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

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

Article XIII

Independent Contractor

Section 13.01. Independent Contractor.

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

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:
   1. via certified or registered United States mail, return receipt requested;
   2. by facsimile transmission;
   3. by personal delivery;
   4. by expedited delivery service; or
   5. by e-mail, return receipt requested.
Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

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

**Regional Greenhouse Gas Initiative, Inc.**
Name: Andrew J. McKeon  
Title: Executive Director  
Address: 90 Church Street, New York, NY 10007-2919  
Facsimile Number:  
E-Mail Address: andrew.mckeon@rungi.org

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

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

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

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

**Article XVI**

**Publicity**

Section 16.01. **Publicity.**

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

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

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

REVISED 5/12

STANDARD TERMS AND CONDITIONS
FOR ALL NYERDA AGREEMENTS

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

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

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

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

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law (“FOIL,” Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (http://www.dos.ny.gov/about/foi12.html) and NYSERDA’s Regulations, Part 501 http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx
7. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER** and/or **FEDERAL SOCIAL SECURITY NUMBER**. As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884  
http://www.esd.ny.gov

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

NYS Department of Economic Development  
Division of Minority and Women’s Business Development  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
http://www.empire.state.ny.us

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations. (This is only a summary; the full text of Part 504 can be accessed at: (http://www.nyserva.ny.gov/About/New-York-State-Regulations.aspx))

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

504.4. Payment Procedures.

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

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

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

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.
(c) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSEDA 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. NYSEDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSEDA 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 NYSEDA and the date when NYSEDA 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 NYSEDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSEDA 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, NYSEDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSEDA 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 NYSEDA, 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 NYSEDA.

504.6. Interest Eligibility and Computation. If NYSEDA fails to make Prompt Payment, NYSEDA 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 NYSEDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.
504.8. **Incorporation of Prompt Payment Policy Statement into Contracts.** The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

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

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

504.11. **Court Action or Other Legal Processes.**

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

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

### New York State Energy Research and Development Authority
17 Columbia Circle
Albany NY 12203
United States

**Supplier:** 0000038438
Regional Greenhouse Gas Initiative, Inc.
90 Church St
New York NY 10007-2919

**Buyer:** 00000038438
Regional Greenhouse Gas Initiative, Inc.
90 Church St
New York NY 10007-2919

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**Contract ID:** 0000000000000000000149969

**Tax Exempt?** Y  **Tax Exempt ID:**

**Freight Terms**
POB Destination Common

**Ship To:**
17 Columbia Circle
Albany NY 12203
United States

**Bill To:**
17 Columbia Circle
Albany NY 12203
United States

**PO Date:** 02/03/2020  **Revision:** 1  **Page:** 1

**Schedule Total**
612,618.88

**Contract Line:** 1  **Release:** 1

**Item Total**
612,618.88

**Total PO Amount**
612,618.88
New York State Energy Research and Development Authority
("NYSERDA")

AGREEMENT

1. Agreement Number: 149969

2. Contractor: Regional Greenhouse Gas Initiative, Inc.

3. Project Director: Andrew J. McKeon

4. Effective Date: January 01, 2020

5. Total Amount of Award: $612,618.88

6. Project Period: January 01, 2020 - December 31, 2020

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.

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

Regional Greenhouse Gas Initiative, Inc.

Signature: [Signature]
Name: Andrew J. McKeon
Title: Executive Director

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Signature: [Signature]
NYSERDA Authorized Signatory
EXHIBIT A
STATEMENT OF WORK
Regional Greenhouse Gas Initiative Funding Agreement

NYSERDA Project Number 149969

Background/Objectives
To provide NYSERDA and NYSDEC with technical and administrative support services related to the Regional Greenhouse Gas Auctions and Initiatives.

The Contractor is defined as:
Regional Greenhouse Gas Initiative, Inc.
Andrew J. McKeon
Executive Director
90 Church Street, 4th Floor
New York, NY 10007
T: (212) 417-7345
andrew.mckeon@rggi.org

The Project Site(s) is/are defined as: N/A

Subcontractor(s) is/are defined as:
Jon Harvey
Strategic Account Sales Manager
EnelX North America
1 Marina Park Drive #400
Boston, MA 02210
jonathan.harvey@enel.com

Pallas LeeVanSchaick
Vice President
Potomac Economics Ltd.
9990 Fairfax Boulevard, Ste. 560
Fairfax, Virginia 22030
T: (703) 383-0719
F: (703) 383-0796
pallas@potomaceconomics.com

Chris MacCracken
Principal
ICF International
9300 Lee Highway
Fairfax, Virginia 22031
T: (703) 934-3277
chris.maccracken@icfi.com

Susan Blackmoor
Senior Analyst
General Dynamics Information Technology
Federal Civil Division
650 Peter Jefferson Pkwy, Suite 300
Charlottesville, VA 22911
T: (434)951-2328
Susan.blackmoor@gdit.com

TASK 0 – PROJECT MANAGEMENT, SCOPE OF WORK AND PROGRESS REPORTING

Responsibility
The Contractor shall be responsible for the timely completion of all the tasks requested by NYSERDA and NYSDEC per the 2019 Cooperative Agreement. The Contractor shall provide all project management activities necessary for the performance of the Agreement in accordance with the terms therein.

Agreement Number: 149969
Amount not to exceed $612,618.88
Term: one year
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<td><strong>Indirect Contractor Expenses</strong></td>
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<tr>
<td><strong>Total Direct and Indirect Expenses</strong></td>
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EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth at Exhibit A hereto.

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

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

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

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

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

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law Section 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 NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

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

Article III

**Deliverables**

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

Article IV

**Payment**

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

Section 4.02. Payments

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

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

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

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

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.
Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Performance

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Prior to beginning any Work, Contractor shall notify the NYSERDA Project Manager of all subcontractors performing work under the Agreement, as well as all changes in subcontractors throughout the term of the Agreement. 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. For each Subcontract valued at $100,000 or more, the Contractor shall obtain and maintain, pursuant to Section 4.05, a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form from such Subcontractor prior to the execution of the Subcontract. Such form shall be made available to the Contractor by NYSERDA. Each such Subcontract shall contain a provision
whereby the Subcontractor warrants and guarantees that there is and shall be no actual or potential conflict of interest that could prevent the Subcontractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of the Subcontract and that the Subcontractor shall have a duty to notify NYSERDA immediately of any actual or potential conflicts of interest. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA’s Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

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

Article VI

Schedule; Acceptance of Work

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

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

Article VII

Force Majeure

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

Article VIII
Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information; Confidentiality.

(a) NYSERDA shall have the right to use, duplicate, or disclose Contract Information, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Contractor shall have the right to use Contract Information for its private purposes, subject to the provisions of this Agreement.

(c) NYSERDA shall have no rights to any Proprietary Information.

(d) No information shall be treated by NYSERDA as confidential unless such information is clearly so marked by Contractor at the time it is disclosed to NYSERDA; see Exhibit C regarding NYSERDA's obligations under the Freedom of Information Law. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, be considered confidential or Proprietary Information.

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

(f) In conjunction with Contractor's performance of the Project, NYSERDA or other entities may furnish Contractor with certain information concerning the Work that is collected and stored by, or on behalf of, NYSERDA and is either non-public, confidential or proprietary in nature as classified per the policies and procedures outlined in the New York State Information Classification Policy (NYS-S14-002)\(^1\) and the New York State Information Security Controls Standard\(^2\) (the "Information"), identified as such by the Project Manager in writing.

The Information will be kept confidential and will not, without NYSERDA's prior written consent, be disclosed by you, your agents, employees, contractors or professional advisors, in any manner whatsoever, in whole, or in part, and will not be used by Contractor, Contractor's agents, employees, contractors or professional advisors other than in connection with the Work. Contractor agrees to transmit the Information only to Contractor's agents, employees, contractors and professional advisors who need to know the Information for that purpose and who are informed by Contractor of the confidential nature of the Information and who will agree in writing to be bound by the terms and conditions of this Agreement.

Contractor shall conform to requirements of the New York State Information Technology Services (ITS) Information Security Policy (NYS-P03-002)\(^3\) and any amendments thereto, to maintain the security of and to prevent unauthorized access to Information that is maintained in electronic form on your systems. Such measures shall include:

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\(^1\) [https://its.ny.gov/document/information-classification-standard](https://its.ny.gov/document/information-classification-standard)
\(^3\) [https://its.ny.gov/sites/default/files/documents/nys-p03-002_information_security_0.pdf](https://its.ny.gov/sites/default/files/documents/nys-p03-002_information_security_0.pdf)
a. Access Control on Servers, Systems, Apps, Databases, i.e., role-based permissions, authentication, authorization, and password policy;

b. Network Security, i.e., isolation of Information, secure V-LANS, Firewalls;

c. Patch Management, i.e., formal patch cycles and maintenance process;

d. Malware Prevention, i.e., anti-virus, anti-spyware, vulnerability assessments, penetration testing, audits;

e. Encryption of Information in transit and Information in storage on desktops, backups, and removable media;

f. Change Control to ensure that new and modified system software are authorized, tested, and implemented accurately;

g. Security Event Logging/Monitoring that provides real time alerting of security events

h. IDS, WS, Website Monitoring of websites for compromise indicators which indicates website defacements, compromises or inappropriate content (Application/Host/Network IDS and IPS);

i. Web Application scanning that is performed on code and application in compliance with Open Web Application Security project (OWASP) and SANS (SysAdmin, Audit, Network, and Security) Institute standards.

Contractor will keep a record of the location of the Information. At the conclusion of the Project Period, Contractor will return to NYSERDA all the Information and/or provide proof to NYSERDA that the Information was destroyed. Contractor also agrees to submit to an audit of its data security/destruction practices by NYSERDA or its representative during the contract term and for up to two (2) years following the expiration of the Agreement.

(g) If, in the course of performance of the Agreement, Contractor or Subcontractors (if any) encounter any information in NYSERDA’s Salesforce or other database platforms that a reasonable person would identify as unrelated to the Agreement or otherwise inadvertently produced to Contractor or Subcontractors, Contractor shall notify NYSERDA immediately and neither Contractor nor Subcontractor shall use such inadvertently produced information for its own use. Any Contractor access to NYSERDA information shall be used solely for NYSERDA-related matters. This shall include, but not be limited to, access to the Salesforce CRM.

Article IX

Warranties and Guarantees

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

(a) all information provided, and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor’s knowledge, complete, true and accurate when provided or made;
(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

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

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

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

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

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

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

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

(j) Contractor is familiar with and will comply with NYSERDA’s Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement, including, but not limited to, the provisions that ensure the appropriate use of public funds by requiring Contractors, Consultants and Vendors to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement; and to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA;

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

4http://www.nyserda.ny.gov/About/Board-Governance.aspx
(l) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity; and

(m) Contractor represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify NYSERDA immediately of any actual or potential conflicts of interest.

Article X

Indemnification

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

Article XI

Insurance

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Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

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

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

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

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

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

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

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

Section 12.02. Termination.

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

(b) NYSERDA specifically reserves the right to terminate this agreement upon its determination of excessive project schedule lapses or delays. NYSERDA also reserves the right to deny schedule extensions for project completion beyond those to which the parties agreed upon the initial execution of the agreement.

(c) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.
(d) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

Section 12.03 Suspension or Termination for Non-Responsibility.

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

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

Article XIII

Independent Contractor

Section 13.01. Independent Contractor.

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

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

Article XIV

Compliance with Certain Laws

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

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

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

Section 14.04. Sexual Harassment Policy. The Contractor and all Subcontractors must have a written sexual harassment prevention policy addressing sexual harassment in the workplace and must provide annual sexual harassment training to all employees.

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

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

1. via certified or registered United States mail, return receipt requested;
2. by facsimile transmission;
3. by personal delivery;
4. by expedited delivery service; or
5. by e-mail, return receipt requested.

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

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

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

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except for no-cost time extensions, which may be signed by NYSERDA and require no counter-signature by the Contractor, and except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

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

Article XVI

Publicity

Section 16.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA’s Director of Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA’s Director of Communications regarding any media interview in which the Work is referred to or discussed.
(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA’s funding participation in the Project, and shall state that “NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York.” Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor’s policies.

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

REVISED 12/19

STANDARD TERMS AND CONDITIONS
FOR ALL NYSSERA AGREEMENTS

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

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

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

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

3. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSSERA a non-collusive bidding certification on Contractor's behalf.
4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds $5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement’s execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law (“FOIL,” Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (http://www.dos.ny.gov/about/foil2.html) and NYSERDA’s Regulations, Part 501 http://www.nysera.gov/About/New-York-State-Regulations.aspx

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884  
http://www.esd.ny.gov

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

NYS Department of Economic Development  
Division of Minority and Women’s Business Development  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
http://www.empire.state.ny.us

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

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

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

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

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

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

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

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

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

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See https://ogs.ny.gov/iran-divestment-act-2012).
21. **COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006.** Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 ("DERA"), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology ("BART"). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: https://www.dec.ny.gov/regs/2492.html.

22. **ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.
EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. **Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA’s regulations, which consists of NYSERDA’s policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations. (This is only a summary; the full text of Part 504 can be accessed at: [http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx](http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx))

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

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

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

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

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

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

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

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

(g)(1) “Receipt of an Invoice” means:

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

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

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

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

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

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

504.4. Payment Procedures.

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

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

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

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

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

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSEDA 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. NYSEDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSEDA 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 NYSEDA and the date when NYSEDA 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 NYSEDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSEDA or another 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, NYSEDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSEDA 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 NYSEDA, 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 NYSEDA.

504.6. Interest Eligibility and Computation. If NYSEDA fails to make Prompt Payment, NYSEDA 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 NYSEDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully
available to make the related Payment.

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

504.9. Notice of Objection. Contractor may object to any action taken by NYSEDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSEDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSEDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSEDA’s action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSEDA’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 NYSEDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

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

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSEDA 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.