

ATTACHMENT B RETAILER PARTICIPATION AGREEMENT

Appliance Upgrade Program

The New York State Energy Research and Development Authority (“NYSERDA”), and _____ with offices at _____ (“Participating Retailer”), enter this Retailer Participation Agreement, including Exhibits as defined below (collectively, “Agreement”), to be effective as of _____ (the “Effective Date”). NYSERDA and the Participating Retailer each may be referred to herein as a “Party” and collectively may be referred to herein as the “Parties.”

WHEREAS, NYSERDA offers retailers the opportunity to participate in NYSERDA’s Inflation Reduction Act’s (“IRA”) Home Electrification and Appliance Rebate (“HEAR”) Appliance Upgrade Program (the “Program”). The Program covers IRA rebates for certain appliances at retail point-of-sale and through NYSERDA’s existing Single Family (one-to-four unit) and Multifamily (five or more unit) programs. Low- to moderate-income (LMI) households are eligible to participate in the Program, with a particular focus on those in disadvantaged communities across the state.

WHEREAS, The U.S. Department of Energy (“DOE”) provides funding for this Program and intends to address equity and increased accessibility to clean, energy-efficient appliances.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

1. Definitions. The terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below.

Customer: A New York State homeowner, building owner or renter who may participate in the Program or is a current or former participant in the Program.

Consumer Protection Plan: Refers to the Consumer Protection Plan approved by the Department of Energy for the Program.

Implementation Contractor: Organization working under contract with NYSERDA to provide administrative and support functions such as project approvals, technical support, loan origination, loan servicing, reporting, invoicing, payment to retailers and contractors and installation verification.

Retailer Participation Agreement: This Retailer Participation Agreement (Agreement), which establishes the terms and conditions under which NYSERDA-qualified Participating Retailer may offer Program incentives to qualified Customers in New York State.

Program: Refers to Inflation Reduction Act's ("IRA") Home Electrification and Appliance Rebate ("HEAR") Appliance Upgrade Program (the "Program").

Program Manual: Refers to the manual for the Program that specifies the operating procedures, program-specific rules and eligibility, and technical requirements.

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

2. Program Requirements. The Participating Retailer shall meet the requirements outlined in the Program Manual.
3. Federal Funding. The Program is funded, in whole or in part, with funds provided by the federal government. As such, NYSERDA is required to comply with DOE and other federal regulations and procedures governing financial awards as outlined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 as amended by 2 CFR Part 910 and other procedures applicable to this regulation as DOE may, from time-to-time, prescribe for the administration of financial assistance. NYSERDA reserves the right to flow down requirements to Participating Retailers to the extent necessary to meet its obligations under applicable federal regulations.
4. Consumer Protection. The Participating Retailer shall meet the relevant requirements outlined in the Consumer Protection Plan. The Participating Retailer further agrees to follow the consumer protection requirements outlined by the Federal Trade Commission (FTC) Bureau of Consumer Protection. The Participating Retailer also agrees to adhere to the FTC's Holder in Due Course Rule (16 CFR Part 433). If NYSERDA determines that consumer protection requirements are not being met by the Participating Retailer, NYSERDA will give the Participating Retailer notice and the Participating Retailer will have ten (10) business days to comply. If the Participating Retailer is still non-compliant at the end of the notice period, NYSERDA reserves the right to terminate this Agreement and suspend or altogether terminate the Participating Retailer from offering HEAR rebates.
5. Insurance.
 - 5.1 The Participating Retailer, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in this section. All such insurance shall be evidenced by insurance policies, each of which shall: (1) reference this Agreement; name or be endorsed to cover the Participating Retailer as the

insured, and NYSERDA and the State of New York as additional insured; and reference all work to be performed under the Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and be reasonably satisfactory to NYSERDA in all other respects. NYSERDA reserves the right to request insurance documentation and copies of Subcontractor agreements for any Subcontractor, and to request the identity of all participating individuals.

The types and amounts of insurance required to be maintained under this subsection 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, 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 coverage as required by New York State. The Participating Retailer shall maintain Workers' Compensation covering the obligations of the Participating Retailer as required under the provisions of the Workers' Compensation Law, Employers Liability, and Disability Benefits.

5.2 If a Participating Retailer is identified as a Sole Proprietor, the retailer must complete and submit form CE-200: <https://ce-200-form.com/>

5.3 Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Participating Retailer shall deliver to NYSERDA a certificate(s) of insurance evidencing the renewal of such policy(s), and the Participating Retailer shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSERDA will not make payments for projects completed under this Agreement without current insurance certificates.

5.4 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, the Participating Retailer shall deliver to NYSERDA a certified copy of each policy upon request.

5.5 Within five working days, or contemporaneously with the requirements of each insurance policy, the Participating Retailer shall notify NYSERDA in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or

in equity, against the Participating Retailer, any non-Customer party to this Agreement or NYSERDA.

6. Computer, Operating System, and Internet Access Requirements.

- 6.1.1 The Participating Retailer shall have access to a computer with an internet connection with a modern browser and an operating system capable of running any required and necessary Program software.
 - 6.1.2 The Participating Retailer shall have an active email account(s) with the ability to receive emails from NYSERDA, the Implementation Contractor(s), and Program participants and check email on a regular basis for Program announcements and other communications. The Participating Retailer shall ensure any email addresses on file with NYSERDA are current and must identify a primary Program point-of-contact.
 - 6.1.3 The Participating Retailer shall ensure that all computer equipment has an antivirus solution, and that this solution is kept to the most current level necessary. The Participating Retailer is prohibited from downloading any type of hacking tools, including, but not limited to, network sniffers, vulnerability scanners, or password cracking tools.
 - 6.1.4 The Participating Retailer agrees to comply with the New York State Information Classification Policy (NYSS14-002), which sets forth the minimum requirements, responsibilities, and accepted behaviors to establish and maintain a secure environment to achieve the State's information security objectives. Additionally, when corresponding with Customers, Implementation Contractors, and NYSERDA, the Participating Retailer agrees to use the NYSERDA External Contractor Data Security and Controls Policy to determine the type of Customer information that can be shared based on the platform being used. To minimize the occurrence of incoming emails containing confidential information, Customers should be instructed to redact utility account numbers, social security numbers, and bank account numbers if the Participating Retailer is requesting documents containing this information. Participating Retailers who fail to comply with the policy will be subject to disciplinary action.
7. Pricing. The Participating Retailer agrees to apply fair and reasonable pricing for covered appliances and for the delivery or installation of appliances as detailed in the applicable Program Manual. NYSERDA reserves the right to request additional information from Participating Retailer on pricing and to obtain comparative price quotes.
8. Licenses. Participating Retailer shall maintain any relevant licenses as required by federal, State, county or municipal governments or any other governmental

agencies for work in the trades it undertakes through this Program. Participating Retailer shall produce evidence of current licensing upon request by NYSERDA or its Implementation Contractor.

9. Billing. See Program Manual, section 7.2.

9.1 Participating Retailer agrees to deliver the appliance prior to invoicing NYSERDA or the Implementation Contractor. At the time of invoicing, the Participating Retailer will record all required data including make and model of the appliance delivery and attest to delivery confirmation in the Program workflow software. It is expressly understood that NYSERDA and its Program Implementor will approve payment based on the attested delivery confirmation provided by Participating Retailer.

9.2 If billing discrepancies are identified for appliances already paid for, NYSERDA reserves the right to withhold comparable amounts of payments owed to the Participating Retailer until the discrepancies are resolved.

9.3 Billing for appliance delivery which have not been completed, or billing for amounts that are in excess of the coupon values approved by NYSERDA may result in withholding payment or termination from the Program.

10. Acknowledgement. The Participating Retailer acknowledges this Agreement and participation in the Program is voluntary.

11. Termination.

11.1 NYSERDA may suspend or terminate a Participating Retailer from participation in the Program for any reason, including failure to maintain Program standards, poor performance, unresponsiveness, or inappropriate behavior. In all cases involving a Participating Retailer's participation status, NYSERDA's written decision is final.

11.2 In the event the Participating Retailer wishes to terminate this Agreement, the Participating Retailer must provide 30-days written notice to NYSERDA.

12. Program Changes. NYSERDA reserves the right to make changes upon notice to the Participating Retailer. Programmatic changes announced through Program announcements will supersede policies and procedures in this Agreement and the Program Manual. Such notifications shall be communicated via email and posted in accordance with the Program Manual.

13. Subcontracting.

- 13.1 Participating Retailer shall not knowingly employ as a Subcontractor any firm that has been suspended or terminated from this Program or any other NYSERDA program(s) without NYSERDA's prior written permission. An employee of a Subcontractor who has demonstrated unprofessionalism, unethical behavior or has exhibited poor workmanship on one or more past Program projects may be prohibited from working on Program projects.
- 13.2 A non-participating Subcontractor of a Participating Retailer shall not represent itself as a participant in the Program or as able to offer Program services and benefits, for the purpose of executing the sale of a non-Program project. Additionally, Participating Retailer shall not permit any Subcontractor to represent itself as working for, approved by, or certified by the State of New York, NYSERDA, or NYSERDA's Implementation Contractor.
14. Indemnification. The Participating Retailer shall protect, indemnify and hold harmless NYSERDA, its Implementation Contractors, 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 Participating Retailer's or its Subcontractor's performance of this Agreement, including, but not limited to, any claim or suit resulting from or related to mildew, fungus, moisture intrusion or mold of every type and nature. The obligations of the Participating Retailer under this Section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.
15. Notification of Claims or Events. The Participating Retailer 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, the Participating Retailer and/or a member of a Participating Retailer's staff. Accordingly, the Participating Retailer 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 the Participating Retailer'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.
16. Relationship of the Parties.
- 16.1 The personnel furnished by the Participating Retailer to perform the services under this Agreement, shall be the Participating Retailer'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 the Participating Retailer, except to the extent required by Section 414(n) of the Internal Revenue Code.

16.2 The relationship of the Parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and the Participating Retailer for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power, or authority to obligate or bind the other in any manner not specified in this Agreement.

17. Stop Work Orders.

17.1 NYSERDA may at any time, by written Order to the Participating Retailer, require the Participating Retailer 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 Participating Retailer, 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 Participating Retailer 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 Participating Retailer, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

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

(b) terminate the Work covered by such order.

17.2 If a Stop Work Order issued under this section is cancelled or the period of the Order or any extension thereof expires, the Participating Retailer shall resume Work. An equitable adjustment shall be made in the delivery schedule and or the fee, if any, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

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

- (b) the Participating Retailer 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.
- 17.3 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.
- 17.4 Notwithstanding the provisions of this section, the maximum amount payable by NYSERDA to the Participating Retailer shall not be increased or deemed to be increased except by specific written amendment hereto.
18. Code of Conduct. The Participating Retailer is familiar with and will comply with NYSERDA's *Code of Conduct for Contractors, Consultants, and Vendors* (available at <https://www.nyserda.ny.gov/About/Board-Governance>) 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.
- 18.1 In addition, the Participating Retailer must follow the policies and procedures found on the Doing Business with NYSERDA webpage at <https://www.nyserda.ny.gov/About/Doing-Business-with-NYSERDA>, as amended and superseded.
19. Quality Assurance and Verification
- 19.1 The QA process for the Program includes an administrative review and QA field inspections. The QA and verification policy and procedures documents are in the Program Manual, and any updates will be issued to the QA contact for all Participating Retailers as necessary to comply with changing standards or meet the goals of the Program. Participating Retailers shall be responsible for staying current with all revisions to the QA policy documents.
- 19.2 The Participating Retailer shall not inhibit or discourage Customer from participating in the QA and verification process and shall make a good faith effort to facilitate this process.
- 19.3 The Participating Retailer shall provide project-related information to NYSERDA and its Implementation Contractors, upon request. This information

may include, but is not limited to, contracts, pictures, and installed product information.

20. Project Requirements.

20.1 All appliances sold and/or installed as part of this Agreement shall be brand new and meet the requirements identified in the Program Manual.

20.2 To the greatest extent practicable, all equipment and products purchased with funds made available for the Program should be American-made.

20.3 The Participating Retailer shall provide the Customer with a written warranty of labor and materials. Appliances shall carry a minimum one-year parts and labor warranty from the Participating Retailer, valid from the date the delivery is completed. After one year, the Participating Retailer must honor any valid manufacturer's warrantee for the installed appliance. In the event labor is not covered during this period, the Participating Retailer is expected to charge the Customer fair market rate for any needed repairs. Damaged or defective items, as determined by the Implementation Contractor, shall be replaced at no cost (including shipping) to the Program. For appliances installed not meeting Program requirements, as identified through a Program participant concern submission or QA inspection, the warranty will be extended one year once the Participating Retailer has remediated all deficiencies to Program/manufacture's standards.

20.4 The Participating Retailer must provide the Customer with a reasonable time frame for delivery. A courtesy phone call must be made if they are running more than one hour past the scheduled delivery time.

20.5 Participating Retailer must maintain satisfactory and professional Customer interaction, treat Customers fairly, and shall provide timely completion of work and response to Customer complaints and NYSERDA directives.

20.6 If requested by the Customer, deliveries will include complete installation into the home, including placement into the designated space and leveling of the new appliance. All refuse related to delivery, including appliance packing materials, must be removed at the time of installation.

20.6.1 Where providing installation, The Participating Retailer must make sure that all units are operational before the delivery crew leaves the home.

20.7 If, at the time of the scheduled delivery, there is no one at the residence to receive the delivery, the Participating Retailer can charge a no-show fee not to exceed the cap referenced in the Program Manual.

- 20.8 Participating Retailer shall provide all Customers with Participating Retailer contact information, and all included manufacturer's documentation that came with the appliance, which at a minimum shall include the manual(s).
- 20.9 Participating Retailer will provide a confirmation of appliance delivery to the Customer identifying the make and model of the appliance installed, signed by the Customer. The Participating Retailer may upload a copy of the confirmation in the Program workflow platform.
- 20.10 If, during the warranty period, the unit fails three times for a problem originating from the manufacturer and/or repair, the Participating Retailer must replace the appliance at no cost to the Customer.
- 20.11 The Participating Retailer must notify the Implementation Contractor immediately once they have been made aware of a manufacturing defect identified during the warranty period and assist in ensuring that the manufacturer proactively fixes the defect before the unit fails.
- 20.12 If Participating Retailer becomes involved in a dispute with a Customer over business practices, Participating Retailer shall follow the Customer Concern Resolution Process outlined in the Consumer Protection Plan and work with the Implementation Contractor to resolve the dispute amicably.
- 20.13 NYSERDA, its Implementation Contractor or QA Contractor will conduct random inspections of work that has been performed through the Program as part of this Agreement. Participating Retailer agrees to promptly comply with requests from the Implementation or QA Contractors.
- 20.14 Participating Retailer, upon request of NYSERDA, Implementer Contractor, or QA Contractor, and at no additional cost to the Customer, shall make reasonable repairs or corrections as required. This provision survives termination of the Agreement.
- 20.15 Participating Retailer shall maintain a policy for QA, for resolution of Customer complaints or disputes, and for response to Customer emergencies. The policy shall include protocols for a timely response, identification of responsible parties, documentation of corrective actions, results, and a means of identifying and addressing systemic issues. Participating Retailer agrees to make this policy available to NYSERDA or its Implementation Contractor for review and approval upon request.

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

[PARTICIPATING RETAILER]

Signature: _____

Name _____

Title _____

EXHIBIT A

REVISED 12/19

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement 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 NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
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.

