



**SAMPLE SUMMARY OF CONTRACT TERMS**

### **NYSERDA CONTRACT KEY ITEMS LIST**

The following is a summary of certain notable provisions in the New York State Energy Research and Development Authority (“NYSERDA”) Agreement (the “Agreement”) between NYSERDA and [ORGANIZATION] (the “Contractor”). For any items summarized below, the referenced section(s) of the Agreement should be reviewed for a complete understanding of the relevant obligations. Note that provisions that are considered customary or irrelevant are excluded from this summary. Any defined terms used here have the same meaning as ascribed to them in the Agreement.

**Project Title:**

**Contract Length:** 6 months

| <b>EXHIBIT A – STATEMENT OF WORK</b> |                            |                     |                |              |
|--------------------------------------|----------------------------|---------------------|----------------|--------------|
| <b>Task</b>                          | <b>Description of Work</b> | <b>Deliverables</b> | <b>Budget</b>  | <b>Notes</b> |
| Task 1.0                             |                            |                     | X hours<br>\$X |              |

| <b>EXHIBIT B – GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS</b> |  |                          |  |
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| <b>Item</b>  | <b>Summary of Provisions</b>   | <b>Section Reference</b> | <b>Notes</b>   |
| <b>Conditions Precedent; Pre-Execution Deliverables</b>              |  |                          |  |
| Project Personnel  | <ul style="list-style-type: none"><li>The identified Project Director shall be responsible for Work completed by Contractor.</li><li>Written approval of NYSERDA necessary to change Project Director.</li></ul> |                          | <ul style="list-style-type: none"><li>If Contractor notifies NYSERDA of change of Project Director and does not receive response within 30 days, request shall be considered approved.</li></ul> |
| Payment Terms  | <ul style="list-style-type: none"><li>NYSERDA not obligated to make any payments beyond the Expiration Date,</li></ul>   | Article IV, Section 4.01 | <ul style="list-style-type: none"><li>NYSERDA may extend the Expiration Date at its sole discretion</li></ul>  |

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|   | <p>unless NYSERDA extends the Expiration Date</p> <ul style="list-style-type: none"> <li>Contractor shall be reimbursed for the services performed by its employees at the lesser of employee's billing rate set forth in the Budget or the employee's billing rate applicable at the time the Work is performed</li> </ul>   |   | <ul style="list-style-type: none"> <li>Length of contract is currently "6 months"</li> </ul>  |
| Progress Payments and Invoices          | <ul style="list-style-type: none"> <li>Final invoice must be received by NYSERDA prior to the Expiration Date</li> <li>Acceptance of final payment from NYSERDA releases NYSERDA from all claims by and liability to Contractor</li> </ul>  | <p>Article IV, Section 4.03</p> <p>Article IV, Section 4.04</p> | <ul style="list-style-type: none"> <li>Review Section 4.02(a) to understand invoicing procedures</li> </ul>   |
| Maximum Commitment                      | <ul style="list-style-type: none"> <li>NYSERDA shall not be liable for amounts exceeding maximum aggregate amount payable by NYSERDA (\$50,000)</li> </ul>  | Article IV, Section 4.06  |   |
| <b>Compliance; Obligations</b>          |   |   |   |
| Record Retention                        | <ul style="list-style-type: none"> <li>Must retain all books and records for at least 3 years after the final payment / termination of the Agreement</li> </ul>   | Article IV, Section 4.05  |   |
| Proprietary Information & Data Security | <ul style="list-style-type: none"> <li>All Proprietary Information (meaning information produced or developed outside the scope of this Agreement and without NYSERDA financial support) shall be the property of the Contractor</li> <li>Contractor must maintain proper security measures to protect confidential and classified information pertaining to NYSERDA, including information that the Project Manager designates as such or</li> </ul> | Article VIII, Section 8.01                                      | <p>Contractor shall conform to requirements of the <a href="#">NY State Information Security Policy (NYS-P03-002)</a>. There is also a list of specific required data security practices in Article VIII, pp. 14-15. Consider sharing this with your IT staff.</p> <p>For the Public Officers Law section 92 definition of "personal information" see</p> |

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|                                  | <p>personal information protected by Section 92 of the New York State Public Officers Law</p> <ul style="list-style-type: none"> <li>• Contractor must return all such confidential information to NYSERDA at the conclusion of the project</li> <li>• Contractor will submit to an audit of its data security practices during the contract term and for up to 2 years following expiration of Agreement</li> </ul> |                            | <p><a href="https://codes.findlaw.com/ny/public-officers-law/pbo-sect-92.html">https://codes.findlaw.com/ny/public-officers-law/pbo-sect-92.html</a></p> <p>Also, see p. 8 below for additional data security requirements.</p>  |
|                                  | <ul style="list-style-type: none"> <li>• Must comply with NYSERDA's Code of Conduct, including by "refrain[ing] from policy advocacy on behalf of NYSERDA unless explicitly authorized"</li> </ul>   | Article IX                 | <p>NYSERDA's Code of Conduct is available at <a href="http://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf">http://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf</a></p> |
| Insurance                        | <ul style="list-style-type: none"> <li>• No insurance provision</li> </ul>   | Article XI                 |  |
| Sexual Harassment Policy         | <ul style="list-style-type: none"> <li>• Contractor and Subcontractors must have a written sexual harassment prevention policy and provide annual sexual harassment training to all employees</li> </ul>   | Article XIV, Section 14.04 | <p>A model sexual harassment policy can be found on the <a href="#">New York State website</a></p>   |
| <b>Restrictions; Limitations</b> |  |                            |  |
| Subcontracting                   | <ul style="list-style-type: none"> <li>• Except as otherwise provided, may not assign, transfer, convey or subcontract any part of Agreement without express consent in writing of NYSERDA</li> <li>• May enter into Subcontracts but must notify the NYSERDA Project Manager prior to beginning any work.</li> </ul>  | Article V                  | <p>There are a host of provisions that need to be included in subcontracts (see Article V)</p>   |

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|                        | <ul style="list-style-type: none"> <li>For subcontracts not forming a part of a team arrangement or over \$50,000 Contractor shall select subcontractor or suppliers through a competitive bidding or multi-source price review process.</li> <li>May not assign, cancel or terminate any Subcontract without written approval of NYSERDA</li> </ul>  |                             |  |
| Independent Contractor | <ul style="list-style-type: none"> <li>Status of Contractor is that of “independent contractor”</li> <li>Subcontractors are not employees of NYSERDA</li> </ul>   | Article XIII, Section 13.01 |  |
| Publicity              | <ul style="list-style-type: none"> <li>Must notify NYSERDA regarding any media interview in which the Work is referred to or discussed</li> <li>Materials released for education purposes must credit NYSERDA for funding the Project and include the statement “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”</li> <li>Commercial materials produced by Contractor shall credit NYSERDA and shall be submitted to NYSERDA for review</li> </ul> | Article XVI, Section 16.01  |  |
| Stop Work Order        | <ul style="list-style-type: none"> <li>NYSERDA may require Contractor to stop Work for a period of 90 days</li> </ul>   | Article XII, Section 12.01  |  |
| Termination            | <ul style="list-style-type: none"> <li>Agreement may be terminated by NYSERDA at any time with or without cause, upon 10 days prior written notice</li> </ul>   | Article XII, Section 12.02  | <ul style="list-style-type: none"> <li>Agreement cannot be terminated by Contractor</li> </ul> |

|                    |  |                          |   |
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|                    |  |                          | <ul style="list-style-type: none"> <li>Contractor may continue Work after Stop Work Order or termination at its own expense.</li> </ul> |
| <b>Liabilities</b> |  |                          |   |
| Indemnification    | <ul style="list-style-type: none"> <li>Must indemnify NYSERDA and the State against all losses, claims, damages, judgments, penalties, causes of action, costs and expenses, and attorneys' fees</li> <li>Indemnification provision shall survive any expiration of termination of the Agreement and shall not be limited by any enumeration of required insurance coverage</li> </ul> | Article 10 Section 10.01 | <ul style="list-style-type: none"> <li>No indemnity provided by NYSERDA or the State</li> </ul>   |

**EXHIBIT C – STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS**

| Item                           | Summary of Provisions  | Section Reference | Notes  |
|--------------------------------|--|-------------------|--|
| <b>Compliance; Obligations</b> |  |                   |  |
| Non-discrimination             | <ul style="list-style-type: none"> <li>No discrimination on the basis of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.</li> </ul>  | Clause 1          | As required by Article 15 of the Executive Law   |
| Security                       | <ul style="list-style-type: none"> <li>Must comply with NY State Information Security Breach and Notification Act</li> <li>Must report breach of the security of the system to any resident of NY whose private information was or believed to have been accessed without valid authorization.</li> </ul>                            | Clause 17         | <p>General Business Law Section 899-aa; State Technology Law Section 208</p> <p>Nonprofits that maintain computerized employment records are also subject to the NY Stop Hacks and Improve Electronic Data Security Act (SHIELD Act) and must “develop, implement, and maintain reasonable safeguards to protect the security, confidentiality, and integrity of the private information, including, but not limited to, disposal of data.”</p> <p>For more information see the <a href="#">Lawyers Alliance Legal Alert</a></p> |
| Proprietary Information        | <ul style="list-style-type: none"> <li>Any information submitted to NYSERDA will be subject to the NYS Freedom of Information Law (FOIL), therefore, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format and clearly label any information that is confidential or proprietary.</li> </ul> |                   | <p>For information on FOIL see the website for the Committee on Open Government (<a href="http://www.dos.ny.gov/about/foil2.html">http://www.dos.ny.gov/about/foil2.html</a>) and NYSERDA’s Regulations, Part 501 <a href="http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx">http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx</a></p>  |

| Restrictions; Limitations         |  |          |   |
|-----------------------------------|--|----------|---|
| International Boycott Prohibition | <ul style="list-style-type: none"> <li>Neither Contractor nor any affiliated person has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979.</li> </ul> | Clause 4 | For information about the coverage of this law, see <a href="https://www.bis.doc.gov/index.php/enforcement/oac">https://www.bis.doc.gov/index.php/enforcement/oac</a> |

#### **Exhibit D – NYSERDA Prompt Payment Policy Statement**

- Payment procedures
- Should refer to Exhibit B, Article IV, Section 4.02 for invoicing procedures

#### **Exhibit E – 2017 Report Content Guide**

- Guide to preparing a report for NYSERDA
- Reports should follow format presented in Exhibit E, including proper notices
- Documents published on NYSERDA's website must be accessible and comply with Americans with Disabilities Act