

WEB-RELATED CONTRACT ADDENDUM

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

Section 1. Definitions.

Contractor Content means the Web Site Content developed by the Contractor under this Agreement.

Contractor Tools means the software tools of general application, whether owned or licensed to Contractor, which are used to develop the Web Site.

Documentation means the documentation for the software developed by Contractor specifically for the Web Site and other materials which implement the Web Site.

Error means any failure of the Web Site (i) to meet the specifications in the Statement of Work or the Section of this Addendum addressing hosting requirements and/or (ii) to operate with the hardware or software owned or licensed by the selected Internet Service Provider.

Final version means a non-copy protected and unencrypted digital master of the final version of the Web Site, recorded in executable form on the specified medium with any necessary supporting software and data, as to which all development work hereunder has been completed and which meets all requirements of the Statement of Work.

NYSERDA Content means the Web Site Content provided by NYSERDA, as listed on Schedule “A”.

Web Site means the Contractor Content and the NYSERDA Content as incorporated with the Contractor Content by the Contractor.

Web Site Content shall mean a coordinated collection of computer files, including HTML (Hyper-Text Markup Language), image, audio, video, server and browser based scripts and programs, and other computer files designed to be presented to a web browser by a web server using standard Internet protocols and accessible through one URL (Universal Resource Locator) address.

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

(A) The Web Site (1) will be of high quality and free of defects in material and workmanship in all material respects; and (2) will conform in all respects to the functional and other descriptions contained in the specifications for the Web Site as set forth herein and in the Statement of Work. For a period of one year after the date of acceptance of the Final Version by

NYSERDA (the “Warranty Period”), Contractor agrees to fix at its own expense any Errors.

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

(C) Except to the extent based on NYSERDA Content used as licensed to Contractor and on licenses obtained by Contractor, the use, public display, public performance, reproduction, distribution, or modification of the Contractor Content and Documentation does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trade secrets, trademarks, service marks, publicity, privacy, and patents. The use of the Contractor Tools and any other software in the Contractor Content and Documentation does not and will not violate the rights of any third parties, including but not limited to, copyrights, trade secrets, trademarks, service marks, publicity, privacy, and patents.

(D) Its performance of this Agreement will not conflict with any other contract to which Contractor is bound, and while developing the Web Site, Contractor will not engage in any such consulting services or enter into any agreement in conflict with this Agreement.

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

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

(G) The Contractor Content and the Documentation is not in the public domain.

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

Section 3. Proprietary Rights.

(A) NYSERDA’s Ownership Rights. Contractor acknowledges and agrees that except as stated in subsection (C) of this section, the Contractor Content and Documentation, including but not limited to images, graphic user interface, source and object code, and any documentation and

notes associated with the Web Site are and shall be the property of NYSERDA. Title to any and all now known or hereafter known tangible and intangible intellectual property rights including but not limited to copyrights, trademarks, service marks, patents and trade secrets in the Contractor Content and Documentation is with, and shall remain with NYSERDA.

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

(C) Ownership of Components. Contractor will retain copyright ownership of the following material: _____ *[fill in or state "none"]*("Retained Components"). However, Contractor grants to NYSERDA a royalty-free, worldwide, perpetual, irrevocable, assignable, nonexclusive license, with the right to sublicense through multiple tiers of sublicensees, to use, reproduce, distribute, modify, publicly perform, publicly display, digitally perform, make, have made, sell, offer for sale, or transfer without compensation the Retained Components on the Web Site or any Web site operated by or for NYSERDA and related marketing material.

(D) Power of Attorney. Contractor agrees to execute, when requested, patent, copyright, or similar applications and assignments to NYSERDA, and any other lawful documents deemed necessary by NYSERDA to carry out the purpose of this Agreement. Contractor further agrees that the obligations and undertaking stated in this subsection (D) will continue beyond the termination of this Agreement. In the event that NYSERDA is unable for any reason whatsoever

to secure Contractor's signature to any lawful and necessary document required to apply for or execute any patent, copyright or other applications with respect to the Contractor Content and Documentation (including improvements, renewals, extensions, continuations, divisions or continuations in part thereof), Contractor hereby irrevocably designates and appoints NYSERDA and its duly authorized officers and agents as Contractor's agents and attorneys-in-fact to act for and in Contractor's behalf and instead of Contractor, to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other rights thereon with the same legal force and effect as if executed by Contractor.

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

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

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

or

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

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

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

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

Section 4. Confidentiality.

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

(B) Restrictions on Use. Contractor agrees that except as authorized in writing by NYSERDA: (i) Contractor will preserve and protect the confidentiality of all Confidential Information; (ii) Contractor will not disclose to any third party, the existence, source, content or substance of the Confidential Information or make copies of Confidential Information; (iii) Contractor will not deliver Confidential Information to any third party, or permit the Confidential Information to be removed from Contractor’s premises; (iv) Contractor will not use Confidential Information in any way other than to develop or maintain the Web Site or perform its obligations under the Statement of Work as provided in this Agreement; (v) Contractor will not disclose, use or copy any third party information or materials received in confidence by Contractor for purposes of work performed under this Agreement.

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

Section 5. Accessibility. The Web Site shall comply with New York State policy for Universal Accessibility of web sites. Compliance must be demonstrated by running the Web Site through www.cast.org/bobby/ (“Bobby”) or such other equivalent web site as approved in advance by NYSERDA. Proof that the Web Site is “Bobby Approved” must be provided to NYSERDA monthly by the Contractor. The Contractor must display the “Bobby Approved” icon on the Web Site as requested to do so by NYSERDA.

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

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

Section 7. Hosting.

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

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

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

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

(iv) Security. Contractor shall prevent unauthorized access to restricted areas of the Web Site and any databases or other sensitive material generated from or used in conjunction with the Web Site; and Contractor shall notify NYSERDA as soon as possible of any known security breaches or holes.

(v) Inapplicability of Force Majeure. The foregoing standards shall apply regardless of the cause of the interruption in service, even if the interruption in service was beyond the control of the Contractor.

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

(C) Site Backup. Contractor shall maintain a complete and current copy of the Web Site on a server located at a remote location. In the event that service is interrupted to the Web Site, the remote server shall be immediately activated so that public access to the Web Site continues without interruption.

(D) Site Downloads. Contractor shall make a complete backup of the Web Site daily and shall make such backup available to NYSERDA upon request.

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

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

Section 8. Termination. In the event this Agreement is terminated by NYSERDA pursuant to the provisions of Article XII, NYSERDA will have the right, in addition to all of its other rights, to require Contractor to deliver all of Contractor's completed work and work in progress, including all originals and copies thereof, as well as any other materials provided to Contractor by NYSERDA or third parties, or created by Contractor under this Agreement. Any payments made pursuant to Articles IV and XII of this Agreement shall be deemed payment in full for all of such work in progress, including full payment for all source code, object code, documentation, notes, graphics, and all other materials and work relating to the portion of the Web Site and the assignment or licenses of rights relating to the Web Site which has been completed as of the time of termination. Subject to Contractor's obligations under the provision of this Addendum addressing Termination During Web Site Hosting, Contractor shall remove all copies of the Web Site Content from servers within its control and use reasonable efforts to remove any reference to NYSERDA or the Web Site Content from any site which caches, indexes or links to the Website. This Addendum shall survive termination of this Agreement.

Section 9. Portability Requirement. Contractor shall develop the Web Site in such manner that it may be easily portable at any time from Contractor's servers to the servers of NYSERDA or a third party designated by NYSERDA without losing functionality or operation.

Section 10. Creative Control. The parties acknowledge that NYSERDA possesses final creative control over all content including that which is developed by Contractor.

Section 11. Conflicts. To the extent that any provision of this Addendum conflicts with any provision of the balance of the Agreement, the provisions contained in this Addendum shall control.

Section 12. Corrections to Addendum and Additional Provisions. NYSERDA shall have the right to amend this Addendum at its election to correct any errors or omissions. NYSERDA shall also have the right to amend this Addendum at its election to incorporate additional provisions as it deems necessary and appropriate. NYSERDA will provide written notice of any amendment to this Addendum. Any amendment to correct an error or omission shall be effective

upon the giving of such notice by NYSERDA. Any amendment to incorporate additional provisions shall become effective fourteen (14) business days after the giving of such notice by NYSERDA.

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

The following section should be added as appropriate, as determined by the contracting team:

Section 14. Time is of the Essence. Time is of the essence hereunder.