



ENERGY SERVICES PROGRAM

MASTER COST RECOVERY AGREEMENT

BETWEEN

POWER AUTHORITY OF THE STATE OF NEW YORK

AND

[CUSTOMER]

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ENERGY SERVICES PROGRAM MASTER COST RECOVERY AGREEMENT

This Master Cost Recovery Agreement (this “Master Agreement”), dated _____, is entered into by and between POWER AUTHORITY OF THE STATE OF NEW YORK, a corporate municipal instrumentality of the State of New York with offices located at 123 Main Street, White Plains, New York 10601 (“Authority”) and the _____, a _____ with offices located at _____ (“Customer”).

WHEREAS, Public Authorities Law §1005(17) permits the Authority, as deemed feasible and advisable by the Trustees, to finance and design, develop, construct, implement, provide and administer energy-related projects, programs and services for any public entity and certain other specified entities; and

WHEREAS, the Trustees have authorized the establishment of the Authority’s Energy Services Program (“ESP”) to include, among other things, energy efficiency projects and services, clean energy technology projects and services and high-performance and sustainable building projects and services (including technologies that reduce air and other pollution and conserve materials and resources such as water); and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services; and

WHEREAS, Public Authorities Law §1005(17) permits Customer, a statutorily eligible entity, to enter into an energy services contract with the Authority for such energy-related projects, programs and services as authorized by Public Authorities Law; and

WHEREAS, Authority and Customer desire to work together to develop and implement Projects contemplated under the ESP and to enter into this Master Agreement as more particularly set forth herein.

NOW, THEREFORE, Authority and Customer (sometimes referred to herein collectively as the “Parties” and individually as a “Party”), in consideration of the mutual covenants and conditions contained herein and in these recitals, hereby agree as follows:

DEFINITIONS

The following definitions apply for all purposes of this Master Agreement:

“Advisory Services” means the consulting services provided by Authority or Service Providers to assist Customer in its efforts to reduce energy consumption and associated operations and maintenance costs, to realize environmental benefits, including but not limited to the reduction of air pollution; to conserve natural resources; and/or facilitate the use of clean energy sources at Customer’s Facilities.

“Advisory Services Terms and Conditions” means the additional terms and conditions set forth in Exhibit C applicable to Advisory Services Projects provided by Authority or Service Provider to Customer hereunder.

“Ancillary Documents” means documents, other than this Master Agreement and the Customer Project Commitment (and documents that modify them, such as Change Orders and Contingent Work Orders), covering information necessary for the implementation of a specific Project, such as authorizations, Substantial Completion and Operation Transfer Reports, Milestone Completion Reports and Final Inspection Reports, etc.

“Authority’s Authorized Representative” means an individual designated by Authority in accordance with Section 10.1(b) to coordinate a Project on behalf of Authority and to communicate with Customer concerning such Project.

“Authority Implemented Work” means Work undertaken by Authority for Customer as more fully set forth in a CPC (subject to the terms and conditions of this Master Agreement and any applicable Transaction Document) through the services of qualified Service Providers or Subproviders engaged by Authority.

“Authority Material Handling Fee” is a fee applied by the Authority to the cost of materials purchased directly by the Authority for a Project, where applicable, to reimburse the Authority for procurement, material handling, storage and/or restocking. The amount of such fee, when applicable to a Project, will be set forth in the CPC, as superseded by the Final CPC.

“Authority Program Fee” mean Authority’s fee applicable to each Project. Details of the Authority Program Fee will be set forth in the Compensation Schedule, attached hereto as Exhibit A, and the amount of such fee will be set forth in the CPC, as superseded by the Final CPC.

“Background Intellectual Property Rights” means Intellectual Property Rights of a Party owned, controlled, acquired, developed, invented, generated, authored, conceived or reduced to practice prior to the date of this Master Agreement, or acquired parallel to and independent of this Master Agreement or any Transaction Documents entered into under this Master Agreement.

“Capital Project” is a Project involving the design, construction, installation and/or modification of facilities and/or equipment in Customer’s Facility.

“Capital Project Terms and Conditions” means the additional terms and conditions set forth in Exhibit B applicable to Capital Projects provided by Authority or Service Provider to Customer hereunder.

“Change Order” is a Transaction Document that memorializes a modification to the CPC that cannot be made by Contingency Work Order, setting forth agreed-upon additions, deletions or revisions to the Work, and the cost and/or time impact to the Project.

“Compensation Schedule” is a schedule attached hereto as Exhibit A setting forth details about the Authority Program Fee and other relevant Project costs, where applicable, for the different services offered by Authority under this Master Agreement.

“Contingency Work Order” is a Transaction Document that memorializes the Authority’s use of the Project Contingency for a Project, such use to be reflected on subsequent CPCs that are executed for the particular Project.

“Customer’s Authorized Representative” means an individual designated by Customer in accordance with Section 10.1(a), to coordinate a Project on behalf of Customer and to assist Authority, its Service Providers and Subproviders with the implementation of the Project.

“Customer Project Commitment” or “CPC” is a Transaction Document containing terms and conditions for one or more specific Projects at a Customer’s Facility(ies) that includes, at a minimum, the location of Customer’s Facility, a detailed scope of Work (including a description of milestones, if any), the projected Project costs and any specific payment terms applicable to the Project.

“Data” refers to data, metadata, data elements, identifiers, data models, data structures, databases, information, files, documents, materials, content, libraries, code, scripts, algorithms, and any items similar to any of the foregoing, that are collected by the Authority.

“Debris” shall mean unregulated materials removed from a Customer Facility and unsuitable for further use.

“Environmental Laws” means all current and future federal, state and local laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), environmental permits, and obligations and other requirements imposed by any “Governmental Authority” (as defined herein), including New York State Department of Environmental Conservation (“NYS DEC”) Technical Administrative Guidance Memoranda and other guidance documents issued or published by any Governmental Authority, in each case, relating to pollution, protection of the environment, natural resources, or protection of human health and safety from conditions in the environment, the presence, “Release” (as defined herein) of, threatened Release of, or exposure to, “Hazardous Substances” (as defined herein), or to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

“Environmental Liabilities” means all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses, and costs, relating to environmental conditions or activities, including (i) Remediation costs, engineering costs, environmental consultant and expert fees, laboratory fees, permitting fees, investigation costs, defense costs, and reasonable attorneys’ fees and expenses; (ii) any claims, demands, and causes of action relating to or resulting from any personal injury (including wrongful death), property damage (real or personal) or natural resource damage; and (iii) any penalties, fines or costs associated with the failure to comply with any Environmental Law.

“Energy Services Program” or “ESP” includes energy efficiency projects and services; clean energy technology projects and services; high-performance and sustainable building programs and services (including technologies that reduce air and other pollution, conserve materials and resources such as water); and the construction, installation and/or operation of facilities or equipment done in connection with any such project, programs and services.

“Facility” means the building, structure or premises owned and/or operated by Customer that may benefit from Customer’s participation in Authority’s ESP Program.

“Final CPC” means the document that reflects the final reconciliation of Project costs and all amendments to the CPC that is issued by Authority to Customer upon completion of the Work for a Project.

“Final Inspection Report” means the report, if any, to be executed by Authority and Customer after completion of a Project.

“Hazardous Substances” means (i) any petroleum, petroleum products or byproducts, and all other regulated hydrocarbons (including without limitation, petrochemicals and crude oil), or any fraction thereof, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons, and other ozone-depleting substances; and (ii) any chemical, material, substance, product or waste (including thermal discharges and hazardous waste) that is prohibited, limited, or regulated by or pursuant to any Environmental Laws.

“Intellectual Property Rights” means any and all intellectual property rights, including, but not limited to rights in any and all of the following: (i) technical information and know-how; (ii) discoveries, improvements, enhancements, upgrades, inventions, (whether or not patentable); (iii) patents, patent applications, patent disclosures, and any other patentable subject matter; (iv) copyrights, applications to register copyrights, works of authorship and any other copyrightable works; (v) trademarks, trade names, trade dresses, brand names, logos and similar marks; (vi) any sketches, drawings, outlines, drafts; (vii) computer software (including source code, executable code, databases, data and related documentation); (viii) trade secrets and know-how; and (ix) all improvements or modifications to any of the foregoing.

“Labor Cost” is that portion of the Total Reimbursement Costs for installation labor performed by Service Provider and Subprovider in connection with the Work performed in connection with a Project pursuant to a CPC based on this Master Agreement. Such costs will be detailed in each CPC.

“Long-Term Repayment Obligation” means the obligation of Customer to repay Authority in accordance with and subject to the terms of a loan agreement after conversion of a Short-Term Repayment Obligation.

“Material Cost” is that portion of the Total Reimbursement Costs related to equipment, materials and supplies in connection with the Work performed in connection with a Project pursuant to a CPC based on this Master Agreement. Such costs will be detailed in each CPC.

“Milestone Completion Report” means a document generated by Authority or Service Provider that identifies a milestone(s) satisfactorily completed during the progress of a Project or phase of a Project (i.e., design, construction, or otherwise), signifies Customer’s concurrence with the completion of such milestone and represents Customer’s authorization to proceed to the next milestone or phase of the Work, as applicable.

“Other Agreement” means any stand-alone agreements entered into between the Parties at any time, including, without limitation, non-disclosure agreements, privacy agreements, or grant agreements, but shall not include any Master Cost Recovery Agreement, Energy Efficiency

Services Agreement or other agreements governing services under the ESP entered into by the Parties prior to the execution of this Master Agreement.

“Processed Data” means any data, information, work product, report, model or document produced, created or prepared at any time by the Authority which is a derivative work, compilation, combination, analysis, interpretation, repackaging, or reformatting of the Data.

“Project” means any project or service undertaken through Authority’s ESP pursuant to a CPC based on this Master Agreement.

“Project Contingency” means a defined budget to be utilized at the Authority’s discretion in accordance with Section 2.3 hereof for, among other things, unexpected costs and expenses that may arise during the performance of a Project (usually calculated as a percentage of Material Cost and Labor Cost).

“Release” means any actual or threatened release, spill, emission, emptying, escape, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching, or migration into the environment or within any building, structure, facility, or fixture and/or the exacerbation of any preexisting condition of Hazardous Substances.

“Remediation” means the investigation (including any feasibility studies or reports), cleanup, removal, abatement, transportation, disposal, treatment (including in-situ treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances and any Release(s), that may be required to satisfy Environmental Laws, in each case, including, without limitation, any closure, restoration or monitoring, operations and maintenance activities, including any engineering or institutional controls, that may be required by any Governmental Authority after the completion of such investigation, study, cleanup, removal, transportation, disposal, treatment, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Authority in connection with such investigation, cleanup, removal, transportation, disposal, treatment (including in situ treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that may be imposed pursuant to an Environmental permit or a consent order).

“Service Provider(s)” means a third party provider of goods and/or services that Authority, acting as the contracting entity, contracts with through its procurement policies, procedures and guidelines to perform Work in connection with a Project at Customer Facilities.

“Service Provider Fees” means the costs associated with the payment to Service Providers, its Subproviders and other third party professionals for Work performed with respect to a specific Project. Service Provider Fees will be detailed in each CPC.

“Short-Term Interest” is a cost component of the Total Reimbursement Costs of a Project representing the costs incurred by the Authority in connection with financing the delivery of a Project during the time within which such funds remain unpaid by Customer.

“Short-Term Repayment Obligation” refers to Customer’s obligation to reimburse Authority for the costs of delivering a Project, as identified in the Final CPC.

“Short-Term Repayment Obligation Maturity Date” means the date set forth in the Final CPC, no later than ninety (90) days following the approval of the Final CPC.

“Specific Subject Matter” shall mean intellectual property rights, payment and financing terms, Authority’s liability and limitation thereof, Project warranties, and amendments to this Master Agreement and/or any Transaction Documents.

“Subprovider(s)” refers to individuals or entities retained by the Service Provider(s) to perform all or part of the Work.

“Substantial Completion and Operation Transfer Report” is a document signed by the Parties signifying that the equipment and/or facilities installed at the Project have been inspected, tested and accepted by Customer.

“Third Party” means any utility company, permit agency, governmental authority having jurisdiction over a Project, any contractor or service provider hired by Customer, or any other third party that is not a Service Provider or Subprovider but is, directly or indirectly, involved in or whose approval is required in connection with, a Project and not under contract, directly or indirectly, with the Authority.

“Total Annual Energy Savings” is the estimated net reduction in Customer’s annual usage of (a) energy service, (b) other utilities including, but not limited to, water and sewer, and (c) any related operation or maintenance savings, if applicable, resulting from the installation of one or more energy conservation measures in accordance with this Master Agreement.

“Total Reimbursement Costs” is the sum of all of the costs of a Project as set forth in the CPC and Final CPC, including, but not limited to, to the extent applicable to such Project: (1) Material Cost; (2) Labor Cost; (3) the amount of the Project Contingency applied as a Project cost; (4) Service Provider Fees; (5) Authority Program Fee; (6) Short-Term Interest; and (7) other Project-related costs and expenses.

“Transaction Document(s)” means with respect to a Project, this Master Agreement and any related Customer Project Commitment and any document that modify them, such as Change Orders and Contingency Work Orders.

“Waste” refers to waste PCBs (as defined by the United States Environmental Protection Agency (“USEPA”) in 40 CFR Part 761) and hazardous waste (as defined by the USEPA in 40 CFR Part 261 and the NYS DEC in 6 NYCRR Part 371) as well as other material regulated for purposes of release, reuse, disposal, or recycling (e.g. CFCs, ethylene glycol, mercury, oil, asbestos), which form a part of the equipment removed from Customer Facilities due to implementing the Work. Disposal of such Waste shall be conducted in accordance with the provisions set forth in Article IV.

“Work” means the services performed for Customer for a selected Customer Facility pursuant to this Master Agreement and the other Transaction Documents for a Project. The scope of Work shall be described in the CPC, as amended by subsequent Change Orders, Contingency Work Orders, and the Final CPC.

ARTICLE I

SCOPE AND APPLICATION OF AGREEMENT; ORDER OF PRECEDENCE

1.1 Transaction Documents. In connection with each Project, the Parties will, either concurrently with or subsequently to this Master Agreement, enter into one or more Customer Project Commitments, or similar memoranda, that define a specific Project(s) and the costs and fees associated with such Project, and associated Ancillary Documents. Except as otherwise expressly set forth therein, all Transaction Documents, upon execution by the Parties, shall be governed by the terms and conditions of this Master Agreement. Each Transaction Document shall contain a specific reference to this Master Agreement and CPC, as applicable. This Master Agreement does not obligate Authority to accept requests for Projects issued by Customer or obligate any Party to enter into a CPC.

1.2 Entire Agreement. Subject to the provisions of Section 1.4 below, with respect to a Project, this Master Agreement (including Exhibits A, B, and C and any other exhibits, schedules or appendices hereto) and any Transaction Document which specifically references a Project, constitute the entire agreement between Authority and Customer concerning such Project, and supersedes all prior negotiations, representations, contracts and agreements concerning such Project.

1.3 Conflict and Order of Precedence. In the event of a conflict between the terms of this Master Agreement and the terms and conditions set forth in another Transaction Document, or between the terms of two or more Transaction Documents in effect for a Project, the order of precedence shall be as follows: (i) the terms of the CPC for such Project (as amended by Contingency Work Orders and/or Change Orders and as superseded by the Final CPC) but solely with respect to the price (i.e., the Project's Total Reimbursement Costs), payment and financing terms, and scope of Work (including description of milestones) of the Project; (ii) the terms of this Master Agreement; (iii) the remaining terms of the Project CPC; and (iv) the terms of any Ancillary Document. Notwithstanding the foregoing, the Parties agree that with respect to Specific Subject Matters, if the terms of a Transaction Document concerning a Specific Subject Matter are more favorable to Authority than the respective terms set forth in this Master Agreement, the more favorable terms of the Transaction Document shall prevail with respect to the Project to which it relates. (By way of example, if a Transaction Document includes a term that disclaims any warranties by Authority (or Service Provider) for Work performed, such term would prevail over the warranties set forth in Section 7.1. hereof.)

1.4 Other Agreements. This Master Agreement supersedes all Master Cost Recovery Agreements, Energy Services Agreements or other agreements governing services under the ESP entered into by the Parties prior to the execution of this Master Agreement. Notwithstanding the foregoing, this Master Agreement does not supersede and does not apply to any Other Agreements existing between Customer and Authority. Any projects which Authority has undertaken or undertakes at Customer Facilities pursuant to such Other Agreements, or under prior Energy Services Agreements under which projects remain incomplete as of the date of this Master Agreement, shall be governed by those agreements and related documents, unless otherwise agreed

in writing. Termination of this Master Agreement shall have no effect on the Other Agreements which will remain in full force and effect according to their respective terms.

1.5 Amendments. This Master Agreement and any other Transaction Document executed in connection herewith may be amended only in writing signed by an authorized officer or designee of Authority and Customer.

ARTICLE II

GENERAL PROJECT STRUCTURE

2.1 Customer Project Commitment or CPC. For each Project undertaken under this Master Agreement, the parties will enter into one or more CPC(s), each of which will state the specific terms and conditions applicable to such Project, segregating the Project into logical phases to be performed consecutively. Each CPC will include, at a minimum, the phasing plan setting forth how the Project will proceed, the location of Customer's Facility, scope of Work, (including description of milestones, if any), projected Total Reimbursement Costs, and payment terms.

The Authority is not obligated to commence any Work for a particular Project unless or until a CPC is executed by Authority and Customer. Notwithstanding the foregoing, the Parties may agree to expedite the commencement of a portion of the Work associated with a particular Project prior to the execution of a CPC provided that the Parties memorialize such agreement prior to the commencement of such Work in a writing that sets forth the specific items of Work to be commenced and the associated cost of such Work. In such event, Customer agrees to bear the costs of any Work undertaken by Authority or its Service Providers for Customer in preparation for or with respect to such Project or potential Project even if no CPC is ultimately executed.

2.2 Final CPC. As soon as practicable following completion of the Work and receipt of all invoices associated with a Project, Authority will generate a Final CPC which will include all Contingency Work Orders, and all agreed-upon Change Orders, if any. The Final CPC will reconcile the Total Reimbursement Costs set forth in the CPC on the basis of Authority's actual costs and will supersede all prior CPCs. The Final CPC shall also describe the Project-specific terms for the Work completed at the Facility or Facilities, Customer's Short-Term Repayment Obligation, and the final repayment terms. Authority and Customer shall execute such Final CPC, which shall be "deemed executed" unless Customer disputes such Final CPC in writing within forty-five (45) days of the Authority's transmission thereof. If Customer timely disputes the Final CPC, then the Parties shall endeavor to resolve the dispute as expeditiously as possible in accordance with the procedures set forth in Section 12.2; provided, however, that Customer shall pay any undisputed amounts of Customer's Short-Term Repayment Obligations set forth in the Final CPC in accordance with Article V hereof.

2.3 Contingency Work Order. If unexpected costs and expenses arise during the performance of a Project, the Authority may utilize the Project Contingency, provided that (i) the scope modifications, if any, are consistent with the general nature of the Project; (ii) the modifications do not render the Project ineligible under the Authority's Energy Services Program requirements; and (iii) the cumulative increased Project costs do not exceed the Project Contingency. Contingency Work Orders may be utilized to account for, among other things,

remedial work required due to design or construction omissions (whether remedial work is caused by omissions of Authority, its Service Providers or Customer) to the extent that the requirements set forth above are met. If the requirements for a Contingency Work Order are not met, Authority and Customer may negotiate a Change Order as described in Section 2.4 below.

As the Project Contingency is utilized, the Authority will issue a Contingency Work Order, which shall be effective upon issuance and automatically update the terms of the respective CPC without the need for express Customer approval. Any objections to the manner in which the Authority is utilizing the Project Contingency must be raised by the Customer in writing to the Authority within seven (7) days of the Authority's issuance of any such Contingency Work Order, or such other period of time identified in the Contingency Work Order. Failure to comply with this notice requirement by the Customer will be deemed a waiver of any claim that (i) the Project Contingency was used improperly; or (ii) that payment on account of such Contingency Work Order is disputed. Upon request, the Authority will provide Customer with periodic reports that establish an accounting of how the Project Contingency is being utilized.

2.4 Change Order. Any party to a CPC may at any time by written notice to the other party request modifications to the Work described in the executed CPC. Authority shall provide Customer with a written analysis of the effects of the requested modification(s) and, provided that the requested modification(s) do not materially alter the general scope of the Project, the Parties will negotiate a Change Order to the CPC. No Change Order shall take effect until it is approved within the time period specified in the Change Order by Authority and by Customer in accordance with Customer's procedures to authorize amendments to the CPC. In the event of a dispute over a request for a Change Order, Authority may elect to proceed with the Work in accordance with the scope of Work as set forth in the CPC (as revised by agreed-upon Change Orders and/or Contingency Work Orders), or the dispute may be treated under the provisions of Section 12.1 hereof.

2.5 Unforeseen Circumstances or Conditions. In the event that circumstances or conditions at Customer's Facility are encountered after a CPC is executed, that may require changes to the Project schedule and/or result in an increase to the Total Reimbursement Costs of the Project, Authority shall as soon as practicable notify Customer. The CPC shall be revised by a Contingency Work Order or a Change Order, as applicable, to incorporate necessary changes to the Project schedule, the scope of Work and/or any increase in the Total Reimbursement Costs, as a result of the existence of the unforeseen circumstance or condition. Customer shall assume any increase in costs as part of its Short-Term Repayment Obligation.

2.6 Third Party Obligations. The Authority shall not be held responsible for any action or failure to act of Customer, its officers, employees, agents, representatives or any Third Party, including, but not limited to, any delay in issuance or any non-issuance of a permit or approval necessary to perform or close out the Work under a Project. Any changes to the Project schedule or scope of Work or any increase in the Total Reimbursement Costs caused by such act or failure to act, shall be Customer's responsibility. If the Third Party conduct necessitates the issuance of a Change Order to compensate the Authority for any changes to the Project schedule, scope of Work or Total Reimbursement Costs resulting from such act or failure to act, Authority may suspend its Work on the Project until Customer approves such Change Order. If Customer fails to approve the Change Order within thirty (30) days of its issuance or the Project is suspended as a

result for more than ninety (90) days, Authority, in its sole discretion, may terminate all Project Work and issue a Final CPC as provided in Section 3.4(d) below.

2.7 Execution and Disputes Regarding Reports. The execution of a Milestone Completion, Final Inspection, Substantial Completion and Operation Transfer Report or similar report(s) shall not be unreasonably withheld by either Party, and the Parties shall endeavor to fully execute such report within thirty (30) days after its submittal to Customer or it shall be deemed executed unless it was disputed by Customer in writing within such thirty (30) day period. In the event of any disputes by Customer with respect to such report(s), the Parties shall endeavor to resolve such dispute as expeditiously as possible in accordance with Sec. 12.1 hereof.

2.8 Limitation on Work in Certain Premises. Absent the express written consent of Authority, no Work of any kind shall be performed in any premises of Customer used for private business use within the meaning of Section 141(b) of the U.S. Internal Revenue Code of 1986, as amended.

2.9 Eligibility Criteria. Projects will be undertaken on an individual basis in Customer's Facilities as deemed feasible and advisable by Authority and mutually agreed to by Authority and Customer. A Project will not proceed unless it satisfies (as determined by Authority in its sole discretion) Authority's requirements related to reduction in overall primary energy costs, energy conservation, results in environmental benefits and/or other requirements of the Authority's Energy Services Program, then in effect.

ARTICLE III

SUSPENSION AND TERMINATION OF PROJECTS

3.1 Suspension of Work.

(a) Suspension by Customer. Customer may direct Authority to suspend Work at any Customer Facility by written notice to Authority. Authority, and the Service Providers and Subproviders, will thereupon cease Work at that Facility as soon as practicable.

(b) Suspension by Authority. In addition to any other right by Authority to suspend Work on a Project set forth herein, Authority may suspend Work at any Customer Facility if any of the following occurs: (i) Customer fails to make payment to Authority when due; and such payment default continues for a period of ten (10) days after written notice thereof by Authority to Customer; (ii) circumstances or conditions at Customer's Facility are discovered after a CPC is executed which require changes to the Project and/or result in an increase to the Project's Total Reimbursement Costs that cannot be covered by the use of any remaining Project Contingency budgeted for the Project; (iii) a Third Party's act or failure to act causes a delay to the critical path of the Project schedule that continues for a period of thirty (30) days after written notice thereof by Authority to Customer; (iv) a delay caused by a Force Majeure event continues for a period of fifteen (15) consecutive days; (v) the existence of a hazard not caused by Authority or its Service Provider(s) that threatens the safety and protection of the site, its inhabitants or the public; or (vi) the existence of an unforeseen circumstance or condition the correction of which could reasonably be expected to (A) create an unreasonable risk for Authority or Service Provider

not ordinarily associated with projects of similar size and scope (as determined by Authority); (B) create a threat to life or safety of the inhabitants or the public in general, or (C) violate applicable federal, state or local laws, regulations, codes or standards.

(c) Liability for Cost Increase as Result of Suspension. The suspension of Work by either Party pursuant to the provisions of this Section 3.1 may adversely impact the Project schedule, the scope of Work and/or the Total Reimbursement Costs. The CPC may be revised by a Contingency Work Order or Change Order, as applicable, to incorporate any necessary changes. Customer shall assume any increase in the Total Reimbursement Costs in full as part of its Short-Term Repayment Obligation unless the suspension was caused by the gross negligence or willful misconduct of Authority, its Service Provider or Subprovider, in which case Customer will not be responsible for any increase in the Total Reimbursement Costs to the extent such increase is caused by such gross negligence or willful misconduct.

(d) Resumption of Work After Suspension. In the event Work on a Project was suspended by a Party (whether pursuant to this Section 3.1 or otherwise), Authority and Customer have to agree in writing that Work shall resume before any Work on the Project can continue. In the event Work is suspended for more than ninety (90) days, Authority, in its sole discretion, may terminate Work for that Project and Authority shall issue a Final CPC as provided in Section 3.4(d) below.

3.2 Emergency. If an emergency results in or could reasonably be expected to result in personal injury or loss of life or damage or harm to property or public safety, Customer, acting in good faith in order to prevent, avoid or mitigate personal injury or loss of life or damage or harm to property or public safety may direct a Service Provider to suspend Work. Customer shall provide written notification to Authority of the suspension and events leading up to the suspension within eight (8) hours after the emergency has been stabilized. Sections 3.1(c) and (d) shall also be applicable to a suspension under this Section 3.2.

3.3 Termination of a Project. Authority may terminate a Project (and the related CPC) at any time upon thirty (30) days' prior written notice to Customer. In addition, the following incidents shall be deemed to immediately terminate a Project: (i) closure, abandonment, destruction or material damage to the Facility for which Project Work is being performed; (ii) reduction or elimination of energy savings or other modification to the Project that, in the Authority's opinion, renders the Project ineligible under the Authority's requirements for inclusion in its Energy Services Program, whether due to removal, by-passing or alteration of equipment or due to any unforeseen event; (iii) discovery of asbestos or other hazardous material in Customer's Facility that impedes the execution of the Work; and (iv) failure by Customer to make payment to Authority when due and such payment default continues for a period of thirty (30) days after written notice thereof by Authority to Customer.

3.4 Actions Upon Project Termination or Cancellation. In the event that a Project is canceled or terminated in whole or in part subsequent to execution of a CPC but prior to completion of such Project, Authority shall:

(a) Discontinue or direct Service Provider(s) to discontinue all Work and the placement of all orders for materials, equipment or labor otherwise required for the Project or terminated part of the Project, as applicable;

(b) Cancel or direct Service Provider to cancel all existing orders and subcontracts related to performance of the Project or terminated part of the Project, as applicable;

(c) Take actions reasonably necessary, or as directed by Customer in writing, for the protection and preservation of the Work and all Project-related equipment, materials and property within Authority's or Service Provider's possession and control; and

(d) Issue a Final CPC covering (i) that portion of the Total Reimbursement Cost (excluding the Authority Program Fee) actually incurred by Authority at or prior to such termination/cancellation both for the performed and for the terminated portion(s) of the Work (including, but not limited to, non-cancelable material and equipment not yet incorporated into the Work); (ii) the costs for any additional services performed by Authority or Service Provider pursuant to 3.4(c) hereof; (iii) any wind-down costs incurred by Authority and its Service Providers and Subproviders as a result of the termination/cancellation, along with Service Providers' and Subproviders' reasonable and customary overhead and profit on the Work not executed; and (iv) the Authority Program Fee. The Authority Program Fee for a Project that is terminated or canceled prior to completion shall be as set forth in the Compensation Schedule, unless otherwise agreed upon by the Parties in the CPC.

ARTICLE IV

ENVIRONMENTAL PROVISIONS

4.1 Hazardous Materials and Disposal of Waste and Debris.

(a) General Responsibilities. With respect to Authority Implemented Work, Authority shall require that Service Provider and/or Subprovider (as applicable) be responsible for environmental air monitoring and thoroughly cleaning the job site, including the removal of Waste and Debris generated as a result of a Project. Such removal may involve the management, transportation and disposal of Waste and Debris. If in the course of performing the scope of the Project Work as described in the CPC for any Authority Implemented Work, Authority encounters existing Hazardous Materials, including but not limited to Waste, any such materials shall be handled, transported and disposed of in accordance with applicable local, state and federal laws and regulations, as well as Authority's policies and procedures.

(b) Customer is Generator of Waste. The Customer acknowledges that, in accordance with USEPA and NYS DEC regulations, it is, and remains the Generator of, and holds title to, any Waste encountered during Work performed pursuant to this Master Agreement. If the Customer holds a Hazardous Waste "Generator Identification Number" for the specific site where work is being performed (as defined in Section 3010 of Subtitle C of RCRA), that number will be utilized for any and all hazardous waste disposal. If a Hazardous Waste "Generator Identification Number" does not exist, one may need to be obtained from the USEPA for each site from which Authority removes Waste. The Customer authorizes Authority, where required by USEPA and/or

NYS DEC regulations, to apply in the name of the Customer for Hazardous Waste Generator Identification Numbers in order to dispose of Waste pursuant to this Master Agreement and to act as the contact Party for such applications. To the extent that the Customer is the generator of the Waste, a duly authorized representative of the Customer must sign such applications when requested by Authority. The Customer also authorizes Authority, where required by USEPA and/or NYS DEC regulations, to prepare, in the name of the Customer, any manifests or other forms required for the disposal of the Waste generated pursuant to activities under this Master Agreement. A duly authorized representative of the Customer shall sign any manifests or other shipping records required to ship Waste offsite for disposal.

(c) Notification and Cost of Waste Disposal. With respect to Authority Implemented Work, Authority shall advise Customer (whenever possible, in advance of removal) where material determined to be Waste has been encountered which must be disposed of pursuant to USEPA and NYS DEC regulations. Authority shall keep the Customer fully informed of Authority's activities on its behalf and shall provide the Customer with copies of all applications and other materials provided or received in connection with actions taken pursuant to this authorization. The direct costs of Waste disposal will be included in the Final CPC. Any costs to Authority relating to the Project that may arise subsequent to the time the Final CPC is executed (or deemed executed) under present or future laws or regulations due to pollution, clean-up or otherwise at the site of disposal shall be borne by the Customer. If, however, such costs are due to the negligence or willful acts of Authority's Service Provider or Subprovider or due to the willful acts of Authority, the Customer shall not be responsible. With respect to Authority Implemented Work, Authority shall use reasonable diligence in overseeing the removal and disposal of Waste, shall maintain complete and accurate records thereof, and shall make those records available to the Customer upon request. In addition, any existing equipment determined by the Customer to be useful to the Customer may, at the Customer's request, be retained by the Customer and shall be the sole responsibility of the Customer.

(d) Customer Disposal of Waste. Notwithstanding the foregoing, the Customer shall have the option of disposing of Waste and Debris generated as a result of a Project at its own expense in accordance with all applicable local, state and federal laws and regulations, as well as Authority's policies and procedures.

4.2 Remediation. The Customer shall be responsible for the performance of any Remediation required under applicable local, state and federal Environmental Laws in order to address the existence or suspected existence of Hazardous Substances in, on, or under the job site that are discovered or encountered during Work performed and any Release or threatened Release in, on, under, over or migrating to, from or through the job site. The Customer shall promptly take all actions as are necessary to perform Remediation of any such Release or Discovery, and such other work as may be required by any Governmental Authority to safeguard the health, safety or welfare of any persons, the land and any improvements thereon or there under, from any Release or threatened Release or Discovery. In the case any Remediation is required, the Customer shall be responsible for restoring the affected portion or portions of the job site, together with any and all affected soil and groundwater, to the functional and topographical condition that existed prior to the Release and Remediation, as well as to the condition required by Environmental Laws, and as necessary to satisfy the requirements of any Governmental Authority exercising jurisdiction with respect to the job site for such Release or Discovery.

4.3 Environmental Indemnification. Customer shall be solely responsible for any and all loss, damage or injury to persons or property and for any cleanup costs associated with any site where Waste and Debris are disposed of or comes to be situated including, but not limited to, response and remedial costs. In addition, to the extent permitted by law, the Customer shall, at its sole cost and expense, indemnify, defend and hold harmless Authority and the State of New York against any loss, liability (including, without limitation, judgments, attorney's fees, court costs, penalties or fines), or expenses of any type (including, but not limited to, required corrective actions) which Authority or the State of New York incurs because of injury to, or death of any person, or on account of damage to property, or any other claim arising out of, in connection with, or as a consequence of (a) the disposition or use of retained equipment by the Customer or anyone for whose acts the Customer may be liable, and (b) any cleanup costs associated with any site where Waste and Debris are disposed of or come to be situated traceable to such Waste and Debris including, but not limited to, response and remedial costs.

ARTICLE V

RECOVERY OF COSTS/REPAYMENT OBLIGATION

5.1 Project Cost. Authority shall initially pay for and/or incur costs for all components of the Total Reimbursement Costs applicable to a Project at the selected Customer Facility. Customer agrees to pay the Authority the Total Reimbursement Costs specified in the respective CPC as reconciled by the Final CPC.

5.2 Total Reimbursement Costs. The following components of the Total Reimbursement Costs may be delineated in a CPC for a particular Project:

(a) Material Cost. The Material Cost represents the cost of materials, equipment, fixtures, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

(b) Labor Cost. The Labor Cost represents (i) the sum of all wages paid to skilled trade and craft workers, plus employee benefits, payroll taxes, insurance and related costs; or (ii) the fees paid to skilled trade and craft workers that are not employees, in each case as represented on the Service Providers' or Subproviders' invoice.

(c) Project Contingency. The Project Contingency, or a portion thereof, actually applied by the Authority to the Project as set forth in a Contingency Work Order.

(d) Service Provider Fees. The Service Provider Fees represent the costs associated with the payment of Service Providers, Subproviders and other third party professionals based on actual invoices, individual billing rates based on hourly increments, or a percentage fee applied to certain Project costs, plus reimbursable expenses;

(e) Authority Program Fee. The Authority Program Fee reimburses Authority for services provided by Authority during the implementation of a Project. The Authority Program Fee can be based on a percentage fee applied to certain Project costs, a lump sum fee, individual

billing rates based on hourly increments and/or other fee arrangements identified in the Compensation Schedule.

(f) Short-Term Interest. Short-Term Interest reimburses the Authority for costs incurred in connection with financing the delivery of a Project. It is based on the underlying source of funds chosen by the Authority, in its sole discretion, to finance a Project during its implementation and may vary depending upon the actual financing product the Authority selects. In addition to the actual interest expense incurred by the Authority on the short-term debt issued for Project expenses, Short-Term Interest may include additional fees for administering the financing program including but not limited to costs incurred to secure liquidity facilities, remarketing services, purchase of an interest rate cap(s), issuing and payment agents and other financing related costs and credit premiums, if any.

(g) Other Project-Related Costs. Other Project-related costs may include Authority Material Handling Fee, Waste disposal costs, additional Project-specific insurance, surety bond costs, specialty services and other Project-specific costs not otherwise included in any of the above categories.

5.3 Billing. The specific billing method for each Project is set forth in the CPC and/or the long-term financing agreement associated with the particular Project. The final repayment amount due to the Authority will be the Total Reimbursement Costs as reconciled in a Final CPC to reflect adjustments to account for payments made or additional charges incurred by Customer and will constitute the Customer's Short-Term Repayment Obligation. In the event a Project is terminated before completion, Authority shall issue a Final CPC as provided in Section 3.4(d).

5.4 Payment.

(a) Payments. Customer shall pay any invoiced amounts to Authority within thirty (30) days of Customer's receipt of Authority's invoice. Any outstanding amounts not paid within such thirty (30) day period shall accrue additional Short-Term Interest until the date when payment is made in full. Such additional Short-Term Interest will be reflected on subsequent invoices and/or the Final CPC.

(b) Late Payment. Customer's final Short-Term Repayment Obligation shall be fully repaid on or before the Short-Term Repayment Obligation Maturity Date. Any amount due and unpaid on the Short-Term Repayment Obligation Maturity Date shall be subject to interest in accordance with the late payment rate set forth in State Finance Law §179(g).

5.5 Grants and Funding. Authority may pursue and apply for grants or other available funding for the respective Project, where applicable, when authorized by Customer. The Customer may assign the right to receive such grants or other available funding to the Authority, and the Authority may, at its sole discretion, accept such assignment. If Authority accepts such assignment, the Authority will apply the funds to reduce the Total Reimbursement Costs, provided the funds are actually received by the Authority by the Short Term Repayment Obligation Maturity Date.

5.6 Long-Term Financing for Capital Projects. Should Customer desire financing to satisfy its Short Term Repayment Obligation for a Capital Project, the Customer may apply for long-term financing through the financing products offered by the Authority to convert Customer's

Short-Term Repayment Obligation to a Long-Term Repayment Obligation. The Authority at its sole discretion may make a long-term financing option available to the Customer. This is a fixed rate long-term financing product provided by the Authority in collaboration with a third-party. General parameters include:

- Rates will be based on a fixed rate (Authority borrowing rate or equivalent) adjusted for customer's credit, term of agreement or other factors as appropriate;
- Available for the period after project acceptance and closing; and
- Funding is contingent on the execution of appropriate financing documentation containing customary terms and conditions including representations, warranties, covenants, legal opinions and other conditions precedent.

The Authority will endeavor to provide options for the Customer to make financing payments as a monthly billing surcharge to the Customer's electrical supply bill under the then-effective power supply agreement between the Customer and Authority (it being understood if a Customer is not served by the Authority, such monthly billing will not be a surcharge but rather a separate invoice for the repayment amount due).

The Authority from time to time may modify its financing offer and/or develop/offer new Project or program financing mechanisms to Customers. Details on future financing products will be provided and agreed on a Project- or program-specific basis either through a separate document or amendment to this agreement.

Regardless of whether the Customer elects to utilize any of the Authority's available financing products, the Customer is responsible for satisfying its Short Term Repayment Obligation within the time constraints set forth herein.

If the Customer elects to apply for Long Term Financing, it shall submit a loan application a minimum of 90-days prior to anticipated Final CPC execution. If Customer's application for long-term financing is approved by the Authority, the Parties' obligations with respect to such financing will be set out in an amendment to this agreement, the CPC, or as a separate agreement, with terms and conditions agreed to by the Parties.

ARTICLE VI

INSURANCE REQUIREMENTS

Authority's agreements with the Service Providers shall provide that the Service Provider or Subproviders shall obtain and maintain the policies of insurance with the identified limits set forth in Section 6.1, unless additional policies of insurance and/or higher limits are required under the applicable CPC. The costs of such insurance will be part of the Total Reimbursement Costs.

6.1 Insurance Requirements:

(a) Workers' Compensation (inclusive of New York State disability benefits) and Employer's Liability coverage;

(b) Commercial General Liability insurance policy, including Contractual Liability and Products/Completed Operations Liability coverages, with limits of not less than \$2,000,000 per occurrence for bodily injury and not less than \$2,000,000 for property damage, such policies naming Authority, Customer and the State of New York as additional insureds under the policy;

(c) Automobile Liability coverage with a minimum limit of \$1,000,000 per accident; and

(d) if required under the applicable CPC:

(i) Pollution Liability, including coverage for asbestos abatement, with minimum limits of \$1,000,000 per occurrence;

(ii) Professional Liability insurance with a minimum limit of \$1,000,000; and

(iii) Builder's risk insurance in the amount of the estimated Total Reimbursement Cost to be issued on a replacement cost basis without optional deductibles and will include the interests of Customer, Authority, and the Service Providers. Such insurance shall be maintained until final payment has been made by Customer to Authority.

6.2 Adjustments. The types of insurances required and/or policy limits listed in Sections 6.1 above may be adjusted as Customer and Authority deem appropriate in connection with a specific CPC. The form and sufficiency of each insurance policy required to be obtained hereunder by the Service Provider or Subprovider shall be subject to approval by Authority. Authority shall hold all Certificates of Insurance submitted to the Authority by its Service Providers and Subproviders with respect to any Project implemented under this Master Agreement.

6.3 Customer Insurance Requirements. With specific regard to the ESP equipment, for so long as any portion of Customer's Short-Term or Long-Term Repayment Obligation, as applicable, remains unpaid, Customer shall procure an all risk policy of insurance which will insure the equipment for full replacement cost value against loss while the equipment is in Customer's care, custody and control. The insurance policy shall name Authority and the State of New York as additional insured and loss payees, and shall contain a full waiver of subrogation against Authority, its agents, Service Providers, Subproviders and the State of New York. Customer shall also procure a Commercial General Liability insurance policy with minimum limits of \$5,000,000 per occurrence for bodily injury and property damage naming Authority and the State of New York as additional insured. In lieu of obtaining all risk and commercial general liability insurance, Customer may request in writing to Authority to self-insure against risk of loss. Authority may approve or deny such request in its sole discretion. Customer agrees to provide any relevant documents or information requested by Authority in order for Authority to make the determination that Customer has sufficient resources to self-insure. The decision to self-insure will not relieve Customer of any of the obligations imposed herein and shall afford Authority the protection against loss and rights it would have received, if Customer had obtained such policies of insurance.

ARTICLE VII

WARRANTIES, DAMAGES, LIABILITY, ETC.

7.1 Service Provider's Warranty Requirements. Authority's agreements with its Service Providers shall provide that all Work performed and any materials provided by the Service Providers under the agreements shall be free from any defects. Such agreements shall further provide that any defective Work or materials identified within one (1) year after (i) execution (or deemed execution) by the Parties of a Substantial Completion and Operation Transfer Report or (ii) if no such report must be signed, completion of the Project, shall be promptly corrected, repaired, replaced, re-performed or otherwise remedied by the Service Provider and/or Subprovider(s) at no additional expense to Customer. Authority's agreements with Service Providers shall also provide that any manufacturers' warranties for equipment installed at Customer's Facilities be assigned to Customer.

Authority shall have no obligation to assist Customer with any warranty claims against a Service Provider or equipment manufacturer. Customer shall coordinate any warranty claims directly with the respective Service Provider or equipment manufacturer.

7.2 Authority Warranty Disclaimer. THE WARRANTY PROVIDED BY SERVICE PROVIDER AND THE ASSIGNED WARRANTIES OF THE EQUIPMENT MANUFACTURERS ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES. AUTHORITY EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION OR QUALITY NOT EXPRESSLY SET FORTH HEREIN, TO THE EXTENT PERMITTED BY LAW. NO AFFIRMATION OF AUTHORITY, BY WORDS OR ACTION, SHALL CONSTITUTE A WARRANTY. DESCRIPTIONS, SPECIFICATIONS, DRAWINGS, AND OTHER PARTICULARS FURNISHED TO CUSTOMER ARE ONLY ESTIMATES AND DO NOT CREATE A WARRANTY.

7.3 Projected Energy Savings. Authority and its Service Providers shall use their best efforts to prepare accurate engineering estimates. After energy efficiency Work is completed in Customer's Facility, it is the intent and expectation of the Parties that Customer's annual energy usage for that Facility shall not increase above the pre-installation level except due to changes in rates or increases in usage not related to the implementation of the ESP Work. Customer is responsible for providing Authority with accurate information concerning the operation of its Facility. Customer understands that the projected energy savings are based upon such Customer input. It is Customer's sole responsibility to ensure that the expected energy savings meet Customer's satisfaction at the time the CPC for a Project is executed.

AUTHORITY HEREBY DISCLAIMS ANY AND ALL LIABILITY FOR ANY ENERGY SAVINGS PROJECTED BY AUTHORITY OR OTHERWISE EXPECTED BY CUSTOMER THAT CANNOT BE ACHIEVED.

7.4 Uncontrollable Forces. Authority shall not be responsible for delays or failures in performance resulting from occurrences beyond its reasonable control including, but not limited to, acts of God, strikes, walkouts, acts of war, or any law, regulation, or action of any court or

governmental authority, fire, malfunctions in communication lines or computer hardware, power failures, shipping or delivery delays or other events caused by those not party to this Master Agreement (including, without limitation, any Third Parties, and any Service Providers or Subproviders of Authority). In the event Authority or the Service Providers or Subproviders are unable to fulfill any obligations hereunder by reason of such uncontrollable forces, Customer will be notified in writing and the completion dates described in the CPC will be extended by the amount of additional time reasonably necessary to complete the Work. If necessary, Authority will issue a Contingency Work Order or a Change Order, as applicable.

7.5 Damages, Indemnification by Service Provider.

(a) Damages. Authority's agreements with the Service Providers shall include a provision that all damage of whatever nature resulting from the performance of the Work or resulting to the Work during its progress, from whatever cause shall be borne by the Service Provider, and all Work performed shall be solely at the Service Provider's risk until the Work has been finally inspected and accepted by Authority. The Service Provider, however, shall not be responsible for damages resulting from gross negligence or willful misconduct of officials or employees of Authority or Customer.

(b) Indemnification. Authority's agreements with the Service Providers will include a provision that to the extent permitted by law, the Service Provider shall assume the entire responsibility and liability for and defense of, and pay and indemnify, Authority, Customer, and the State of New York (where a Project undertaken for Customer is located on property of New York State), against any loss, damage, expense or liability and will hold each of them harmless from and pay any loss, damage, cost or expense (including without limitation, judgments, attorney's fees, and court costs) which Authority, Customer or the State of New York incur because of injury to or death of any person or on account of damage to property, or any claim arising out of, in connection with, or as a consequence of, the performance of the Work and/or any act or omission of the Service Provider or any of its Subproviders, employees, agents or anyone directly or indirectly employed by the Service Provider or anyone for whose acts the Service Provider may be liable.

7.6 Limitation of Authority's Liability.

(a) Obligation to Exhaust Remedies against Service Provider. In the event of any alleged Authority liability to Customer, Customer shall first pursue and exhaust all remedies in law against the Service Providers and Subproviders and under the insurance identified in Article VI above and carried by the Service Providers and Subproviders before making any claim or taking any action against Authority.

(b) Exclusion of Indirect, Incidental, Consequential Damages. To the fullest extent permitted by law, Authority shall not be liable to Customer, for any indirect, special, incidental, or consequential damages of any kind (including without limitation, any loss of property or equipment, loss of profits or revenue, loss of use of equipment or power systems, cost of capital, cost of purchased or replacement power or temporary equipment, including additional expenses incurred in using existing facilities) related to or arising in connection with this Master Agreement or any other Transaction Document executed in connection herewith, regardless of the

form of action (whether in contract, tort or otherwise), even if Authority has been advised of the possibility of such damages.

(c) Total Liability Cap. The Parties agree that in no event shall Authority's total liability (whether in contract, tort or otherwise) for all claims relating to a Project exceed ten percent (10%) of the Total Reimbursement Costs for such Project set forth in the respective CPC.

(d) No Limitation of Service Provider/Subprovider Liability. Nothing in this Section 7.6 shall be construed as limiting the liability of a Service Provider or Subprovider to Authority or Customer in connection with the performance of such Service Provider's or Subprovider's Work on Customer's premises.

(e) Customer agrees that in no case will it seek to enforce its claims for any remedy under this Master Agreement by withholding payments due under any other agreements with the Authority, or its assignees, including but not limited to any amendment to this Master Agreement, a CPC, or separate financing agreement to satisfy the Customer's Short- or Long-Term Repayment Obligation.

7.7 Customer's Responsibility for Project Equipment and Performed Work. Upon delivery at Customer's Facility, Customer shall be responsible for all damage to all Project materials, supplies and equipment of every description and all Work performed at Customer's site unless such damages are caused by Authority or its Service Providers or Subproviders.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS

8.1 Intellectual Property; Proprietary Information.

(a) Intellectual Property Rights. Neither Party shall acquire, directly or by implication, any ownership of any Background Intellectual Property Rights of the other Party. Each Party shall retain title to any Intellectual Property Rights developed, authored, conceived or reduced to practice independently and solely by that Party during the performance of this Master Agreement without the other Party's Background Intellectual Property Rights. Notwithstanding any of the foregoing, it is agreed by the Parties that Authority shall be the sole owner of all Intellectual Property Rights related to any Project which is jointly developed, invented or otherwise generated during the performance of this Master Agreement or any Transaction Document.

(b) Work Product; Proprietary Information. Unless and until Customer has repaid its Short-Term or Long-Term Repayment Obligation, as applicable, the Facility data, evaluations, design and other information produced by Authority or its Service Providers in connection with a Project shall be the property of Authority. Customer shall have the right to use any such proprietary information for the maintenance of Project installations in its Facilities. Upon payment in full by Customer, such information shall become the property of Customer. Any information identified as confidential which is exchanged by Authority and Customer shall be duly protected by the recipient to the extent permitted by law. It is understood that the Public Officers

Law and other statutes and regulations regarding Freedom of Information may require the disclosure of information in certain situations.

ARTICLE IX

TERM AND TERMINATION

9.1 Term. This Master Agreement shall end on the tenth anniversary of the date first shown in the preamble above unless earlier terminated in writing by either Party in accordance with the terms of this Master Agreement.

9.2 Termination of Master Agreement. Unless otherwise provided in this Master Agreement, either Authority or Customer may terminate this Master Agreement at any time upon one hundred twenty (120) days' prior written notice to the other Party.

9.3 Pending Projects. Authority and Customer acknowledge that a Project implemented pursuant to a CPC executed during the Term of this Master Agreement may extend beyond the expiration or early termination of this Master Agreement. Provided that the Project was commenced pursuant to a CPC that was executed during the Term of this Master Agreement, then this Master Agreement will be extended, as it applies to such CPC only and for the sole purpose of completing the Project. The Project implemented pursuant to such CPC may continue until completed or otherwise terminated earlier pursuant to the terms and conditions of this Master Agreement.

9.4 Extension. This Master Agreement may be renewed at the end of the current term for an additional period, such additional period not to exceed a period equal to the original Term, to be mutually determined by the Parties in writing and signed by an authorized officer or designee of Authority and Customer.

ARTICLE X

GENERAL OBLIGATIONS OF THE PARTIES

10.1 Authorized Representatives

(a) Customer's Authorized Representative. For each Project, Customer shall designate a Customer's Authorized Representative and shall inform Authority in writing accordingly. If Customer desires to change its Customer Authorized Representative, it must notify Authority in writing (in accordance with notice requirements set forth herein) at least five (5) business days prior to such change. Customer's Authorized Representative shall coordinate the Project on behalf of Customer and assist Authority and the Service Providers and Subproviders with the implementation of the Project in the selected Facilities of Customer. Customer's Authorized Representative shall be responsible to obtain all necessary approvals, authorizations, and signatures of Customer with respect to any CPC, Change Order, Final CPC and other Transaction Document.

(b) Authority's Authorized Representative. For each Project, Authority shall designate an Authority's Authorized Representative and shall inform Customer accordingly.

Authority's Authorized Representative shall coordinate the Project on behalf of Authority and communicate with Customer. Authority will inform Customer of any changes to its Authorized Representative.

10.2 Authority Obligations. With respect to any Authority Implemented Work, Authority shall comply with the following:

(a) Reporting and Information. Authority shall keep Customer informed as to the progress of the Work and shall provide Customer with periodic reports of all activities by the Service Providers and Subproviders at Customer's Facilities. Authority and its Service Providers shall meet with representatives of Customer upon reasonable notice to discuss any matters concerning the Projects.

(b) Permits, Licenses, Authorizations. Authority shall require that the Service Providers and Subproviders obtain and maintain all permits, licenses and authorizations required to perform the Work in Customer's Facilities and that they will comply with all applicable local, state and federal laws, guidelines and regulations, including applicable local, state and federal building, fire and electrical codes and standards. Any costs associated with permits and licenses that must be obtained by Service Provider or Subprovider for a specific Project will be reflected in the Total Reimbursement Costs. Notwithstanding the foregoing, neither Authority nor Service Provider (or Subprovider) shall be responsible for closing out open permits obtained by Service Provider (or Subprovider) due to existing deficiencies or code violations in Customer's Facility which are outside the Project scope.

(c) Service Provider/Subprovider Performance. Authority shall require its Service Providers and Subproviders to comply with regulations governing access to and performance of the Work in the selected Customer Facilities and to perform such Work in such a manner as not to unreasonably interfere with Customer's business at the Facilities. Authority shall also require its Service Providers and Subproviders to comply with Customer's operational and safety requirements, which in certain instances may require substantial supervision and control over the site by Customer.

(d) Records. Authority's Service Providers shall maintain accurate records of Project Work for a period of six (6) years after completion of a Project.

10.3 Customer Obligations. With respect to any Project entered into in connection with this Master Agreement, Customer shall have the following rights and obligations:

(a) Right to Inspect. Customer and Customer's Authorized Representative may observe and inspect all Work in any of Customer's Facilities and shall have the right to attend all Project job meetings, upon written notice of its intent to attend a particular meeting.

(b) Attendance at Meetings. Upon reasonable request and notice from Authority or Service Provider, Customer shall attend meetings scheduled by Authority or Service Provider to discuss any Project-related matters.

(c) Site Rules and Regulations. Customer must promptly notify Authority of any site specific construction, safety, technical or other requirements and restrictions related to its

Facility(ies) prior to the start and during the Project. If Customer becomes aware of any defect in the Work or any failure of Authority or the Service Provider or Subprovider to meet the respective Project requirements, the Customer shall give prompt notice to Authority.

(d) Access. Customer shall provide Authority and its Service Providers safe, proper and timely access to the Facility as necessary to perform the Work. Upon Authority's request, Customer's Authorized Representative will accompany Authority and its Service Providers to Customer Facilities. Customer shall promptly provide verbal and written notice of limitations or changes in site access.

(e) Permits and Licenses.

(i) Customer shall provide Authority or Service Provider with such assistance (including, but not limited to, all necessary information requested by Service Provider) as may be required for Authority or Service Provider to obtain all permits, licenses and authorizations necessary to perform the Work in accordance with all applicable local, state and federal laws, regulations, codes and standards applicable to the Facility.

(ii) Customer shall be responsible and shall hold all licenses, permits, authorizations and regulatory approvals necessary for the lawful conduct of its business as presently conducted, and shall comply with all applicable statutes, laws, ordinances, rules and regulations of all governmental bodies, agencies and subdivisions having, asserting or claiming jurisdiction over it, with respect to any part of the conduct of its business and corporate affairs.

(f) Project Equipment. As long as Customer's Short-Term or Long-Term Repayment Obligation, as applicable, remains outstanding, (i) Customer will keep all Project-related equipment free from any and all liens, claims, encumbrances, and the like; (ii) Customer will not grant a security interest in such equipment to any party without the prior written consent of Authority; (iii) the equipment will remain at the Facility site as designated in a CPC; (iv) Customer will not sell, offer for sale, transfer, or dispose of such equipment without notice to Authority; (v) Customer will not use or permit any person to use the equipment in a manner prohibited by law or in a manner which would void any manufacturer's warranty; (vi) Customer agrees to maintain the equipment in good order and repair at all times, and will not waste or destroy the equipment or any part of it; and (vii) Customer will keep the equipment insured in accordance with the requirements set forth in Section 6.3 hereof.

(g) Coordination. Customer shall be responsible for facilitating coordination with Third Parties as required. Furthermore, Customer shall promptly resolve any disputes or issues that arise with any Third Parties. Customer shall be responsible for any changes to the Project schedule, the scope of Work and/or the Total Reimbursement Costs resulting from any delays due to unresolved disputes or issues with Third Parties pursuant to Section 2.6 hereof.

(h) Review and Approval. Customer will promptly review any documents submitted to it by Authority requiring Customer's decision and shall render any required decision pertaining thereto without undue delay.

(i) Assistance; Timely Performance. Customer shall cooperate with Authority and its Service Providers and Subproviders and provide Authority with such other assistance as

necessary to facilitate the performance of the Work. Customer shall perform all obligations set forth in this Master Agreement and any other Transaction Document in a timely manner so as to permit the orderly progress of the Projects. Authority shall not be responsible for any Project delays due to Customer's non-compliance with its obligations set forth herein or in a Transaction Document.

ARTICLE XI

DATA USAGE

11.1 License. Customer grants to the Authority a perpetual, non-exclusive, irrevocable, royalty-free, transferable, sublicensable license to use the Data for any and all purposes, including without limitation, the purpose of: (i) providing Electric Service, Energy Services and New York Energy Manager, including a right to store, record, backup, transmit, maintain, display and use or process Data, (ii) creating Processed Data, and (iii) any purpose of the Authority.

11.2 Limitations. The Authority may share the Data (whether or not aggregated or anonymized) with energy or utility industry organizations, educational and/or research institutions or laboratories, other distribution utilities, and similar organizations, for any purpose, including without limitation, to conduct energy-related studies, to analyze new services, to evaluate traffic on the grid, etc.

11.3 Processed Data Ownership. The Authority shall be the sole owner of all right, title and interest in and to the Processed Data, and reserves all rights, title and interest in and to the Processed Data, including all related intellectual property rights; and makes no representation with respect to the sharing of Processed Data.

ARTICLE XII

MISCELLANEOUS

12.1 Disputes. In the event of any dispute regarding ESP Work at any Customer Facility, Work there may be suspended by Authority until the matter is resolved to the mutual satisfaction of the Parties in accordance with the procedures set forth in Section 12.2 hereof. In the event the Parties are unable to resolve any such dispute after good faith efforts, the Work at that Facility shall terminate and Authority shall issue a Final CPC as provided in Section 3.4(d) hereof.

12.2 Dispute Resolution. The Parties shall use good faith efforts to settle promptly all disputes arising under this Master Agreement or in connection with any ESP Work. In the event that any dispute, including but not limited to a billing dispute, a dispute regarding the quality of the Work, or a dispute regarding the interpretation of this Master Agreement, arises and cannot be resolved in the normal course of business by operating personnel within twenty (20) days after commencement of a dispute, either Party may give the other Party formal notice of the dispute in accordance with the notice requirements set forth herein. In the event that such notice is given, the Parties shall attempt to resolve the dispute by negotiation between representatives who have the necessary authority to resolve the dispute in question. Within twenty (20) days after delivery of the notice, the receiving Party shall consider all information relevant to the dispute and shall

submit to the other Party (in accordance with the notice requirements set forth herein) a proposal for resolution. Thereafter, the representatives shall confer in person or by telephone, promptly and no later than five (5) days after receipt of the proposal for resolution, to attempt to resolve the dispute. All reasonable requests for information by one Party to another Party will be honored. To the extent that disputes are not resolved pursuant to this process, the Parties reserve all rights under law or equity to seek and pursue remedies through the judicial process.

12.3 Publicity.

(a) Public Announcements. Except as otherwise required by law, the Customer will not issue any press release or make any other public statement connected to or arising out of this Agreement or the matters contained herein without the Authority's prior written approval, which approval will not be unreasonably withheld or delayed. Any responses to news media inquiries or social media activities developed by the Customer, related to this Master Agreement, or any Project undertaken pursuant to this Master Agreement, will be coordinated with the Authority for review and approval prior to their release. A public announcement proposed by the Customer will be deemed accepted in the event that the Authority does not provide an objection thereto within five business days' notice thereof.

(b) Signage. The parties agree that Authority may, at no cost to Customer, install and maintain publicity signage at or in the vicinity of a Project. Customer will cooperate with Authority, and/or any third-party vendor designated by Authority, by timely responding to any questions regarding the design, manufacture, installation and maintenance of the signage. Customer will provide ordinary maintenance to the signage and promptly notify Authority after Customer becomes aware of any damage that may occur to the signage. The publicity signage may highlight the Project, any Authority or New York State program or other initiative and the identity of the parties supporting the Project, including those parties' respective logos. Upon written notice from the Customer the Authority will remove the signage.

12.4 Notices. All notices permitted or required hereunder or in connection with any Transaction Document shall be in writing and transmitted either: (i) via certified or registered United States mail, return receipt requested; (ii) by personal delivery; (iii) by expedited delivery service; or (iv) by e-mail (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sender).

Such notices shall identify the Master Agreement and the Transaction Document to which it relates, and be addressed as follows or to such different addresses as the Parties may from time-to-time designate in accordance herewith:

To Authority:

NEW YORK POWER AUTHORITY

STRATEGIC SUPPLY MANAGEMENT

Name: John Canale

Title: Vice President, Strategic Supply Management

Address: 123 Main Street, 5th Floor, White Plains, NY 10601

E-Mail Address: john.canale@nypa.gov

with a copy to:

NEW YORK POWER AUTHORITY
LAW DEPARTMENT

Name: Debra Hopke, Esq.

Title: Principal Attorney

Address: 123 Main Street, 9th Floor, White Plains, NY 10601

E-Mail Address: debra.hopke@nypa.gov

To Customer:

CUSTOMER

Name:

Title:

Address:

E-Mail Address:

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 email, upon confirmed receipt. 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 Master Agreement (and any Transaction Document) 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 Master Agreement.

12.5 No Waiver. The failure of any Party to insist upon strict adherence to any term of this Master Agreement or any Transaction Document executed in connection herewith on any occasion shall not be considered a waiver nor deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Master Agreement.

12.6 Assignment. This Master Agreement and any Transaction Document executed in connection herewith may not be assigned, transferred nor conveyed by either Party without the prior written consent of the other Party. Any attempted assignment, transfer or conveyance without such consent shall be entirely void ab initio and have no force or effect.

12.7 Governing Law; Venue. This Master Agreement (and any Transaction Document executed in connection herewith) and any and all disputes arising in connection herewith (whether in contract, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of laws provision or rule that would cause the application of the laws of any jurisdiction other than New York. Any action at law, or in equity, for the enforcement of this Master Agreement (and any Transaction Document executed in connection herewith) or any dispute arising in connection herewith shall be instituted only in a court of competent jurisdiction located in the County of Albany, State of New York.

12.8 No Third Party Beneficiaries. Nothing contained in this Master Agreement shall, directly or indirectly, create a contractual relationship with, or give any claim or right of action in favor of, any third party (including, without limitation, any Service Provider or Subprovider) against Authority.

12.9 Severability. The invalidity or unenforceability of any provisions of this Master Agreement or of any Transaction Document executed in connection herewith shall not affect the validity or enforceability of any other provisions of this Master Agreement or Transaction Document, as applicable, which other provisions shall remain in full force and effect.

12.10 Survival of Provisions. The articles that contain provisions related to the following will survive the expiration, termination or completion of this Master Agreement: Conflict and Order of Precedence; Recovery of Costs and Repayment Obligation, Warranty, Damages, Liability, Ownership of Installed Work and Intellectual Property, Publicity; and Governing Law, Venue.

12.11 Not Construed Against Drafter. Authority and Customer acknowledge that they have read this Master Agreement, have had the opportunity to review it with an attorney of their respective choice, and have agreed to all its terms. Under these circumstances, Authority and Customer agree that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Master Agreement and that in the event of any ambiguity in any of the terms or conditions of this Master Agreement, including any exhibits or schedules hereto, such ambiguity shall not be construed for or against any Party hereto on the basis that such Party did or did not author same.

12.12 Headings. The articles and section headings contained in this Master Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Master Agreement.

12.13 Counterparts. This Master Agreement may be executed in counterparts via inked signature or electronic mark, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The fully executed Master Agreement may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have duly executed this Master Agreement as of the effective date first written above.

POWER AUTHORITY OF THE STATE OF [CUSTOMER]
NEW YORK

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

STATEWIDE COMPENSATION SCHEDULE

As compensation for services rendered by the Authority under the Master Agreement, the Customer will pay the Authority Program Fee as set forth below.

A. CAPITAL PROJECTS

I. AUTHORITY PROGRAM FEE

For Capital Projects, the Authority Program Fee is calculated as a percentage of the cumulative sum of all costs related to a Project, including, but not limited to all Material Costs; Labor Costs; Service Provider Fees; the amount of the Project Contingency applied as a Project cost; and other Project-related costs and expenses. The Authority Program Fee is in addition to all such costs related to a Project. The Authority Program Fee percentage will be fixed upon execution of the CPC for the installation phase.

1. Authority Program Fee when Service Provider performs Work

The following table sets forth the Authority Program Fee where the Authority delivers a Project using one or more Service Providers to perform turnkey projects (audit, design, construction management and/or installation).

| Project Size (in millions) | Authority Program Fee |
|-----------------------------------|------------------------------|
| \$0 - \$3M | 12.5% |
| \$3M - \$6M | 12.0% |
| \$6M - \$12.5M | 11.5% |
| \$12.5M - \$40M | 11.0% |
| \$40M - \$60M | 10.5% |
| > \$60M | 10.0% |

Exceptions to the above pricing may include projects delivered under Authority programs such as street lighting, electric vehicles, operations & maintenance, direct install and New York Energy Manager. Authority Program Fee exceptions will be documented in the CPC or other separate document.

2. Authority Program Fee when Authority and Service Provider perform Work

The following table sets forth the Authority Program Fee where the Authority will be performing design and construction management with its own forces using one or more Service Providers to perform installation. If the Authority procures material directly in lieu of using one of its Service Providers, there will be an additional Material Handling Fee of 1.5% charged on the Material Cost of the Project.

| Project Size (in millions) | Authority Program Fee |
|-----------------------------------|------------------------------|
| \$0 - \$3M | 27.5% |
| \$3M - \$6M | 27.0% |
| \$6M - \$12.5M | 26.5% |
| \$12.5M - \$40M | 26.0% |
| \$40M - \$60M | 25.5% |
| > \$60M | 25.0% |

3. Authority Program Fee when Authority provides Audit Services Only

The Authority Program fee for providing Audit services not contemplated as part of a full project (i.e. design, construction management and/or installation) is calculated as twenty-five percent (25%) of the costs related to the Audit.

II. MILESTONE PAYMENTS

To the extent applicable, the Authority Program Fee will be paid on milestones as detailed in the CPC or as otherwise mutually agreed upon.

III. AUTHORITY FEE IN THE EVENT OF PROJECT TERMINATION

1. Termination at or after Audit Phase

If a Project is terminated at or after the audit phase, but prior to moving forward with any design or implementation, the Authority's Program Fee is calculated as twenty-five percent (25%) of the actual costs associated with such audit.

2. Termination during Design, Procurement or Installation Phase

If a Project is terminated in whole or part during the design, procurement or installation phase, the Authority's Program Fee for the Project will be the cumulative percentage value at the current milestone (as if it had been achieved) and calculated based on the estimated Project costs, including, but not limited to all Material Costs; Labor Costs; Service Provider Fees; the amount of the Project Contingency applied as a Project cost; and other Project-related costs and expenses, including interest up through the current milestone (as if it had been achieved). For the purposes of calculating the Authority's Program Fee, the then current milestone is assumed complete once the Project is canceled.

The following table sets forth the Authority Program Fee percentage segmented by milestone.

| Milestone | % of Authority's Program Fee | Cumulative Authority Program Fee Percentage |
|--------------------------------|------------------------------|---------------------------------------------|
| 30% Design | 10% | 10% + (audit cost) |
| 90% Design | 15% | 25% + (audit cost) |
| 100% Design & Bidding | 15% | 40% + (audit cost) |
| Construction CPC Preparation | 10% | 50% + (audit cost) |
| Construction (25% completion) | 10% | 60% + (audit cost) |
| Construction (50% completion) | 15% | 75% + (audit cost) |
| Construction (75% completion) | 15% | 90% + (audit cost) |
| Construction (100% completion) | 10% | 100% + (audit cost) |

B. ADVISORY SERVICES PROJECTS

I. AUTHORITY PROGRAM FEE

The Authority Program Fee for the Advisory Services will be calculated according to one of the following methods as set forth in the CPC for the Project:

Time and Materials: The Authority's Program Fee maybe based on actual time and cost of material incurred by Authority or its Service Providers in connection with a Project based on rates defined in the Project CPC.

Lump Sum: The Authority's Program Fee may be based on the percentage complete of a lump sum or milestones defined in the Project CPC.

Unit Price: The Authority's Program Fee maybe based on the unit prices defined in the Project CPC.

Percent of Materials and Labor: The Authority's Program Fee maybe based on a percentage of Service Provider Material Costs and Labor Costs as defined in the Project CPC.

Other Mechanisms: The Authority's Program Fee may be based on an evolving cost recovery mechanisms not defined in this Master Agreement. If other mechanisms are selected, the Authority's Program Fee will be based on mutual Authority and Customer agreement and will be defined in the Project CPC.

II. PROJECT TERMINATION

If a Project is terminated in whole or part prior to completion of a Project, the Authority's Program Fee will be based on the Project costs incurred and any applicable fees earned by Authority up until the date of termination, plus any interest costs incurred. For the purposes of calculating the Authority's Program Fee, as applicable, the then current milestone is assumed complete once the Project is canceled.

* * * * *

EXHIBIT B

CAPITAL PROJECT TERMS AND CONDITIONS

1. Application. In addition to the terms and conditions set forth in the main body of this Master Agreement, these Capital Project Terms and Conditions shall apply to all Capital Projects provided by Authority or Service Provider to Customer under the Master Agreement.

2. Capital Project Services. Capital Projects are generally delivered through the services of qualified installation Service Providers or Subproviders under contract with the Authority. Capital Project services may include any or all of the following services (as more fully described below): audit, design, construction management, equipment procurement, installation, commissioning, disposal of Waste, financing and other Project related services required to install a Project.

3. Audit.

(a) Scope. After Customer has identified potential Projects for Authority's and Customer's consideration, Customer may request that Authority perform an audit of the Facility. The audit will help identify opportunities for implementing ESP measures and will be scheduled by Customer's Authorized Representative and/or the appropriate Facility manager. The scope of the audit will be set forth in a CPC which shall be executed by an authorized officer or designee of Authority and Customer prior to commencement of any audit Work. In some instances, the audit will involve a complete inventory of the systems which are currently used in normal operation, while in others a more targeted approach will be taken. The audit may also include an analysis of whether hazardous materials and Waste related to those systems are likely to be present or generated as a result of installing a Project.

(b) Audit Report. Based upon the results of the audit, a written report will be furnished to Customer. The report will include an estimate of the Total Reimbursement Costs as well as estimates of the potential Total Annual Energy Savings and environmental or sustainability benefits, as applicable, that Customer can reasonably expect through implementation of the recommendations made in the report. If, after analysis of the report by Authority and Customer, Authority, in its sole discretion, determines that the Project either (1) does not meet Authority's eligibility criteria, or (2) is not appropriate at such Facility, activity there will cease.

(c) Deferment of Total Reimbursement Costs for Audit Work. Upon completion of the audit Work, if Customer and Authority decide to proceed to the next phase, Customer and Authority will execute a CPC reflecting the scope of such next Project phase. By executing the CPC, Customer acknowledges its concurrence with the audit results. Subject to Authority's approval, Customer may request that payment of the Total Reimbursement Costs for the audit Work, be deferred and included in the Total Reimbursement Costs of the CPC for the next Project phase.

4. Project Design.

(a) General. If agreed upon by the Parties in a CPC, Authority shall prepare a Project design. Customer will be asked to review all aspects of the design and specifications. Where deemed appropriate by Authority and Customer, the Service Provider will arrange for geotechnical surveys (i.e., soil tests, borings, and related evaluations), surveys of the site (i.e., to determine physical characteristics of the site, such as utility locations), and/or demonstration installations (i.e., the installation of sample lighting fixtures or other equipment) of selected measures in Customer's Facility, all at Customer's sole risk.

(b) Milestones and Milestone Completion Reports. Authority will submit the Project design documents to the Customer at 30%, 60%, 90% and "final" design milestones, or according to the milestone schedule set forth in the respective CPC. Upon completion of each design milestone, Customer and Authority (or their duly authorized representatives) shall promptly review the design Work, or applicable portions thereof and Customer and Authority shall jointly sign a Milestone Completion Report. It shall be Customer's responsibility to determine that the proposed design meets Customer's needs.

(c) Deferment of Total Reimbursement Costs for Design Work. Unless otherwise set forth in the CPC for a Project, Authority may invoice the Customer for the Total Reimbursement Costs for the performed design Work through the milestone(s), if any, set forth in the CPC (plus any Total Reimbursement Costs incurred during the audit, if such costs were deferred and rolled over). Customer may request payment deferral if Customer approves Authority to proceed to the next milestone or the next Project phase. With Authority's approval, Customer's Short-Term Repayment Obligation will be deferred and rolled into the next milestone invoice, or at design completion, become part of the Total Reimbursement Costs of the CPC for the next Project phase.

(d) Ownership of Design Work Upon Early Termination. If Customer terminates the design Project prior to its completion, upon receipt of Customer's final payment, Authority will deliver to Customer all design plans and documents completed through the date of termination. Customer's use of such design plans and documents will be subject to any copyrights of the Authority and/or the designer. By using any incomplete or unfinished design plans and/or documents that have not been sealed with the licensed design professional's stamp upon delivery to Customer, Customer accepts full and complete responsibility for such design and further agrees to hold Authority harmless from its use of such incomplete or unfinished design plans and/or documents.

5. Procurement. After Authority and Customer agree on the Project's design and technical specifications, Authority or the Service Provider will competitively solicit, using the Authority's procurement guidelines, bids for the Work as set forth in the design documents. The resulting final design, specifications and bid price shall be incorporated into a CPC for the Project. Authority's contracts with its Service Providers will require compliance with the Authority's guidelines regarding the competitive solicitation of the services of Subproviders for Customer's Facilities, including the selection of minority and women-owned business enterprises. The services of Subproviders and equipment procurement will be obtained through a competitive bid process conducted by the Service Provider with Authority oversight. In the event Customer

decides not to proceed with the installation Project, Customer shall reimburse Authority for the costs of any Work undertaken by Authority and/or its Service Provider in connection with the procurement process and the associated cost and expense of same.

6. Installation.

(a) General. After Authority and Customer have entered into a CPC for installation Work, the Service Provider and/or its Subproviders will perform the Work pursuant to the design and technical specifications set forth in such CPC.

(b) Substantial Completion and Operation Transfer Report. After Customer has inspected, tested and accepted the Project equipment, or portion thereof, installed by the Service Provider, the Parties will execute a Substantial Completion and Operation Transfer Report for the completed portion of the Work signifying (i) that Customer accepts responsibility for operation and maintenance of the installed equipment, (ii) that the Project, or specified portion thereof, is substantially complete, and (iii) the commencement of any warranty period.

(c) Final Inspection Report. Upon completion of the Work, Customer and Authority (or their duly authorized representatives) shall promptly inspect the entire Facility, or applicable portions thereof. Authority or its Service Providers will confirm that the Work has been satisfactorily completed according to the provisions of this Master Agreement and the applicable CPC. Authority and Customer shall jointly sign a Final Inspection Report.

7. Maintenance and Post-Installation Audit. Authority will provide Customer with information regarding the maintenance of Project installations and recommendations for appropriate replacement equipment to be used in those installations to facilitate proper usage and, if applicable, energy savings at Customer's Facilities. After the Project installations are completed, Customer shall use reasonable efforts to see that such maintenance and materials instructions are followed at its Facilities. While any portion of the Customer's Short-Term Repayment Obligation remains outstanding, Authority may, upon reasonable notice to Customer, audit installations in Customer's Facilities to evaluate compliance with such maintenance and materials instructions.

8. Project Closeout for Capital Projects. Notwithstanding the terms set forth in the CPC or Final CPC, the Customer shall, within the time specified in the Final CPC, but not later than the Short-Term Repayment Obligation Maturity Date, (a) repay the Short-Term Repayment Obligation from its own sources or (b) repay the Short-Term Repayment Obligation with the proceeds of a Long-Term Repayment Obligation separate contract. The Customer shall make payment of any remaining balance of the Short-Term Repayment Obligation that is not repaid by such financing upon receipt of the Authority's invoice and in accordance with the terms of this Master Agreement. The Short Term Repayment Obligation, as set forth in the Final CPC, shall include the Authority's estimate of Short-Term Interest to be accrued between the issuance of the Final CPC and Short-Term Repayment Obligation Maturity Date.

9. Authority Obligations. In addition to the obligations otherwise set forth herein and the respective CPC, Authority shall require the Service Provider to adhere to the Project's design

and technical specifications as set forth in the CPC and minimize any interference with the normal operations at Customer's Facility.

10. Customer Obligations. In addition to the obligations otherwise set forth herein and the respective CPC, Customer shall promptly review all completed installations. Customer shall review and approve, as may be required, any corrective or restoration Work resulting from improper work by the Service Provider.

11. Customer-Supplied Equipment and/or Work. Customer and Authority may agree in the CPC for the provision of Customer materials and/or completion of Customer work in connection with a Project, independent of Authority. If so, then Customer shall be responsible for any changes to the Project schedule, scope of Work or any increase in the Total Reimbursement Costs caused by Customer due to non-delivery of Customer materials or non- or late performance of Customer work and Authority shall issue any necessary Contingency Work Order or Change Order, as applicable. Authority may suspend its Work on the Project until Customer approves such Change Order. Furthermore, if the Customer does not meet the Project schedule with respect to Customer materials and/or Customer work, Authority has the right to terminate the Project if the delay is not cured within fifteen (15) days of written notice thereof by Authority to Customer and turn it over to Customer for completion without any liability on the part of Authority.

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EXHIBIT C

ADVISORY SERVICES TERMS AND CONDITIONS

1. Application. In addition to the terms and conditions set forth in the main body of this Master Agreement, these Advisory Services Terms and Conditions shall apply to all Advisory Services Projects provided by Authority or Service Provider to Customer pursuant to the Master Agreement.

2. Advisory Services. Upon Customer's request, Authority may provide any or all of the Advisory Services described below. Advisory Services may be provided by Authority employees and/or Service Providers with expertise in the area as determined by Authority. Authority and Customer will cooperate in good faith during the performance of such Advisory Services.

3. Description of Services

(a) Review. Review of information provided by the Customer regarding, among other things, Customer's site conditions, future plans for modifications to facilities, operations and/or usage, historical utility data, any relevant strategic plans or initiatives, and other relevant requirements that are specific to Customer.

(b) Meetings. Participate in meetings and conference calls as mutually agreed upon by the parties as being in the best interests of the Project or as otherwise detailed in the Customer Project Commitment.

(c) Site Observations. Observe Customer's facilities, physically or remotely via electronic means as determined by the Authority to assess the condition of existing equipment and physical site conditions.

(d) Analysis. Analyze data presented by Customer and/or collected by or on behalf of the Authority. Outreach to appropriate third parties as necessary to coordinate and/or collect additional data.

(e) Advice and Guidance. Deliver oral or written advice, guidance and other recommendations communicated via in person meetings, telephone conversations, or correspondence.

(f) Deliverables and Reports. Prepare reports, memorandums, and other documents that memorialize the advice, guidance and recommendations delivered to the Customer and support the Customer's underlying project, where applicable.

The foregoing descriptions are given by way of example and not by way of exclusion. Advisory Services may include services that have not yet been developed or approved by Authority

to date, provided such services are described in a CPC signed by both Parties to this Master Agreement.

4. Further Assistance; Information. In addition to the obligations set forth herein and the respective CPC, Customer shall provide Authority and/or Service Providers with such assistance as may be required to perform the Advisory Services. This may include, but is not limited to, providing access to the Customer's Facility(ies), information such as historical utility data, maintenance logs, existing feasibility studies, reports, equipment drawings or any other information or services reasonably requested by Authority and/or Service Providers.

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