

# PARTICIPATION AGREEMENT

## NYS Clean Heat Statewide Heat Pump Program

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This NYS Clean Heat Statewide Heat Pump Program (“Heat Pump Program”) Participation Agreement (“Agreement”) for Air-Source Heat Pump (“ASHP”) Installers and Ground Source Heat Pump (“GSHP”) Installers, Designers or Drillers (“Heat Pump Contractors”), including Exhibit A “NYSEG/RG&E TERMS AND CONDITIONS” attached hereto, and the NYS Clean Heat Statewide Heat Pump Program Manual (“Manual”), as they may be revised from time to time, is entered into by and between New York State Electric & Gas Corporation or Rochester Gas and Electric Corporation (“NYSEG/RG&E”), as applicable, having its principal place of business at 89 East Avenue, Rochester, NY 14649 and the Participating Contractor (“Contractor”) as identified in the NYS Clean Heat Statewide Heat Pump Program Participating Contractor Application (“Contractor Application”) and as referenced in this Agreement, which hereinafter may be referred to each as a “Party” to this Agreement or collectively as the “Parties” to this Agreement. This Agreement governs the rights and responsibilities of NYSEG/RG&E, and the Contractor with respect to the Contractor Application and the procurement and installation of heat pump systems approved under and through the Heat Pump Program (“Heat Pump Systems”) and to otherwise effectuate the purposes of the Heat Pump Program. The terms, conditions, and provisions of the Heat Pump Program as identified in the Program Manual in its most updated form as first filed on March 16, 2020 (“Manual”) are incorporated herein by reference.

WHEREAS, NYSEG/RG&E has agreed to be one of the utilities that administers (“Administrator”) the Heat Pump Program for furthering the State’s objective of advancing New Efficiency: New York’s goals of using and supporting the development of the heat pump industry in New York State and that provides financial incentives (“Incentives”) for the installation of Heat Pump Systems that meet the requirements of the Heat Pump Program. The Parties hereunder agree to be bound, for purposes of the Heat Pump Program, by the following terms and conditions; and

WHEREAS, the success and future of this Heat Pump Program depends on the performance and integrity of the Contractors in their dealings with the public and their quality installation of Heat Pump Systems; and

WHEREAS, this Agreement has been designed to foster and protect the integrity of the Heat Pump Program, and will be enforced; and

WHEREAS, ASHP installers and GSHP installers and designers are Contractors eligible to receive incentive payments under this Agreement and the Heat Pump Program (“ASHP Installers,” “GSHP Installers and

Designers,” respectively), however, Drillers may participate as Contractors, but are ineligible to receive incentive payments under this agreement;

WHEREAS, in its role as an Administrator of the Heat Pump Program, NYSEG/RG&E reserves the right to deny Contractor status to any applicant and to revoke such status where in its judgment such action is in the best interests of the Heat Pump Program; and

NOW, the Parties agree that all the terms and conditions contained in this Agreement shall be binding upon the Parties.

## Article 1: Participation in the NYS Clean Heat Statewide Heat Pump Program

**Section 1:** The Contractor agrees that by the act of signing and submitting a Contractor Application to the Heat Pump Program, the Contractor confirms and agrees: (1) that the Contractor has read and understands this Agreement and accepts and agrees to abide by the terms and conditions contained herein; (2) that the Contractor acknowledges and agrees that the act of submitting an Incentive Application(s) signals such agreement that the terms and conditions are binding on the Contractor in the same manner, force, and effect as if the Participant had executed this Agreement by signature; (3) that all of the information provided in a Heat Pump Program Participating Contractor Application and site owner Invoice submitted by the Contractor, including any attachments, is true and accurate, to the best of its knowledge; (4) that any project for which a Heat Pump Program Incentive Application is submitted by the Contractor under the Heat Pump Program shall comply with the requirements of the Heat Pump Program, the applicable Manual, the terms and conditions of this Agreement, and with all applicable codes, accepted industry standards, and best practices. This Agreement does not obligate NYSEG/RG&E to make any payment to the Contractor.

**Section 2:** The Contractor acknowledges that failure to adhere to the terms and conditions of participation in the Heat Pump Program or to otherwise fail to follow the Heat Pump Program requirements and procedures may result in termination of this Participation Agreement. The obligation of the Contractor with respect to approved Participating Contractors and Incentive Applications shall survive any expiration or termination of this Agreement.

**Section 3:** ASHP Installers shall provide an ASHP Manufacturer-sponsored Installation Training Certificate or comparable Proof of Training Completion documentation. Such Certificate or proof of training documentation should, at a minimum, evidence that the Installer’s training covered application, sizing, pipe layout, equipment location and installation of indoor and outdoor ASHP units. GSHP

Installers and Designers shall provide an IGSHA Certificate or comparable Proof of Training Completion documentation

**Section 4:** Upon NYSEG/RG&E's acceptance of a Contractor into the Heat Pump Program, Contractors are then authorized to submit "Incentive Application(s)", based on the Contractor's status (as identified in the Manual as the same may be modified, revised, or updated from time to time). Contractors may be approved to submit Incentive Applications for ASHP systems, , GSHP systems <300,000 Btu/h, custom GSHP systems >300,000 Btu/h, or all systems, based on credentials submitted with the Contractor Application package(s) submitted. The Contractor will be responsible for information contained in an Incentive Application for all Heat Pump System installations for which an Incentive Application is submitted under this Agreement, regardless of whether the installation was performed partially or completely by others including, but not limited to a Contractor's subcontractors

**Section 5:** Heat Pump System installations must comply with the Manual in effect at the time of NYSEG/RG&E's acceptance of the Incentive Application and must conform to the corresponding NYSEG/RG&E approved Incentive Application. The Manual identifies the current Incentive, rules for participation, submission requirements, Heat Pump System requirements, and the procedures for securing Incentive payments. The Manual may be changed by NYSEG/RG&E at any time, and changes will be applicable to all Heat Pump Systems not yet approved by NYSEG/RG&E at the time of such change. Notice of all such changes will be provided to the Contractor via the e-mail address identified in the Contractor Application.

**Section 6:** The Contractor, its employees, and subcontractors shall treat customers fairly and in good faith, and shall deliver promised services in a timely, responsible, professional, and competent manner. The Contractor shall fairly represent the Heat Pump Program and the relationship of the Contractor with NYSEG/RG&E to customers and the public. If it is determined that the Contractor is not fairly or accurately representing the Heat Pump Program and/or its relationship with NYSEG/RG&E, the Participating Contractor will be subject to administrative review and its status within the Heat Pump Program may be affected. All installations completed through this Heat Pump Program are subject to random field inspections. The selection of installations for inspection will be determined by NYSEG/RG&E according to a standard protocol and the status of the Contractor. Written complaints received by NYSERDA from customers will be documented and investigated by NYSEG/RG&E or its representatives. Complaints from customers will be shared with the Contractor unless determined by NYSEG/RG&E to be frivolous and/or have no merit.

**Section 7:** The Contractor shall not, without prior written permission from NYSEG/RG&E, knowingly subcontract with, employ, or hire any individual or company to perform work related to an Incentive Application if said individual or company is currently in a probation or suspended status, or whose participation in the Heat Pump Program has been suspended or terminated. A list of eligible

Contractors in the Heat Pump Program is accessible on NYSEG/RG&E website at:  
<https://saveenergyny.ny.gov/NYScleanheat/>.

**Section 8:** The Contractor agrees to provide to NYSEG/RG&E and NYSEG/RG&E agents, throughout the Term of this Agreement, access to a Project Site(s) (as defined in the Manual) facility, equipment, and personnel as necessary to facilitate quality assurance of the heat pump system installation. NYSEG/RG&E or its technical contractor(s) may conduct a site inspection at a Project Site at any time. NYSEG/RG&E or its agents may choose to visit a Project Site to verify that the information provided in any of the required documentation is accurate. Should NYSEG/RG&E decide to inspect a Project Site, NYSEG/RG&E or its agents may, or may not, contact the Contractor to schedule the inspection; inspections may occur without notice to the Participating Contractor. If the inspection reveals activities different from that represented in any of the required documentation, NYSEG/RG&E may refuse to make payment. The Contractor hereby agrees that NYSEG/RG&E may independently communicate with any site owner or NYSEG/RG&E customer, as applicable, with respect to any Project, as defined in the Manual, without prior notice to the Contractor.

## Article 2: Heat Pump Program Incentives and Payments

**Section 1:** The amounts, limitations, and availability of Incentives as defined in the Manual are those that are in effect at the time that NYSEG/RG&E accepts the Incentive Application.

**Section 2:** NYSEG/RG&E reserves the right to change the Heat Pump Program Incentives at its discretion. Notice of all such changes will be provided to the Contractor via the e-mail address as identified on the Contractor Application.

**Section 3:** Incentive payments that result from Incentive Applications will be paid to the Contractor listed on the corresponding Incentive Application. Acceptance by the Contractor of final payment shall release NYSEG/RG&E from all claims and liability of the Contractor, representatives and assigns to this Agreement.

**Section 4:** NYSEG/RG&E reserves the right to withhold approval of Incentive Applications at any time, for any reason. NYSEG/RG&E will not process an Incentive Application submitted by the Contractor if their Agreement has been terminated, or where the Contractor is a party on customer contract(s) that are the subject of unresolved application, installation, or performance issues.

**Section 5:** NYSEG/RG&E may charge the Contractor for any costs incurred by NYSEG/RG&E for additional field inspections required due to the failure by the Contractor to submit a complete Incentive Application, repetitive errors in design or installation or to make corrections or modifications as requested by NYSEG/RG&E.

**Section 6:** Notwithstanding any other provision of this Agreement, NYSEG/RG&E reserves the right to deny or alter payment of an Incentive, to exercise its Set-Off rights, or to seek reimbursement of Incentives paid if, at any time, it learns that the approved Heat Pump system was not actually installed or was not installed as required under the Heat Pump Program or this Agreement. NYSEG/RG&E may: (a) elect to not pay the Incentive; (b) require changes before making any payments; (c) require reimbursement of Incentives already paid unless the requested changes are made; (d) withhold approval of Incentive Applications for other ASHP Systems; or (e) exercise its Set-Off rights.

## Article 3: Obligations between the Contractor and Eligible Customers

**Section 1:** The Contractor shall execute a written agreement with the customer for each Heat Pump System. Each such agreement, including the disclosure of all subcontractors, shall meet the requirements identified in the applicable Manual. In addition, at the completion of each Heat Pump installation, the Contractor must train site owners on system operation and maintenance.

**Section 2:** The Parties agree that NYSEG/RG&E may, at NYSEG/RG&E's discretion, communicate by voice and/or written format with any Heat Pump System customer with respect to any matter relevant to a proposed or installed Heat Pump System. Such communications may be in reply to an inquiry from a customer or at NYSEG/RG&E's initiation.

**Section 3:** The Contractor further attests that the customer signature appearing on any document submitted by the Contractor below shall be the true and genuine signature of the customer and that it was affixed to the document on the date indicated.

## Article 4: Insurance Requirements

**Section 1:** The Contractor, at no additional cost to NYSEG/RG&E, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in this Article. All such insurance shall be evidenced by insurance policies, each of which shall: (1) reference this Agreement; name or be endorsed to cover the Contractor as the insured, and NYSEG/RG&E, NYSERDA and the State of New York as additional insured; and reference all work to be performed under the Heat Pump Program; (2) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSEG/RG&E of written notice thereof; and be reasonably satisfactory to NYSEG/RG&E in all other respects. NYSEG/RG&E reserves the right to request insurance documentation and copies of subcontractor agreements for any subcontractor, and to request the identity of all individuals participating in the Heat Pump System installation.

**Section 2:** The types and amounts of insurance required to be maintained under this Section are as follows: (1) commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury, sickness, or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster, and (2) Workers Compensation coverage as required by New York State.

**Section 3:** Not less than 15 days prior to the date any policy furnished or carried pursuant to this Agreement will expire, the Contractor shall deliver to NYSEG/RG&E a certificate(s) of insurance evidencing the renewal of such policy(s), and the Contractor shall promptly pay all premiums thereon due. No work shall be performed under this Agreement without current insurance. NYSEG/RG&E will not accept Incentive Applications or make payments under this Agreement without current insurance certificates.

**Section 4:** In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSEG/RG&E hereunder, or if deemed necessary by NYSEG/RG&E due to events rendering a review necessary, the Contractor shall deliver to NYSEG/RG&E a certified copy of each policy upon request.

**Section 5:** Within five working days, or contemporaneously with the requirements of each insurance policy, the Contractor shall notify NYSEG/RG&E in writing of the occurrence of any accident, event or incident involving personal injury or property damage that might reasonably result in any complaint or claim, in law or in equity, against the Contractor, any non-customer party to the applicable customer agreement or NYSEG/RG&E

## Article 5: Indemnification

The Participating Contractor shall protect, defend, indemnify, and hold harmless NYSEG/RG&E, its directors, officers, employees, agents and from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, experts' and/or attorneys' fees and expenses) imposed upon, incurred by, or asserted against, NYSEG/RG&E resulting from, arising out of or relating to the Contractor's performance of this Agreement. The obligations of the Contractor under this section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

## Article 6: Miscellaneous

**Section 1:** NYSEG/RG&E does not endorse, guarantee, or warrant any manufacturer, product, or the Contractor, and NYSEG/RG&E disavows and provides no warranties, expressed or implied, for any product or services that may be rendered hereunder. The Contractor's reliance on warranties is limited to any warranties that may arise from, or be provided by, contractors, vendors, manufacturers, etc.

**Section 2:** The Participating Contractor acknowledges that neither NYSEG/RG&E nor any of its representatives are responsible for assuring that the design, engineering, construction, and/or installation of the Heat Pump System is proper or in compliance with any particular laws (including patent laws), regulations, codes, or industry standards. NYSEG/RG&E does not make any representations of any kind regarding the results to be achieved by any Heat Pump System, or the adequacy or safety of such measures. The scope of review by NYSEG/RG&E of the installation of the Heat Pump Systems is limited solely to determining whether such Heat Pump Systems conform to Heat Pump Program terms, conditions, and requirements.

**Section 3:** This Agreement, including Exhibits A and B and all documents incorporated by reference, including any Contractor or Incentive Applications made part of this Agreement, is the entire Agreement between NYSEG/RG&E and the Participating Contractor and supersedes all other communications and representations. If either NYSEG/RG&E or the Contractor desire to modify this Agreement, the modification must be in writing and signed by an authorized representative of the party against which enforcement of the modification is sought.

**Section 4.** The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent or employee of NYSEG/RG&E. In accordance with such status, the Contractor and its respective officers, agents, employees, subcontractors, representatives, and servants shall, at all times during the term of this Agreement, conduct themselves in a manner consistent with such status. By reason of this Agreement, the Contractor shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives, or servants of NYSEG/RG&E nor make any claim, demand, or application for any right or privilege applicable to NYSEG/RG&E, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSEG/RG&E and the Contractor for any reason, including but not limited to unemployment, workers' compensation, employee benefits, vicarious liability, professional liability coverage or indemnification. No party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement. The Contractor expressly acknowledges NYSEG/RG&E's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSEG/RG&E, the Contractor, subcontractors, vendors and/or the Contractor's personnel by virtue of any act or omission on the part of NYSEG/RG&E or its employees. Accordingly, the Contractor expressly covenants and agrees to notify NYSEG/RG&E of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully

and honestly cooperate with NYSEG/RG&E in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSEG/RG&E for disclosure of information concerning such claim or event even if this Agreement should terminate for any reason.

**Section 5:** The Contractor shall collaborate with NYSEG/RG&E's Director of Communications, or other authorized representative as designated by NYSEG/RG&E, to prepare any press release and to plan for any news conference concerning Heat Pump Systems installed under the Heat Pump Program. In addition, the Contractor shall notify NYSEG/RG&E's Director of Communications or other such designate representative regarding any media interview involving Heat Pump Systems installed under the Heat Pump Program.

**Section 6:** Commercial promotional materials, advertisements, informational brochures, and website content produced by the Contractor shall credit NYSEG/RG&E and shall be submitted to NYSEG/RG&E for review and recommendations to improve their effectiveness prior to use. Such content may be approved in advance by NYSEG/RG&E and after initial approval, such content may be used in subsequent promotional materials or advertisements without additional approvals. In the event that NYSEG/RG&E determines that the Contractor is presenting or publishing incorrect or misleading information regarding the Heat Pump Program or the Contractor's status in the Heat Pump Program, the Contractor agrees to make appropriate modifications promptly upon notification by NYSEG/RG&E. If a website maintained by or for the Contractor includes references to NYSEG/RG&E and/or the Heat Pump Program, the website must include the following link <https://saveenergyny.ny.gov/NYScleanheat/> or any such link as NYSEG/RG&E may provide.

**Section 7:** This Agreement does not commit NYSEG/RG&E to approve any Incentive or Incentive Application, pay any costs incurred in preparing an Incentive Application, or procure or contract for services or supplies. NYSEG/RG&E reserves the right to accept or reject any or all Incentive Applications received, to negotiate with all qualified sources, or to cancel, in part or in its entirety, the Heat Pump Program when it is in NYSEG/RG&E's best interest.

**Section 8:** This Agreement may be terminated by NYSEG/RG&E at any time upon notice to the Contractor. If the Contractor wishes to cancel or terminate this Agreement, NYSEG/RG&E may seek reimbursement of any Incentives provided by NYSEG/RG&E regarding Heat Pump Systems that have not been completely installed and commissioned as required in this Agreement.

**Section 9:** The Contractor agrees and consents to receive notices at the email addresses provided in this Contractor Application.



**Section 10:** The Contractor shall disclose any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United shall describe circumstances for each. This disclosure requirement extends to the Contractor and its officers, partners, and directors or members of any similarly governing body. If a conviction should come to the attention of NYSEG/RG&E after the execution of this Agreement, NYSEG/RG&E may instruct the Contractor to temporarily stop work pending further investigation, or terminate the Agreement; the Contractor may be subject to penalties for violation of any law that may apply in the particular circumstances. The Contractor must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

**Section 11:** NYSEG/RG&E shall have no liability under this Agreement to the Contractor or to anyone else beyond the funds actually paid to NYSEG/RG&E by third parties, which would fund this Agreement.

**Section 12:** The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years thereafter, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to the Contractor's performance under this Agreement. NYSEG/RG&E shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records pertaining to the Contractor's performance under this Agreement, at the office or offices of the Contractor where they are then being kept, maintained and preserved. If such books, accounts and records are not kept at an office within the State of New York, within a reasonable time of a request by NYSEG/RG&E, the Contractor shall make such books, accounts and records available to NYSEG/RG&E at NYSEG/RG&E's offices or at an agreed upon location within the State of New York. Any payment made under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein which are found by NYSEG/RG&E on the basis of any audit of the Participating Contractor by an agency of the United States, the State of New York, or NYSEG/RG&E not to constitute a properly invoiced amount.

BY THE ACT OF SUBMITTING AN INCENTIVE APPLICATION, THE CONTRACTOR ACKNOWLEDGES AND CONFIRMS ITS UNDERSTANDING THAT NYSEG/RG&E MAKES NO REPRESENTATIONS OF ANY KIND REGARDING THE RESULTS TO BE ACHIEVED OR THE PERFORMANCE, ADEQUACY OR SAFETY OF ANY SYSTEM INSTALLED UNDER THE HEAT PUMP PROGRAM. NYSEG/RG&E DOES NOT ENDORSE, GUARANTEE, OR WARRANT ANY PARTICIPATING CONTRACTOR, PARTICULAR MANUFACTURER, OR PRODUCT, NYSEG/RG&E PROVIDES NO WARRANTIES, EXPRESSED OR IMPLIED, FOR ANY PRODUCT OR SERVICE. NYSEG/RG&E IS NOT RESPONSIBLE FOR AND WILL NOT CONTRIBUTE TO ANY REMEDY TO AN ACTUAL OR ALLEGED SYSTEM DEFECT, INADEQUACY, MALFUNCTION, OR COMPLAINT.

Signature of Contractor \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Contractor Business Name \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT A

### NYSEG/RG&E TERMS AND CONDITIONS

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

#### **ARTICLE 1 – PAYMENT**

All payments by NYSEG/RG&E will be made by check.

#### **ARTICLE 2 – TAXES**

The Agreement does not include sales/use taxes. Contractor shall be responsible for payment of and assumes exclusive liability for any and all contributions or taxes imposed by or required under the laws of the State of New York or any other state or Federal law, or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect to, wages, salaries, benefits or other compensation paid to employees engaged upon or in connection with the Agreement. NYSEG/RG&E shall withhold from any payments due Contractor hereunder any amounts that it is required to withhold pursuant to any Federal or State tax laws.

#### **ARTICLE 3 - CLAIMS/DISPUTES**

**A.** Any claims by Contractor relating to this Agreement, must be submitted to the NYSEG/RG&E in writing within fourteen (14) calendar days of initial occurrence of the basis for the claim. Failure to provide such notification shall be deemed waiver of such claim.

**B.** The notice of claim shall include the particulars and shall specify the cause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Contractor considers itself to be entitled in connection with the Agreement.

**C.** The Parties agree to hold a meeting promptly to attempt in good faith to negotiate a resolution of the dispute, such meeting to be attended by representatives of the Parties with decision-making authority regarding the dispute. If, within twenty-one (21) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, either Party may refer the dispute to a court under Article 19 which is to be the sole legally binding forum available to the Parties for resolution of a dispute hereunder.

#### **ARTICLE 4 – AUDIT**

Contractor shall check all materials and labor entering into the work under the Agreement and shall keep full and detailed accounts as may be necessary to provide proper financial management under this Agreement. At all reasonable times, NYSEG/RG&E shall have access to the Contractor's offices, work and records pertinent to all charges, for inspection, audit and review. Contractor shall permit such examination and make appropriate adjustments as may be required by the results of the audit. All results of these audits must be kept confidential between the Parties and their agents. This provision shall remain in effect for two (2) years following final payment under this Agreement.

#### **ARTICLE 5 - RIGHTS, PRIVILEGES, REMEDIES; NON WAIVER**

All rights, privileges and remedies afforded each of the parties hereto by this Agreement shall be deemed cumulative and the exercise of any one or more of such rights or remedies shall not be deemed a waiver of any other right, privilege or remedy provided for herein or available at law or in equity.

#### **ARTICLE 6 - NON WAIVER OF RIGHTS**

Any failure by NYSEG/RG&E to enforce or require the strict performance of the terms or conditions of this Agreement shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way.

#### **ARTICLE 7 - INDEPENDENT SUPPLIER**

Contractor is and shall always remain an independent contractor in its performance of this Agreement. With the exception of staff augmentation engineering services required by NYSEG/RG&E, where Contractor's personnel work out of NYSEG/RG&E's offices under NYSEG/RG&E's direction, the provisions of this Agreement shall not be construed as authorizing or reserving to NYSEG/RG&E any right to exercise any control or direction over the operations, activities, employees or agents of Contractor in connection with this Agreement. Neither Party to this Agreement shall have any authority to employ any person as agent or employee for or on behalf of the other party to this Agreement for any purpose, and neither Party to this Agreement, nor any person performing any duties or engaging in any work at the request of such Party, shall be deemed to be an employee or agent of the other Party to this Agreement.

NYSEG/RG&E shall carry no worker's compensation insurance, health insurance or accident insurance to cover the Contractor, or any of its agents, employees or subcontractors. NYSEG/RG&E shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, or provide any other contributions or benefits which might be expected in an employer/employee relationship. The Contractor agrees to report and pay any contributions for taxes, unemployment insurance, Social Security and any other required payments himself or herself.

#### **ARTICLE 8 – SUBCONTRACTS**

If Contractor shall cause any part of the work to be performed by a sub-contractor, the provisions of this Agreement shall apply to such sub-contractor and its officers, agents or employees in all aspects as if they were employees of Contractor, and Contractor shall not thereby be discharged from any of its obligations and liability hereunder, but shall be liable hereunder for all acts and omissions of the sub-contractors. Nothing hereunder shall create any contractual relationship between NYSEG/RG&E and any subcontractor or any sub-subcontractor.

#### **ARTICLE 9 - THIRD PARTY BENEFITS**

Except as may be specifically provided for herein, no provision of this Agreement is intended or is to be construed to be for the benefit of any third party.

#### **ARTICLE 10 – SAFETY**

NYSEG/RG&E may at any time suspend the work or any part thereof, immediately and verbally for reasons of safety. In the event of any work stoppage, Contractor shall properly protect such work as may be liable to sustain injury from any cause.

NYSEG/RG&E's Safety Rules and Regulations for Contractors are made a part hereof, shall apply to all work performed under this Agreement.

#### **ARTICLE 11 – ACCIDENT, SECURITY AND LOSS PREVENTION**

For the protection of workers and the public, the Contractor will take all necessary and advisable precautions for the safety of all persons and property at, on, or near the work site and will erect and maintain all necessary and advisable safeguards as required by the conditions, prudent industry practice,

and progress of the work. Contractor is responsible for the security and protection of its own equipment, supplies, and tools used in connection with the work contemplated by the Agreement.

**ARTICLE 12 - EMERGENCIES**

The Contractor shall perform any work and shall furnish and install any materials and equipment necessary during an emergency affecting the safety of persons and property.

**ARTICLE 13 - TERMINATION**

NYSEG/RG&E may for any reason, with or without cause, on written notice to Contractor terminate the Agreement without liability to NYSEG/RG&E

**ARTICLE 14 - ASSIGNMENT**

Contractor shall not assign all or any of its rights or obligations under this Agreement except with the prior written consent of NYSEG/RG&E. Any assignment made without such consent shall be void ab initio.

**ARTICLE 15 - SEVERABILITY**

If any provision of this Agreement is unenforceable under any applicable law or is held invalid, such holding shall not affect any other provision hereof, and this Agreement shall be construed as if such unenforceable or invalid provision had never been contained herein.

**ARTICLE 16 - PUBLIC RELEASE OF INFORMATION**

Dates, photographs, sketches, advertising and other information relating to the work under this Agreement, which Contractor desires to release or publish, shall be submitted to NYSEG/RG&E for approval two (2) weeks prior to the desired release date. As a part of the approval request, Contractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases must have the prior written approval of NYSEG/RG&E which approval may be withheld without reason or explanation to Contractor.

**ARTICLE 17 - LIMITATION OF LIABILITY**

To the fullest extent permitted by law, NYSEG/RG&E shall not be liable for any special, indirect, punitive, exemplary, incidental or consequential damages resulting in any way from the performance of the work contemplated by this Agreement, including lost profits or other business interruption damages, whether based in contract, warranty, tort, negligence, strict liability, or otherwise, and whether suffered by Contractor or by any of its subcontractors, under or in respect to this Agreement or for any failure or performance related to this Agreement howsoever caused.

**ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

To the extent, if any, that the provisions of the following executive order and statutes, as amended or supplemented, along with their implementing regulations, apply to the performance of the Agreement by Contractor, the Contractor will comply with the applicable executive order, statutes and regulations: Section 202 of Executive Order 11246 (41 CFR § § 60, et seq.); Section 402 of the Vietnam Era Veterans Readjustment Act (41 CFR § § 60-250.1, et seq.); Section 503 of the Rehabilitation Act of 1973 (41 CFR § § 741.1, et seq.); and New York Executive Law §§ (5 NYCRR § § 140.1, et seq.). These regulations may require the Contractor to develop an Affirmative Action Compliance Program and file a standard Form 100 Report (EEO-1), or other reports, as prescribed.

Without limiting the foregoing, the Contractor and each of its subcontractors (if any) shall abide by the

requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **ARTICLE 19 - GOVERNING LAWS**

The Contractor will comply with all applicable federal, state and local laws, rules, ordinances and regulations of any governmental entity, board or agency having jurisdiction over the work or the premises, including, without limitation, Federal, state, or local laws, rules and regulations and any applicable Executive Orders (state or Federal) in the performance of the Agreement. All questions concerning the interpretation, validity and enforceability of this Agreement and of its terms and conditions, as well as questions concerning the sufficiency or other aspects of performance under the terms or conditions of this Agreement, shall be governed by the law of the State of New York, without reference to its conflict of law provision and any action or proceeding brought in connection therewith, will be brought in the appropriate court located in the State of New York. The Parties hereby irrevocably consent to the jurisdiction of such court and hereby waive, to the fullest extent permitted by, any objection which they may now or hereafter have to the venue of any such dispute related to or arising out of this Agreement brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each Party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

#### **ARTICLE 20 - EMPLOYEE SOLICITATION**

Contractor understands and acknowledges that NYSEG/RG&E has expended and continues to expend significant time and expense in recruiting and training its employees and that the loss of employees would cause significant and irreparable harm to NYSEG/RG&E. To the maximum extent permitted under applicable laws, the Contractor agrees and covenants not to directly or indirectly solicit, hire, or recruit, or attempt to solicit, hire, or recruit any employee who has been employed by NYSEG/RG&E or its Affiliates during the term of this Agreement, with whom Contractor has had contact in connection with the negotiation, execution, or performance of this Agreement (collectively, "Covered Employee"), or induce the termination of employment of any Covered Employee for a period of one (1) year, beginning on the employee's last day of employment with NYSEG/RG&E or one (1) year after the term of this Agreement, whichever is sooner in the applicable case, except with the prior written consent of NYSEG/RG&E, and Contractor shall not induce or attempt to induce, directly or through an agent or third party, any such Covered Employee to leave the employ of NYSEG/RG&E or its Affiliates. As used herein, the term "Affiliate" shall mean any person or entity controlling, controlled by, or under common control with NYSEG/RG&E through majority stock or other ownership interest, direct or indirect. Notwithstanding the foregoing, nothing in this clause shall either (i) limit Contractor from employing any person who contacts Contractor on his or her own initiative and without any solicitation by Contractor specifically directed to such employee, or (ii) directly or indirectly prohibit or restrict either Party from soliciting or hiring another Party's current or future employees to the extent such prohibition or restriction is prohibited or impermissible under applicable laws.

#### **ARTICLE 21 – ETHICS**

Contractor shall comply with the Avangrid Contractors' Code of Ethics ("Contractors' Code of Ethics") in connection with its performance under this Agreement. The Contractors' Code of Ethics can be found at the Avangrid website ([www.Avangrid.com](http://www.Avangrid.com)).

#### **ARTICLE 22 - GRATUITIES PROHIBITED**

The Contractor shall not, under any circumstances, offer or extend any gratuity or special favor to any employee or agent of NYSEG/RG&E or its Affiliates or do anything which might reasonably be interpreted as an attempt to influence any employee or agent of NYSEG/RG&E in the conduct of their duties.

**ARTICLE 23 – NOTICE**

Along with all other correspondence requirements included in this Agreement, any notice, request, approval or other document required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given when delivered in person or deposited in the U.S. Mail, postage prepaid, addressed as specified herein or to such other address or addresses as may be specified from time to time in a written notice given by such Party, or when email notice has been given with an acknowledgement given by the appropriate Party representative. The Parties shall acknowledge in writing the receipt of any such notice delivered in person.

All communications to NYSEG/RG&E shall be directed to:

Contract Administration  
89 East Avenue  
Rochester, NY 14649

With Copy To :  
Elizabeth Rhoda  
NYCleanHeatContractor@rge.com

Phone: 585-724-8028

Fax: 585-771-2820

All communications to Contractor shall be directed to:

Contractor Name	_____
Contact Name	_____
Title	_____
Email Address	_____
Street Address	_____
City, St, Zip	_____
Phone	_____
Fax	_____