



**ENERGY SERVICES PROGRAM
SOLAR ADVISORY SERVICES AGREEMENT**

Contract No. T-_____

This Advisory Services Agreement (this “Agreement”), dated as of this _____ day of _____, 20__, 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 State University of New York, an educational corporation organized and existing under the laws of the State of New York, by and on behalf of [insert Campus name], with offices located at [insert Campus address] (“Customer”).

WHEREAS, Public Authorities Law §1005(17) permits the Authority, as deemed feasible and advisable by its 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

WHEREAS, as part of its ESP offerings, the Authority has established a program under which it provides consulting services to assist prospective customers in its efforts (i) to reduce energy consumption and associated operations and maintenance costs; (ii) to realize environmental benefits, including but not limited to the reduction of air pollution; (iii) to conserve natural resources; and/or (iv) facilitate the use of clean energy sources at Customer’s facilities (“Advisory Services Program”); and

WHEREAS, Public Authorities Law §1005(17) permits Customer, a public 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, including services provided under the Advisory Services Program; and

WHEREAS, Customer desires to engage the Authority to provide such services under its Advisory Services Program for services related to the New York Office of General Services; “Group 05302 – Solar Power Purchase Agreements (STATEWIDE)” issued May 1, 2017 under which Customer may obtain the services of solar developers (“Solar Developer” or “Seller”), and enter into this 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:

ADVISORY SERVICES

1. The Authority will provide the Services, as are more specifically defined in the Scope of Services attached as Schedule A.
2. Services may be provided by Authority employees and/or an entity engaged by the Authority, at its discretion, through its procurement policies, procedures and guidelines to perform all or a part of the Services (“Service Provider”).
3. Authority will keep Customer informed as to the progress of the Services and the identity of Service Providers and provide Customer with periodic reports of all activities. Authority will meet with representatives of Customer upon reasonable notice to discuss any matters concerning the Services.
4. Authority and Customer will cooperate in good faith during the performance of such Services.

COMPENSATION AND PAYMENT

1. The “Authority Program Fee” or “APF” reimburses the Authority for the Services provided by Authority under this Agreement. It excludes all other project-related costs and disbursements not otherwise performed directly by the Authority, including but not limited to, any Service Provider Fees.
2. The Authority’s Program Fee for the Project identified in _____ is a fixed lump sum of \$ _____. Except under the circumstances set forth in the termination provision below, the APF will be paid directly by the Solar Developer to the Authority under the terms of the Solar Power Purchase Agreement (“Solar PPA”) between the Customer and the Solar Developer for the Project. The APF will be paid on a milestone basis as articulated in the Solar PPA with payments made within 60 business days of the date the first project to reach each milestone.
3. The Customer agrees to include reasonable payment terms in the Solar PPAs as will most expeditiously and fully compensate the Authority. At a minimum, provisions in each PPA with a Solar Developer or Seller will require (i) the APF to be paid in full within 60 calendar days of the Customer receiving the first electricity from the first completed project and (ii) provides for a direct right of action by the Authority against the Solar Developer to recover the APF, as follows:
 - i. *“Authority Program Fee. The Authority Program Fee (“APF”) is payable by the Seller to the New York Power Authority (“Authority”) for providing support services to the Purchase during the solicitation period, i.e., assessing the solar PV project sites, developing and issuing the mini-bid solicitation and*

evaluating proposals received in response to the mini-bid solicitation, and during the construction period.

- ii. The APF is equal to [Sinsert].*
 - iii. The APF is payable as follows, (a) within 30 calendar days of the execution of the Power Purchase Agreement between the Seller and the Purchaser, the Seller will pay to the Authority a sum equal to 10% of the APF, (b) within 30 calendar days of the final permit or approval being received by the Seller allowing the System to be fully constructed and commissioned, the Seller will pay to the Authority a sum equal to 40% of the APF, (c) within 30 calendar days of commencing construction of the System, the Seller will pay to the Authority a sum equal to 25% of the APF and, (d) within 30 days of the Purchaser receiving the first electricity from the System pursuant to the PPA, the Seller will pay to the Authority a sum equal to 25% of the APF.*
 - iv. The Parties agree that the Authority is a third party beneficiary of this PPA, with all rights and remedies afforded herein, for the express purpose of enforcing the Seller's obligation to make payment of the APF.*
 - v. A failure, for any reason, by the Seller to adequately incorporate the APF costs into the Contract Price in Exhibit 1 does not relieve the Seller of any obligation to pay the APF to the Authority pursuant to this PPA.*
 - vi. If for any reason whatsoever the Seller fails to pay the APF to the Authority by the due dates set out above, then for as long as any portion of the APF remains unpaid the Purchaser shall not be required to pay for any electric energy generated by the System during that period. The Seller must continue to provide all electric energy generated by the System to the Purchaser during this time and does not relive the Seller of any of its obligations under this PPA."*
4. Customer's liability under this Agreement for payment of the APF will arise under the following circumstances: (i) if a Solar PPA is ultimately not executed for the Project; or (ii) eighteen (18) months have lapsed after the execution of the Solar PPA and no permits sufficient for the Solar Developer to begin construction of the Project have been issued; or (ii) the Customer notifies the Authority that the Customer no longer wishes to proceed with development of the Project.
 5. Should any of the circumstances set forth in paragraph 4, above, materialize, the Customer agrees to pay the Authority the maximum amount of \$125,000 (or such lesser portion thereof that will result in the Authority's full recovery of the APF). Customer shall pay the Authority's invoice for actual Solar Advisory Services performed under this Agreement within 60 days of Customer's receipt of Authority's invoice. Any amount due and unpaid after 60 days shall be subject to a late payment charge determined as the greater of (i) interest in accordance with the late payment rate set forth in State Finance Law §179(g).
 6. Customer agrees to provide cooperation and support to the Authority in the event that the Solar Developer fails to make timely payment to the Authority, and agrees to execute all further and additional documentation necessary for the Authority to recover full payment of the APF under the Solar PPA.

TERM

1. This Agreement shall become effective on the date first written above, and terminate upon the completion of the Services or three years after it become effective, whichever occurs earlier. This Agreement may be renewed at the end of the current term for two (2) additional one-year periods, to be mutually determined by the Parties in writing and signed by an authorized officer or designee of Authority and Customer. In no event shall the cumulative term of this Agreement exceed 5 years.
2. Either Party may terminate this Agreement at any time upon 60 days' prior written notice. In addition, the following incidents shall be deemed to immediately terminate a Project: (i) closure, abandonment, destruction or material damage to the Facility or the Project for which Services are being performed; (ii) modification to the proposed Project that, in the Authority's opinion, renders the Project ineligible under the Authority's requirements for inclusion in its ESP, whether due to removal, by-passing or alteration of equipment or due to any unforeseen event; (iii) failure by Customer to make payment to Authority when due and such payment default continues for a period of 60 days after written notice thereof by Authority to Customer; or (iv) a suspension of Services that remains in effect for more than 90 days.
3. In addition to any other right or remedies available to the Authority, Authority may suspend Services if any of the following occurs: (i) a delay caused by a Force Majeure Event (as defined below) continues for a period of fifteen (15) consecutive days; (ii) 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 (iii) 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. In the event Services are suspended by Authority, Authority and Customer will mutually agree in writing the terms under which the Services will resume, including, but not limited to an adjustment to any schedule for the performance of the Services, and the Authority Program Fee.

WARRANTIES, DAMAGES, LIABILITY

1. 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 for any Project meet Customer's satisfaction prior to implementing the Project. **AUTHORITY HEREBY DISCLAIMS ANY AND ALL LIABILITY FOR ANY ENERGY SAVINGS PROJECTED BY AUTHORITY OR OTHERWISE EXPECTED BY CUSTOMER THAT CANNOT BE ACHIEVED.**
2. 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 Agreement (a “Force Majeure Event”). In the event Authority or its Service Providers are unable to fulfill any obligations hereunder by reason of such Force Majeure Event, Customer will be notified in writing and any completion dates described in Schedule A will be extended by the amount of additional time reasonably necessary to complete the Services.
3. To the extent permitted by applicable law, including Section 41 of New York State Finance Law and Article II of the New York Court of Claims Act, neither party shall be liable to the other in contract, in tort or otherwise for any injury to persons or damage to, or loss of property or equipment, arising from the Authority’s performance of this Agreement. Nothing in this subsection shall be construed as limiting the liability of a Contractor or Subcontractor to the AUTHORITY or the CUSTOMER in connection with the performance of such Contractor’s or Subcontractor’s work on the CUSTOMER’s premises.
 4. To the fullest extent permitted by law, neither party shall be liable to the other 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 Agreement, regardless of the form of action (whether in contract, tort or otherwise), even if Authority has been advised of the possibility of such damages.
 5. In no event shall Authority’s total liability (whether in contract, tort or otherwise) for all claims relating to the Services exceed the total Program Fee.

INTELLECTUAL PROPERTY RIGHTS

1. Neither Party shall acquire, directly or by implication, any ownership of any Intellectual Property Rights of the other Party. “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. 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 Agreement without the Intellectual Property Rights of a Party that are owned, controlled, acquired, developed, invented, generated,

authored, conceived or reduced to practice prior to the date of this Agreement, or acquired parallel to and independent of this Agreement (“Background Intellectual Property Rights”).

2. Unless and until Customer has paid the Authority Program Fee, 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.

OBLIGATIONS OF THE PARTIES

1. Each Party will designate an authorized representative responsible for coordinating the Services, obtaining all necessary approvals, and authorizations. A Party may change its authorized representative by notice to the other Party in writing at least five business days prior to such change.
2. Customer shall provide Authority and its Service Providers safe, proper and timely access to its facility(ies) as necessary to perform the Services, and upon Authority’s request, will accompany Authority and its Service Providers to its facilities. 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 performance of the Services.
3. Customer shall be responsible for facilitating coordination with third parties, including but not limited to utility companies, permitting agencies, governmental authorities having jurisdiction over a proposed Project, or any other contractor or service provider engaged directly by Customer, or whose approval is required in connection with a proposed Project but is not under contract with the Authority, as required to advance a proposed Project.
4. In addition to the obligations set forth herein, Customer shall provide Authority and/or its Service Providers with such assistance as may be required to perform the 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.

MISCELLANEOUS

1. Entire Agreement. This Agreement, including Exhibit A, State University of New York Standard Contract Clauses and Exhibit A-1, State University of New York Affirmative Action Clauses, attached hereto and made a part hereof, constitutes the

entire agreement between Authority and Customer concerning the Services, and supersedes all prior negotiations, representations, contracts and agreements concerning the Services. This Agreement does not supersede any 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 Agreement.

2. Amendments. This Agreement may be amended only in writing signed by an authorized officer or designee of Authority and Customer.
3. Dispute Resolution. The Parties shall use good faith efforts to settle promptly all disputes arising under this Agreement. In the event that any dispute cannot be resolved in the normal course of business within twenty (20) days, either Party may give the other Party formal notice of the dispute, causing the receiving Party to submit to the other Party a proposal for resolution after considering all information relevant to the dispute. Promptly thereafter, the Parties shall confer in person or by telephone 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.
4. Publicity. No marketing, publicity, promotion, social media, or advertising regarding this Agreement, or any Project undertaken pursuant to this Agreement, will be issued by either Party without the other Party's prior written approval, which approval will not be unreasonably withheld. Any responses to news media inquiries or social media activities developed by the other Party, related to this Agreement, or any Project undertaken pursuant to this Agreement, must be coordinated with the other Party for review and approval prior to their release. Letters, speeches, news and/or press releases, articles for publication, website and social media postings, etc., related to this Agreement, or any Project undertaken pursuant to this Agreement, must be coordinated among the Parties for review and approval prior to their release. Any and all communications, whether verbal, electronic or written, must be submitted to the other Party for prior review and approval. Customer agrees to abide by these terms regarding public announcements during the term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement, or the conclusion of any project undertaken pursuant to this Agreement.
5. Signage. The parties agree that with written consent from the Customer, the Authority may, at no cost to Customer, install and maintain appropriate 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 promptly notify Authority after Customer becomes aware of any damage that may occur to the signage. The publicity signage is intended to be placed in an area of Customer's designation with significant public visibility within close proximity to the Project and may include the identity of the Project, any applicable Authority program, New York State program or other initiative under which the Project is implemented and the identity of the parties supporting the project, including those parties' respective

logos. Authority will be responsible for removing the publicity signage upon the conclusion of a Project, or such earlier time as either Party deems it appropriate.

6. Notices. All notices permitted or required hereunder 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, with a copy sent via U.S. Mail.

Such notices shall identify the Agreement 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
PROCUREMENT DIVISION

Name:

Title:

Address: 123 Main Street
White Plains, NY 10601

E-Mail Address:

To Customer:

[CAMPUS NAME]

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 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 Agreement by giving 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 Agreement.

7. No Waiver. The failure of any Party to insist upon strict adherence to any term of this Agreement 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 Agreement.
8. Assignment. This Agreement 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.

9. Governing Law; Venue. This Agreement 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 Agreement or any dispute arising in connection herewith shall be instituted only in a court of competent jurisdiction.
10. No Third Party Beneficiaries. Nothing contained in this 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) against Authority.
11. Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement or Schedule A, as applicable, which other provisions shall remain in full force and effect.
12. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
13. Smoke Free SUNY. The State University of New York campus is smoke free. No smoking is permitted within the buildings or upon the grounds owned or leased by SUNY. Contractor must communicate this policy to its employees, subcontractors, and any other individuals assigned to enter upon SUNY grounds and premises in connection with the services to be performed in connection with this Agreement.
14. Executory Agreement. This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Agreement, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Agreement.

*** SIGNATURE PAGE FOLLOWS ***

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

CONTRACT NUMBER _____

Agency Certification

“In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.”

**POWER AUTHORITY OF THE STATE OF
NEW YORK**

**THE STATE UNIVERSITY OF NEW
YORK CAMPUS NAME**

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

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

**State University of New York
Notary Acknowledgement**

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this _____ day of _____, 20____, before me
personally came

_____, to me
known and known to me to be the person who executed the above instrument,
who, being duly sworn by me, did for himself/herself depose and say that he/she
is a member of the firm of
_____ and that he/she
executed the foregoing instrument in the firm name of
_____ and that he/she had authority
to sign same, and he/she did duly acknowledge to me that he/she executed the
same as the act and deed of said firm of
_____ for the uses and
purposes mentioned therein.

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this ___ day of _____, 20___, before me personally came
_____, to me known, who being duly sworn, did
depose and say that he/she resides in _____;
that he/she is the _____ (title) of
_____ (firm), the corporation
described in and which executed the foregoing instrument; that he/she knows the
seal of said corporation; that the seal affixed to said instrument is such corporate
seal; that it was so affixed by the order of the Board of Directors of said
corporation, and that he/she signed his/her name thereto by like order.

Notary Public