

**Memorandum of Understanding
Between
New York State Energy Research and Development Authority and ASHRAE
NYSERDA Agreement No.**

This Memorandum of Understanding (“MOU”), dated as of the DD of MONTH, 2020, is entered into by and between the New York State Energy Research and Development Authority (“NYSERDA”), a public benefit corporation of New York State established under Article 8, Title 9A of the State Public Authorities Law and having its principal place of business located at 17 Columbia Circle, Albany, NY 12203, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”), a consolidated corporation under the laws of New York State, and having its principal place of business 1791 Tullie Circle, N.E. Atlanta, GA 30329, to form a strategic partnership and establish the terms and conditions to collaboratively help New York State achieve its clean energy, climate change, economic development, and public health policy goals. NYSERDA and ASHRAE are referred herein individually as “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the mission and vision of NYSERDA are to: (1) advance innovative energy solutions in ways that improve New York’s economy and environment; and (2) Serve as a catalyst to advance energy innovation, technology, and investment thereby transforming New York's economy, and empowering people to choose clean and efficient energy as part of their everyday lives; and

WHEREAS, in alignment with New York State policy goals as outlined in the Climate Leadership and Community Protection Act (CLCPA) and New Efficiency New York (NENY), the mission objectives of NYSERDA include the advancement of innovative energy solutions in ways that establish a national best practice model for climate change mitigation and adaptation, resiliency, and clean energy market transformation; and

WHEREAS, ASHRAE is a global society with more than 56,000 members in over 132 countries, and a membership of about 2,700 engineers in New York State; and

WHEREAS, the mission and vision of ASHRAE are respectively: (1) To serve humanity by advancing the arts and sciences of heating, ventilation, air conditioning, refrigeration and their allied fields; and (2) A healthy and sustainable built environment for all; and

WHEREAS, ASHRAE Standards form an integral part of the New York State Energy Code; and

WHEREAS, ASHRAE standards, guidelines, research, training, tools, technical manuals, and best practice guidance form a body of information essential to the New York State clean energy economy and to the achievement of New York State policy goals.

NOW, THEREFORE,

The Parties agree to form a strategic partnership as outlined by the terms and conditions set forth herein, and to work together collaboratively to help New York State achieve its clean energy, climate change, economic development, and public health policy goals.

I. THE PARTIES

Established in 1975, NYSERDA is a New York State public-benefit corporation, located in Albany, New York, with regional offices in New York City, Buffalo, and West Valley. NYSERDA offers information and analysis, programs, technical expertise, and funding aimed at helping New Yorkers increase energy efficiency, save money, use renewable energy, and reduce their reliance on fossil fuels. NYSERDA professionals are charged with protecting the environment and creating clean-energy jobs. NYSERDA collaborates with businesses, industry, the federal government, academia, the environmental community, public interest groups, and energy market participants to reduce energy consumption and greenhouse gas emissions.

Founded in 1894, ASHRAE, a not-for-profit 501(c)(3) corporation, is a professional and technical society that serves humanity by advancing the arts and sciences of heating, ventilation, air-conditioning, refrigeration and their allied fields. ASHRAE's more than 56,000 individual members focus on building systems, energy efficiency, indoor air quality, refrigeration and sustainability. Through research, standards writing, publishing, certification and continuing education, ASHRAE shapes tomorrow's built environment today, and collaborates with many organizations throughout the buildings industry.

II. PURPOSE

The purpose of this MOU is for ASHRAE to assist through its technical expertise New York State in meeting the climate change, clean energy, market transformation and other public policy goals set forth in the Climate Leadership and Community Protection Act (CLCPA) and under New Efficiency New York (NENY), and to support an effective response to the COVID-19 crisis and enable the safe reopening and operation of buildings in New York State under NY Forward. NYSERDA and ASHRAE agree to work cooperatively to improve the design and application of efficient and low carbon heating, ventilating, air-conditioning, and refrigeration technologies and their application in New York State. Cooperation under this agreement also referred to as "the Work" will focus on the following key areas:

1. Sharing and/or presenting existing research, resources, current knowledge, and best practices on minimizing airborne pathogen exposure through improved IAQ/Ventilation/UVGI for buildings that require operation and occupancy to enable the safe reopening and operation of buildings in NYS.
2. Development of job/task specific contractor and building safety guidelines to minimize airborne pathogen exposure.
3. Development and/or delivery of improved IAQ/Ventilation/UVGI airborne pathogen exposure mitigation and pathogen elimination research, technical and/or guidance manuals, and associated training for building owners, operators, service providers, and the design community with an emphasis placed on energy efficient design, technology, and operational approaches. Assessment of a need to update existing standards, develop new standards and build a custom protocol for New York State.
4. Development of guidance documents, technical manuals, and other technical tools to support NYS policy goals including carbon neutral buildings, building electrification, carbon emission load calculations, clean geothermal district systems, and other public policy goals. Development of standards or updating existing standards through the ANSI process that cover topics such as net zero buildings, building electrification, carbon-based energy, and clean thermal district.

5. Development and/or delivery of new or existing ASHRAE professional training on the application of codes, standards, guidance documents, manuals, and tools to support New York State policy goals.
6. Improved communication and information sharing between The Parties to facilitate the following: communication of NYSERDA's available COVID Safe Workforce Training, solicitation of program related feedback, accelerated identification of barriers to market transformation, and the surfacing of insights on new opportunities to grow the clean energy economy in New York State.
7. On demand or project based technical advisory and matchmaking services as mutually agreed.
8. Other activities as needed or beneficial, mutually agreed, and where ASHRAE's and NYSERDA's missions and interests align.

III. AMENDMENT AND TERMINATION

1. This MOU may be modified or amended in writing by the Parties, and such amendments shall become part of, and shall be attached to, this MOU. This MOU may also be terminated with or without cause by any Party upon thirty (30) days written notice.
2. This MOU shall terminate automatically at the end of three (3) years unless revised or extended by written agreement of the Parties.

IV. CONFIDENTIALITY

1. For purposes hereof, "Confidential Information" means any information disclosed, either directly or indirectly, in writing, orally or by inspection of documents, which is indicated as being confidential at the time of disclosure, pursuant to paragraph 4 of this Section.
2. Notwithstanding any other provision of this MOU, the Parties agree to keep all Confidential information in strict confidence for a period of three (3) years from the date of receipt; provided, however, that the Parties shall maintain the strict confidence of any Confidential Information which may constitute a trade secret for so long as such Confidential Information remains a trade secret under applicable law. The Parties shall at all times exercise reasonable care to safeguard such Confidential Information.
3. The Parties agree only to disclose Confidential Information to those employees who need to know the Confidential Information and who have been informed of its confidential nature and who agree to be bound by confidentiality provisions covering such information which are at least as restrictive as those contained in this MOU.
4. NYSERDA is required to comply with the NYS Freedom of Information Law, Public Officers Law, Article 6. Section 87(2)(d) of that law provides for exemptions to disclosure for records or portions thereof that "are trade secret or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the disclosing party wishes to have treated as proprietary and confidential trade secret information should be identified and labeled "Confidential" or

“Proprietary” on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 (NYSERDA; <http://nyserda.ny.gov/~media/Files/About/Contact/NYSERDARegulations.ashx>). By so marking such information, the disclosing party represents that information has actual or potential specific commercial or competitive value.

V. GENERAL TERMS

1. This MOU does not constitute a binding commitment by any Party to contribute resources of any nature, including data or funding or time, towards the initiatives discussed herein. No license under any intellectual property rights of any kind is granted or implied by disclosure of information hereunder.
2. Each Party is responsible for the costs of its participation in all activities carried out in the framework of this MOU, unless specified otherwise in writing. The Parties will separately fund any activities arising from their collaborative efforts. In no event shall any Party be liable to the other Party or its representatives for any special, indirect, punitive, exemplary, or consequential damages of any type, arising in contract, tort (including negligence, whether sole, joint, concurrent, or strict liability) or otherwise, arising out of this MOU.
3. This MOU shall not be construed as a teaming, joint venture or any other contractual relationship or as a settlement of any dispute or as creating any obligation to negotiate with respect to any of the foregoing.
4. This MOU contains the entire understanding between the Parties and may not be modified in any manner except by written amendment executed by the Parties. The Parties may, from time to time, specify any new or different address in the United States as their address by giving fifteen (15) days written notice to the other Party. The change of address shall not be considered as impermissible modification or amendment to this MOU.
5. This MOU may not be assigned by any Party.
6. In the event that any provision of this MOU shall be held invalid or unenforceable for any reason, that provision shall be ineffective to the extent of such invalidity or unenforceability and such invalidity or unenforceability shall not affect any other provision of this MOU.
7. No Party may use the other Parties’ names, logos, trademarks, service marks, trade names, or refer to participation of an employee of the other Party by name or title, in any public release of information without the other Party’s written consent.
8. The Parties have caused this MOU to be executed by their duly authorized representatives and is effective on the date of the last signature below.

VI. REPRESENTATIONS

1. The use, public performance, reproduction, distribution, or modification of the project results does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy.

VII. LICENSES

1. ASHRAE shall be responsible for obtaining any necessary licenses to use any third-party content contained in materials developed by ASHRAE.

VIII. RESTRICTION ON USE

1. ASHRAE agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, ASHRAE shall treat such data in accordance with Section IV of this MOU and any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager.
2. ASHRAE acknowledges that in the performance of the Work under this Agreement, ASHRAE may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. ASHRAE agrees not to disclose any such information without the consent of NYSERDA.

IX. PUBLICITY

1. ASHRAE shall collaborate with NYSERDA's Communications Department to prepare any press release, to plan for any news conference concerning the Work and any other marketing or publicity including but not limited to social media posts concerning the Work. In addition, ASHRAE shall notify NYSERDA's Director of Communications regarding any media interview in which the Work is referred to or discussed.
2. It is recognized that during the course of the Work under this MOU, ASHRAE or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, ASHRAE shall credit NYSERDA's funding participation in the Project and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, ASHRAE shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with ASHRAE's policies.
3. Commercial promotional materials or advertisements produced by ASHRAE shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional

materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by ASHRAE within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify ASHRAE within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and ASHRAE do not agree on the wording of such credit in connection with such materials, ASHRAE may use such materials, but agrees not to include such credit.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

**NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY**

**AMERICAN SOCIETY OF
HEATING, REFRIGERATING AND
AIR-CONDITIONING ENGINEERS**

Signature: _____

Signature: Ch E. Duly III, PE

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Signature: [Signature]

Name: _____

Title: _____

Date: _____