

AUDIT AGREEMENT

ENERGY SERVICES PROGRAM

POWER AUTHORITY OF THE STATE OF NEW YORK

This Audit Agreement (“Agreement”), dated and effective this ___ day of _____20___, by and between the Power Authority of the State of New York (“Authority”), a corporate municipal instrumentality of the State of New York with its principal place of business at 30 South Pearl Street, Albany, New York 12207 and a place of business at 123 Main Street, White Plains, New York 10601, and _____ (“Customer”), with offices located at _____.

WHEREAS, Authority is committed to helping the State reach its “45 by 15” goal, which calls for 45 percent of New York’s electricity to come from energy efficiency and renewable sources by 2015; and

WHEREAS, Authority has developed expertise in the implementation of energy services solutions to meet the State’s needs and the needs of eligible participants in its Energy Services Program; and

WHEREAS, Customer is interested in exploring ways it may reduce its electricity costs, save energy and/or employ the use of renewable energy technologies (such measures, “Energy Services Program Measures” or “ESP Measures”); and

WHEREAS, Customer has identified one or more of its facilities (each, a “Facility”) that may benefit from ESP Measures and has requested Authority to prepare an audit (“Facility Audit” or “Audit”) of each identified Facility in order to determine if it is feasible to proceed with the implementation of ESP Measures at such Facility, and Authority has agreed, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Authority and Customer agree as follows:

1. Facility Audit. Authority will conduct a Facility Audit of each Facility identified in Appendix 1, attached hereto and forming a part of this Agreement. The Facility Audit will identify opportunities for implementing ESP Measures, and it will also include an analysis of whether hazardous materials and waste are likely to be present or generated as a result of implementing such ESP Measures. The scope of the Facility Audit will be as agreed to by Authority and Customer.
2. Costs. Authority shall charge Customer \$3,500 for the Facility Audit. If Customer and Authority agree to a broader scope Facility Audit, Authority’s fee for the broader scope Facility Audit will be agreed to in a writing signed by a duly authorized representative of each party in advance of the commencement of the Audit. A form substantially similar to Appendix 2, attached hereto and forming a part of this Agreement shall evidence such written agreement.
3. Performance. Each Facility Audit will be performed by Authority or by a contractor retained by Authority.

4. Report. The Authority shall provide a written report(s) of its Facility Audit(s) to Customer as soon as is practicable after completion of the Facility Audit(s).

5. Invoicing/Repayment. (a) At the time of submittal of the written report(s) Authority will submit its invoice(s) to Customer for services rendered. Customer shall pay Authority within thirty (30) days after receipt of Authority's invoice.

(b) Customer shall be liable for late payment charges as follows: (i) if Customer is an electricity customer of Authority, late charges shall be subject to interest as set forth in title 21, Section 454.6(b) of the New York Codes, Rules and Regulations (i.e., the late payment charge applicable to Customer's electric bill; or (ii) if Customer is not an electricity customer of Authority, late payment charges shall be computed daily on unpaid amounts, and compounded until paid, at an annual rate equal to 12%.

(c) Customer's invoices shall be sent to:

(d) Payment to Authority shall be sent to:

New York Power Authority
P.O. Box 2245
Syracuse, NY 13220-2245
Attn: Joel Bierenbaum

6. Representatives. Customer and Authority shall each designate a representative who shall be responsible for coordinating activities regarding the Facility Audit and for communicating with the other and assisting the other regarding Audit activities. Customer's representative will accompany Authority and/or its contractor to the Facility to ensure proper access.

7. Insurance - Customer's Responsibility. Customer shall procure a Commercial General Liability insurance policy with minimum limits of \$2,000,000 per occurrence for bodily injury and property damage naming Authority and the State of New York as additional insureds. In lieu of obtaining all risk and commercial general liability insurance, Customer may, at its option and with Authority's approval, which shall not be unreasonably withheld, elect to self insure against risk of loss. The decision to self insure will not relieve Customer of any of the obligations imposed herein and will afford Authority the protection against loss and rights it would have received if Customer had obtained such policies of insurance.

8. Insurance - Authority's/Contractor's Responsibility: In the event the Authority undertakes the Facility Audit work itself, Authority may elect to self-insure against risk of loss. The decision to self insure will not relieve the Authority of any of the obligations imposed herein. In the event Authority retains a contractor to perform the Facility Audit, Authority's agreement with the contractor shall provide that the contractor shall obtain and maintain policies of insurance for Workers' Compensation (inclusive of New York State disability benefits) and Employer's Liability coverage; a 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, the State of New York and Customer as additional insureds to the policy; and Automobile Liability coverage with a minimum limit of \$1,000,000 per accident. The form and sufficiency of each insurance policy required to be obtained hereunder by the contractor shall be subject to approval by Authority. Authority shall hold all Certificates of Insurance and provide copies to Customer upon request. Customer shall be promptly notified when any policy lapses or is otherwise terminated.

9. Limitation of Liability. To the extent permitted by applicable law, under no circumstances shall Authority be liable for indirect, incidental or consequential damages, such as 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) or for any other similar damages, arising from or relating to this Agreement.

10. Priority of Documents. Unless otherwise specified by the parties in a signed writing, once an Energy Services Agreement with a Project-specific Customer Installation Commitment (“CIC”) has been executed by both parties, this Agreement shall be incorporated into and made a part of the Energy Services Agreement and CIC. In the event of any inconsistency or conflict between this Agreement and the Energy Services Agreement or the CIC, the provisions of the documents listed below shall apply in the listed order of priority:

- (1) CIC
- (2) Energy Services Agreement
- (3) Agreement

11. Choice of Law/Venue. This Agreement shall be governed by and construed under New York law without reference to its conflicts of law principles. Any action at law, suit in equity, or other judicial or other proceedings for the enforcement of this Agreement or any of its provisions must be brought in and maintained only in a State court located in the County of Westchester.

IN WITNESS WHEREOF, Authority and Customer have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

POWER AUTHORITY OF THE
STATE OF NEW YORK

[_____]
(CUSTOMER)

By: _____

By: _____

Name: Angelo S. Esposito

Name: _____

Title: Senior Vice President, ES&T

Title: _____

Date: _____

Date: _____

Appendix 1

Customer's Facilities

Appendix 2

Broader Scope Audit

Scope of Audit:

Facility:

Cost:

In accordance with the terms of the Agreement dated _____ between Power Authority of the State of New York (“Authority”) and [] (“Customer”), Customer agrees to pay Authority \$ _____ for the above described Facility Audit to be conducted at the above described Facility.

POWER AUTHORITY OF THE
STATE OF NEW YORK

[]
(CUSTOMER)

By: _____

By: _____

Name: Angelo S. Esposito

Name: _____

Title: Senior Vice President, ES&T

Title: _____

Date: _____

Date: _____