

Appendix 1

ADDITIONAL COVID-19 TERMS AND CONDITIONS

In response to the ongoing COVID-19 pandemic, beginning in March 2020, Governor Cuomo issued a series of Executive Orders addressing various categories of business activities, including, but not limited to, construction, manufacturing, administrative, and professional services. In addition, Empire State Development (ESD) was authorized to develop *Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders*. Although much of NYSERDA's clean energy efforts involve construction activity, NYSERDA engages in many other activities that are affected by State COVID-19 directives and requirements.

The State has also established a series of metrics required to begin a phased reopening plan. The phase-in plan prioritizes businesses considered to have a greater economic impact and inherently low risks of infection for the workers and customers, followed by other businesses considered to have less economic impact, and those that present a higher risk of infection spread.¹ Pursuant to Executive Order 202.31 and "NY Forward," New York will reopen on a regional basis as each region meets the criteria necessary to protect public health.

For New York State regions and approved activities that have been deemed reopened pursuant to the State's Regional Monitoring Dashboard, and in light of the paramount importance placed on health and safety at this time, NYSERDA hereby directs and requires that NYSERDA contractors performing clean energy activity pursuant to a NYSERDA contract or program to comply with all Executive Orders addressing the COVID-19 pandemic, and in all events, NYSERDA contractors are expected to continue to comply with all relevant State, federal and local rules. All contractors are also accountable for staying current with any updates to these requirements. COVID-19 related guidance and references can be found on NYSERDA's website at: <https://www.nyserda.ny.gov/ny/COVID-19-Response>, and is hereby deemed incorporated herein, as may be updated from time to time.

Phase I of reopening does include all construction activity. All NYSERDA contractors specifically engaging in construction activity are required to, without limitation, adhere to and attest to the New York State Department of Health (NYS DOH) *Interim Guidance for Construction Activities During the COVID-19 Public Health Emergency* prior to commencing work on NYSERDA clean energy construction projects. The attestation is embedded within the Guidance Document and NYSERDA advises that contractors maintain a copy of such attestation for their records. Also, as

¹ In accordance with ESD's current Essential Business Guidance and subject to all relevant health and safety requirements, NYSERDA is hereby allowing its contractors performing program work pursuant to a NYSERDA contract or program to undertake the following activities on a Statewide basis:

- electric power generation and storage-related development, construction, operation or maintenance, except with respect to new solar projects on residential sites (which residential projects must continue to follow the regional reopening);
- electric vehicle (EV) charging station installation, operation and maintenance at commercial and government sites; and
- activity by a single worker who is the sole worker on a project site.

included in the NYS DOH Construction Guidance, for all contractors performing construction activities, completed safety plans must be conspicuously posted on a project site. The State has provided a template to assist in developing Business Safety Plans, which is available through the NY Forward website as well as NYSERDA's COVID-19 webpage. While these plans are not required to be submitted to NYSERDA or a State agency for approval, they must be retained on the premises of the business or construction site and must be made available to the NYS DOH or local health or safety authorities in the event of an inspection.

In accordance with Executive Order 202.31, business activities may only commence for New York State regions that have been deemed reopened and is limited to only those activities approved for reopening. For state regions and activities that remain on PAUSE, or for reopened areas that revert back to PAUSE, NYSERDA continues to direct a pause in work until that region is re-opened for all NYSERDA contractors performing program activity pursuant to a NYSERDA contract or program, requiring in-person presence at a project site, that is not explicitly permitted under State directives or guidance.

During this time of uncertainty, NYSERDA is committed to working collaboratively with its Contractors to address contractual obligations when performance under the contract may be suspended or delayed due to COVID-19-related limitations in business activity that are beyond the reasonable control of either NYSERDA or the Contractor.

NYSERDA takes health and safety issues of its contractors and program participants very seriously and will strictly enforce compliance with Executive Order 202.31, and any relevant subsequent Executive Orders, and this guidance, as well as existing contractual obligations that require NYSERDA's contractors to comply with all general and special Federal, State, municipal and local laws, ordinances and regulations that may in any way affect the performance of agreements executed with NYSERDA. Accordingly, non-compliance may give rise to disciplinary action, which may include, without limitation:

- orders to stop work;
- immediate termination of the Agreement;
- a determination of ineligibility to participate in one or more NYSERDA program efforts, on either a temporary or permanent basis;
- reporting of non-compliant activity to enforcement authorities, including but not limited to the NY Forward online complaint submission form, which will result in investigation and, if credible, enforcement.

This guidance supersedes all previously issued guidance and shall be deemed to modify any applicable provisions in any NYSERDA contract, program rule, guideline, manual, solicitation or other applicable document or agreement.