On-site Energy Manager Program
Program Opportunity Notice (PON) 3701
Revised March 2026
NYSERDA reserves the right to extend and/or add funding to the Solicitation should other program funding sources become available.

Applications accepted on a first-come, first serve basis dependent upon funding availability through December 31, 2030 by 3:00 PM Eastern Time*

This New York State Energy Research and Development Authority (NYSERDA) Program Opportunity Notice (PON) 3701 seeks applications from facilities interested in participating in the On-site Energy Manager Program (the "Program") to demonstrate how a dedicated On-site Energy Manager (OsEM) can improve a company's profitability by delivering energy, process, and operational improvements.

The Program targets Commercial, Multifamily, and Industrial facilities, campuses, or portfolios that do not have an existing dedicated full-time OsEM who show a desire to continue the role beyond the Program engagement period and are willing to share results and lessons learned to further the Program's objective of increasing the penetration of energy managers.

Contracted OsEMs may be selected from the current list of NYSERDA Flexible Technical Assistance (FlexTech) Consultants or use an Independent Service Provider. Support may also be sought for a new permanent hire or a hybrid of supplementing permanent staff with a Consultant.

Additional information about the Program can be found on the webpage: www.nyserda.ny.gov/OSEM.

Application Submission:
A NYSERDA Portal Account is required for the Application Submission process. Applicants can follow the instructions on FlexTech: Create a NYSERDA Portal Account.
Applicants with existing NYSERDA Portal Accounts may apply here: https://portal.nyserda.ny.gov

- NYSERDA Portal Application, Concept , Scope of Work, Budget and OsEM Resume or Job Description must be uploaded to the application; see sample templates on OsEM Resources page. For applications where a Consultant is fulfilling the OsEM role, a Letter of Commitment must also be uploaded.

- For affordable multifamily projects, affordability verification documentation must also be provided.

Questions should be directed as follows:

Commercial Program questions: David Myers, 518-362-0238, David.myers@nyserda.ny.gov
Industrial Program questions: Stacey Sabo, 716-261-4862, StaceyOsEM@nyserda.ny.gov
Multifamily Program questions: Mira Martin, 518-362-0235, MiraOsEM@nyserda.ny.gov
All Contractual questions: Jim Cowman, 518-362-0487, Jim.Solicitations@nyserda.ny.gov

* NYSERDA reserves the right to extend and/or adjust funding to this solicitation. Late, incomplete, or unsigned applications will be returned. Faxed applications will not be accepted. If changes are made to this solicitation, notification will be posted on NYSERDA's website at www.nyserda.ny.gov.

I. Introduction (Describe Background/Goals/Objectives)

The Program seeks to demonstrate the value of an OsEM role at a given facility such that the role becomes standardized and self-sustaining. Facilities will benefit from the successful energy and productivity projects that will be driven by OsEMs. Projects may include operation and maintenance improvements, behavioral changes, energy efficiency upgrades, process improvements, throughput and scrap reduction improvements, cost management, and other improvements such as water savings.

The purpose of the Program is to prove the business case for an OsEM role and to disseminate developed case studies and tools to the market for broader adoption. Program participants are required to share success stories and best practices to facilitate this market transformation activity. Post Program, Customers who retain their OsEM and continue to demonstrate increased annual energy savings via reporting to NYSERDA may be eligible for a bonus payment (see Funding & Invoicing Section).

Participants are encouraged to continue sharing success stories, even beyond the bonus period if applicable, through NYSERDA's website, Best Practice events, and other market transformation activities.

II. Eligibility Requirements

Eligible Customers include Commercial, Multifamily, and Industrial facilities located in New York State. Most eligible participants must also pay into the electric System Benefits Charge (SBC). A limited amount of funding is available to certain Affordable Multifamily and P-12 priority district non-SBC paying Customers. The list of eligible Priority Districts may be found here :

https://www.nyserda.ny.gov/All-Programs/FlexTech-Program/FlexTech-Documents-and-Resources. Affordable Multifamily buildings must meet the affordability criteria detailed in the Affordable Multifamily Building Verification document available at https://www.nyserda.ny.gov/All-Programs/On-Site-EnergyManager/Resources. Contact OnSiteEnergyManager@nyserda.ny.gov for more information.

In order to fully realize the benefit of energy management, the term of the OsEM contract will be a minimum of 12 months. Unless otherwise negotiated, all work cost-shared under this Program must be completed within 54 months of issuance of the Purchase Order (excluding the bonus payment period). The OsEM must begin work within 6 months of the issuance of the Purchase Order.

Customers must:

- Not have an existing dedicated full-time energy manager on-site.
- Not include any buildings that have previously participated in an OsEM engagement.
- Effectively demonstrate the need for an OsEM per the OsEM Concept.
- Ensure completion of the tasks listed in the Scope of Work Requirements. Additional tasks related to energy management and productivity improvement may be added to the scope of work and will be subject to NYSERDA approval.

OsEM engagements must:

- Be at least 0.5 Full Time Equivalent (20 hours per week).
- Include cost-sharing in the form of cash support from the customer. In-kind contributions are allowed only in cases where the Applicant utilizes permanent staff.
- Use funds for OsEM services only and not for implementation or equipment purchase.

The OsEM must fall into one of the below designations:

- New permanent hire
- Supplementing permanent staff with contracted staff
- Contracted staff ("Consultant")
    - Contracted OsEM support may be selected from NYSERDA's qualified FlexTech Consultant list (http://www.nyserda.ny.gov/Contractors/Find-a-Contractor/FlexTech-Consultants) or may be an Independent Service Provider.
    - The specific staff member who will be performing the OsEM role must be identified in the scope of work submitted with the application. There must be one dedicated individual who performs the on-site services and is the direct customer contact. It is acceptable to have junior Consultant staff perform lower-level administrative tasks, although such delegation should not hinder the Program's intention of demonstrating the business case for a dedicated energy manager. Unless otherwise approved by NYSERDA, the OsEM must account for a minimum of 75% of the total hours funded under the engagement. The resumes of all Consulting staff involved must be included in the proposal.

III. OsEM Application & Required Documentation

A Consultant (either a FlexTech Consultant or an Independent Service Provider) or Customer may be the Applicant.

Applications will be reviewed on a first-come, first-served basis dependent on funding availability. Application materials can be found on the program resources page: https://www.nyserda.ny.gov/All-Programs/On-Site-Energy-Manager/Resources. A complete application package consists of:

- NYSERDA Portal Application
    - If a Property Manager/Owner's Representative is completing the Customer portion of the application, provide the Property Owner Authorization Form authorizing submission of the application on their behalf.
- **OsEM Concept** to justify the need for an OsEM and describe the reporting structure for the OsEM (include facility company organizational chart to illustrate structure).
    - If the OsEM application includes buildings that have recently applied for and/or completed FlexTech studies, explain how the OsEM will leverage the FlexTech study(ies) while avoiding duplication.
- **Scope of Work (per Scope of Work Requirements)** with facility energy reduction goal, tasks, deliverables, and project schedule.
- **Detailed budget (per Budget Template or equivalent)** including a breakout by task and by title, hourly rate, hours, and non-labor costs.
- **OsEM resume*** (for staff, Consultant, or both depending on support sought) or job description. Please highlight:
    - Relevant qualifications such as licensed Professional Engineer (P.E.), Certified Energy Manager (CEM), Certified Energy Auditor (CEA), etc.
    - Past experience as energy advisor to the sector, including years of experience.

  - Demonstrated business acumen and leadership skills to be able to sell energy projects to upper management
  - *If the new permanent hire is not yet identified, the job description which reflects the Program criteria must be included. The resume of the proposed candidate must be submitted once identified.

- **For projects using a Consultant to fulfill the OsEM role only, submit:**
  - Letter of commitment from facility's upper management (corporate officer or executive staff).

- **For Affordable Multifamily applications only**, affordability verification documentation must also be provided.
  - Applicants should be sure to reference https://www.nyserda.ny.gov/All-Programs/On-Site-Energy-Manager/Resources for the most current Affordable Multifamily Building Verification documentation requirements.

Application Review Process:

NYSERDA will review each application package for completeness and to ensure reasonableness across the following areas:

- OsEM experience, qualifications, and leadership skills
- OsEM integration
- Cost & time allocation
- Labor rates
- Energy savings target (for the cost-shared 12+ month engagement) relative to the facility's annual energy usage. The target energy savings ideally equals or exceeds the NYSERDA cost-share. The OsEM concept should include a description of how the potential savings justifies the OsEM cost.

After a complete application package is reviewed, NYSERDA will inform the Applicant of their selection status. NYSERDA intends to work with Applicants during the review process through the sharing of comments and recommendations for scope of work improvement to encourage successful applications. This may include:

- Making adjustments to the contract period and funding levels.
- Reducing the NYSERDA cost-share based on hourly rates presented.
- Making adjustments to the proposed scope of work and required reporting.
- Remove any buildings/addresses that have participated in a prior OsEM engagement.

Applications will be rejected when:

- The eligibility requirements set forth in Section II are not met.
- The application package is incomplete per Section III.
- Successful negotiation of the application package is not possible after comments and discussion with NYSERDA.

Consultants and/or individual contributors to OsEM engagements who repeatedly fail to resolve scope of work or deliverable technical review comments after three (3) revisions may be subject to disciplinary action, including but not limited to:

- Consultants and/or individuals may be limited to one (1) open application at a time until the Consultant and/or individual can demonstrate improvement meeting the OsEM program requirements.
- If the Consultant and/or individual cannot demonstrate improvement to the satisfaction of NYSERDA, the Consultant and/or individual may be prohibited from participating in the FlexTech Program, the Clean Green Schools Initiative, the OsEM Program, and/or other relevant technical assistance programs.
- If the Consultant is an approved FlexTech Consultant, that status will be reviewed and may be revoked resulting in termination of the FlexTech Umbrella Agreement.
- If a Consultant and/or individual is prohibited from participating in the OsEM Program, NYSERDA may also prohibit the Consultant and/or individual from acting as a Subcontractor on projects participating in other NYSERDA funding opportunities, at NYSERDA's sole discretion.

These disciplinary actions may also apply to Subcontractors involved in projects that meet the above parameters.

IV. Proposal Evaluation

Funding Overview:

Facility Consumption (aggregated)**	**OsEM Cost-Share Cap*** (initial 12+ month term)	**OsEM Bonus** (12 months after initial term)	**Maximum Possible**
Greater than $1M annual energy spend	Not to exceed $200,000	$7,000	$207,000
Less than $1M annual energy spend	Not to exceed $100,000	$5,000	$105,000

*Funds may be used for technical assistance and OsEM support only and may not be used toward implementation, equipment purchase, or any labor costs outside of the OsEM effort.
**At NYSERDA's discretion, aggregated facility consumption may be adjusted to only include building usage impacted by the OsEM's focus.

OsEM Cost-Share:

- NYSERDA will contribute up to 75% towards the allowable OsEM fees for most engagements per task and budget detail in the approved scope of work.
  - Priority Districts include P-12 public school districts identified using the New York State Education Department's Needs to Resource Index or districts that serve Disadvantaged Communities. Based on the availability of funding for Priority Districts, NYSERDA will contribute up to 90% of the allowable OsEM fees within the cap structure above. The list of eligible Priority Districts may be found here: https://www.nyserda.ny.gov/All-Programs/FlexTech-Program/FlexTech-Documents-and-Resources.
  - For Affordable Multifamily buildings which meet the affordability criteria detailed in the Affordable Multifamily Building Verification document, available at https://www.nyserda.ny.gov/All-Programs/OnSite-Energy-Manager/Resources. NYSERDA will contribute up to 100% of the allowable OsEM fees within the cap structure above.
  - Based on availability of funds and variety of projects in the sector program portfolio, after three project applications from a single owner-organization, the cost share may be limited to 50% for projects that do not further demonstrate value of the OsEM role for reasons including scope and/or facility similarity to previously completed projects from the same owner-organization.

- NYSERDA's cost-share for the OsEM will be paid directly to the Applicant, which is based on the Program Application, and may be the Consultant or Customer.
- For OsEM engagements with facilities who have annual energy costs greater than or equal to $1 million (all fuels), the maximum OsEM cost-share excluding a bonus payment is $200,000.
- For OsEM engagements with facilities who have annual energy costs less than $1 million (all fuels) the maximum OsEM cost-share excluding a bonus payment is $100,000.

OsEM Bonus:

Customers may be eligible for a bonus payment for one additional year of continued OsEM engagement. Customers will be required to demonstrate successful engagement of the OsEM during the initial term, as well as the continued value of the OsEM, to be considered for a bonus payment.

- Customers will be required to report the continued energy saving impacts and financial investments to NYSERDA at the conclusion of the additional year. Bonus payment reporting requirements are outlined on NYSERDA's OsEM page in the Resources section: www.nyserda.ny.gov/OSEM.
- Reported energy savings impacts for the bonus year period must be equal to or greater than 1% of the site's prior 12-month energy consumption to receive a bonus payment.
- Bonus payments are subject to NYSERDA's review and approval.

Invoicing:

- All invoices for OsEM services, whether consultant or staff services, should be broken out by non-labor costs, individuals, titles, hourly rates, dates and hours worked on each task.
- Invoices should also indicate the amount that is being invoiced concurrently to/paid for by the site. If applicable, NYSERDA may also require a copy of the Customer's canceled check paying their OsEM engagement cost-share.
- Travel costs are limited to 3% of the total OsEM engagement cost.
- NYSERDA encourages Invoices to be submitted monthly. Customers using a new permanent hire for their OsEM may be able to invoice more frequently with NYSERDA Project Manager approval. Invoices are subject to NYSERDA Project Manager approval. All invoices complete with the required reimbursement documentation must be submitted through https://services.nyserda.ny.gov/Invoices/.
- NYSERDA reserves the right to withhold payment in cases where program deliverables are not being met, as outlined in the approved scope of work.
- NYSERDA will issue the Bonus payment directly to the Customer upon receipt and verification of required documentation, regardless of who was the Applicant. Consultants are not eligible to receive Bonuses so in the case of the Consultant being the Applicant, Bonus payments will be made directly to the Customer via a direct-to-voucher payment.

Project Payments:

NYSERDA will contribute its share of the eligible OsEM costs, not to exceed the amount agreed upon in the Purchase Order, directly to the Applicant per the approved Scope of Work. Customers shall pay the remaining balance of the OsEM fees directly to their OsEM, as applicable, under the terms and conditions to be negotiated by the Customer and OsEM.

Applicant invoices to NYSERDA must include the OsEM's total billed cost, and must include labor and nonlabor costs, title(s), hourly rates, dates and hours for each task. Invoices must also indicate the amount that is being invoiced concurrently to the Customer, if applicable. In such cases, NYSERDA may also require a copy of the customer's canceled check showing payment of their cost-share. NYSERDA payments may not be released prior to Customer contribution equal to or exceeding the requested payment amount, as applicable. Payment will be based on services provided as defined in the Scope of Work and as documented by approved deliverable(s), invoices and other documentation deemed necessary by NYSERDA. NYSERDA reserves the right to withhold payment in cases where program deliverables are not being met or where the Applicant has not met their scope of work or performance obligations.

V. PROGRAM PARTICIPATION

APPLYING TO THE PROGRAM

A FlexTech Consultant, Independent Service Provider, or Customer may be the Applicant.

A NYSERDA Portal Account is required for the Application Submission process. Applicants can follow the instructions on FlexTech: Create a NYSERDA Portal Account.

https://nyserda.atlassian.net/wiki/spaces/PUBLIC/pages/73892106/Technical+Services+Create+a+NYSERDA+Salesforce+Portal+Account

Applicants with existing NYSERDA Portal Accounts may apply here: https://portal.nyserda.ny.gov

- NYSERDA Portal Application, Concept , Scope of Work , and Budget and OsEM Resume or Job Description must be uploaded to the application; see sample templates on OsEM Resources page. For applications where a Consultant is fulfilling the OsEM role, a Letter of Commitment must also be uploaded.
- For affordable multifamily projects, affordability verification documentation must also be provided. Applicants should be sure to reference On-site Energy Manager Resources for the most current Affordable Multifamily Building Verification documentation requirements.
- Property management and/or owner representative firms participating as the Customer or Applicant will be required to verify building owner agreement to the scope of work, concept, and budget, as well as agreement to the OsEM Program terms and conditions.

All applications will be reviewed on a first-come, first-served basis dependent on funding availability. A complete application package includes a complete Scope of Work and Concept with a detailed budget and schedule. Incomplete project application packages will be rejected.

VI. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, nonconfidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets 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 proposer 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 except it from disclosure, including a written statement of the reasons why the information should be excepted.

See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/About/Contact/NYSERDA-Regulations.ashx. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

Omnibus Procurement Act of 1992 - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

Information on the availability of New York subcontractors and suppliers is available from:

Empire State Development
Division for Small
Business 625 Broadway
Albany, NY 12207

A directory of certified minority- and women-owned business enterprises is available from:

Empire State Development
Minority and Women's Business Development
Division 625 Broadway
Albany, NY 12207

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx. Proposers are required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility (this includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years).

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of $100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contracting and filed with NYSERDA. See, ST-220-CA (available at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf.

Contract Award - NYSERDA anticipates making multiple awards under this solicitation. NYSERDA anticipates a contract duration of six (6) years, unless NYSERDA management determines a different structure is more efficient based upon proposals received. A contract may be awarded based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each application should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. Preference may be given to facilities with annual aggregated energy costs greater than $500,000. NYSERDA will use Attachments A, B, Concept, Scope of Work, Budget, and OsEM Resume or job Description to contract successful applications. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the checklist questions. Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify applicants in approximately four (4) weeks from the receipt of a complete application package whether your application has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

Accessibility Requirements NYSERDA requires contractors producing content intended to be posted to the Web to adhere to New York State's Accessibility Policy. This includes, but is not limited to, deliverables such as: documents (PDF, Microsoft Word, Microsoft Excel, etc.), audio (.mp3, .wav, etc.), video (.mp4, .mpg, .avi, etc.), graphics (.jpg, .png, etc.), web pages (.html, .aspx, etc.), and other multimedia and streaming media content. For more information, see NYSERDA's Accessibility Requirements on the Doing Business with NYSERDA page or download NYSERDA's Accessibility Requirements [PDF].

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement. NYSERDA reserves the right to disqualify proposers based upon the results of a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

Disclosure Requirement - The proposer shall disclose any indictment for any alleged felony, or 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 States and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers 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.

EO 16 Protocols – Pursuant to Executive Order No. 16 issued on March 17, 2022, all vendors responding to bids or contracting with New York State must certify, using the form provided as part of this solicitation, their status with regard to conducting business operations in Russia, and that any such business operations in Russia conducted on behalf of the vendor are determined to be permitted under any of the allowable exemptions. The term vendor is intended to encompass bidders prior to contract award, contractors who have received a contract award, contract assignees, or contractors for whom an extension to an existing contract is being pursued. Exemption decisions are in NYSERDA's sole discretion and are final decisions. NYSERDA reserves the right to solicit additional materials or information regarding the responses or materials provided by a vendor.

Pursuant to Executive Order No. 16, all vendors will be vetted to ensure that they are not on the federal sanctions list at https://sanctionssearch.ofac.treas.gov/. There is no waiver or exemption process for vendors appearing on the federal sanctions list.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case sanctions are lifted during a solicitation, or after award in the case of some solicitations.

VII. VII. Attachments:

Attachment A: NYSERDA Portal Application User Guide
Attachment B: Terms and Conditions

Attachment A
On-site Energy Manager Program
NYSERDA Portal Application User Guide

A NYSERDA Portal Account is required for the Application Submission process. Applicants can follow the instructions on FlexTech: Create a NYSERDA Portal Account.

Applicants with existing NYSERDA Portal Accounts may apply here: https://portal.nyserda.ny.gov

The online Application contains six (6) separate pages. Please review the information in the blue box at the top of each page. It provides high-level guidance and requirements that may be necessary for you to complete each step.

- Fields marked with a red asterisk (*) are required and must be completed before you can move on to the next page.
- Clicking Continue at the bottom of any page will save your progress (if all required fields have been completed) should you be unable to complete the application in one sitting.

For step-by-step instructions on the Application Submission process, please visit:
https://nyserda.atlassian.net/wiki/spaces/PUBLIC/pages/64198450/FlexTech

NEW YORK STATE | NYSERDA New York State Energy Research and Development Authority

ATTACHMENT B
EXHIBIT A PROGRAM TERMS & CONDITIONS

1. Approval

NYSERDA's approval of a complete Application shall be evidenced by the issuance of a Purchase Order (PO). The Applicant may not commence work with the On-Site Energy Manager until such PO has been issued.

2. Amounts Payable

The Applicant shall pay the Cost-Share, identified in the PO, directly to the On-Site Energy Manager as set forth in a separate agreement between the Applicant and the On-Site Energy Manager. The NYSERDA Agreement with the Applicant is a not-to-exceed amount, based on the Applicant's scope of work, budget, and allowance for the potential bonus payment. The Applicant will be bound to the staff identified and hourly rates included in the approved scope of work and budget. The NYSERDA share shall not exceed the defined cost-share percent listed in the approved Scope of Work and Purchase Order based on the total cost of the On-Site Energy Manager's services. NYSERDA's share shall not to exceed the hourly rates included in the project budget, for the initial 12 or greater month work period. All NYSERDA payments will be based on approved invoices, and any backup documentation, when required. Should the total amount be lower than the original not-to-exceed amount, then NYSERDA reserves the right to lower the not-to-exceed amount accordingly. NYSERDA also reserves the right to seek a refund for monies paid if, at any time, it learns that the work was not completed as invoiced. Please see PON 3701 Section IV: Funding & Invoicing for detailed requirements related to Cost-Share, Invoicing and OsEM Bonus Payments.

3. Inspections, Follow-up Visits and On-Site Monitoring

(a) NYSERDA reserves the right to make a reasonable number of visits to the facility. Such visit(s) will be at a time convenient to the Applicant and made with at least one week advance notice to the applicant by NYSERDA.

4. Payments

OsEM Cost-Share: The Applicant will submit invoices directly to NYSERDA. NYSERDA may require a copy of the Applicant's canceled check paying their On-site Energy Manager engagement cost-share. NYSERDA encourages that Invoices be submitted monthly to https://services.nyserda.ny.gov/Invoices/ . Customers using a new permanent hire for their OsEM may be able to invoice more frequently with NYSERDA Project Manager approval.

- Customers receiving a 100% cost share from NYSERDA must include the OsEM 100% Cost Share Invoicing Form, signed by an authorized representative of the Customer, with all invoices.

OsEM Bonus: Per PON 3701 Section IV: Funding & Invoicing: OsEM Bonus, Customers that continue to engage an OsEM and save an additional 1% of the site's prior 12-month energy consumption will submit a Bonus Request that includes requisite reporting and documentation of energy savings impacts and financial benefits for one year following the OsEM engagement. NYSERDA will issue a Bonus payment directly to the Customer after review and approval of each bonus period report. Consultants are not eligible to receive Bonuses so in the case of the Consultant being the Applicant, Bonus payments will be made directly to the Customer via a direct-to-voucher payment.

Applicant invoices to NYSERDA must include the OsEM's total billed cost, and must include labor and nonlabor costs, title(s), hourly rates, dates and hours for each task. Invoices must also indicate the amount that is being invoiced concurrently to the Customer, if applicable. In addition, if applicable, NYSERDA may also require a copy of the customer's canceled check showing payment of their cost-share. NYSERDA payments may not be released prior to Customer contribution equal to or exceeding the requested payment amount, as applicable. Payment will be based on services provided as defined in the Scope of Work and as documented by approved deliverable(s), invoices and other documentation deemed necessary by NYSERDA. NYSERDA reserves the right to withhold payment in cases where program deliverables are not being met or where the Applicant has not met their scope of work or performance obligations.

All invoices complete with the required reimbursement documentation must be submitted through https://services.nyserda.ny.gov/Invoices/.

5. Changes in the Program

Notwithstanding paragraph 18 (b), the program and these Terms & Conditions may be changed by NYSERDA at any time without notice. Approved applications, however, will be processed to completion under the Terms & Conditions in effect at the time of application to NYSERDA.

6. Indemnification

The Customer and the Applicant shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Applicant's or its subcontractors' performance of this Agreement. The obligations of the Applicant under this Article shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein of required insurance coverage.

7. No Warranties

a) NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The Applicant's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, vendors, etc.

b) The Customer and the Applicant acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering and construction of the Project is proper or complies with any particular laws (including patent laws), codes, or industry standards.

NYSERDA does not make any representations of any kind regarding the results to be achieved by the Project or the adequacy or safety of such measures.

8. Limit of Incentive Payments

NYSERDA reserves the right, for any reason, to stop approving applications and limit or stop making payments at any time without notice.

9. Release by the Applicant

The payment by the Applicant of the final invoice submitted shall release NYSERDA from any and all claims and liability the Applicant, its representatives, and assigns might otherwise have relating to this award.

10. Title to equipment

Title to all of the equipment purchased under this Agreement shall vest with the Customer.

11. Vendor Selection

NYSERDA has the right not to allow a vendor, contractor, or direct hire of the Applicant to participate in this program.

12. Removal of Equipment

The Customer agrees, as a condition of participation in the program, to remove and dispose of the equipment being replaced by the Project in accordance with all laws, rules, and regulations.

13. Miscellaneous

a) This Agreement (the Application and these Terms and Conditions) is the entire agreement between the parties and supersedes all other communications and representations.

b) If either NYSERDA or the Applicant desires to modify this Agreement, the modification must be in writing and approved by an authorized representative of both parties.

14. Audit

The Applicant shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of seven years after acceptance of the Work, 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, Applicant's performance under this Agreement.

NYSERDA shall have the right from time to time and at all reasonable times during this period to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Applicant where they are then being kept, maintained and preserved. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Applicant by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

15. Stop Work Order

a) NYSERDA may at any time, by written Order to the Applicant, require the Applicant to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Applicant, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Applicant shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Applicant, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

   i. by written notice to the Applicant, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Applicant, or

   ii. terminate the Work covered by such order as provided in the Termination Section of this Agreement.

b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Applicant shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

   i. the Stop Work Order results in an increase in the time required for, or in the Applicant's cost properly allocable to, the performance of any part of this Agreement, and

   ii. the Applicant asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

d) Notwithstanding the provisions of this Section, the maximum amount payable by NYSERDA to the Applicant pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.

16. Termination

a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Applicant. In such event, payment shall be paid to the Applicant for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Incentive Payment and in reimbursement of any amounts required to be paid by the Applicant pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Applicant shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).

b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Applicant in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Applicant in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

c) Nothing in this Article shall preclude the Applicant from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Applicant so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Applicant for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

17. Suspension or Termination for Non-Responsibility

a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the Responsibility of the Applicant. In the event of such suspension, the Applicant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Applicant must comply with the terms of the suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

b) Termination. Upon written notice to the Applicant, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Applicant's expense where the Applicant is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

Payments are not payable unless NYSERDA has approved the Invoice, and approved the other activities and documentation provided by the On-Site Energy Manager.

18. Independent Contractor

a) The status of the Applicant under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Applicant, the subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Applicant to perform the Work shall be Applicant's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Applicant, except to the extent required by section 414(n) of the Internal Revenue Code.

b) Applicant expressly acknowledges NYSERDA'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 NYSERDA, Applicant and/or Applicant's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Applicant expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon Applicant's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

c) Relationship of the Parties. It is understood and agreed that the personnel serving as the On-Site Energy Manager, to perform the services stipulated in the Scope of Work (SOW), under no circumstances are to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of the Applicant, except to the extent required by section 414(n) of the Internal Revenue Code.

The relationship of the parties to these Terms and Conditions, the Purchase Order, the On-Site Energy Manager Agreement with the Applicant, and the On-Site Energy Manager Scope of Work with NYSERDA is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and the Applicant for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in these Terms and Conditions, the Purchase Order, the On-Site Energy Manager Agreement with the Applicant, or the On-Site Energy Manager Scope of Work with NYSERDA.

19. Insurance

Section 19.01. Maintenance of Insurance; Policy Provisions The Applicant, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Applicant as additional insureds;

b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and

c) be reasonably satisfactory to NYSERDA in all other respects.

Section 19.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

a) 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 or 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, and $1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 19.03. Notification of Claims/Events. The Applicant expressly acknowledges NYSERDA'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 NYSERDA, the Applicant and/or the Applicant's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, the Applicant expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon the Applicant's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that these Terms and Conditions, the On- Site Energy Manager Agreement or the On-Site Energy Manager Scope of Work should terminate for any reason.

20. OsEM Data for the Market

a) NYSERDA reserves the right to publish de-identified project data. NYSERDA shall follow New York State's Data Governance policy [NYS-S14-002 and NYS P03-002] for classification of information and no personally identifiable information shall be published.

b) For Multifamily Affordability Buildings, the Applicant and/or Customer agree that Customer's information, including name, electric and/or fuel consumption data, as well as any project information including but not limited to the FlexTech report, savings calculations and electric and/or fuel energy savings may be provided to the New York State Utilities, the Utilities implementation contractors and the Utilities' third-party evaluation contractor(s) for purposes of Affordable Multifamily Energy Efficiency Program (AMEEP) program management, AMEEP incentive payment, and AMEEP program evaluation purposes, subject to the Utilities entering into an agreement with the evaluation contractor(s) to maintain such Customer information confidential, and without regard to whether or not a Customer receives electric and gas service from more than one utility.

EXHIBIT B

REVISED 8/25

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

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

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is an agreement for a public work covered by Article 8 of the Labor Law or a building service covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, if this is an agreement for a public work or a building service as covered above, or a covered project as defined in Labor Law section 224-a, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. If this is an agreement for a covered renewable energy system as defined in Labor Law 224-d, Contractor must meet all applicable provisions of that law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds $5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets 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." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked

above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (https://opengovernment.ny.gov/) and NYSERDA's Regulations, Part 501 http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx.

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.

9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the

United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
https://www.esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
https://www.esd.ny.gov

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding $100,000 for the purchase of goods and services:

(a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).

(b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).

(c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See https://ogs.ny.gov/iran-divestment-act-2012).

21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 ("DERA"), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology ("BART"). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: https://www.dec.ny.gov/regs/2492.html.

22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

NEW YORK STATE | NYSERDA New York State Energy Research and Development Authority

EXHIBIT C

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.[1]

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

504.2. Definitions. Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

[1] This is only a summary; the full text of Part 504 can be accessed at: http://www.nyserda.ny.gov /About/New-York-State-Regulations.aspx

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

504.3. Prompt Payment Schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

504.4. Payment Procedures.

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

504.5. Exceptions and Extension of Payment Due Date. NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars ($10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

504.7. Sources of Funds to Pay Interest. Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

504.8. Incorporation of Prompt Payment Policy Statement into Contracts. The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

504.9. Notice of Objection. Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

504.10. Judicial Review. Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

504.11. Court Action or Other Legal Processes.

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.