



Demonstrating Distributed Energy Storage for ‘Stacking’ Customer and Grid Values
Program Opportunity Notice (PON) 3541

Up to \$15.5 million Available

*NYSERDA reserves the right to extend and/or add funding to the
Solicitation should other program funding sources become available.*

All, some, or none, of the available funds may be awarded.

Applications accepted through December 31, 2019 by 5:00 PM
Eastern Time or until all funds are committed.

Program Summary

New York State’s Reforming the Energy Vision (REV) initiative envisions Distributed Energy Resources, including energy storage, being an integral part of transforming the grid to one with more renewable energy and flexible consumption. NYSERDA is seeking field demonstration projects of commercial distributed energy storage systems that leverage the flexibility of energy storage to ‘stack’ two or more value streams by performing multiple functions for retail electric customers, distributed generation, utilities and the New York State Independent System Operator (NYISO). These demonstration projects should help electricity customers, storage vendors, developers, utilities, the NYISO, aggregators, etc. by tackling the operational, regulatory and business model complexities in real-world energy storage ‘use cases’ that can be repeatable and scalable in New York State.

This solicitation has a multi-step application process. The first step is to submit a Concept Paper explaining what would be demonstrated per the instructions in Attachment A. Concept Papers may propose to demonstrate values and services that distributed energy storage can monetize today, but face some complexity or barrier that will be addressed in the project. Alternatively, they may propose values and benefits that are of a pilot nature or not monetizable by tariff, regulation or programs today. In this case, submissions must support that the services not compensated are needed, should be demonstrated, and are better than other alternatives at meeting that need. The Papers will be reviewed and selected Concepts will be invited to submit a Feasibility Study proposal to fund further investigation of the viability of demonstrating the proposed concept, or a Full Demonstration proposal. The aim of a Concept Paper must be a demonstration, not merely obtaining support for feasibility work.

Energy storage use cases proposed for demonstration must support the State’s REV, renewable generation and greenhouse gas reduction objectives and illustrate how these use cases help:

- reduce the intermittency of solar and wind energy,
- avoid or delay the need for new electric system infrastructure,
- increase system efficiency and resiliency,
- reduce the requirement for fossil fuel plants to meet periods of peak electric demand, or
- compliment demand response and energy efficiency measures within buildings.

When invited to submit a proposal, the cost-share funding requested of NYSERDA for a Feasibility Study may not exceed \$100,000 and 75% of study’s budget (minimum 25% proposer cost-share). There is no maximum funding that may be requested of NYSERDA for Full Demonstrations,



however it may not exceed 50% of total project budget (minimum 50% proposer cost-share) based on the requirements identified in Section IV.4.

Electronic submission is preferable. NYSERDA will also accept Concept Papers and Proposal submissions by mail or hand-delivery. If submitting electronically, proposers must submit in either PDF or MS Word format. PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. Concept Papers and Proposals may be submitted electronically by following the link for electronic submissions found on this PON's webpage, which is located in the "Current Opportunities" section of NYSERDA's website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). Instructions for submitting electronically are located as Attachment F to this PON.

If mailing or hand-delivering, proposers must submit two (2) paper copies of their submission with required attachments, along with a CD or DVD containing both a PDF and a MS Word digital copy of the proposal, following the guidelines. Proposals (not Concept Papers) must be accompanied with a completed and signed Proposal Checklist. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

Proposals, PON 3541
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

No communication intended to influence this procurement is permitted except by contacting Tony Abate (Designated Contact) at (518) 862-1090, ext. 3522 or by e-mail tony.abate@nyserda.ny.gov, Ben Falber (Designated Contact) at (212) 971-5342, ext. 3050 or by e-mail benjamin.falber@nyserda.ny.gov or Jason Doling (Designated Contact) at (212) 971-5342, ext. 3558 or by e-mail jason.doling@nyserda.ny.gov. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090 ext. 3507 (venice.forbes@nyserda.ny.gov). Contacting anyone other than the Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

*Incomplete Concept Papers or Proposals may be subject to disqualification. It is the proposer's responsibility to ensure that all pages have been included in the submission. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at <https://www.nyserda.ny.gov>.

I. Solicitation's Objective

New York State's Reforming the Energy Vision (REV) initiative envisions Distributed Energy Resources, including energy storage, being an integral part of transforming the grid to one with more renewable energy and flexible consumption. NYSERDA is seeking field demonstration projects of commercial distributed energy storage systems that leverage the flexibility of energy storage to 'stack' two or more value streams by performing multiple functions for retail electric customers, distributed generation, utilities and the NYISO. Distributed energy storage with intelligent controls has unique flexibility to create value for the retail customer and provide services to utilities, the NYISO, load-serving entities, aggregators, etc. Leveraging the flexibility of energy storage to provide different services and 'stack' multiple values will be key to the adoption of distributed energy storage. Distributed energy storage systems are electrochemical, thermal or mechanical systems located either with load (e.g., at a customer site), co-located with a distributed energy resource such as solar, or connected directly to the distribution system (i.e. located with utility equipment).

Following a NYSERDA Review, selected Concept Papers will be invited to submit a proposal either for; i) a Feasibility Study to fund further investigation of the viability of the proposed business model, use cases and demonstration, or ii) Full Demonstration of the proposed concept demonstration. Demonstrations must install commercially available distributed energy storage to provide different services and 'stack' multiple values in scalable and replicable business models in New York State. This is not an incentive program, rather NYSERDA intends these as bellwether projects to demonstrate and solve practical challenges to leveraging the flexibility of distributed energy storage to solve multiple needs and obtain multiple values. This solicitation is also not intended to focus on demonstrations of utility owned storage or utility business models, which should be directed to a utility or to REV Connect (info@nyrevconnect.com) for consideration as a REV Demonstration Project idea.

These demonstration projects should help electricity customers, storage vendors, developers, utilities, the NYISO, aggregators, etc. by tackling the operational, regulatory and business model complexities in real-world energy storage 'use cases' that can be repeatable and scalable in New York State. Energy storage in off-grid applications is not eligible.

Stacking values from multiple services has some inherent complexities which these demonstration projects must address. First, is the operational complexity of determining which services to provide, in what combination and when during the day or year. Other operational complexities might include interconnection, aggregation, baselines and metering, interoperability and telemetry for dispatchable services such as those of a distribution utility or the NYISO. Second, is the complexity of transacting these services or functions with several different entities. Each entity uses different structures and rules to procure and compensate the values, including tariffs, market mechanisms, programs, auctions, and service contracts. A third complexity is the business and financing model that makes the capital investments of energy storage practical.

Concept Papers may be proposed that demonstrate distribution and/or wholesale grid services with values available today (program, tariff, market, etc.), but face some complexity or barrier that will be addressed in the project. Alternately, if the proposed values and benefits provided by the energy storage system are of a pilot nature, for which no tariff, program, etc. exist, submissions must assess the value of this service and support that the services that are not compensated today are better than other alternatives.

A main-focus of the demonstration projects should be to increase confidence in obtaining multiple values for distributed energy storage for various use cases. Proposals should justify that the amount of funding requested of NYSERDA for the demonstration is necessary and appropriate to the proposed demonstration. Concept Papers and Proposals must also specifically describe how the energy storage application and use case being demonstrated can eventually be commercially viable without incentives in the future because of cost reductions, improved value streams, better business models and financing, etc.

The deliverables of these Feasibility Studies and Full Demonstration projects will include case studies, fact sheets, aggregated energy storage system performance data, and best practice guides that can be broadly shared with stakeholders to improve the economics of distributed energy storage and encourage replication within New York State. These demonstrations may also provide guidance for utility REV demonstrations, future tariffs or regulations. This solicitation is not intended to support projects that develop or demonstrate new or unproven technology, nor use cases where obtaining the identified value streams are already understood and widely deployed.

II. Requirements

A. Energy storage use cases proposed for demonstration must support the State's REV, renewable generation and greenhouse gas reduction objectives

The Concept Papers and Proposals for distributed energy storage demonstrations must illustrate how these use cases help:

- reduce the intermittency of solar and wind energy,
- avoid or delay the need for new electric system infrastructure,
- increase system efficiency and resiliency,
- reduce the requirement for fossil fuel plants to meet periods of peak electric demand, or
- complement demand response and energy efficiency measures within buildings.

B. The demonstration must be of a commercially available distributed energy storage system

Storage systems demonstrated must be commercially available technologies with proven performance at the system size proposed. This must be demonstrated by prior commercial deployments and the product carrying a commercial warranty and any certification required by an Authority Having Jurisdiction such as UL 1973 and, as it is adopted, UL 9540 for energy storage systems and UL 1741 for inverters. This solicitation does not seek energy storage installed on the bulk transmission system. This solicitation is not exclusive to any particular energy storage technology and the solution should be suited to the use case requirements, site footprint, and desire for flexibility in use as the regulatory structure evolves. There is no minimum or maximum energy storage size requirement, but Concepts Papers should propose demonstration of storage sized appropriately to the application requirements.

C. The energy storage system may be located behind or in-front of a customer's meter

Distributed energy storage systems are often referred to as either 'behind-the meter' (BTM) or 'in-front-of-the meter' (FTM). BTM energy storage systems are those located with a host load, as opposed to sites primarily injecting power into the grid, such as community solar. The primary benefits of an energy storage system to a host load may include enabling flexibility in electricity

consumption for peak load shaving, demand charge management, and responding to time-of-use commodity supply prices. Other benefits may include storing or shifting on-site Distributed Energy Resource (DER) generation, providing demand response (DR), providing a measure of power quality or back-up power. Target customers for BTM installations are those who may be able to reduce their utility demand charges by reducing their peak load. These customers are often described in two general groupings in New York State; i) interval-metered customers who typically are large commercial or industrial customers and ii) demand metered customers who typically are small to medium sized. Interval-metered consumption data, typically in 15 minute intervals, permits identifying customer load profiles that could best realize bill savings by reducing their electric demand peaks using energy storage. Demonstration of BTM energy storage may include commercial, industrial, campus and/or residential sites as well as aggregations of multiple energy storage systems or host sites.

FTM distributed energy storage systems are those typically injecting energy into the distribution system behind a meter where there is no customer load. FTM applications may take one of these three forms; i) stand-alone energy storage, ii) energy storage with a DER, or iii) energy storage connected directly to utility distribution system equipment, such as a substation. FTM demonstrations may also include aggregations of multiple energy storage systems or host sites.

D. At least two services must be provided by the energy storage system to “stack value”

Concept Papers for demonstrations submitted under this PON must focus on how distributed energy storage can address multiple needs and obtain or ‘stack’ two or more value streams in applications that could be scalable or broadly deployed in New York State. Concept Papers and Proposals should support that distributed energy storage is better in this use case than other alternative solutions. Services provided by the energy storage system may be those that are:

- i) monetized today and possible to stack, but require more demonstration to become replicable,
- ii) monetized today but complications exist to being able to stack those values, or
- i) value streams that are novel, conceptual or of a pilot nature for which no tariff, program, or means to monetize exists today. This may include value streams that would be possible as the [Value of DER](#) is implemented by the New York State Public Service Commission or those described in the [NYISO’s DER Roadmap](#). Submissions of this nature must support that these services/values are not compensated or fully compensated today, but the value to the grid and ratepayer does in fact exist. Care must be exercised to not ‘double count’ value for streams that are already embedded in retail rates.

The New York State Public Service Commission [Order Establishing the Benefit Cost Analysis \(BCA\) Framework](#) “identifies means for evaluating DER alternatives as substitutions for traditional utility solutions (and) support the developments of tariffs that place a value on DER”. Refer to this document in instances when potential system values are not otherwise monetizable as this presents a comprehensive list of system benefits that may be considered.

Tax credits, accelerated depreciation and incentives are not considered values for consideration of ‘stacking’ under this solicitation. However, submissions may need to address operational

considerations needed to obtain these available benefits, such as any requirement to charge the energy storage from solar¹.

NYSERDA gives the following guidance on what constitutes ‘stacking’ in some prototypical example use cases. This guidance is not meant to be exhaustive nor prescribe use cases or types of values to ‘stack’, nor are the use cases presented in any order of preference. Any services may be proposed so long as they address an identified real electric system need in New York State.

1. BTM Commercial & Industrial Energy Storage for Retail Bill Savings – Energy storage primarily used to manage a customer’s peak electric demand to reduce a customer’s monthly electric bill under existing commodity and delivery tariffs or contracts, stacked with at least one additional value. This use case would include savings on, for example, ESCO commodity contracts, utility Mandatory Hourly Pricing (MHP), utility demand-delivery and standby tariffs, etc. For this solicitation, an additional value stream must be stacked beyond retail bill savings.

Additional value streams that potentially may be ‘stacked’ onto this retail bill savings use case include, but are not limited to:

- Utility and/or NYISO demand response program participation
- Time-shifting injection of BTM DER generation into the grid
- Values created under pilot or future tariffs including under the New York State Department of Public Service (DPS) [Value of DER proceeding](#) underway at the New York State Public Service Commission
- Contracted utility load relief under a peak shaving program or non-wires alternative
- NYISO market participation
- Value streams enabled by aggregation

2. Small BTM Energy Storage for Residential and Small Commercial – Small energy storage systems primarily used at small, consumption-metered, commercial and residential customers for back-up power, shifting load DER injections responding to a price or utility demand response program, stacked with at least one additional value. Aggregation may enable these small resources to capture additional values.

Additional value streams that may be ‘stacked’ onto this small energy storage systems use case include, but are not limited to:

- Time-of-use tariff or ‘smart home’ programs
- Utility or NYISO demand response reliability programs
- NYISO wholesale market or economic program participation

3. ES BTM or FTM for time-shifting of DER generation/injection – Energy storage primarily used to shift the production of a distributed generator, stacked with at least one additional value. New York State has made it possible for eligible DERs like solar to be located remotely from customer load and inject their production into the grid. Though historically remote net-metering has not presented an opportunity for energy storage to create value, the [Value of DER](#) being

¹ Federal Investment Tax Credit <https://www.irs.gov/businesses/qualifying-advanced-energy-project-credit-section-48c>

implemented by the New York State Public Service Commission is changing this value proposition. Such an alternative ‘injection’ tariff may present multiple value elements encouraging time-shifting injections into the grid. For this solicitation, value generated under a tariff must be stacked with at least one additional value outside of the tariff.

Additional value streams that may be ‘stacked’ onto this use case include, but are not limited to:

- Wholesale market participation (products supplied in an economic program that are not redundant to values compensated under the retail ‘injection’ tariff)
4. ES BTM or FTM for contracted utility load relief – Energy storage primarily used and obligated to shift load to relieve utility infrastructure, stacked with at least one additional value. New York State utilities are being encouraged to consider where curtailment and non-wires alternatives may bolster capabilities of distribution infrastructure and result in ratepayer savings. This could include utilities procuring the services of DERs that reduce or modify the load profile of their territory or a distribution circuit. In these instances, the utility contracts with DERs for a prescribed performance.

Additional value streams that may be ‘stacked’ onto this use case include, but are not limited to:

- NYISO wholesale market or economic program participation
 - Time-shifting of DER generation injection into the grid
5. Wholesale market or economic program participation – The NYISO currently has programs² that enable dispatchable energy storage to derive value from wholesale market participation. The NYISO, in its [Distributed Energy Resources Road Map](#) is considering if new structures could better enable economic participation of dispatchable DERs in the energy, capacity and ancillary services markets. Obtaining energy, capacity and ancillary service market revenue itself may constitute stacking values. Variations of this use case may include aggregations of BTM or FTM energy storage resources.

Additional value streams that may be ‘stacked’ onto this wholesale market use case include, but are not limited to:

- Contracted utility load relief as under a non-wires alternative
- Time-shifting of DER generation injection into the grid

E. The energy storage application must have a strong potential to be commercially viable and repeatable in New York State

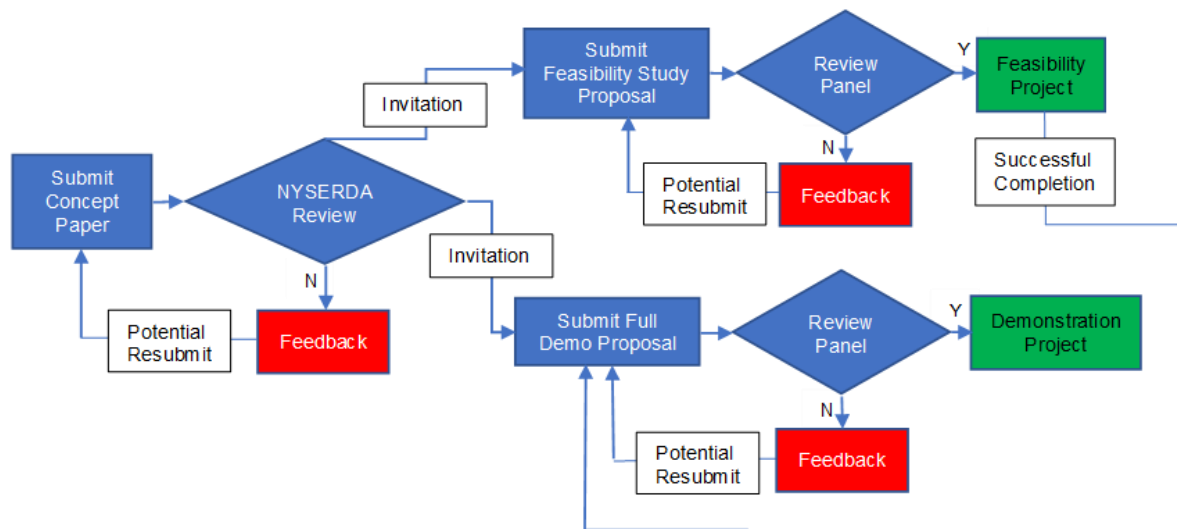
Concept Papers and Proposals should justify that the scale of the demonstration and funding requested of NYSERDA are necessary and appropriate to the use case. Concept Papers and Proposals must also specifically describe how the energy storage application and use case being demonstrated can eventually be commercially viable without incentives in the future because of cost reductions based on historical trends, improved value streams, better business models and financing, etc.

² Energy Limited Resource (ELR), Limited Energy Storage Resource (LESR) and Demand Side Ancillary Services Program (DSASP)

III. Multi-step Application Process

A multi-step application process is used for this solicitation. All proposers must first submit a maximum 4-page Concept Paper per the instructions/template in Attachment A. Concept Papers must concisely describe the use case for distributed energy storage to be demonstrated, why this is desirable and scalable in New York State, values to be sought and desired outcomes of the demonstration. NYSERDA will evaluate/score Concept Papers as they are received based on the Scoring Criteria in Section VI. Concept Papers may be submitted to NYSERDA at any time this solicitation remains open.

Following a NYSERDA Review, selected Concept Papers will be invited to submit a proposal either for: i) a Feasibility Study to fund further investigation of the viability of the proposed concept demonstration, or ii) a Full Demonstration of the proposed concept demonstration. Concept Papers invited to submit a proposal will be provided feedback, questions and concerns related to their concept that should be addressed in the subsequent proposal. Proposers that are invited to submit proposals must do so within 30 or 90 days of the invitation to propose a Feasibility Study or Full Demonstration, respectively. This process is depicted in the flow chart below and additional details are in the table below. Concept Papers not invited to submit a proposal may be resubmitted with changes within 30 days and after a debriefing of the strengths and weaknesses. See flow chart below.



Submission	1. Concept Paper (Mandatory)	2. Feasibility Study Proposal	3. Full Demonstration Proposal
Intent of the Submission at Each Stage	<ul style="list-style-type: none"> description of the concept & use case, values, economics, barriers, scalability and NYS impacts present any 'voice-of-customer' that substantiates value of the services provided by the energy storage system description of demonstration, anticipated location(s), budget, and duration estimates 	<ul style="list-style-type: none"> detailed explanation of barriers or complexity to be addressed explain how these issues can be addressed and what determines feasibility of the concept demo detail use case requirements to be studied value estimates for services provided and to whom budget and schedule 	<ul style="list-style-type: none"> how demonstration will overcome or address barrier or complexity evaluate effectiveness of system in achieving identified uses assess performance risk and values realized for not yet monetizable use cases, assess the value achieved examine system optimization techniques budget, schedule and M&V

	<ul style="list-style-type: none"> desired outcomes of a demonstration discussion of the viability of a Full Demo vs. doing a Feasibility Study key members of the proposing team identified follow guidelines in Attachment A 	<ul style="list-style-type: none"> operational strategy for system optimization to meet requirements limitations or requirements to monetize value streams needed cost/benefit analysis describe business model(s) inherent in the concept 	<ul style="list-style-type: none"> detail budget and schedule site(s) identified and analyzed identify values known but at risk, estimate values not yet monetizable, discuss financial viability of use case and future improvements from cost declines
Attachments	Required Attachment A, see Attachment F	Required Attachments B, C, D & E See Attachment F	Required Attachments B, C, D & E See Attachment F
Submission/Review Timeframe	4-page max. following guidelines in Attachment A. Submit anytime, reviewed and decision in 30 days	Submit anytime within 30 days of invitation, reviewed and decision in 60 days	Submit anytime within 90 days of invitation, reviewed and decision in 60 days
Review Process	NYSERDA internal reviewers. Outside expertise may be engaged.	Panel Review by NYSERDA and external experts.	Panel Review by NYSERDA and external experts.
Review Outcomes	i) Score 85 and above may be invited to propose Full Demonstration within 90 days ii) Score above 70 may be invited to propose Feasibility Study within 30 days iii) Below 70 may resubmit with changes within 30 days if debriefed	i) Feasibility Study proposals scoring 85 and above deemed meritorious ii) Scoring 70 – 84, deemed not meritorious but invited to resubmit with changes within 30 days if debriefed iii) Below 70, deemed not meritorious, not invited to resubmit	i) Full Demonstration proposals scoring 85 and above deemed meritorious ii) Scoring 70 – 84, deemed not meritorious but invited to resubmit with changes within 30 days if debriefed iii) Below 70, deemed not meritorious and not invited to resubmit
Funding and Cost-share	N/A	Up to \$100,000 NYSERDA cost share with min. 25% proposer co-funding	Min. 50% proposer co-funding. No max. funding request of NYSERDA, but amount must be justified by system value that is at performance risk, potential value not currently monetizable, and/or cost deficiencies that will be addressed through demonstrated cost declines.
Host Site(s) Identified	Not required, but may be stated.	Not required, but may be stated. Site characteristics and plan to acquire site(s) must be identified.	One or more host sites must be identified and support the Proposal.
Host Site Eligibility	Contribute to System Benefits Charge (SBC)/Clean Energy Fund (CEF)	Contribute to SBC / CEF	Contribute to SBC / CEF
Utility/NYISO Commitment	Not required, but may be stated.	Not required, but initial contact to scope needed feasibility work is suggested.	Engagement of distribution utility is required for distribution needs addressed and NYISO for wholesale participation
Other		Non-proprietary aspects of the outcomes of Feasibility Study projects will be made public and be incorporated into case studies and fact sheets.	NYSERDA may require independent 3 rd party M&V through an approved contractor. NYSERDA will require collection and publication of basic project performance data (load reduction, aggregated savings) for inclusion in the NYSERDA Distributed Generation web portal , case studies, fact sheets, etc.

IV. Details on Submissions

1. Prior to Submission

Prior to submitting a Concept Paper to this solicitation, proposers may communicate with NYSERDA's Designated Contact to discuss their concept and its potential responsiveness to this solicitation. Communication with NYSERDA staff prior to submission is entirely optional and is NOT required prior to Concept Paper submission.

2. Concept Papers: Submissions, Review and Re-submittals

Concept Papers must use the format of the Concept Paper Template provided as Attachment A. The intent of the template is to present the Concept in an orderly, organized manner, without repeating, or restating information. Proposers are asked to submit only well conceptualized Concept Papers. Proposers may submit Concept Papers to NYSERDA for consideration under this solicitation at any time during the open period of this solicitation.

Concept Papers determined compliant with application procedures and responsive to the solicitation will be subject to NYSERDA Review by internal technical experts in accordance with Section VI, Concept Paper and Proposal Scoring Criteria. This review will take place and a determination made within 30 days. Only the most technically meritorious Concept Papers will receive an invitation from NYSERDA to submit either a Feasibility Study or Full Demonstration Proposal. A Concept Paper must receive a score of at least 85 to receive an invitation to submit a Full Demonstration proposal. A Concept Paper must receive a score of at least 70 to receive an invitation to submit a Feasibility Study proposal. Concept Papers receiving a score of less than 70, and where the proposer has been debriefed on the Paper's strengths and weaknesses, may resubmit the Paper with changes within 30 days of being notified of the results of the NYSERDA review.

3. Feasibility Study and Full Demonstration Proposals: Submissions, Review and Re-submittals

Proposers may submit Feasibility Study and Full Demonstration proposals to NYSERDA for consideration under this solicitation only after review of a Concept Paper and an invitation is extended. Proposals for Feasibility Studies must be submitted within 30 calendar days from the date of the invitation and proposals for Full Demonstrations within 90 days. Feasibility Study and Full Demonstration proposals determined compliant with application procedures and responsive to the solicitation will be subject to panel review consisting of both NYSERDA and external technical experts in accordance with Section VI, Concept Paper and Proposal Scoring Criteria. Review of Feasibility Studies and Full Demonstration proposals will take place and a determination made and communicated within 60 days. No Feasibility Studies or Full Demonstration scoring less than 85 will be deemed technically meritorious. Feasibility Studies or Full Demonstrations scoring 85 or above may be invited to enter contract negotiations with NYSERDA for funding of the feasibility or demonstration work proposed. Completed Feasibility Studies may submit a proposal for a Full Demonstration within 90 days of completion. Feasibility Studies and Full Demonstration proposals that are not found meritorious may request a de-briefing of the proposal's strengths and weakness. Proposals reviewed as not meritorious, but having obtained a score between 70 and 84, and having been debriefed on their strengths and weaknesses, may re-submit their Proposal within 30 days of being notified of the results of the NYSERDA review.

Invited proposals for Feasibility Study and Full Demonstration projects should follow the outline provided below:

- Executive Summary – 2 pages
- Proposal for Feasibility Study or Full Demonstration - up to 20 pages, including, but not limited to the following topics:
 - Concept/demonstration explanation and benefits.
 - Problem statement, discussion of barriers, complexities and opportunities.
 - Use-case or project values, performance requirements, business model, benefit cost analysis proforma, project financing.
 - Impact on, replicability potential and market potential in New York State.
 - Project budget, requested NYSERDA cost-share, cost-share or co-funding provided and justifications.
 - Demonstration site identification or site requirements.
 - Stage of customer, utility, and/or NYISO engagement, necessary permitting, necessary milestones and timeframe to commissioning, plans or operation and maintenance expense.
 - Descriptions of outcomes, deliverables, use cases and lessons learned materials anticipated.
- Statement of Work, Schedule and Milestone Deliverables (Must use the template provided in solicitation Attachment D)
- Budget (solicitation Attachment E)
- Proposer Qualifications – up to 5 pages
- Letters of Support
- Solicitation Attachments B and C

4. Funding Amounts, Required Cost-share, Existing Installations and Proposal Budget

When invited to submit a Proposal, the cost-share funding requested of NYSERDA for a Feasibility Study may not exceed \$100,000 and 75% of study's budget (minimum 25% proposer cost-share). There is no maximum funding that may be requested of NYSERDA for Full Demonstrations, however it may not exceed 50% of total project budget (minimum 50% proposer cost-share). Proposer cost sharing that exceeds these minimums will be favorably considered in the evaluation criteria. Cost sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts which have already been undertaken. The proposer or proposing team cannot claim as cost-share any expenses that have already been incurred.

A proposer seeking to utilize an existing distributed generator with new energy storage or an existing energy storage project for stacking value may submit concepts for obtaining value streams distinct and additional to those already anticipated or being realized. Example, a proposer wishing to utilize an energy storage project that is currently operational or under development in Con Edison's Demand Management Program or Brooklyn-Queens Demand Management Program, or in a utility Non-Wires Alternative or REV demonstration, is eligible to propose concepts only for providing services additional to those for which the system was originally designed. NYSERDA will not cost share any portion of the capital expenses or other costs required for the project's original intended

purposes, services and value streams. NYSERDA cost share may only be requested for incremental costs associated with providing the additional functions, capacity, services or values.

The amount of funding requested as NYSERDA cost share must be based upon, and the proposal must specifically identify: (1) system benefits that are monetizable today and will be provided through the proposed project, but for which there is performance optimization or revenue risk that prevents this value from being readily monetized (e.g., customer's demand peaks may not entirely align with a utility's demand response call period); (2) system needs that are recognized in the Public Service Commission's BCA framework (referenced in Section II.D above) but which are not yet monetizable. In this case, the system value or a range of value must be estimated based on alternatives currently meeting the system need in the marketplace; and (3) any shortfall in the project proforma that is expected to be improved or removed through cost declines based on historical track record. Specific categories of costs and anticipated timeframes for cost reduction should be included.

Proposals must include a complete Budget Form, Attachment E. Indicate requested NYSERDA funding in the column labeled "Funding & Co-funding via NYSERDA." Include non-NYSERDA cash and in-kind contributions in the column labeled "Cost-sharing and Other Co-funding."

Proposers should also include a Budget for each sub-contractor that comprises greater than 20% of the total budget or more than \$50,000.

- Cost sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. The proposal should show the non-NYSERDA funding relative to cost share described directly above in BUDGET section.
- NYSERDA will not fund efforts that have already been undertaken. The proposing team cannot claim as cost-share any expenses that have already been incurred.
- Show the cost-sharing plan in the following format (expand table as needed) in your Proposal as a summary of the Budget. Make sure that this table agrees with your Budget.

	Cash	In-Kind Contribution	Total
NYSERDA	\$	\$	\$
Proposer	\$	\$	\$
Others (list individually)	\$	\$	\$
Total	\$	\$	\$

A payment based on the final deliverable will be reserved until project completion. If awarded, NYSERDA may choose to negotiate the amount of such payment. NYSERDA reserves the right to audit indirect rates presented in the proposal and adjust for differences. Requests for financial statements or other financial information may be made if deemed necessary.

5. Electronic Submission, Mail and Hand-delivery

Electronic submission is preferable. NYSERDA will also accept Concept Papers and Proposal submissions by mail or hand-delivery. If submitting electronically, proposers must submit in either PDF or MS Word format. PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. Concept and Proposal may be submitted electronically by following the link for electronic submissions found on this PON's webpage, which is located in the "Current Opportunities" section of NYSERDA's website (<https://www.nyserdera.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). Instructions for submitting electronically are located as Attachment F to this PON.

If mailing or hand-delivering, proposers must submit two (2) paper copies of their submission with required attachments, along with a CD or DVD containing both a PDF and a MS Word digital copy of the proposal, following the guidelines. Proposals (not Concept Papers) must be accompanied with a completed and signed Proposal Checklist. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Proposals, PON 3541
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

6. Program Policy Factors

Proposals and Concept Papers that meet solicitation requirements will be reviewed by NYSERDA or a Review Panel using the Evaluation Criteria described in Section VI below. At NYSERDA's discretion, proposers may be requested to interview with all or part of the Review Panel to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview.

NYSERDA reserves the right to accept or reject Proposals and Concept Papers based on the following factor(s):

- The degree to which pricing and hourly rates are in line with the rest of the market.
- Whether the proposed project will advance the goals of the State Energy Plan / Clean Energy Fund / REV. The State Energy Plan / Clean Energy Fund / REV goals include improving resilience and reducing greenhouse gas emissions.
- The degree to which the proposed project, including proposed schedule and cost shares, optimizes the use of available funding to achieve programmatic objectives.
- The degree to which the proposed concept or demonstration may be redundant to projects or work already being done in New York State.

- The degree to which the proposed concept or project addresses NYSERDA's mission and strategic goals or would be complementary to and support NYSERDA's existing portfolio of projects.
- Whether the proposed project will accelerate transformational advances in areas that industry by itself is not likely to undertake because of barriers or uncertainty.
- Diversity of awards, including multiple locations, territories, climates and customer types.
- The degree to which there are technical, market, organizational and/or environmental risks associated with the project.
- The degree to which there is portfolio diversity associated with time to market and / or development of pipeline.
- The degree to which the proposed concept or demonstration is relevant in the current and changing regulatory environment, market structures and building codes.
- The degree to which the proposer has the resources (human and financial) to be able to complete the project.

7. **Miscellaneous**

- This solicitation is planned to be open for more than two years over which period there may be regulatory, tariff, program, market structure or other changes that are impactful to distributed energy storage. Evaluation of Concept Papers and Proposals will be made considering the regulatory context at the time.
- NYSERDA reserves the right to vet concepts and claims of performance and capabilities in proposals. This includes contacting the proposer, any identified host site, and/or the local distribution utility or the NYISO to validate or seek clarification on any information contained in an application.
- NYSERDA will require submission and publication of performance data associated with the demonstrations including, at a minimum, kW and kWh of performance, peak reduction if applicable, and aggregated revenue and cost savings achieved. Specific performance requirements that will be utilized should be recommended in the Proposal and will be negotiated with successful proposers., NYSERDA may require third party measurement and verification of project performance data for Full Demonstrations. Such costs will be borne by NYSERDA.

V. Proposer Eligibility

To be eligible for selection under this solicitation, proposers must submit a complete Concept Paper or invited Proposal package and agree to the terms and requirements of this solicitation. All materials submitted to this solicitation become the property of NYSERDA. Proposers will not be reimbursed by NYSERDA for any costs associated with the preparation of their submissions.

For-profit and not-for-profit businesses and universities that are incorporated in the United States are eligible to apply as a stand-alone proposer or as the lead of a project team. This includes energy storage vendors, DER developers, DER host sites, demand response providers, wholesale market participants, and non-utility load serving entities. Government (Federal, State, Local) entities may participate on a project team but not serve as a stand-alone proposer. Utility, NYISO or NYPA support for the project and engagement or participation in the project team is expected and demonstrations that attempt to provide system value to one of these parties will not be supported

without the engagement of that party. For this reason, distribution utilities, NYISO, or NYPA may not serve as a stand-alone proposer nor project team lead.

Demonstration locations proposed to benefit from NYSERDA's cost-share funding must contribute to the System Benefits Charge or benefit utility territories that contribute to the Clean Energy Fund. This excludes demonstrations at locations receiving 100% commodity supply from NYPA and in LIPA, cooperative electric, and municipal electric territories.

VI. Concept Paper and Proposal Scoring Criteria

Concept Papers and Proposals deemed compliant and responsive will be reviewed and scored by the Review Panel per the criteria below.

1. Quality of the Distributed Energy Storage Value-Stacking Concept/Use Case

- Does the submission present a demonstration or a concept that can be demonstrated?
- Is the concept/use case description clear and address:
 - what functions or services the energy storage system would perform and how it is possible for the storage to perform multiple services
 - what are the desired impacts on the host load, grid or renewable injections
 - how technically and cost competitive the storage system is compared to alternative solutions
 - what regulations or business models exist or would be necessary to monetize and obtain values for who and how
- Does it describe what would be proven or addressed by a demonstration of this use case?
- Is the proposed concept/demonstration oriented towards commercial replication?
- Does it describe and prioritize the risks, barriers and complexities and possible solutions to stacking multiple values including issues of business model, monetization, system optimization and dispatching in the case of conflicting needs, tariff/program change, etc.?

2. Potential for Impact in New York State

- Does the use case address issues that can reasonably be anticipated in New York or have the potential for substantial peak load reduction, reductions in GHG emissions or improvements that may increase the ease and installation of renewable energy?
- Are the values being stacked ones that are applicable and beneficial in New York State?
- Is the concept or use case potentially a transformational advancement over existing solutions used to address electric system needs which, if successful, could result in significant improvements and/or create entirely new marketplaces in New York State?
- Is the value proposition sufficient such that the concept or technology will likely be successful in the target market?

3. Value of the Demonstration

- Is work scope presented in the Concept Paper, Feasibility Study proposal or Full Demonstration proposal appropriate, clear and complete including the Statement of Work, Budget and Schedule as required?
- Is the amount of time, effort, resources and co-funding in the Budget and Schedule reasonable and appropriate for the work scope and/or scale of concept demonstration?

- Is the applicant's cost-share adequate or more than adequate and is the NYSERDA cost share requested justified given the other commercial terms, revenues, incentives, etc. involved in the project? (see Section IV. 4.)
- Is the demo and plan presented likely to validate the proposed concept, overcome barriers to stacking values, adequately mitigate risks and position the project to remain technically and financially sustainable?
- Does the plan clearly articulate the deliverables, such as case studies, data, and lessons learned that will be valuable in New York State?

4. Viability of Replication in New York State

- Does the concept or proposal explain how and when this use case or market opportunity can be commercially viable without incentives?
- Has the market been identified and characterized and are there sufficient markets, needs or business cases to drive adoption?
- Does the concept or proposal discuss the addressable market and the realistic conditions/changes needed for adoption?
- How significant are the barriers to market entry or adoption of the concept or use case and how likely are they to be overcome?
- Is there an understanding of other competitive options providing the same values and services and is this proposed solution superior from a net cost perspective?

5. Qualifications and Experience of Proposing Team

- Does the proposed team have the necessary expertise and resources to execute the proposed concept in a demonstration in New York State?
- Is the proposer engaged in, and understanding, the markets in New York State applicable to the concept or demonstration?
- Does the team and energy storage vendor have sufficient expertise designing, permitting, installing and operating this technology solution in a commercial setting and what is the company's track record and going concern?
- Does the team have experience in operating energy storage for obtaining the proposed or similar values elsewhere?
- Does the concept or proposal have letters of support or resource commitment as appropriate?

VII. Submission Responsiveness Criteria

The following types of submissions will be deemed **nonresponsive** and not reviewed or scored:

- Concept Papers that do not propose demonstration of distributed energy storage in New York State for multiple value streams or benefits.
- Proposals for Feasibility Studies or Full Demonstrations that were not reviewed as Concept Papers and invited to propose.
- Applications that focus on demonstrating a utility-owned storage solution.
- Applications that have been submitted in response to other currently issued NYSERDA solicitations.
- Applications focused on research and discovery/or fundamental knowledge generation or applications for technologies not yet commercialized as described in Section II.B.

- Applications including or contingent upon substantive technology or product development or products not adequately warranted or with necessary industry certification required by an Authority Having Jurisdiction for the proposed purpose.
- Incomplete applications, applications not complying with the solicitation instructions, Proposals not including a complete Proposal Checklist Attachment A or other required material.

Noncompliant and nonresponsive Concept Papers and proposals for Feasibility Studies and Full Demonstrations will be rejected and not scored. A notification letter will be sent by email to the points of contact designated on the submission cover sheet.

VIII. Attachments

- A. Concept Paper Template
- B. Proposal Checklist
- C. Disclosure of Prior Findings
- D. Statement of Work Format
- E. Budget Form
- F. Electronic Submittal Instructions
- G. Sample Agreement

IX. 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, non-confidential 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.nyserdera.ny.gov/About/-/media/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



NYSERDA

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>. The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form 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 contacting 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. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer 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. 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 submitted proposal (see Proposal Checklist). 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 proposers in approximately 8 weeks from the receipt of a submission whether the Proposal 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](#).

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.

PROJECT TITLE (250 characters or less)

Principal Contact, Lead Organization, Address, City, State, Zip, Email

1. OVERVIEW

NYSERDA Contact:	Enter the name of any NYSERDA contact spoken to about the proposed concept prior to applying (if any).
Project Summary:	Write a summary (1-3 sentences) that describes the proposed demonstration concept, scale (kW/kWh size), and the impact it could have on enabling energy storage to obtain multiple values in New York State.
Estimated Demo Budget:	Enter the estimated total budget for demonstration and the estimated funding request that may be made in a future Full Demonstration Proposed to PON 3541.
Estimated Demo Duration:	Enter the estimated demo project duration in months. Please planning and design, installation and demo operation phases. The demo may be a commercial installation that remains active for many years. The demo operation phase must be long enough to prove performance against the objectives.

2. CONCEPT – limited to 4 pages, no attachments, following this suggested outline

I. Demonstration Concept/Use-Case

Describe the distributed energy storage value-stacking concept/use-case

- What functions or service the energy storage would perform?
- Who values those functions or services and how?
- How valuable those services can be compared to the cost?
- How it is possible for the storage to perform multiple services?
- What exists or would be necessary to monetize and obtain values?
- What issues of monetization, stacking, tariff/program change, etc. Does the concept/demonstration address?
- What would be proven or addressed by a demonstration of this use-case?
- What are the economics and business model of a commercial project of this use case?
- What are the technical and techno-economic risks and challenges?

II. Impact in New York State

Explain the benefits and impact of this energy storage use-case in New York State

- Explain how this demonstration will be impactful addressing energy storage issues and values applicable and significant to New York State

- Describe how the concept/use-case has potential for substantial peak load reduction, reductions in GHG emissions or improvements that may increase renewable energy
- Estimate any savings or benefits that could be realized on a commercial project of this use-case
- Describe how the use-case would be a potentially transformational advancement over existing solutions and/or would create entirely new markets
- Explain how the concept would become successful in the target market or application

III. Demonstration Plan

Describe what would be demonstrated, how, where, etc.

- Described demonstration objectives and what needs to be validated, measured, tested, etc.
- Describe the estimated effort, budget, resources and schedule for the demonstration and why they are reasonable and appropriate for the work and/or scale of concept demonstration.
- Justify why the NYSERDA cost-share is needed in this demonstration to address added risks, uncertainty, barriers, etc.
- Outline the key risks and challenges to the demonstration
- Describe how the demonstration may be technically and financially sustainable

IV. Potential for Replication in New York State

Explain why the demonstrated use-case will be scalable and repeatable

- Explain how this use-case can be commercially viable in the future without subsidy and what business model could drive adoption
- Explain how energy storage is competitive in the application(s) being demonstrated
- Identify and characterize the markets or needs and any conditions or changes needed to drive adoption

V. Team qualification and experience

Describe the applicant/team involved in the demonstration

- Describe the organizations involved and what expertise and resources each will contribute
- Describe any specific experience applicable to the concept or demonstration the team has in New York State
- Describe the specific energy storage expertise in system design, permitting, installation, operation, etc.
- Describe any experience the team has experience in operating energy storage to obtain the proposed or similar values elsewhere

CONCEPT PAPER TEMPLATE INSTRUCTIONS

CONTENT REQUIREMENTS:

- (1) The above Concept Paper template and content provided should be used to prepare Concept Papers.
- (2) Applicants should ensure the accuracy of their Concept Paper by reviewing prior to the proposal submission.
- (3) Confidential, proprietary, or privileged information should be indicated by including in the footer of every page the following: "Contains Confidential, Proprietary, or Privileged Information Exempt from Public Disclosure." In addition, every line and paragraph containing proprietary, privileged, or trade secret information must be clearly marked with double brackets or highlighting.
- (4) Delete these template instructions prior to submitting Concept Papers.

FORMAT REQUIREMENTS:

- (1) Concept Papers must be submitted in Adobe PDF format, be written in English, use black 11 point Times New Roman font, use 8.5 inch by 11 inch paper, be single-spaced, and have margins no less than 1 inch.
- (2) Concept Papers shall not exceed four (4) pages in length including graphics, figures, and/or tables.

ATTACHMENT B
PON 3541 - PROPOSAL CHECKLIST (MANDATORY FOR PROPOSALS)

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is not a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.		Federal Tax Identification Number:	
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:			
Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) (NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.) ___Yes ___No			
Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page "confidential" or "proprietary" (For additional information regarding this, please refer to the section entitled "Proprietary Information" in the solicitation document). ___Yes ___No			
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) ___Yes ___No			
Are you a Minority or Women-Owned Business Enterprise? ___Yes ___No			
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? ___Yes ___No			
Are you submitting the required number of copies? (See proposal instructions.) ___Yes ___No			
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page) ___Yes ___No			
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
Provide list of items consistent with Proposal Requirements section of solicitation:	Indictment/Conviction of Felony_____(if applicable) NYSERDA Contracts Awarded_____(if applicable) Prior and/or Competing Proposals_____(if applicable) Exceptions to Terms & Conditions_____(if applicable) Completed and Signed Contract Pricing Proposal Form(s)_____ Disclosure of Prior Findings of Non-responsibility Form_____.		
AUTHORIZED SIGNATURE & CERTIFICATION			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

NOTE: This completed form **MUST** be signed and attached to the front of all copies of your proposal.

CONTRACT EXHIBIT A: STATEMENT OF WORK

Project Title
NYSERDA Agreement No. _____

BACKGROUND/OBJECTIVES

(PROVIDE A BRIEF DESCRIPTION OF THE PROJECT. THIS SHOULD BE NO MORE THAN A TWO PARAGRAPH DESCRIPTION THAT PROVIDES A BACKGROUND OF THE PROBLEM, AS WELL AS HOW THE CONTRACTOR INTENDS TO SOLVE THE PROBLEM. KEEP IN MIND THAT THE CONTRACT SHOULD "STAND ON ITS OWN", I.E. ANYONE SHOULD BE ABLE TO PICK IT UP AND FIGURE OUT WHAT IS GOING ON.)

DEFINITIONS

SOW: Statement of Work

(Define any acronyms or uncommon words/phrases/technical terms to be used in the SOW)

The Contractor is defined as:

Company Name
PI Name
Street Address, City, State Zip code
Phone/Fax
E-mail

Subcontractor(s) is/are defined as:

Subcontractor name
Street Address, City, State Zip code
Phone/Fax
E-mail

The Project Site(s) is/are defined as:

Site Name
Street Address, City, State Zip code

TASK 0 - PROJECT MANAGEMENT AND PROGRESS REPORTING

Responsibility

Regardless of subcontracting arrangements, the Contractor shall be responsible for the timely completion of all the tasks in the SOW per the Project Schedule included herein. The Contractor shall provide all project management activities necessary for the performance of this SOW, as per attached *milestone schedule/budget*, which shall include the following activities:

- Coordinate the work of the Contractor's employees and those of subcontractors and equipment vendors that are undertaking tasks described in this SOW;
- Ensure control over the Project Budget and adherence to the Project Schedule; and
- Provide all project reporting to NYSERDA as specified in this SOW.

Subcontract(s)

The Contractor shall enter into an agreement with (*name subcontractor*) to perform work in the area of (*include subcontractor area of responsibility*).

(Repeat identification of additional subcontractor agreements as needed under this contract.)

At NYSERDA's request, the Contractor shall submit a copy of the above agreement(s) to NYSERDA's Project Manager.

Progress Reporting

The Contractor shall submit **periodic** progress reports, no less frequently than quarterly, to NYSERDA's Project Manager no later than the 15th of the month following each reporting period. The Progress Reports shall include information on the following subjects in the order indicated, with appropriate explanation and discussion:

- a. Name of contractor
- b. Title of the project.
- c. Agreement number.
- d. Reporting period.
- e. Project progress including a summary of progress, findings, data not already provided to the NYSERDA Distributed Generation Portal, analyses, results and demonstration results from all tasks carried out in the covered period.
- f. Planned work for the next reporting period.
- g. Identification of problems.
- h. Planned or proposed solutions to identify problems described in (f) above.
- i. Ability to meet schedule, reasons for slippage in schedule.
- j. Schedule - percentage completed and projected percentage of completion of performance by calendar quarter - may be presented as a bar chart or milestone chart.
- k. Budget- analysis of actual costs incurred in relation to the budget.

Project Kick-off Meeting

The Contractor shall hold a project kick-off meeting within thirty days from the contract execution date. The Contractor shall coordinate with NYSERDA's Project Manager to arrange the meeting at a mutually convenient time and place. The Contractor is encouraged to invite representatives of subcontractors and equipment vendors. The purpose of this meeting shall be to finalize the strategies for accomplishing the objectives of this work. In a timely manner, the Contractor shall submit to NYSERDA's Project Manager a brief report summarizing the issues discussed and decisions made, if any, during this meeting.

Project Completion Meeting

The Contractor shall conduct a project completion meeting, it shall occur within time period covering 15 days prior to and 15 days following the submission of the draft Final Report. The Contractor shall coordinate with NYSERDA's Project Manager to arrange the meeting at a mutually convenient time and place.

Metrics Reporting

The Contractor shall submit metrics for energy, environmental and economic benefits that are realized by the project (*contents and frequency of which to be agreed upon during contract negotiations and may include submission of metrics for inclusion in the NYSDA [Distributed Generation web portal](#), case studies, fact sheets, etc.*).

Task 0 Deliverables:

- (1) Written periodic Progress Reports.
- (2) Brief report summarizing the Kick-off Meeting and Minutes.
- (3) Brief report summarizing the Completion Meeting and Minutes.
- (4) Annual Metrics Reports.

Task 1-Title

Identify Task and Expected Deliverable for said task. The tasks should:

- *Be worded using action phrases, and should always start with “The Contractor shall...”*
- *Tasks should be worded so it is clear what the Contractor is required to do.*
- *If the Contractor is working with a subcontractor, it should say which one, specifically (unless there is only one, or all of them, in which case ‘Subcontractor’ or Subcontractor’s, respectively, is acceptable.)*
- *Avoid using phrases like ‘etc.,’ or ‘including, but not limited to;’ these phrases are ambiguous and hard to enforce.*
- *Tasks should be linear, so later tasks build on earlier tasks, and earlier tasks inform work being completed later on, as much as possible.*
- *When referring to previous tasks, it should be worded as “.... the work/report/system/method approved in Task X.”*

Task 1 Deliverable- This should be directly tied to the work completed in the Task. Most, if not all Tasks, should have a deliverable, except in special circumstances.

- *Deliverables should be a tangible item: a report, a presentation, pictures, purchase orders or bills of lading.*
- *Deliverables should not be something not asked for in the Task, and work completed in the Task should be reported on in the deliverable.*

Task 1 Schedule- Every Task should have a timeframe from the Effective Date that the work is expected to be completed in. This can be divided up task by task or included as a separate attachment.

(Repeat Identification of task and deliverable as often as needed under this contract.)

Task X - Final Report

Upon completion of the contract period, the Contractor shall prepare a non-proprietary/non-confidential Final Report covering all aspects of the work performed under this Agreement; the report shall include information on the following subjects:

- Discussions of the observations and findings and recommendations, if any, from all tasks, and avenues for further improvements, as appropriate;
- Discussions of the project results and lessons learned regarding configuration, capabilities, and benefits of the project; and
- Environmental, and economic benefits, and implementation scenarios associated with such.

Draft Version and Final Version of Final Report: A draft version of the Final Report shall be submitted to NYSERDA's Project Manager no later than the date specified in the Milestone Schedule of the NYSERDA Agreement for this task. NYSERDA will comment on the draft version within 30 working days after receipt of such draft. Within 30 working days after receipt of NYSERDA's comments, the Contractor shall prepare a final version of the report reflecting therein careful consideration of NYSERDA's comments to the satisfaction of NYSERDA, and submit two (2) bound, color hard copies and one (1) electronic copy of the final version of the Final Report.

Task X Deliverables:

- (1) A draft version of the Final Report.
- (2) A final version of the Final Report.

To be included on Demonstration Contracts under Task 0:

Site Agreement

The Contractor shall prepare and execute a site agreement with the Host Site prior to beginning the Work. The site agreement shall include terms for installing and monitoring the (*insert technology to be demonstrated*) at the Host Site and shall clearly specify the commitment and responsibilities of all parties. The site agreement shall include terms to allow, upon reasonable advance notice, NYSERDA's Project Manager and his/her invited guests to visit the Host Site to inspect the (*insert technology to be demonstrated*) and to witness operations. Invited guests may include other NYSERDA personnel, New York State agency representatives, and other stakeholders. The site agreement terms shall also specify, at a minimum: (1) cost share contributions; (2) description and duration of the monitoring; (3) descriptions of any modifications required to the Host Site for monitoring the (*insert technology to be demonstrated*); (4) access to the demonstration site for installing, inspecting, and servicing the (*insert technology to be demonstrated*) by the Contractor and its agents; (5) insurance; (6) equipment removal; (7) indemnification (including a provision by which the site owner disclaims any liability against NYSERDA for any damages or losses occurring by virtue of the (*insert technology to be demonstrated*) being installed or operated at the site); (8) site restoration; (9) warranty terms and (10) publicity (including but not limited to posting of project success information on NYSERDA's website). The site agreement shall be executed with an entity having the authority to commit the Host Site. A copy of the executed site agreement shall be furnished to NYSERDA for NYSERDA's records.

For projects that will incorporate a Go/No-Go requirement, some suggested language:

Go/No-Go Evaluation: The Contractor shall not proceed with the remaining tasks until the (*provide the deficiency to be addressed i.e. technical data, market study, test plan, economic study, etc.*) has been approved by (*name the appropriate project participant(s), customer(s), stakeholder(s), NYSERDA*). The Contractor must document (*name the project participants, customer, stakeholder*) acceptance of the (*name the solution to the deficiency*) and present such documentation to the NYSERDA Project Manager for approval. NYSERDA reserves the option to not proceed beyond this point and terminate the project if NYSERDA's Project Manager determines that the (*name the solution to the deficiency*) is not acceptable to (*name the appropriate project participant(s), customer(s), stakeholder(s), NYSERDA*). If the decision is made to terminate the project, the Contractor shall provide a Final Report, documenting the project results and lessons learned during Task (*##'s*).

If the decision is made to continue with the project, the Contractor shall proceed to Task (*next task #*).

Schedule and Milestone Deliverables

Task #	Task Name	Deliverable	Budget Payment	Estimated Completion Date
Project Management				
0.1	Kickoff Meeting	A brief report regarding the project kickoff meeting		30 days after contract authorization
0.2	Completion Meeting	A brief report regarding the project completion meeting		11 months after contract authorization
0.3	Progress Reporting	Periodic written reports		Quarterly
6	Final Report	A draft version of the Final Report.		11 months after contract authorization
Phase 1				
1				X months after contract authorization
2				X months after contract authorization
3				X months after contract authorization
Go-no-go decision				
Phase 2				
4				X months after contract authorization
5				x months after contract authorization



**Attachment C
PON 3541**

**Disclosure of Prior Findings of Non-responsibility Form
(Mandatory for Proposals)**

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number:		
Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years?		Yes
		No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law?		Yes
		No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?		Yes
		No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility:		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		



Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information?

Yes

No

If you answered yes, please provide details:

Government Agency or Authority:

Date of Termination or Withholding of Contract:

Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate.

Signature:_____

Date:_____

Print Name:_____

Title:_____

NYSERDA Budget			Solicitation/Contract No.		Page
Contractor:			Name of Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding: Total Project Cost:		
Cost Element			Total Project Cost:	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Labor (specify names or titles)	Hours	Rate/hr			
Total Labor					
2. Direct Materials, Supplies, Equipment, and Other Costs					
Total Direct Materials, Supplies, Equipment and Other Costs					
3. Travel					
Total Travel					
4. Final Deliverable					
5. Subcontractors/Consultants					
Total Subcontractors/Consultants					
Total Project Cost					
<input type="checkbox"/> By checking this box I certify that hourly rates included in this budget are the same or less than the hourly rates charged to other government or commercial entities for similar work performed.					

INSTRUCTIONS FOR PREPARATION OF BUDGET

Your budget may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided. Each offer should submit using the most favorable cost. NYSERDA reserves the right to accept or reject proposals based on the degree to which pricing and hourly rates are in line with the rest of the market.

A. GENERAL

The schedule must be submitted on NYSERDA's Budget Form.

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

(Title each supporting schedule and cross-reference it to the item number on the Budget)

1 LABOR (DIRECT)

a. Attach supporting schedules showing:

- o Each category or type (Title) of labor being estimated
- o Applicable labor rates per hour, fully burdened
- o Estimated hours required to perform the proposed statement of work

b. EDUCATIONAL INSTITUTIONS

Provide the following for each calendar year of the contract:

- 1 For individuals not on an "actual hours worked" basis:
 - o individual's name
 - o annual salary and the period for which the salary is applicable (preferably in weeks)
 - o the proportionate time to be charged to this effort
- 2 For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 1(a.)

2 DIRECT MATERIALS (PURCHASED PARTS), SUPPLIES, EQUIPMENT, AND OTHER COSTS

a. Provide the following information for each proposed item with an estimated unit cost in excess of \$15,000

- o Description of the item
- o Proposed vendor
- o Quantity needed
- o Unit cost
- o Basis for cost (i.e., catalog, prior purchase, quote, etc.)
- o Total cost

o Evidence of a competitive selection process in accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement.

b. OTHER DIRECT MATERIALS

In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, for all items in excess of \$5,000, provide whatever information would be necessary to understand what is being obtained, how it is being obtained, what it will cost and how the estimated cost was determined with justification for all items.

c. OUTSIDE SPECIAL TESTING

- o Describe the effort.
- o Provide the units of time (hours, days, or weeks), cost rates, and the vendor.

In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.

d. EQUIPMENT

Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.

- o vendor
- o model number
- o quantity
- o competitive selection process
- o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
- o description of the use or application (NYSERDA dedicated, contract dedicated, other)

e. **OTHER DIRECT COSTS**

- o Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
- o Provide cost details for the amounts estimated (hours or units, rates, etc.)
- o If any internal service center rates are applied, provide details similar to that required in Instruction #B.

3 TRAVEL

- o NYSERDA will accept as a direct charge only that travel required to perform the statement of work. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
- o Identify and support any other special transportation costs required in the performance of this project.

4 FINAL DELIVERABLE

- o A payment based on the final deliverable will be reserved until project completion. This amount typically represents 10-20% of contract value and will be negotiated with NYSERDA.

5 SUBCONTRACTORS/CONSULTANTS

- o Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
- o State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day.
- o Explain any administrative hours needed to manage sub-contractors and include those hours in the direct labor category above (1. Direct Labor). NYSERDA does not accept a percentage-based mark-up on subcontractor tasks.

5 CERTIFICATION (CHECK BOX)

Proposers must certify, via an attestation statement, that hourly rates included in the proposal budget are the same or less than the hourly rates charged to other government or commercial entities for similar work performed.

Attachment F - Electronic Submittal Instructions
PON 3541 - Demonstrating Distributed Energy Storage for 'Stacking' Customer and Grid Values

NYSERDA - INSTRUCTIONS FOR ELECTRONICALLY SUBMITTING PROPOSALS

Begin at the PON's website and click the "Submit a Proposal" button.

Please read the following instructions before submitting a proposal.

1. Submit one proposal for each session.
2. Enter your e-mail address and click the "Validate Email" button to generate an automated email.
3. Check your email for the auto-generated email containing a link to validate your email address. Click the link to be taken back to the Funding Opportunity page and to begin the online submission process.
4. Upload as many files as needed, one at a time.
5. The electronic file names should include the proposing entity's name in the title of the document. Note: there is a **100** characters limit.
6. You may submit Word, Excel, or PDF files. Individual files should be less than **1GB** file size. (Note: **Please do not submit 'Zip' file documents with your proposal submission**)
7. PDF files must be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
8. After clicking the "Upload File" button, a list of your files will appear on the web page. You can delete files from this list if needed.
9. After all necessary files have been uploaded, review the list of documents to ensure that your proposal is complete and accurate.
10. Click the "Submit Proposal button."
11. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
12. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
13. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address of the **Primary Contact listed on the Proposal Checklist.**

Important Reminders:

1. **The electronic proposal system closes promptly at 5pm Eastern Time on the due date of the solicitation.** Files in process or attempted for submission after 5pm will be locked out of the system. Please allow at least 15-30 minutes to enter/submit proposals.
2. E-mail or facsimile (fax) submittals will not be accepted.

If you make an error:

If after you click "Submit Proposals" you discover that a document(s) you submitted is incomplete or inaccurate follow these instructions:

1. Start the process over again and **resubmit the entire proposal**. You will receive another confirmation e-mail.
2. Immediately forward both confirmation e-mails (original and resubmission) to proposals@nyserda.ny.gov with the subject line of "**Resubmittal**" and the PON/RFP/RFQ number.
3. NYSERDA will accept the second submission as your proposal. The first submission will be disregarded.

If you need help:

If you need help with this electronic proposal submission process, please contact Jill Baxter at Jillina.Baxter@nyserda.ny.gov or 518-862-1090 ext. 3279 and the Program contact listed in the solicitation.

Attachment G – Sample Agreement

New York State Energy Research and Development Authority ("NYSERDA")

AGREEMENT

1. Agreement Number:

2. Contractor:

3. Project Director:

4. Effective Date:

5. Total Amount of Award:

6. Project Period:

7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, 2014 Report Content Guide.

8. ACCEPTANCE. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE
UNLESS EXECUTED BELOW BY NYSERDA.

[CONTRACTOR]

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

Signature: _____

Signature: _____

Name _____

Jeffrey J. Pitkin
Treasurer

Title _____

STATE OF)
) SS.:
COUNTY OF)

On the ____ day of _____ in the year _____, before me, the undersigned,
a Notary Public in and for said State, personally appeared _____,
personally known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their capacity(ies), and that by
his/her/their signature(s) on the instrument the individual(s), or the person upon behalf
of which the individual(s) acted, executed the document.

Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and the Exhibits noted thereon, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

Contract Administrator: NYSERDA, Director of Contract Management, Cheryl M. Glanton, or such other person who may be designated, in writing, by NYSERDA.

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Proprietary Information: Recorded information regardless of form or characteristic produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof, or any governmental agency or instrumentality.

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance of Work by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection with the Work.

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

Work: The Work described in the Exhibit A (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

Article II

Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary and appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified at Item V, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

[OR, if specific equipment has been identified by the Project Manager for NYSERDA to retain title in, then use the following:]

Section 2.03. Title to Equipment. Title shall vest in NYSERDA to all of the following equipment purchased hereunder:

- 1)
- 2)
- 3)
- 4)

Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better holding in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment. If, after six (6) months following the later of (a) Contractor's completion of the obligations, (b) completion of the Work, or (3) the termination of the Agreement, NYSERDA has not removed any such equipment, it will be deemed abandoned and become the property of the Contractor. Any such removal of equipment by NYSERDA shall be at NYSERDA's expense.

Article III

Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit C Statement of Work.

Article IV

Payment

Section 4.01. Payment Terms. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYSERDA's payments shall be on a

reimbursement basis, and shall be paid only to the extent that Cash-based Expenses are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, and the following:

(a) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate as shown in the Budget or the actual wages paid to the employee and applicable at the time the Work is performed. Such wage rates shall be inclusive of actual Cash-based Expenses in the form of wages paid to employee, fringe benefits, overhead, general and administrative (G&A), and other indirect costs. Contractor hereby warrants and guarantees that the wage rates charged herein are Contractor's customary billing rates for performance of work of the type described in the Statement of Work attached hereto.

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel, and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs shall not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

Section 4.02. Progress Payments

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be submitted electronically to NYSERDA's online invoice system at <https://services.nyserdera.ny.gov/Invoices/> or, if this project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Contractor portal with the contractor's log-in credentials. If electronic submission is not possible, invoices may be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall reference the purchase order number, which will be generated and provided to the Contractor upon contract execution, and the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and Other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to

correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously paid to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. Upon acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.05. Maintenance of records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three 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 relating to, the Contractor's performance under this Agreement.

Section 4.06. Maximum commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof 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 Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. 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 Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Performance

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

Section 5.02. Subcontract Procedures. Without relieving it, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for a subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization solicited, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally high qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

Article VI

Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of all deliverables shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such deliverables by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work.

Article VII

Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

Article VIII

Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information; Confidentiality.

(a) NYSERDA shall have the right to use, duplicate, or disclose Contract Information, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Contractor shall have the right to use Contract Information for its private purposes, subject to the provisions of this Agreement.

(c) NYSERDA shall have no rights to any Proprietary Information.

(d) No information shall be treated by NYSERDA as confidential unless such information is clearly so marked by Contractor at the time it is disclosed to NYSERDA; see Exhibit C regarding NYSERDA's obligations under the Freedom of Information Law. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibits, Statement of Work, be considered confidential or Proprietary Information.

(e) The Contractor agrees that if the Contractor receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless further use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information, that term is defined in Section 92 of the New York State Public Officers Law. Contractor does not disclose any such information without the consent of NYSERDA.

Article IX

Warranties and Guarantees

Section 9.01. Warranties and Guarantees. The Contractor warrants and guarantees that:

(a) all information provided and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

(c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(d) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;

(e) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;

(f) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for an claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(g) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

(h) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading and that all facts have been disclosed that would materially adversely affect the Work;

(i) information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement;¹ and

¹<http://www.nyserda.ny.gov/About/Board-Governance.aspx>

(k) its rates for the indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

(l) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Article X

Indemnification

Section 10.01. Indemnification. The Contractor 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, arising from or relating to Contractor's or its Subcontractors' performance of the Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any limitation herein or required insurance coverage.

Article XI

Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional direct cost to NYSERDA, 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 11.02 of entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

(a) accept policies as evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor 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 11.02. 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 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or canceled pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to even rendering review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order

(a) NYSERDA may, at any time, by written Order to the Contractor, require the Contractor 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 Contractor, 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 Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence 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 Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, 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 Contractor 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 Contractor's cost properly allocable to, the performance of any part of this Agreement, and

(ii) the Contractor 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 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

Section 12.02 Termination

(a) This Agreement may be terminated by NYSERDA at any time during the term of the Agreement, with or without cause, upon ten (10) days prior written notice to the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor 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). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

12.03 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 Contractor. In the event of such suspension, the Contractor will be given written notice defining the particulars of such suspension. Upon issuance of such notice, the Contractor 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 Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor 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.

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, 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 Contractor to perform the Work shall be Contractor'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 Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor 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, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor 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 contractor'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.

Article XIV

Compliance with Certain Laws

Section 14.01. Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in Exhibit C hereof.

Section 14.02. All and Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if through mistake, oversight or otherwise, any such provision is not contained herein or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply fully with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

NYSERDA

Name: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: Cheryl.Glanton@nyserda.ny.gov

Personal Delivery: Reception desk at the above address

[Contractor Name]

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed,

waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Article XVI

Publicity

Section 16.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which the Work is referred to or discussed.

(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained here and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree

on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

SAMPLE

EXHIBIT C

REVISED 5/12

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:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and by 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 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 a public work Agreement covered by Article 6 of the Labor Law or a building service Agreement 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, 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. 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 39-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 purpose 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 prior 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 or 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 (<http://www.dos.ny.gov/about/foil2.html>) 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 of 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 NYSEDA'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 NYSEDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSEDA, in writing, of each and every change of address to which service of process can be made. Service by NYSEDA 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, NYSEDA 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 NYSEDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSEDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSEDA 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 NYSEDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSEDA 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
<http://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 Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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 68 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, NYS/EDA 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 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 subsection 3 of Section 14 of the State Finance Law (See <http://www.ogs.ny.gov/about/regs/ida.asp>)

EXHIBIT D

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.²

(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 the 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 D 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

² 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>

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:

(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 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 subsection, 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.

(3) "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 the 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 any 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. Source of Funds to Pay Interest. Any interest payable by NYSERDA pursuant to this 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 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.

Exhibit E

New York State Energy Research and Development Authority (NYSERDA)

2016 Report Content Guide

Revised 12/10/2015

(Replaces the 2015 NYSERDA Report Content Guide)

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Purpose

This document explains how to prepare and submit a report to the New York State Energy Research and Development Authority (NYSERDA). It includes details on the elements of the report, specifications for formatting and accessibility, and information on electronic submission. Please follow these instructions unless your NYSERDA contract specifies otherwise.

NYSERDA will publish the finished report deliverable online and/or in print unless the NYSERDA Project Manager approves special circumstances. Please direct questions about technical content and submission deadlines to your NYSERDA Project Manager. For questions related to formatting and electronic submission of the report, contact Diane Welch in NYSERDA Marketing at 518-862-0090, ext. 3276 or Diane.Welch@nyserdanys.gov.

Required Elements

Section 6 includes a checklist of the required elements. This section contains details about the items that are required in all reports (unless noted as optional). Items should appear and be paginated in the following sequence:

- Title page (no page number):
 - Include title of report, draft of report prepared for NYSERDA, NYSERDA Project Manager (name and title), prepared by name of organization, individuals and affiliation, report number (NYSERDA will provide during writing), contract number and date report submitted.
- Notice (small Roman numerals for page numbers, i.e., ii):
 - Option 1 When NYSERDA is the project's sole sponsor, this notice must be used:

Notice

This report was prepared by [Insert Preparer's Name] in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority (hereafter "NYSERDA"). The opinions expressed in this report do not necessarily represent those of NYSERDA or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement. Further, NYSERDA, the State of New York, and the contractor make no warranty or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports we publish. Contractors are responsible for determining and

satisfying copyright or other use restrictions regarding the content of reports that they write, in compliance with NYSERDA's policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email print@nyserda.ny.gov.

- Option 2—When there are project co-sponsors in addition to NYSERDA, use the following notice instead:

Notice

This report was prepared by [Insert Preparer's Name] in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority and the [Insert Co-Sponsor's Name] (hereafter the "Sponsors"). The opinions expressed in this report do not necessarily reflect those of the Sponsors or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, the Sponsors, the State of New York, and the contractor make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any process, method, or other information contained, described, disclosed, or referred to in this report. The Sponsors, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

NYSERDA makes every effort to provide accurate information about copyright owners and related matters in the reports it publishes. Contractors are responsible for determining and satisfying copyright or other use restrictions regarding the content of the reports that they write, in compliance with NYSERDA's policies and federal law. If you are the copyright owner and believe a NYSERDA report has not properly attributed your work to you or has used it without permission, please email print@nyserda.ny.gov.

- Abstract and Keywords (optional; small Roman numerals for page numbers):
 - The Abstract is a brief, approximately 200-word description of project objectives, investigative methods used, and research conclusions or applications. This information will be used when NYSERDA registers the report with the New York State Library and the Library of Congress. A list of keywords that describe the project and identify the major research concept should be submitted with the report. Four to six precise descriptors are generally sufficient and will be used for indexing, registering and distributing the report.
- Acknowledgments (optional; small Roman numerals for page numbers):
 - If included, the Acknowledgments page precedes the Table of Contents and is generally no longer than two paragraphs in length.
- Table of Contents (small Roman numerals for page numbers):
 - The Table of Contents should list front matter material (except the Table of Contents) and titles and section numbers for heading levels one through four. Additional levels should not

be used in the report. If the heading styles are applied in Word, the list can be automatically generated.

- List of Figures (small Roman numerals for page numbers).
 - If the report contains three or more figures, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- List of Tables (small Roman numerals for page numbers).
 - If the report contains three or more tables, they should be listed using the style of the Table of Contents. (If the figure titles in text have the caption function applied in Word, the list can be automatically generated.)
- Acronyms and Abbreviations List (small Roman numerals for page numbers).
 - All acronyms and abbreviations should be spelled out and followed by the acronym or abbreviation in parentheses on first use.
 - First reference to NYSERDA in text should be “the New York State Energy Research and Development Authority (NYSERDA).” Subsequent references should read simply “NYSERDA.”
 - When referring to New York State use “New York State” on first use and abbreviate “the State” for subsequent uses.
 - Use a one- or two-column layout for the list; do not use a table.
- Executive Summary or Summary (continued; ES-1, ES-2, ES-3 etc. for page numbers of Executive Summary and Summary, respectively).
 - An Executive Summary is one page in length maximum. A Summary is a shorter version of the report and varies in length but less than 10 percent of the main report is a good guideline.
- Main Text (sequentially numbered pages i.e., 1, 2, 3 etc. preferred, but chapter-page numbering is acceptable).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc. preferred but sequential page numbering is acceptable), callouts in text (i.e., Figure 1 shows...) and Alternative Text to comply with ADA accessibility are required. Refer to ADA guidelines for the best way to represent color with reference to colors. Preferences for tables are listed in this document.
 - Figures and tables at the back of the document are preferred for documents that NYSEDA will be formatting; figures and tables placed in-line with text near callout is acceptable. Do not wrap text.
- References Cited and Bibliography information (as needed; continue sequential page numbering):
 - References Cited vs. Bibliography: References Cited has specific references called out in text to document sources of specific information, and a bibliography is a list of sources used to compile a document but does not have callouts for specific facts in the text.
 - Endnote style for reference citations is preferred but footnotes are acceptable.
 - Format of reference callout in text for footnote or endnote is the author-date callout in text (i.e., Wood and Stone 2010).

- Full reference citations listed alphabetically by the last name of the first author.
- Citation format is based on Chapter 15 (Documentation II: Author-Date References) of The Chicago Manual of Style (16th edition).
- Use the following format to refer to reports published by NYSERDA:

New York State Energy Research and Development Authority (NYSERDA). Year of publication. “Title of Report,” NYSERDA Report Number xx-yy. Prepared by organization, company or individual names and city/state location (optional).
nyserda.ny.gov/publications

- Appendices (optional; A-1 etc for Appendix A, B-1 etc for Appendix B, etc numbering):
 - In NYSERDA reports, Appendices should be called appendices and not Attachments. Attachments are used to append a document to an appendix. (Attachments may have different definitions in emails and legal documents.)
- Alternative text that describes figures and tables to meet Accessibility requirements. (A separate Word file is fine—see Section 2.2 for more details).

Copyright for Intellectual Property

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA the copyright owner’s written permission to use any illustrations, photographs, tables, figures, or substantial amounts of text from any other publication.

For each figure and table, the contractor must also provide a source line that gives the original source and any language stating permission to reprint that should be published with each respective table or figure.

Proprietary or Confidential Information

Proprietary or confidential information should be clearly labeled in the report submission as “proprietary” or “confidential.” To the extent possible, the information should be contained within one section or appendix that can be easily removed prior to publishing. Consult your NYSERDA Project Manager with any questions.

Americans with Disabilities Act (ADA) Accessibility Compliance

As a State Authority, NYSERDA is obligated to ensure that all documents published on NYSERDA’s website are accessible, pursuant to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220 August 7, 1998).

To meet the needs of persons with visual or mobility disabilities, reports must be in a format that allows for conversion of written words of an electronic document into speech, thus allowing the person with a disability to hear the text. The formatting of these documents is critical to the success of the conversion from text to speech. Screen reading software will read the document as one long series of paragraphs with no differentiation for new topics unless properly formatted with Heading Styles. (Imagine reading a textbook with no difference in text from one paragraph to the next.)

Reports submitted to NYSERDA must meet the following requirements:

- Use numbered headings in the document up to Level 4 (i.e., 1.1.1.1).
- Pick one of the formatting options outlined in Section 3 of this document.
- Provide short titles for all tables, images, and figures.
- Provide Alternative Text (also known as alt-text) that describes the visual elements of each image and figure—and does not just repeat the title or caption. Include alt text for any tables that are inserted as images.
- Write out links in documents that will be printed. Write the sentence so that the URL is not at the end and followed by a period. See the last bulleted item for an example (“Visit...”).
- Avoid linking to “click here” or including extremely long URLs. For web-only documents, use contextual links, such as linking NYSERDA’s website to “NYSERDA” instead of putting a long URL in text.
- Visit nyserdera.ny.gov/Doing-Business-with-NYSERDA for more information about how to make a document accessible.

Formatting

Contractors have two options for the formatting of submitted documents.

Option 1—NYSERDA does the formatting

- Contractor emails to NYSERDA Project Manager a Word file of all report components with all text in Times New Roman 10 pt font.
- File should include outline level numbering with each section head (1 is Level 1 Heading, 1.1 is Level 2 Heading, 1.1.1 is Level 3 Heading, 1.1.1.1 is Level 4 Heading), not to exceed Level 4.
- Each figure and table should have a call-out in the main text (i.e., Figure 1 shows... or According to Figure 1... or (Figure 1) at the end of a sentence).
- Figures and tables along with their titles and sources (and captions if necessary) should be grouped together at the back of a file or supplied in a separate file. Contractor can request online or back-of-report placement of figures.
- NYSEDA will format the document according to the 2016 NYSEDA Marketing’s Template for Reports.

Option 2—Contractor does the formatting

- Visit nyserdera.ny.gov/Doing-Business-with-NYSERDA to download:
 - Report template (2016 NYSEDA Marketing’s Template for Reports).
 - Details about report formatting (2016 NYSEDA Report Formatting Guide).
- Apply each of the Word Styles in the template to the elements of the document as appropriate, such as apply Heading 1 to all first-level headings, Body Text to all body text and References to reference materials. Place figures and captions after each respective call-out OR in order at the back of the report.

Submitting a Report to NYSERDA

No print drafts of the report are required. An electronic Word version of the draft report should be emailed to the NYSERDA Project Manager. Contact the Project Manager regarding how to transfer large files. The contractor is responsible for satisfactorily addressing comments from NYSERDA and other stakeholders. When making corrections, the contractor must ensure that technical content is not compromised. After editorial corrections have been made, the contractor must email to the Project Manager a Word version of the final report. NYSERDA will consider high-resolution image submissions for report covers.

Contacts

- The NYSERDA Project Manager should be the contractor's primary point of contact.
- For additional questions, contact Diane Welch in NYSERDA Marketing at Diane.Welch@nyserda.ny.gov or 518-862-1090 ext. 3276.
- Contractors can also email print@nyserda.ny.gov or call 518-862-1090 and ask for marketing.

Required Elements Checklist

The following elements should be included in reports unless noted as optional, along with the style of page numbers is listed in parentheses.

- Title page (no page number).
- Notice (small Roman numerals; page numbers, i.e., vi).
- Abstract
- Keywords (optional; small Roman numerals).
- Acknowledgments (optional; small Roman numerals).
- Table of Contents (small Roman numerals).
- List of Figures (small Roman numerals).
- List of Tables (small Roman numerals).
- Acronyms and Abbreviations List (small Roman numerals).
- Executive Summary or Summary (optional; ES-1 or S-1 etc.).
- Main Text (pages sequentially numbered i.e., 1, 2, 3 etc.).
- Figures and tables with sequential numbering (Figure 1, Figure 2, etc.), callouts in text (i.e., Figure 1 shows...), and Alt Text for ADA Accessibility.
 - Figures and tables at the back of the document are preferred for documents that NYSERDA will be formatting; figures and tables placed in-line with text after first callout are acceptable. Do not wrap text.
- References Cited and Bibliography information.
- Appendices (optional; page numbering is A-1 etc. for Appendix A, B-1 etc. for Appendix B).
- Copyright information for intellectual property (i.e., images, figures, tables or large pieces of text that have been previously published)—include written permission from the copyright holder

at the end of the document and use appropriate language in the captions of the images, figures and tables such as “Reprinted with permission from [publisher’s name].”

- Alternative text that describes each image and figure (include Alt text for tables that are included as images) —and does not just repeat the title or caption. (See Section 2.3 for more information.) The text should be listed at the end of the document or provided in a separate file.

SAMPLE