

**Clean Energy Incubators**

Program Opportunity Notice (PON) 3413

**\$3,700,000 Available**

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

**Round 1 Proposals Due: December 1, 2016 by 5:00 PM Eastern Time\***  
**Round 2 Proposals Due: November 29, 2017 by 5:00 PM Eastern Time\***

This New York State Energy Research and Development Authority (NYSERDA) Program Opportunity Notice (PON) 3413, Clean Energy Incubators, seeks proposals to catalyze the continued development and growth of a vibrant, self-sustaining clean energy innovation ecosystem in New York State through the support of clean energy business incubators. This PON is a continuation of NYSERDA's successful clean energy incubator program and will continue the evolution of the existing incubator program by making additional, competitively awarded funding available for clean energy incubators across New York State. NYSERDA's strategy is to provide operational and programming support for clean energy incubators that offer commercialization resources, technical assistance, and business development support to early-stage companies in order to help them achieve key milestones and accelerate their time to market. Proposals will be evaluated on the basis of innovative and high-impact programming for client companies and graduates, utilization of institutional resources and regional assets, collaboration with partners, and leverage of funding and support from other sponsors. NYSERDA seeks proposals specifically from the Capital Region and Western New York regions of New York State for Round 2. Up to \$3,700,000 of NYSERDA funding is available through Round 2 of this PON. The maximum award per incubator will be \$2,000,000. Awarded contracts will be for an initial term of four years with one, one-year option to renew. All, some, or none, of the available funds may be awarded in Round 2. NYSERDA reserves the right to add or reduce time and/or funding to awarded contracts.

### **Proposal Submission**

Electronic submission is preferable. NYSERDA will also accept proposals by mail or hand-delivery. If submitting electronically, proposers must submit the proposal in either PDF or MS Word format with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility. Proposal 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. 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 (<http://www.nyserdera.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

If mailing or hand-delivering, proposers must submit (2) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing either a PDF or MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Jill Baxter, PON 3413**  
**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 Nicholas Querques (Designated Contact) at (518) 862-1090, ext. 3086 or [nicholas.querques@nyserda.ny.gov](mailto:nicholas.querques@nyserda.ny.gov). If you have contractual questions concerning this solicitation, contact Venice Forbes (Designated Contact) at (518) 862-1090, ext. 3507 or [venice.forbes@nyserda.ny.gov](mailto: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 offeror, and (2) may result in the proposer not being awarded a contract.

**\* All proposals must be received by 5 pm Eastern Time on the date noted above. Late, faxed, or emailed proposals will not be accepted.** Incomplete proposals may be subject to disqualification. It is the proposer's responsibility to ensure that all pages have been included in the proposal. Please note: for electronic submission, there are required questions that you will have to answer in addition to uploading attachments and you should allot at least 60 minutes to enter/submit proposals. The electronic proposal system closes promptly at 5 pm, files in process or attempted edits or submission after 5 pm Eastern Time on the date above, will not be accepted. If changes are made to this solicitation, notification will be posted on NYSERDA's website at <https://www.nyserda.ny.gov/>.

## ***I. INTRODUCTION***

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Many early-stage companies that are commercializing clean energy technologies and solutions continue to face a difficult path to market as a result of the capital intensity and long lead times associated with the clean energy commercialization process. In addition, clean energy companies – whether they are developing disruptive hardware technologies or innovating new business models – often lack active relationships and deep connections with the broader investment community and key development partners. Incubators, which are organizations that help new and early-stage ventures develop and scale, can dramatically improve the success rate of these clean energy companies.

For the purpose of this solicitation, clean energy is defined as hardware technologies, software technologies, services, or processes that broadly reduce energy consumption and greenhouse gas emissions and/or enable the transition to a sustainable and clean energy economy by increasing the supply of renewable energy and distributed energy resources, improving the efficiency of energy utilization at the consumer and industrial scale, improving the processes and systems that use energy, or more effectively enabling energy solutions to permeate the marketplace.

NYSERDA founded its incubator program in 2009 to foster the viability and growth of the state's most promising clean energy companies by providing ready access to investors, mentors, development partners, and commercialization resources. These six incubators, which span from Buffalo to Long Island, have assisted 146 client companies and graduates have raised over \$313 million in private investment, \$207 million in project finance capital, and \$94 million of non-NYSERDA grant funding to date, while generating over 1,075 jobs and bringing dozens of new clean energy products and solutions to the market.

The clean energy incubators that were awarded under Round 1 of this PON include:

- Venture Creations – Rochester Institute of Technology (Finger Lakes)
- Clean Tech Center – CenterState CEO's The Tech Garden (Central New York)
- ACRE – NYU Tandon School of Engineering (New York City)
- CEBIP – Stony Brook University (Long Island)
- Southern Tier Clean Energy Incubator – Binghamton University (Southern Tier)

This PON is a continuation of NYSERDA's successful clean energy incubator program and will continue the evolution of the existing incubator program by making additional, competitively awarded funding available for clean energy incubators across New York State, which could include existing NYSERDA-sponsored incubators and/or new incubators that are not currently supported by NYSERDA. NYSERDA seeks proposals specifically from the Capital Region and Western New York regions of New York State for Round 2 of the PON. For existing NYSERDA-sponsored incubators, any potential awards made through this solicitation will be new and separate contracts from the work that they are performing or have performed under current or past contracts. NYSERDA's strategy is to provide operational and programming support for clean energy incubators that offer commercialization resources, technical assistance, and business development support to early-stage companies in order to achieve key milestones and accelerate their time to market.

The broad goal of NYSERDA's Technology and Business Innovation program is to support technologies and companies that will help New York State reach its energy and climate targets. Within that context, the goals of NYSERDA's clean energy incubator program include:

- Accelerating the time to market for clean energy incubator client companies and graduates, as evidenced through the following metrics: private investment raised, project finance capital secured, grants awarded, strategic partnerships executed, revenue generated, new products commercialized, jobs created/retained, and liquidity events realized.
- Evolving the operations and programming of NYSERDA-sponsored incubators so they are mainly targeted at achieving client-driven milestones and quickly able to address the needs of client companies and graduates.
- Serving as a foundational element of the regional and statewide clean energy innovation ecosystem in order to promote the continued transition to a robust, sustainable clean energy economy in New York State.

The subsequent sections of this PON are as follows:

- II. Program Requirements (page 3)
- III. Proposal Requirements (page 6)
- IV. Proposal Evaluation (page 7)
- V. General Conditions (page 9)
- VI. Attachments (page 12)

## **II. PROGRAM REQUIREMENTS**

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### **Eligibility and Proposer Qualifications**

Proposers may be existing NYSERDA-sponsored incubators and/or new incubators that are not currently supported by NYSERDA. Proposers must be entities with a demonstrable and proven track record of successfully providing business incubation services to early-stage companies that are developing the full spectrum of clean energy technologies and solutions. Proposers may be organized as for-profit or non-profit entities. Proposers must be located in New York State, which means that their principal place of business and management team must entirely be based within the state.

Proposers must have the physical facilities and ability to provide on-site resources and co-location space for client companies and graduates at such location. Historically, incubators providing physical space, on-site resources, and co-location space have been more successful in regard to fostering an entrepreneurial culture and assisting client companies and graduates achieve significant milestones. Successful proposers will be required to, without exception, provide site-specific programming, services,

and physical space to incubator client companies and graduates. However, this shall not preclude the delivery of commercialization resources, technical assistance, and business development support to clean energy companies who are not physically located within the organization's incubator facility.

Proposers will be evaluated on their track record and ability to achieve the following key outcomes:

- Communicate a clear value proposition to develop and deploy program offerings that are founded on continuous customer discovery and market validation.
- Curate and deliver innovative, impactful, and high-value add programming for incubator client companies and graduates.
- Utilize institutional and regional assets to provide targeted and timely commercialization resources, technical assistance, and business development support to incubator client companies and graduates.
- Collaborate with world-class partners, including venture development organizations, investors, service providers, and other relevant incubators and NYSERDA-sponsored resources in order to support client companies and graduates as well as raise the profile of the statewide clean energy innovation ecosystem.
- Leverage funding and support from private and public sponsors other than NYSERDA.

Proposers should be able to provide illustrative examples of clean energy companies that have directly benefited from their business incubation support. Proposers must also be able to clearly and succinctly articulate how they have helped specific client companies and graduates achieve significant technical and business milestones, such as attracting investment, securing partnerships, commercializing products, generating revenue, and realizing liquidity events. Proposers should provide contact information for any specified client companies listed in the proposal. NYSERDA reserves the right to verify any information provided in the proposal.

### **Available Funding and Cost Sharing**

Up to \$3,700,000 of NYSERDA funding is available through Round 2 of this PON. The maximum award per incubator will be \$2,000,000. All, some, or none, of the available funds may be awarded in Round 2. NYSERDA reserves the right to add or reduce time and/or funding to awarded contracts. Successful proposers will be required to provide cost sharing; at least 25% of the total project cost is required. The proposer's cost share may be cash or in-kind and may come from the proposer itself or partner organizations. Cash is the preferred form of cost share.

### **Range/Scope of Services**

Proposers are asked to submit proposals for business incubators that will support early-stage companies in the clean energy space. Such companies may range from concept-stage companies and startups to revenue-producing companies that require additional development to accelerate the commercialization of new products. Proposers are expected to develop models that leverage their institutional resources and regional assets while also utilizing national best practices from leading business incubators. To be selected for funding, proposals must outline strategies for how they will address and execute on the following key program activities:

- **Operations** – Strategies and activities related to the operation and administration of the incubator. Examples include, but are not limited to, acquisition of sufficient physical space to house incubator clients, hiring highly qualified and sufficient staff to manage programming, and implementing measurement and verification steps to collect and report high-quality performance metrics. Operations activities will be reported in required periodic reporting for NYSERDA that quantifies the impact of the incubator as well as progress made and milestones achieved by client companies and graduates.

- **Programs** – Strategies and activities that build, foster, and grow a culture of innovation and entrepreneurship throughout the incubator’s institution and broader region. For example, networking events, boot camps, founder meetups, mentor office hours, advisory board meetings, hackathons, prize competitions, etc. The results of these programs will be reported periodically and include an assessment of programming impacts in order to identify what works well and potential areas for adjustment.
- **Client-Driven Milestones** – Strategies and activities focused specifically on increasing the likelihood of incubator client company success. For example, client-specific support and assistance to raise private investment, form strategic partnerships, and bring products to market, etc. These client-driven milestones, which ensure that compensation for incubator is aligned with the performance and success of its client companies and graduates, will be the primary focus of NYSERDA’s support through this PON.

## Schedule and Teaming

The following guidelines should be considered when developing proposals:

- Projects are expected to begin within 4 months of the proposal due date. Awarded contracts will be for an initial term of four years with one, one-year option to renew.
- Teaming arrangements and collaboration are highly encouraged, where appropriate, to enhance the likelihood of project success and overall impact. Teams may include partners such as venture development organizations, investors, service providers, academic and research institutions, government agencies, and other incubators. Include letters of commitment or interest from each identified team member in an appendix to the proposal.

## Letters of Commitment or Interest

If you are relying on any other organization to do some of the work, provide services or equipment, participate as a key partner, or share in the non-NYSERDA cost, include a letter from that organization describing its planned participation. Also include letters of interest or commitment from partners or other organizations critical to the development, implementation, and success of the project. Absence of letters of commitment or interest may be interpreted as meaning that the proposer does not have support from the subject parties. Letters should not be solicited from NYSERDA personnel.

## Potential Conflicts of Interest

Identify the nature of any potential conflicts of interest among team members and partners in providing services to NYSERDA under this PON. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members and partners of the proposed contract. Describe how your firm would resolve conflicts of interest. In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of such, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

## Other Considerations

In addition, proposers should note that:

- A proposal may be considered non-responsive if it fails to comply with the requirements above, the Proposal Requirements of Section III, or the General Conditions of Section V.
- Prior to an award being made, potential awardees may be required to demonstrate the following via formal documentation: a strong track record, access to financial resources sufficient to perform the proposed work, technical experience and adequate facilities (or the ability to access

them), and the ability to qualify for an award under applicable laws and regulations.

- Performance of awarded projects will be assessed on a continuous basis in order to ensure the contractor is meeting its commitments and achieving the milestones laid out in the Statement of Work.

### **III. PROPOSAL REQUIREMENTS**

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The proposer's goal should be to concisely present the information needed to fully address the Proposal Evaluation criteria (see Section IV). Proposals that grossly exceed the page limits or fail to follow the format guidelines in Attachment C may be rejected as non-responsive. If you believe proprietary information must be submitted to provide an adequate proposal, you must comply with the Section V instructions for submitting proprietary material.

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective proposal may reduce, rather than increase, a proposal's standing per the evaluation criteria. Each page of the proposal should state the name of the proposer, the PON number, and the page number. The proposal must be in the following format, with items in the sequence shown.

#### **Procurement Lobbying Requirements**

In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), proposers will be required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility.

#### **Proposal Narrative**

Complete the Proposal Narrative form-fillable document as part of the PON (Attachment C). The Proposal Narrative contains the following sections:

- Executive Summary
- II. Background, Opportunity, and Needs Assessment
  - Attachment C1 - Mission Model Canvas
- III. Statement of Work, Milestone Payment Plan, and Schedule
- IV. Proposer Qualifications
- V. Project Benefits
- VI. Budget
- VII. Letters of Support
- VIII. Attachments

Proposers must carefully review the Proposal Narrative to ensure that all required sections are completed. Failure to do so may result in the proposal being rejected as non-responsive.

#### **Cost Sharing**

The proposal should show non-NYSERDA funding of at least 25% of the total cost of the project. The 25% cost sharing requirement is a minimum indicator of the commitment of the proposer to leverage the NYSERDA investment to build and develop a vibrant, sustainable clean energy innovation ecosystem in their respective region. Cost sharing can be from the proposer, other team members and partners, and other private or public 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. The proposer must provide the cost sharing information and their organization's overhead rate as directed in Attachment C.

#### **IV. PROPOSAL EVALUATION**

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Proposals that meet the solicitation requirements will be reviewed by a Scoring Committee and will be scored and ranked according to the following criteria, **listed in order of importance**. At NYSERDA's discretion, proposers may be requested to interview with all or part of the Scoring Committee to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview. After the proposals are reviewed, NYSERDA will issue a letter to each proposer indicating the proposal evaluation results. Proposers receiving favorable evaluations will be invited to enter into contract negotiations with NYSERDA. The proposer will be required to submit a detailed Statement of Work, schedule, and budget as part of Attachment C, and may also be asked to address specific questions or recommendations of the Scoring Committee prior to any contract award.

##### **Requirements**

A negative response to any one of the questions below may eliminate the proposal from further consideration. Does the proposal:

- Communicate a clear value proposition and demonstrate compelling customer and market validation for the project from clean energy companies, investors, supporting venture development organizations, and service providers?
- Curate and deliver innovative, impactful, and high-value add programming for incubator client companies and graduates?
- Utilize institutional and regional assets to provide targeted and timely commercialization resources, technical assistance, and business development support to incubator client companies and graduates?
- Collaborate with world-class partners, including venture development organizations, investors, service providers, and other relevant incubators in order to support client companies and graduates as well as raise the profile of the statewide clean energy innovation ecosystem?
- Leverage funding and support from private and public sponsors other than NYSERDA?
- Address needs and gaps in economies or innovation ecosystems of one or more communities?
- Provide the required level of cost-sharing?

##### **Evaluation Criteria in Order of Importance**

###### *Proposed Solution/Scope*

- Does the proposed project define a clear and compelling value proposition and model that is validated with customers (clean energy companies) and partners (venture development organizations, investors, and service providers) in the market?
- Does the proposed project highlight how it will curate and deliver impactful, and high-value add programming for client companies and graduates?
- Does the proposed project utilize institutional and regional assets to provide targeted and timely commercialization resources, technical assistance, and business development support to incubator client companies and graduates?
- Does the proposed project provide a strategy for collaboration and provide concrete examples of strong commitment from world-class partners?

- Does the proposed project utilize and deploy national best practices from leading clean energy incubators?
- How meaningful and impactful are the proposed client-driven milestones? How aligned with client success is the proposed milestone payment plan?
- Is the proposed Statement of Work technically feasible, innovative, and superior to alternatives?
- Is the work strategy sound? Can the strategy be tested, measured, and adjusted with ease?

#### *Project Benefits*

- How significant are the economic benefits from the project, in the form of subsequent leveraged investment, new product commercialization, and job creation by incubator clients and graduates?
- Will the proposed project effectively leverage NYSERDA's investment by attracting additional funding and support from other sponsors? Are there existing or future commitments from other sponsors for the proposed project?
- Does the proposed project have a strategy or methodology for quantifying the potential energy and environmental benefits that will result from the technologies and products being commercialized by incubator and the client companies and graduates?
- How will the project develop and deploy programming that, while difficult to quantify, serves to build and develop a vibrant, sustainable clean energy innovation ecosystem in the target region?
- Will a significant part of the work take place in New York State?

#### *Project Team and Support*

- To what degree do the team members, partners, and advisory board members have relevant and necessary technical, commercialization, and entrepreneurial background and experience?
- Has the proposer previously operated a business incubator that served early-stage companies? What is the proposer's track record in providing business incubation to companies in the clean energy space?
- Has the proposer clearly identified the project team and allocated full-time staff that are focused exclusively on the proposed project?
- How firm are the commitments and support from essential team members, partners, co-funders, and other organizations?
- What has been the proposer's record of performance on prior NYSERDA-funded projects?

#### *Market Potential*

- Does the proposed project address a current challenge or opportunity in the market that is not being addressed by others?
- Does the proposed project clearly identify the clean energy sector(s) and company development stage(s) that it is looking to target?
- Does the proposed project outline a clear strategy for achieving long-term sustainability after the project period, as evidenced by the Mission Model Canvas?
- Is there a process or strategy in place to measure progress and success?

#### *Project Value*

- Is the overall project cost justified based on the expected benefits?
- How appropriate are the proposer's co-funding contributions (sources and amounts) in view of the proposer's overall financial resources, degree of risk exposure, and potential to benefit from the work?
- Does the proposer have a reasonable plan for pursuing any additional funding necessary for future sustainability of the incubator?



### *Geographic Coverage*

- Does the proposal adequately identify needs and gaps in the economies or innovation ecosystems of one or more communities where the proposer provides physical space for the delivery of incubation services? How severe are these needs and gaps, and how well does the proposer address them?
- How well aligned is the proposed program with the strategic priorities of the Regional Economic Development Council (REDC) where the proposer is located as expressed, for example, in the REDC's Strategic Plan?
- Does the proposed project have the potential to recruit other resources within its community in support of early-stage clean energy companies?

### **Other Considerations**

NYSERDA reserves the right to accept or reject proposals – or adjust award amounts – based on the following factor(s):

- Geographic coverage and distribution of awardees, including existing NYSERDA-sponsored incubators.
- Duplication of other proposed or awarded projects.
- The degree to which the proposed project, including proposed cost shares, optimizes the use of available funding to achieve programmatic objectives.
- The degree to which there is industry involvement and demonstrated ability to commercialize energy or related technologies.
- The degree to which the proposed project directly addresses NYSERDA's mission and strategic goals.
- The degree to which the applicant has the resources (human and financial) to be able to complete the project.

## **V. GENERAL CONDITIONS**

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### **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 <http://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  
625 Broadway  
Albany, NY 12207

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

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

### **State Finance Law sections 139-j and 139-k**

NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx>. Proposers are required to answer questions during proposal submission, which will include making required certification under the State Finance Law 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](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](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 proposal due date whether their 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.

### **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.

### **Reporting**

If awarded, the proposer will be required to submit to NYSERDA's Project Manager on a quarterly basis, a prepared analysis and summary of program funding leveraged from other sponsors by the incubator itself as well as the following metrics for incubator client companies and graduates for at least four years after their graduation date:

- Private investment raised
- Project finance capital secured
- Grants awarded
- Strategic partnerships executed
- Revenue generated
- New products commercialized
- Jobs created/retained
- Liquidity events realized

All metrics shall be documented, certified, and published to the best of the contractor's ability, in a manner which does not present any competitive harm to incubator client companies and graduates. Reporting shall commence the first calendar quarter after the contract is executed. Reports shall be submitted 30 days after the previous calendar quarter's activities (i.e. reporting period).

NYSERDA may decline to contract with awardees that are delinquent with respect to metrics reporting for any previous or active NYSERDA agreement.

### **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.

## **VI. ATTACHMENTS**

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The following attachments are required for each submitted proposal to be considered complete:

- Attachment A - Proposal Checklist – for mailed or hand delivered proposals only
- Attachment B - Disclosure of Prior Findings of Non-Responsibility Form – for mailed or hand delivered proposals only
- Attachment C - Proposal Narrative
  - Attachment C1 - Mission Model Canvas
- Attachment D - Sample Agreement



**ATTACHMENT A  
PON 3413 PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		Due Date	
<b>Primary Contact</b> (Prime Contractor)		Title	
Company	Phone	Fax	
	e-mail		
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is <b>not</b> a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.			<b>Federal Tax Identification Number:</b>
Address	City	State or Province	Zip
<b>Secondary Contact</b>		Title	
Company	Phone	Fax	
	e-mail		
Address	City	State or Province	Zip
<b>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b>			
Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b> <span style="float: right;">___Yes ___No</span>			
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). <span style="float: right;">___Yes ___No</span>			
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) <span style="float: right;">___Yes ___No</span>			
Are you a Minority or Women-Owned Business Enterprise? <span style="float: right;">___Yes ___No</span>			
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float: right;">___Yes ___No</span>			
Are you submitting the required number of copies? (See proposal instructions.) <span style="float: right;">___Yes ___No</span>			
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page) <span style="float: right;">___Yes ___No</span>			
<b>ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?</b>			
Executive Summary Background, Opportunity, and Needs Assessment Statement of Work, Milestone Payment Plan, and Schedule Proposer Qualifications Project Benefits Budget Letters of Support Attachments		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 _____	
<b>AUTHORIZED SIGNATURE &amp; CERTIFICATION</b>			
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.



## Attachment B

### Disclosure of Prior Findings of Non-responsibility Form (Mandatory)

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:		

Page 2 of 2



**NYSERDA**

# NYSERDA PON 3413

## Clean Energy Incubators

### **Attachment C**

### **Form Fillable Proposal Narrative**

**PROPOSAL TITLE:**

**ROUND:**

**NYS REGION:**

**SUBMISSION DATE:**

Submitted with required attachments to:

New York State Energy Research and Development Authority

17 Columbia Circle

Albany, NY 12203

Attn: Jill Baxter

Submitted by:

Organization Name

Organization Principal Investigator

Principal Investigator Phone #

Principal Investigator Email



The instructions below are intended to guide the proposer through the submission, addressing pertinent information for a successful submission. The format provided allows for the evaluation of the relevance and importance of the problem targeted and the probability that the project will meet its technical and commercialization objectives to ultimately solve the stated problem. All questions should be completed, unless they are indicated for a specific project type. Provide concise, clear, detailed, and direct responses to assist in the review of the proposal. Delete the directions for each section after that section has been completed, leaving only the text boxes with your responses and any inserted images.

## ***I. EXECUTIVE SUMMARY***

Briefly summarize the proposal by highlighting the statewide and regional needs and opportunities that are addressed, the major elements and objectives of the proposed clean energy incubator, the project scope and benefits, and expectations, targets and goals for New York State impacts.

(Do not exceed 2 pages)

---

## ***II. BACKGROUND, OPPORTUNITY, AND NEEDS ASSESSMENT***

Describe the background and rationale for the proposed project to provide context for the proposed activities. (Do not exceed 4 pages)

- Describe the economic context, within the region and statewide, for the clean energy incubator that is being proposed.
- Identify resources within the region and throughout the state that can be applied to the creation, incubation, and acceleration of new and existing clean energy companies.
- Identify and quantify, if possible, the demand for incubation and acceleration services by clean energy companies within the target population.
- Identify gaps in regional resources and statewide assets that inhibit the creation or growth of new and existing clean energy companies.
- Identify other programs, including business incubation programs that service the target region.
- Provide a brief description of the proposed project (elaborated in Section 3), its value proposition, and market demand for the offering. Explain how it will address an opportunity to benefit the region or New York State with reference to the resources and gaps that have been identified.
- Describe how NYSERDA cost sharing of the proposed project might mitigate risks or improve the likelihood of project success.

### **Mission Model Canvas**

The Mission Model Canvas is a strategic management and entrepreneurial tool. It will help you to describe, design, challenge, improve, and pivot your business model for the proposed project. Complete the Mission Model Canvas for the proposed project by going to the link below. Once it is fully

completed, please save a copy of the Mission Model Canvas in PDF format and include it as Attachment C1 to this submission.

### **ATTACHMENT C1 - MISSION MODEL CANVAS**

Your Mission Model Canvas should be attached. Is it? **Yes/No**

---

## ***III. STATEMENT OF WORK, MILESTONE PAYMENT PLAN, AND SCHEDULE***

This is a significant element of the proposal, and will be closely reviewed and evaluated. The program described must cover a five-year plan. (Do not exceed 15 pages)

The Statement of Work (SOW) must list and describe a series of tasks representing the activities necessary to implement a clean energy incubator and clearly address the Program Requirements of Section III in the PON. Each task may be broken down into sub-tasks at the proposer's discretion. A description of the work to be performed under each task or subtask must be included.

Funding will be provided according to a milestone payment plan. NYSERDA will pay the successful proposer a negotiated fixed amount upon accomplishment of the milestones and provision of the associated deliverables in a form satisfactory to the NYSERDA Project Manager. Milestones are separated into three categories.

- **Category A (Operations Milestones)** – Strategies and activities related to the operation and administration of the incubator. Examples include, but are not limited to, acquisition of sufficient physical space to house incubator clients, hiring highly qualified and sufficient staff to manage programming, and implementing measurement and verification steps to collect and report high-quality performance metrics. Operations activities will be reported in required periodic reporting for NYSERDA that quantifies the impact of the incubator as well as progress made and milestones achieved by client companies and graduates.
- **Category B (Programs Milestones)** – Strategies and activities that build, foster, and grow a culture of innovation and entrepreneurship throughout the incubator's institution and broader region. For example, networking events, boot camps, founder meetups, mentor office hours, advisory board meetings, hackathons, prize competitions, etc. The results of these programs will be reported periodically and include an assessment of programming impacts in order to identify what works well and potential areas for adjustment.
- **Category C (Client-Driven Milestones)** – Strategies and activities focused specifically on increasing the likelihood of incubator client company success. For example, client-specific support and assistance to raise private investment, form strategic partnerships, and bring products to market, etc. These client-driven milestones, which ensure that compensation for incubator is aligned with the performance and success of its client companies and graduates, will be the primary focus of NYSERDA's support through this PON.

Proposers must submit the SOW and Milestone Payment plan formatted as a list of tasks and subtasks with associated descriptions. A list of deliverables associated with the tasks and subtasks, and associated milestone payments must also be provided. An example of a portion of a suitable SOW with task/subtask description and deliverable list is provided in Figure 1. Proposers must provide an overall schedule of the project and timing of major tasks and deliverables. This

may be presented in graphic form, such as a Gantt chart. Projects should be planned for a 48-months term. Identify critical path items, if any. Proposers must provide a summary table of milestone payments, indicating the task number, deliverable, proposed payment, and number of deliverables. An example of a summary table of milestone payments is provided in Figure 2.

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**Figure 1. Example subtask descriptions with deliverables**

#### **Task A.1 Quarterly Report**

The Contractor shall prepare and submit Quarterly Reports describing the progress of the project. The Quarterly Report milestone shall be submitted to NYSERDA's Project Manager on a quarterly basis following the calendar quarters (January 1-March 31, April 1-June 30, July 1-September 30, and October 1-December 31, respectively). The Quarterly Report milestone shall consist of both a report narrative and metrics reporting form, which contain specific information and highlights of the incubator as well as progress of individual clients and graduates, including metrics such as private capital, public funding, revenue, new products, and jobs. The template for the report narrative and metrics reporting form, which may be updated by NYSERDA on a periodic basis, shall be provided to the Contractor by NYSERDA's Project Manager. The Contractor shall continue to collect the required information for the Quarterly Report milestone on all clients that graduate from the incubator (graduates) for four years after the date of the clients' graduation from the program.

##### Task A.1 Deliverable:

- Quarterly Report.

#### **Task B.1 Event/Seminar**

The Contractor shall provide events, seminars, and other educational and networking opportunities for incubator clients on a regular basis. The Contractor shall be the sole organizer and/or an active co-organizer of the Event/Seminar. These Events/Seminars shall serve as a means to educate and disseminate meaningful information to incubator clients as well as provide networking opportunities for the full range of stakeholders working with the incubator. In addition, the Event/Seminar shall serve as opportunities for the Contractor to promote the incubator and increase the value of the incubator's brand in the broader clean energy innovation ecosystem.

The Contractor shall organize and/or co-organize at least four Events/Seminars annually, or at least one per calendar quarter, dedicated to networking and relationship building and/or education dissemination on key topics of interest for incubator clients. NYSERDA shall have the right to attend and extend select invitations to Events/Seminars at the discretion of its Project Manager. The Contractor shall provide NYSERDA with the agenda, attendee list, and any marketing materials for each Event/Seminar.

##### Task B.1 Deliverables:

- Agenda.
- Attendee List.
- Marketing Materials.

#### **Task C.1 Client Admission and Onboarding**

The Contractor shall actively and continuously seek new entrepreneurs and companies to consider for admission to the incubator. As part of the Client Admission and Onboarding process, an Incubator Assistance Plan (IAP) shall be developed with each client that is accepted into the incubator to define the venture development milestones to be achieved in the program by the client. The client's completed application shall be included as a deliverable for the Client Admission and Onboarding milestone to allow NYSERDA's Project Manager to review background information about the client and ensure they qualify as a clean energy technology company. Having identified the client's technical, business development, and commercialization needs through the incubator's Client Admission and Onboarding process, the IAP shall be developed with a client-specific schedule of development tasks, in which deliverables will be identified for both the client and incubator.

As part of the Client Admission and Onboarding process, the client's and incubator's mutual commitment shall be memorialized in a Memorandum of Understanding (MOU) signed by both parties, agreeing to fulfill the deliverables in the IAP according to the schedule it describes. The IAP will be an Exhibit attached to the MOU. The MOU will provide for regular meetings of the client and incubator, weekly for the first three to six months and not less frequently than monthly thereafter. The MOU shall be fully executed by the client representative(s) and the Contractor. The Client Admission and Onboarding milestone may only be billed by the Contractor to NYSERDA one time for each client.

##### Task C.1 Deliverables:

- Client Application.
- Client IAP.
- Client MOU.

**Figure 2. Example summary table of milestone payments**

<b>Category A - Operations Milestones (Task Number)</b>	<b>Deliverable(s)</b>	<b>Payment</b>	<b>Number</b>	<b>Total</b>
Quarterly Report <b>A.1</b>	Report	\$X	20	\$X
Quarterly Profit and Loss Statement <b>A.2</b>	Report	\$X	20	\$X
Final Report <b>A.3</b>	Report	\$X	1	\$X

<b>Category B - Programs Milestones (Task Number)</b>	<b>Deliverable(s)</b>	<b>Payment</b>	<b>Number</b>	<b>Total</b>
Mission Model Canvas <b>B.1</b>	Mission Model Canvas and List of Customer Interviews	\$X	X	\$X
Event/Seminar <b>B.2</b>	Agenda, Attendee List, and Marketing Materials	\$X	X	\$X
Advisory Board Meeting <b>B.3</b>	Agenda, Attendee List, and Board Meeting Minutes	\$X	X	\$X
Hackathon/Prize Competition <b>B.4</b>	Agenda, Attendee List, Marketing Materials, and Final Presentations	\$X	X	\$X

<b>Category C - Client-Driven Milestones (Task Number)</b>	<b>Deliverable(s)</b>	<b>Payment</b>	<b>Number</b>	<b>Total</b>
Client Admission and Onboarding <b>C.1</b>	Client Application, Incubator Assistance Plan, and MOU	\$X	See limits per client for each Milestone	Up to the remaining contract amount, until all funds are exhausted
Investor/Strategic Partner Presentation <b>C.2</b>	Presentation	\$X		
Intellectual Property/Nonprovisional Patent Filing <b>C.3</b>	Report, Patent Documents, and Certification by Incubator Director and Client CEO	\$X		
Technology/Prototype Validation (Third Party Testing/Certification) <b>C.4</b>	Report, Results, and Certification by Incubator Director and Client CEO	\$X		
Non-NYSERDA State or Federal Grant Funding <b>C.5</b>	Report and Certification by Incubator Director and Client CEO	\$X		
Seed or Series A Funding <b>C.6</b>	Report and Certification by Incubator Director and Client CEO	\$X		
Sales Contract Executed <b>C.7</b>	Report, Product Dossier, PO, Invoice, and Certification by Incubator Director and Client CEO	\$X		
Liquidity Event <b>C.8</b>	Report and Certification by Incubator Director and Client CEO	\$X		

<b>TOTAL (All Milestones)</b>			<b>Max.</b>	<b>\$2,000,000</b>
-------------------------------	--	--	-------------	--------------------

The Statement of Work, Milestone Payment Plan, and Schedule should be completed using the examples and templates provided in Figures 1 and 2.

Your Statement of Work, Milestone Payment Plan, and Schedule should be included as part of Attachment C. Is it? **Yes/No**

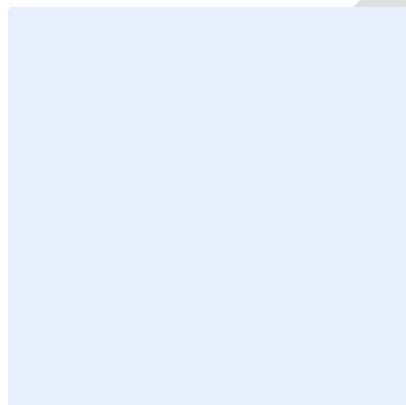
NYSERDA PON 3413  
Enter Company Name

#### ***IV. PROPOSER QUALIFICATIONS***

This is another critical component of the project, and will be closely reviewed and evaluated.  
(Do not exceed 6 pages)

Identify the following:

- Briefly describe your organization and the section/department/group proposing to carry out the work. Include the date incubator was founded, the total number of employees involved, broader program portfolio, and geographic location. Describe roles and responsibilities for all team members and partners. Include any sub-contractors and other sponsors with significant involvement. Note that if any sub-contractor not named in the proposal is to be paid in excess of \$50,000, a competitive bid must follow.
- Provide a visual showing the administrative, reporting, and work flow relationships among team members and partners.
- Identify key individuals that will be involved in the project and its success. Provide one- to two-paragraph summaries of relevant technical and business expertise and qualifications of these individuals and provide their physical location. Submit resumes (as attachments) of all key project team members.
- Provide at least 5 references, with contact information, of clean energy companies that have received incubation support and commercialization assistance from your organization in the past.
- List NYSERDA contracts awarded, if any, in the past five years.



---

#### ***V. PROJECT BENEFITS***

Forecast and map out the beneficial outcomes and impact of the proposed clean energy incubator.  
(Do not exceed 3 pages)

Identify the following:

NYSERDA PON 3413  
Enter Company Name

- Expected deal flow or number of companies and entrepreneurs served by the incubator on an annual basis over the five-year period.
- Expected breakdown of physical and virtual incubator client companies provided services over the five-year period.
- Expected number of incubator client companies who meet graduation criteria, and expected graduation rate.
- Methodology for measuring and quantifying the energy and environmental benefits of the technologies and solutions being commercialized by incubator client companies and graduates.
- Target economic impact and metrics in the form of private investment raised, project finance capital secured, grants awarded, strategic partnerships executed, revenue generated, new products commercialized, jobs created/retained, and liquidity events realized.

Identify other benefits, including those that might accrue to New York State beyond the local region of the incubator. Explain how the proposed program is aligned with the strategic priorities of the Regional Economic Development Council (REDC) where the proposer is located as expressed, for example, in the REDC's Strategic Plan. Describe the methodology that will be used to collect the necessary data and quantify the project benefits.

One objective of this PON is to catalyze the continued development and growth of a vibrant, self-sustaining clean energy innovation ecosystem in New York State. Describe how the proposed program will help to accomplish this and suggest how the program will measure and verify this benefit.

## **VI. BUDGET**

### **Cost Sharing**

All proposals must provide additional funding as cost share; this is an important evaluation criterion.

- It is required that the proposal contain non-NYSERDA funding of at least 25% of the total cost of the project. Cost sharing may be cash or in-kind and can be from the proposer, other team members, and other private or public sources. Cash is the preferred form of cost share. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions.
- The proposer should show the non-NYSERDA funding relative to cost share in the following table. 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 fund efforts that have already been undertaken. The proposing team cannot claim as cost share any expenses that have already been incurred.
- **Using the following table as an example, show your cost sharing plan and overhead rate.**

	Cash	In-Kind Contribution	Total
<b>NYSERDA</b>	\$	\$	\$



<b>Proposer</b>	\$	\$	\$
<b>Others (list individually)</b>	\$	\$	\$
<b>Total</b>	\$	\$	\$
<b>Proposer Overhead Rate</b>	<input type="text"/> %		

## **VII. LETTERS OF SUPPORT**

If you are relying on any other organization to do some of the work, provide services or equipment, participate as a key partner, or share in the non-NYSERDA cost, include a letter from that organization describing its planned participation. Also include letters of interest or commitment from partners or other organizations critical to the development, implementation, and success of the project.

## **VIII. ATTACHMENTS**

Please check the boxes below to indicate which additional attachments are included in your proposal submission. Attachments should be limited to documents directly supporting the narrative such as resumes, letters of support, calculations, business literature, and detailed schedules. Note that unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective proposal may reduce, rather than increase, a proposal's standing per the evaluation criteria.

### **Potential Conflicts of Interest**

Do you have any potential conflicts of interest among team members and partners in providing services to NYSERDA under this PON? If yes, please follow the directions below and include statement as an Attachment. **Yes/No**

Identify the nature of any potential conflicts of interest among team members and partners in providing services to NYSERDA under this PON. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members and partners of the proposed contract. Describe how your firm would resolve conflicts of interest. In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of such, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

### **Exceptions to the Terms and Conditions**

Do you accept the standard terms and conditions? If no, please follow the directions below and include justification as an Attachment. **Yes/No**

Indicate whether you accept the standard terms and conditions as contained in the Sample Agreement (Attachment D). If you do not accept the standard terms and conditions, provide alternate terms with



justification based on the risk and benefit to New York State. NYSERDA reserves the right to consider only exceptions to terms that are specifically included with the proposal. Any negotiation of terms will be at NYSERDA's sole discretion.

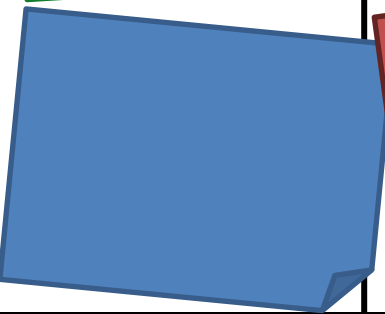
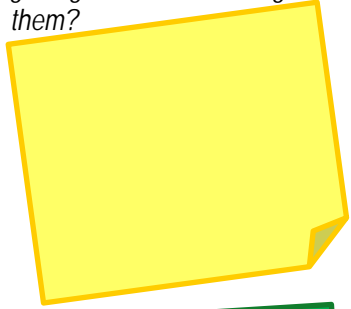
- ☐ [Attachment C1 - Mission Model Canvas](#) (required)
- ☐ Letters of Support (recommended)
- ☐ Resumes (required)
- ☐ Potential Conflicts of Interest Statement (optional)
- ☐ Exceptions to Terms and Conditions Justification (optional)

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# MISSION MODEL CANVAS – ORGANIZATION/PROJECT NAME

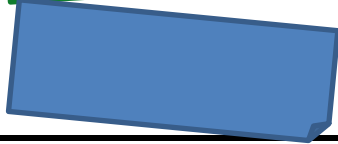
## PARTNERS

Who are your key partners?  
Suppliers? What are you  
getting from them? Giving  
them?



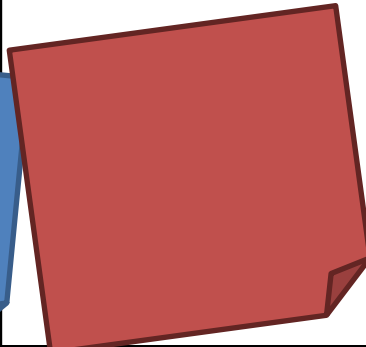
## ACTIVITIES

What key activities do you  
need to be expert in?



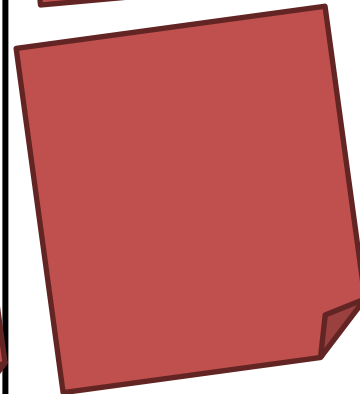
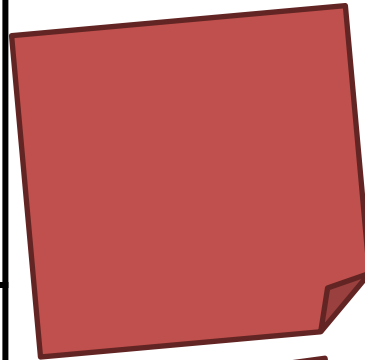
## RESOURCES

What key resources do you  
need to own or acquire?  
Financial? Human?



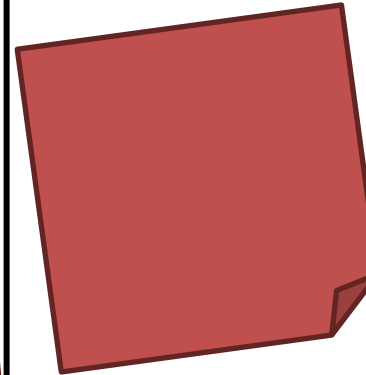
## VALUE PROPOSITION

How are you solving each  
customers' pains/gains? How?  
What product/service features  
match their needs?



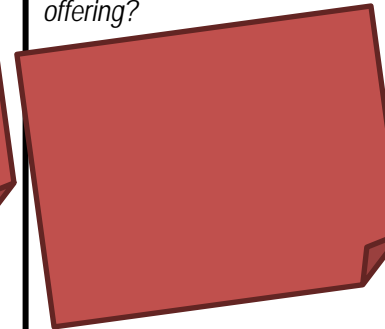
## BUY-IN / SUPPORT

How does the team get "buy-in"  
from all the beneficiaries?



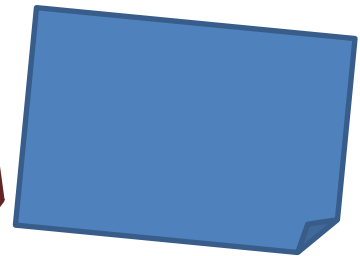
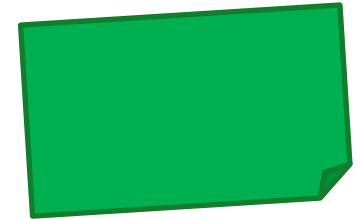
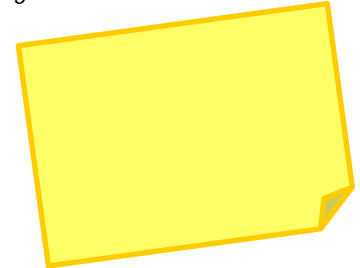
## MARKETING / DEPLOYMENT

How will you market and  
deploy the product/service  
offering?



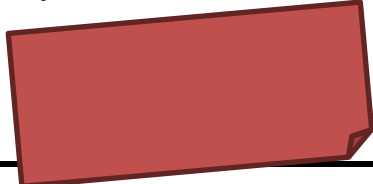
## BENEFICIARIES

Who are your most important  
customers? Stakeholders?  
What are their pains/gains?  
What job do they want you to  
get done for them?



## COSTS

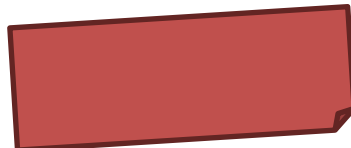
List your fixed and variable costs.



## FUNDING STREAMS

List your sources of funding.

### CURRENT



### FUTURE



## MISSION METRICS / ACHIEVEMENT

How will you measure success?



**ATTACHMENT D  
SAMPLE AGREEMENT**

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

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period: **[Optional for defined-scope R&D projects]**
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, 2016 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 individuals(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's 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 or 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 3, 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 vesting 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 these obligations, (b) completion of the Work, or (3) the termination of this 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 A, 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. Subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D, payment will be made according to the Milestone Billing Events set forth in Exhibit A, Statement of Work.

## Section 4.02. Payments

(a) Invoicing: Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event so identified, the Contractor may submit invoices, including documentation reasonably sufficient to demonstrate completion, requesting payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work, including evidence of the Contractor's cost share, if applicable. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov). Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. In accordance with and subject to the provisions of Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice, the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement.

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 made 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. The 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 related to, 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 of, 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 any 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 submitting, 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 scarce 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.

(a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.

(b) All Proprietary Information shall be the property of Contractor.

(c) The use, public performance, reproduction, distribution, or modification of any materials used by Contractor in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.

(d) The Contractor agrees that to the extent it 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 another 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 as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to 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 any 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) all 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;<sup>1</sup> and

(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.

(j) 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 resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this 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 enumeration herein of required insurance coverage.

## Article XI

### Insurance

***[Under NYSERDA'S risk management program, projects are defined according to the following categories: Category A (low risk; no insurance required); Category B (medium risk; "standard" insurance requirements); and Category C (high risk; insurance to be negotiated on a case-by-case basis). The following language represents NYSERDA'S "standard" insurance requirements.]***

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

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 hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

(a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the 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 carried 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 events rendering a 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 incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the 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 this 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 outlining 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 hereto.

Section 14.02. All Legal 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 strictly 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](mailto: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 herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, 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.

***[If Section 8.03 applies, the following Article XVII is required:]***

## Article XVII

### Business Reorganizations

Section 17.01. Business Reorganizations. In the event the Contractor proposes to consolidate or merge into or with another corporation or entity, or to sell or dispose of all or a majority of the assets of the Contractor, or to otherwise undertake a reorganization

which alters or changes the rights of NYSERDA as provided in this Agreement, before any such action shall be taken, the Contractor shall either:

(a) buy out its obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement; or

(b) assign or otherwise transfer to a new entity the Contractor's obligations under this Agreement, including, but not limited to, the obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement. Such assignment or transfer 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 days after receipt of request for approval, the assignment or transfer 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 after the lapse of the original review period.

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 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 139-h of the State Finance Law, and 2 NYCRR 105.4).

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential,

non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<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 to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

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



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

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

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

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

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884  
<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's Business Development  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
<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 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

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

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

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

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

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <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.<sup>2</sup>

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

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

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

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

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

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

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

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating

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<sup>2</sup> 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 a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

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

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

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

**504.4. Payment Procedures.**

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

invoice shall then promptly be reviewed by NYSERDA.

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

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

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

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

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

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

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

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or

by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

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

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

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

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

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

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the



objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

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

**504.11. Court Action or Other Legal Processes.**

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

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

New York State Energy Research and Development Authority (NYSERDA)

## 2016 Report Content Guide

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Revised 12/10/2015

(Replaces the 2015 NYSERDA Report Content Guide)

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## Purpose

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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 518-862-1090, ext. 3276 or [Diane.Welch@nyserdera.ny.gov](mailto:Diane.Welch@nyserdera.ny.gov).

## Required Elements

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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 or final, prepared for NYSERDA, NYSERDA Project Manager (name and title), prepared by name of organization, individuals and affiliation, report number (NYSERDA will provide during editing), 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 reflect 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 of it. Further, NYSERDA, 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 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.

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- 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 processes, methods, 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 we publish. 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](mailto: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, but do not use a table.
- Executive Summary or Summary (optional; ES-1 or S-1 etc. for page numbers of Executive Summary and Summary, respectively):
  - An Executive Summary is two pages 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 chapter-number are 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 data 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 NYSERDA will be formatting; figures and tables placed in-line with text near callout is acceptable. Do not use 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 must 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](https://nyserdera.ny.gov/Doing-Business-with-NYSERDA) for more information about how to make a document accessible.

## Formatting

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Contractors have two options for the format of a submitted document:

### 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 the file or supplied in a separate file. Contractor can request inline or back-of-report placement of figures.
- NYSERDA will format the document according to the 2016 NYSERDA Marketing’s Template for Reports.

### Option 2—Contractor does the formatting

- Visit [nyserdera.ny.gov/Doing-Business-with-NYSERDA](https://nyserdera.ny.gov/Doing-Business-with-NYSERDA) to download:
  - Report template (2016 NYSERDA Marketing’s Template for Reports).
  - Details about report formatting (2016 NYSERDA 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

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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

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- 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](mailto:Diane.Welch@nyserda.ny.gov) or 518-862-1090 ext. 3276.
- Contractors can also email [print@nyserda.ny.gov](mailto:print@nyserda.ny.gov) or call 518-862-1090 and ask for Marketing.

## Required Elements Checklist

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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 numeral page numbers, i.e., ii).
- 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.