



NYSERDA

**Renewable Energy Standard
Purchase of New York Tier 1 Eligible Renewable
Energy Credits
Request for Proposals (RFP) No. RESRFP17-1**

**Step One Threshold Eligibility Application Packages Due:
Thursday, July 13, 2017 by 5:00 pm Eastern Daylight Time (EDT)***

**NYSERDA SEEKS TO ACQUIRE APPROXIMATELY 1.5 MILLION NEW YORK TIER 1
ELIGIBLE RENEWABLE ENERGY CREDITS ANNUALLY**

The New York State Energy Research and Development Authority (NYSERDA) seeks to procure Tier 1 eligible Renewable Energy Credits under the Renewable Energy Standard (RES), a component of the Clean Energy Standard (CES).

NYSERDA was created in 1975 by the New York State Legislature as a public benefit corporation. As designated in the Public Service Commission (PSC) [Order Adopting a Clean Energy Standard](#), issued and effective August 1, 2016, NYSERDA acts as the Central Administrator of the RES program. RESRFP17-1 will be implemented through a two-step process, consisting of (Step One) an application step that will prequalify Proposers, and (Step Two) a competitive Bid Proposal submission step. **Only those Proposers found prequalified through the Step One application process will be permitted to submit Bid Proposals or otherwise participate in Step Two.**

Step One Threshold Eligibility Application Submission: Step One Threshold Eligibility Application Packages must be **received* by NYSERDA by 5:00 p.m. Eastern Daylight Time on Thursday, July 13, 2017 via electronic submission**.¹ For ease of identification, all electronic files must be named using the Proposer's Bid Facility name and New York Generation Attribute Tracking System (NYGATS) ID number in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on [NYSERDA's Current Funding Opportunities website](#)², located in the "Current Funding Opportunities" section of NYSERDA's website. Instructions for submitting electronically are located as Attachment A.

NYSERDA intends to notify all prospective Proposers as to their qualification status by Tuesday, August 22, 2017. Qualified Proposers will receive a Notice of Qualification, and will be provided detailed instructions for Step Two Bid Proposal submission at that time.

¹ If you are unable to submit by electronic means please contact the Designated Contact immediately.

² <http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>

Step Two Bid Proposal Submission: For Proposers qualified for Step Two, Bid Proposals must be **received* by NYSERDA by 5:00 p.m. Eastern Daylight Time on Thursday, September 28, 2017 via electronic submission**. Instructions for submitting electronically and the link for electronic submissions will be included in a Proposer's Notice of Qualification. Additional information regarding NYSERDA's Renewable Energy Solicitations are found on [NYSERDA's Renewable Energy Solicitations Standard \(RES\) Tier 1 website](#).³

***It is recommended that Proposers set aside ample time, well in advance of the deadlines, to understand the requirements to complete the Step One Threshold Eligibility and Step Two Bid Proposal processes and gather the associated documentation necessary. Both processes must be completed and submitted in their entirety on-line, before their respective 5:00 p.m. deadlines.**

Program questions should be directed to res@nyserda.ny.gov (no phone calls). Contractual questions should be directed to Nancy Marucci, (518) 862-1090 ext. 3335, nancy.marucci@nyserda.ny.gov.

No communication intended to influence this procurement is permitted except by contacting **Abbey DeRocker at (518) 862-1090, ext. 3449 or abbey.derocker@nyserda.ny.gov (Designated Contact)**. Contacting anyone other than the Designated Contact (either directly by the Proposer or indirectly through a lobbyist or other person acting on the Proposer's behalf) to influence the procurement: (1) may result in a Proposer being deemed a non-responsive offeror and (2) may result in the Proposer not being awarded a contract.

Incomplete proposals will be subject to disqualification. It is the Proposer's responsibility to ensure that all required forms and attachments have been completed and submitted. Late packages will not be accepted and those lacking the appropriate completed and signed Step One Threshold Eligibility Application Form may be returned. **Faxed, mailed, or e-mailed packages will not be accepted.**⁴ Packages will not be accepted at any NYSERDA location.

If changes are made to this solicitation, notification will be posted on [NYSERDA's RES Tier 1 website](#)³. Please check the website periodically, as well as immediately before submitting in Step One or Step Two.

³ <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts>

⁴ Unless otherwise agreed by NYSERDA. See footnote 1.

TABLE OF CONTENTS

I.	BACKGROUND: THE NEW YORK STATE CLEAN ENERGY STANDARD AND RENEWABLE ENERGY STANDARD	4
II.	NOTIFICATION of RFP CHANGES	5
III.	PROPOSERS WEBINAR & INQUIRIES	5
IV.	SCHEDULE	6
V.	INFORMATION FOR BID FACILITIES SIMULTANEOUSLY PARTICIPATING IN NYPA AND NYSERDA RFPs	6
VI.	ELIGIBILITY FOR THIS RFP	7
VII.	PARTICIPATING IN THIS RFP	9
VIII.	STEP ONE THRESHOLD ELIGIBILITY APPLICATION PACKAGE	10
IX.	STEP ONE NOTICE OF QUALIFICATION	18
X.	STEP TWO BID PROPOSALS	19
XI.	STEP TWO BID PROPOSAL EVALUATION	24
XII.	POST-AWARD PROCESS	27
XIV.	SELECT PROVISIONS FROM RES STANDARD FORM AGREEMENT	31
XV.	GENERAL CONDITIONS	36
XVI.	LIST OF ATTACHMENTS	39

APPENDICES

APPENDIX 1 – INCREMENTAL ECONOMIC BENEFITS	40
APPENDIX 2 - PROJECT VIABILITY	45
APPENDIX 3 - OPERATIONAL FLEXIBILITY AND PEAK COINCIDENCE	62
APPENDIX 4 - NYSERDA AND NYPA FREQUENTLY ASKED QUESTIONS	69

I. BACKGROUND: THE NEW YORK STATE CLEAN ENERGY STANDARD AND RENEWABLE ENERGY STANDARD

On July 6, 2015, the State Energy Planning Board issued the 2015 New York State Energy Plan (SEP)⁵ which proposed that the State achieve 50 percent of the State's electricity generated from renewable resources by 2030 (50 by 30 goal). In December 2015, Governor Cuomo directed the Department of Public Service (DPS) to develop a Clean Energy Standard (CES)⁶ to help achieve the SEP goals.

The Public Service Commission's (PSC) [Order Adopting the Clean Energy Standard](#) issued on August 1, 2016, along with additional orders issued under Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard (Orders), established the Renewable Energy Standard (RES) as the means of achieving the 50 by 30 goal. A component of the RES consists of a Tier 1 obligation on load serving entities (LSE) to procure Renewable Energy Credits (RECs) associated with new renewable energy resources.

The Orders authorize NYSERDA, as Central Procurement Administrator, to offer long-term contracts to generators for the purchase of Tier 1-eligible RECs, in the form of Tier 1 New York Generation Attribute Tracking System (NYGATS) certificates. Pursuant to the Orders, NYSERDA seeks to accomplish the RES objective by contracting with suppliers, through a series of competitive RFPs, for the RES Tier 1 RECs created by eligible generation resources.⁷

Information regarding current NYSERDA's implementation of the RES can be found on [NYSERDA's CES website](#)⁸.

Information on the Renewable Portfolio Standard, the precursor to the CES, and past Main Tier solicitations can be found on [NYSERDA's website](#)⁹.

⁵ 2015 New York State Energy Plan is available from <http://energyplan.ny.gov/>

⁶ Letter from Governor Andrew M. Cuomo to Audrey Zibelman, Chair, New York State Department of Public Service, December 2, 2105 (Cuomo Letter) available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Renewable_Energy_Letter.pdf

⁷ Directives pertaining to NYSERDA's RES Central Procurement role are contained in the February 22, 2017 [Order Approving Phase I Implementation Plan](#) and the [Final Phase I Implementation Plan](#) filed by NYSERDA on March 24, 2017. The March 9, 2017 [Order on the Value of Distributed Energy Resources](#) further clarifies the treatment of certain distributed energy resources (DERs) such resources under the CES and their eligibility to participate in NYSERDA's long term procurements for RECs.

⁸ <https://www.nyserda.ny.gov/Clean-Energy-Standard/>

⁹ <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Portfolio-Standard/Past-Main-Tier-Solicitations>

The CES/RES Orders can be accessed from the [NYS Public Service Commission's website](#)¹⁰. All Proposers are strongly advised to review the Orders before participating in this RFP.

CAPITALIZED TERMS AND ABBREVIATIONS USED IN THIS RFP ARE DEFINED IN ARTICLE I OF THE [RES STANDARD FORM AGREEMENT](#).

II. NOTIFICATION of RFP CHANGES

Notification of any changes in process or documents will be posted on [NYSERDA's RES Tier 1 website](#)³ and sent via email to those parties who have submitted contact information to [NYSERDA's Renewable Generators and Developers sign-up website](#).¹¹

III. PROPOSERS WEBINAR & INQUIRIES

NYSERDA will hold a webinar for Proposers on **Wednesday, June 14, 2017 at 2:00 p.m. EDT** (Albany, NY time). Proposers are encouraged to submit questions prior to the webinar via the email address res@nyserda.ny.gov. On the webinar, NYSERDA will review the Step One Threshold Eligibility Application package requirements, the Step Two Bid Proposal requirements, the RES Standard Form Agreement, and provide an overview NYGATS. Questions will be taken and, to the extent possible, responses will be provided during the conference. **Proposers who intend to participate must sign up by 12:00 noon Tuesday, June 13, 2017 on [NYSERDA's website](#)**¹².

Respondents will be provided with webinar credentials. All prospective Proposers are strongly encouraged to participate in the webinar.

Proposers may also submit written questions to res@nyserda.ny.gov, with the subject line "**RES Procurement Question.**" Questions can be submitted at any time, but must be received before **5 p.m. on Thursday, June 15, 2017** to be included in NYSERDA's response indicated below.

NYSERDA will post questions anonymously, along with NYSERDA's responses, on [NYSERDA's RES Tier 1 website](#)³, on or about Tuesday, June 20, 2017. The written responses will supersede any responses given by NYSERDA during the Proposer's webinar. All questions regarding the RFP documents or the process **MUST** be directed as indicated. Questions may not be submitted directly to any individual at NYSERDA, DPS Staff, or to individuals working for or on behalf of NYSERDA.

¹⁰ <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-e-0302>

¹¹ <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/Renewable-Generators-and-Developers-Email-List>

¹² To sign up for the Proposers' Webinar please visit <https://nyserda-events.webex.com/nyserda-events/onstage/g.php?MTID=ea990f68307a7028742b97544ec93ed81>

IV. SCHEDULE

The timeline for this RFP is as follows (all times EDT):

RFP Release	Friday, June 2, 2017
Proposers' Webinar	Wednesday, June 14, 2017
Deadline to submit Written Questions	5 pm, Thursday, June 15, 2017
Responses to Questions posted on NYSERDA's website	Tuesday, June 20, 2017
Deadline to submit Tier 1 Eligibility Request	5 pm, Wednesday, June 28, 2017
NYSERDA responds with Tier 1 Eligibility Determination	Friday, July 7, 2017
Deadline to submit Step One Threshold Eligibility Application Packages (Step One)	5 pm, Thursday, July 13, 2017
NYSERDA notifies Proposers of Step One Qualification determinations	Tuesday, August 22, 2017
Deadline to submit Step Two Bid Proposal (Step Two)	5 pm, Thursday, September 28, 2017
NYSERDA notifies winning Proposers	November 2017

Please note that the above dates are subject to change. Notification of any changes to the RFP process or documents will be posted on [NYSERDA's RES Tier 1 website](#).³

V. INFORMATION FOR BID FACILITIES SIMULTANEOUSLY PARTICIPATING IN NYPA AND NYSERDA RFPs

NYSERDA RFP RESRFP17-1 is issued simultaneously with a [New York Power Authority \(NYPA\) Large-Scale Renewables RFQ](#) Q17-6164MH. Depending on their characteristics, certain Bid Facilities will be eligible to bid in both solicitations; other Bid Facilities may only be eligible to participate in one solicitation. All Proposers are encouraged to carefully review both solicitations and the guidance provided below.

Close coordination between NYSERDA and NYPA has allowed the two opportunities to synchronize as thoroughly as possible. Continued alignment will ensure a seamless solicitation, award and contracting process for eligible Proposers.

Prospective Proposers in both (NYSERDA and NYPA) solicitations are therefore notified of the following requirements, timelines and restrictions:

1. Subject to eligibility determinations made independently by NYSERDA and NYPA, Proposers representing a Bid Facility may apply to both solicitations under the following conditions:
 - a. The same Proposer must represent the same Bid Facility under both solicitations.

- b. Using the forms provided with each solicitation, the Proposer associated with the Bid Facility must notify both NYSERDA and NYPA in writing of its intention to apply to both solicitations.
 - c. The generation associated with a single Bid Facility may not be divided between both solicitations.
2. A Bid Facility that has been deemed eligible to participate in both solicitations will have a unilateral option to withdraw its Bid Proposal under NYSERDA RESRFP17-1. To be effective, this option to withdraw must be exercised in writing and must be received by NYSERDA on or before November 3, 2017. Bid Deposits provided to NYSERDA for Bid Facilities that properly exercise the option to withdraw will be returned to the Proposer in full.
 3. A Bid Facility that has been deemed eligible to participate in both solicitations and does not exercise the unilateral option to withdraw described in Item 2 will be removed from consideration under the NYPA solicitation if the Bid Facility receives an award under the NYSERDA RFP RESRFP17-1, immediately upon notification of the NYSERDA award. NYSERDA expects to issue notifications of award by late November.
 4. Proposers who are notified by NYSERDA that their bids have been waitlisted and subsequently receive a notice of award, during the pendency of the open offer,¹³ will have a period of 5 business days from notice to accept the award. Should the Proposer fail to elect to accept the NYSERDA award, the NYSERDA award will be deemed rescinded, and the Bid Facility will remain eligible for consideration in NYPA's solicitation. Bid Deposits provided to NYSERDA for Bid Facilities that elect not to accept a NYSERDA award under these circumstances will be retained by NYSERDA.
 5. A Bid Facility which has been deemed eligible to participate in both solicitations and not offered an award or waitlist status by NYSERDA will automatically remain eligible for consideration in NYPA's solicitation.

Proposers representing the same Bid Facility in both solicitations will be required to complete a NYSERDA/NYPA Coordination Form with their Step Two Bid Proposal. Please refer to Appendix 4, NYSERDA and NYPA Frequently Asked Questions for additional information regarding participation in both solicitations.

VI. ELIGIBILITY FOR THIS RFP

A. Eligible Generation

To participate in this RFP each Bid Facility must qualify as a Tier 1 RES eligible resource under the [Order Adopting the Clean Energy Standard](#), as set forth at [Appendix A](#) of the August 1, 2016 Order. Pursuant to the Order, a Bid Facility must be located: (1) within the New York Control Area or in an adjacent control area and supplying energy into New York State, in accordance with the RES Delivery Requirements also specified in the

¹³ The submission of a Bid Proposal will constitute a binding offer to contract under the terms of the RES Standard Form Agreement (Attachment I); such offer must remain open for a period of at least sixty (60) days from the deadline for submittal of a Step Two Bid Proposal.

Orders and in this RFP, (2) have first commenced Commercial Operation on or after January 1, 2015 or (3) must produce new, incremental energy and Tier 1 RECs from new Bid Capacity above a historical baseline, as established through the Operational or Provisional Certification process.

Note: As a prerequisite to participating in this RFP, a Bid Facility must have: (1) registered in NYGATS, and (2) received either a Statement of Qualification (SoQ) (for facilities in operation) or a Provisional Statement of Qualification (PSoQ) (for facilities not yet operating). The SoQ/PSoQ certifies that a facility has met or will meet the eligibility requirements under Tier 1 of the RES.

Applications for certification are completed in NYGATS. To obtain an SoQ or a PSoQ, a Proposer will need to create a NYGATS account, complete a project registration for the Bid Facility, and once the registration is approved, complete an application for either operational certification (for facilities in operation) or provisional certification (for facilities not yet in operation). For consideration in RESRFP17-1, **Proposers must apply for the RES Tier 1 Certification by 5 p.m. Wednesday, June 28, 2017** for NYSERDA to grant or deny a SoQ or PSoQ by 5 p.m. Friday, July 7, 2017.

More information on the certification process, including guidelines for documenting eligibility for certification, including the eligibility of distributed energy resources, upgrades, relocated facilities and facilities returning to service can be found on [NYSERDA's RES Tier 1 Eligibility website](#).¹⁴ Training materials for using NYGATS to apply for certification may be found on the [NYGATS website](#).¹⁵

Energy Storage. Proposers who intend to include energy storage in the Step Two Bid Proposal must indicate that intention in the Step One Threshold Eligibility Application package. Proposals that include energy storage must also include, to the extent applicable, the operating parameters of the proposed storage facility. A Bid Facility paired with energy storage will be eligible for an award if the energy storage system is co-located with the generation behind a single wholesale or retail meter, or with separate sub-meters for the storage and generation. The energy storage system may store energy produced by the Bid Facility only, and may not charge from the grid. Additional details on the inclusion of Energy Storage are contained in Section XI(C) and Appendix 3.

Commercial Operation Milestone Date. Bid Facilities that receive awards under RESRFP17-1 will be required to enter Commercial Operation by November 30, 2019. The Commercial Operation Milestone Date may be extended (see Attachment I, RES Standard Form Agreement Article II, Purchase and Sale of Rights to Tier-1 Renewable Energy Certificate, Section 2.07, and Article XV, Contract Security).

¹⁴ <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility>

¹⁵ <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS>

B. Eligibility Limitations

Tier 1 eligible RECs or environmental attributes that are the subject of a current NYSERDA RES contract, were the subject of an award under a previous NYSERDA RES or RPS Main Tier solicitation are not eligible under this RFP.

C. Subsequent Tier 1 Eligibility Changes

Bid Facilities selected for award under this RFP will not be subject to subsequent changes in RES eligibility rules; however, if the Bid Facility fails to maintain eligibility consistent with the RES requirements as they existed on June 2, 2017, such ineligibility will extend to the RECs associated with the Bid Facility's production throughout the entire period in which the Bid Facility fails to maintain eligibility.

VII. PARTICIPATING IN THIS RFP

NYSERDA has designed this solicitation as a two-step process, consisting of:

- (1) Step One: a Threshold Eligibility Determination step, and
- (2) Step Two: a competitive Bid Package Proposal review step.

Under Step One, Proposers will submit a Threshold Eligibility Application package containing information and documentation that NYSERDA will evaluate to determine whether the Application Package demonstrates meeting or exceeding a minimum standard in six minimum Threshold Eligibility categories.

Bid Facilities that satisfy the minimum Threshold Eligibility requirements, have received a PSoQ or SoQ, and provide a Bid Deposit will receive a Notice of Qualification allowing them to participate in Step Two. The Notice of Qualification will also identify the Bid Facility's Maximum Contract Tenor and will provide Proposers with a description of and access to the process and forms to be used in Step Two.

Only those Proposers found prequalified through the Step One Threshold Eligibility Application process will be permitted to submit Bid Proposals or otherwise participate in Step Two.

Under Step Two, Proposers will be invited to submit Bid Proposals with additional information including a bid price and more detailed information about the proposed project, the developer, and the maturity and experience of each. Step 2 Bid Proposals will be evaluated and scored based on: (1) the bid price, which will be weighted at 70% of the overall score, and (2) non-price factors, which will have a combined weight of 30% of the overall score.

The 30% non-price component is divided into three equally-weighted categories: (1) 10% incremental economic benefits to New York State, (2) 10% project viability, and (3) 10% operational flexibility and peak coincidence. Appendices 1, 2 and 3 provide detailed explanations of the scoring process in each of these categories.

NYSERDA will continue to utilize a confidential maximum acceptable bid price above which NYSERDA will not award a contract.

VIII. STEP ONE THRESHOLD ELIGIBILITY APPLICATION PACKAGE

Proposers must first provide NYSERDA with a complete Step One Threshold Eligibility Application package. Application packages may identify a single Bid Facility only. NYSERDA will review each Threshold Eligibility Application package and determine the Bid Facility's qualification for participation in Step Two.

Deadline for Submitting a Step One Threshold Eligibility Application package: The complete Threshold Eligibility Application package must be **received*** by NYSERDA no later than **5 p.m. EDT on Thursday, July 13, 2017 via electronic submission**. All information must be provided. **NYSERDA strongly recommends that you reserve ample time to address the requirements for each Bid Facility. The Step One Threshold Eligibility Application package must be completed and submitted online, before the deadline.**

Unless the proposed Bid Facility is in operation (i.e., the proposed Bid Facility is applying with an SoQ), the Step One Threshold Eligibility Application requires Proposers to include supporting evidence or documentation for Threshold Eligibility categories. NYSERDA encourages Proposers to assemble required supporting evidence/documentation well in advance of starting a submission. The application website will close promptly at 5 p.m. EDT on Thursday, July 13, 2017. Submissions in process will be truncated upon the 5 p.m. deadline.

All electronic signatures must be provided as indicated. Failure to provide any attachments or information requested may result in the Threshold Eligibility Application package being declared non-responsive and rejected. NYSERDA may request additional information and materials at any time. Threshold Eligibility Application Packages become the property of NYSERDA.

A complete Step One Threshold Eligibility Application package consists of the following:

- 1) Step One Threshold Eligibility Application Form (Attachment B);
- 2) Threshold Eligibility Supporting Evidence Documentation for the following six categories;
 1. Site Control;
 2. Interconnection;
 3. Permitting;
 4. Project Development;
 5. Project Financing;
 6. Resource Assessment;
- 3) Project Schedule Form (Attachment H);
- 4) Proof of Bid Deposit.

If the proposed Bid Facility is currently in operation, Proposers need only submit:

- 1) Step One Threshold Eligibility Application Form (Attachment B);
- 2) Threshold Eligibility Supporting Evidence Documentation;
 6. Resource Assessment;
- 4) Proof of Bid Deposit.

1) Step One Threshold Eligibility Application Form

This form requires general information identifying the Bid Facility, the proposing party, and other relevant information. Note that this section must include the Bid Facility's NYGATS ID and whether the Bid Facility has a SoQ or PSoQ (see Section VII(A) Eligible Generation regarding the certification process). **Step One Threshold Eligibility Application Packages lacking a SoQ or PSoQ and complete Step One Threshold Eligibility Application Form may be rejected.** The form also includes an attestation by the Proposer regarding the accuracy and truthfulness of the information and documentation provided by the Proposer.

The Threshold Eligibility Application Form (Attachment B) requests that Proposer indicate whether Proposer wishes to have the information in the Threshold Eligibility Application Package treated as proprietary or confidential trade secret information. NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL" see Public Officers' Law Article 6). Information in any tangible form including any document that Proposer wishes to be protected from disclosure to third parties including any information provided as a part of a proposal must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

2) Threshold Eligibility Supporting Evidence Documentation

Threshold Eligibility Supporting Evidence Documentation should be uploaded as attachments as described in more detail below. Determinations regarding Threshold Eligibility will be made based on the information provided in the Step One Threshold Eligibility Application package in each of the following six categories:

- 1) Site Control;
- 2) Interconnection;
- 3) Permitting;
- 4) Project Development;
- 5) Project Finance;
- 6) Resource Assessment.

Minimum Eligibility Thresholds

The listing below identifies the supporting evidence documentation required to verify that the Bid Facility meets the minimum threshold for each category. **If the progress by**

a Bid Facility exceeds the minimum threshold in any category, documentation as to the additional level of progress achieved should be provided by the Proposer in Step One.¹⁶ Bid Facilities that have exceeded the minimum thresholds will have the opportunity to demonstrate such progress and may receive additional points as a part of the 10% Project Viability evaluation in Step Two (see Section XI.A. Scoring Criteria and Appendix 2). An opportunity to submit additional documentation as to progress in any of the six Project Viability categories will be provided in the Step Two process.

Category 1: Site Control

The Site Control minimum threshold has two subcategories: Generation Facility Site Control, and Interconnection Right of Way Site Control.

Generation Facility Site Control

A Bid Facility must have at least an executed exclusivity agreement or letter of intent with site owner(s). The full site needed for the Bid Facility must be covered by the exclusivity agreement(s) or letter(s) of intent, unless the site is greater than 15 acres, in which case the exclusivity agreement(s) or letter(s) of intent must cover at least 50% of the site's acreage.

Interconnection Right of Way Control

Proposers must demonstrate that the Bid Facility either has (i) an exclusivity agreement(s) or letter(s) of intent for the necessary rights of way, and/or (ii) an executed right of way agreement(s), which provide necessary rights to the developer (if the generator lead facilities will be merchant-owned), or (ii) that the right of way is controlled by or assignable to the interconnecting utility that will own the interconnection facilities.

Supporting Evidence Documentation Required for Site Control¹⁷

Proposers must demonstrate that the proposed Bid Facility meets the threshold level of Generation Facility and Interconnection Right of Way Site Control by providing the following documents:

- Map of site layout indicating project and parcel boundaries, to scale, with parcel designation by owner.
- Summary description (table) of control status by parcel with parcel designation tied to site map using Attachment C.
- If available, a one-line diagram.

¹⁶ For example, under Category 3, Permitting Progress, for a Bid Facility subject to Article 10, the documentation required to demonstrate achievement of the minimum threshold consists of a draft Public Involvement Program Plan (PIP). If a PIP has, in fact, been filed, attach a copy of the PIP that was filed. The filed PIP will satisfy the Minimum Eligibility Threshold and will also be considered as a part of the Project Viability evaluation in Step Two.

¹⁷ Unless the proposed Bid Facility is currently in operation (i.e., proposed Bid Facility is applying with an SoQ).

Category 2: Interconnection

Proposers must have researched the relevant interconnection process for the Bid Facility and what interconnection requirements are appropriate for their generation facility. For new distributed energy generation Bid Facilities located within New York, Proposers should review the most recent requirements and restrictions published by [New York's Department of Public Service](#).

The threshold requirements vary by the size and location of the Bid Facility:

- Large Generators (>20 MW) under the authority of the New York Independent System Operator (NYISO) or a similar interconnecting authority in an adjacent U.S. control area:¹⁸ Proposer has submitted a valid interconnection request and demonstrate that all initial fees have been paid.
- Small Generators (<=20 MW) under jurisdiction of NYISO or a similar interconnecting authority in an adjacent U.S. control area:¹⁹ Proposer has identified the applicable requirements, and has either (i) submitted an interconnection request or (ii) prepared drafts of all initial interconnection application documents such that they can submit initial documentation within 3 months following an award from NYSERDA.
- Small Generators with a Non-Federal Energy Regulatory Commission (FERC) Interconnection:²⁰ Proposer has discussed the Bid Facility with the relevant interconnecting utility company, and have identified the applicable requirements. Proposer has either (i) submitted an interconnection request or (ii) has prepared drafts of all initial interconnection application documents such that they can submit initial documents within 3 months following an award from NYSERDA.
- Behind-the-Meter Generators: Proposer has (i) contacted the local interconnecting utility about interconnection and (ii) has drafted interconnection request documents.
- Bid Facilities located in Ontario or Quebec, or other Bid Facilities that do not fall under any of the other interconnection categorizations: Proposer has met the equivalent threshold for projects of the same scale in the U.S.

Supporting Evidence Documentation Required for Interconnection¹⁷

The Proposer must demonstrate that it meets the threshold level of interconnection progress by providing a summary or other evidentiary documentation confirming the extent of interconnection activities and the payment of any necessary fees. For Behind-the-Meter Generators, Proposer must also provide a draft of all interconnection request documents.

¹⁸ FERC Jurisdiction, Large Generator Interconnection

¹⁹ FERC Jurisdiction, Small Generator Interconnection, inclusive of 2 MW Fast Track

²⁰ Connecting Transmission Owner Interconnection under state jurisdiction (typically, utility distribution less than 5 MW).

Category 3: Permitting

Proposers must be well informed of all applicable permitting requirements and sufficiently advanced in planning for the permitting process. To fulfill this requirement, all Proposers must meet the following threshold requirements:

- Complete Attachment D, NYSERDA Environmental Assessment form, modeled after the New York SEQRA Short Environmental Assessment Form.
- Provide a list of required permits at the local, state and federal level including any special use/conditional use permits, air permits, planning board approvals, U.S. Army Corps of Engineers (USACE) letters, and other applicable requirements, using Attachment E.
- Have performed an initial review of (i) cultural, historic, archeological and natural heritage impacts, as may be required; and (ii) wetland, fish and wildlife, and other applicable environmental impacts.
- If applicable, have developed emissions profiles for the Bid Facility that are consistent with state/federal emission regulations and RES eligibility requirements.
- If the project is subject to Article 10, have a reasonably complete Public Involvement Program Plan (PIP) prepared in accordance with the Article 10 regulations.

Supporting Evidence Documentation Required for Permitting¹⁷

The Proposer must demonstrate that it meets the threshold level of permitting progress by providing the following documents:

- A completed Environmental Assessment form in Attachment D.
- List of required permits, using Attachment E.
- If Article 10 applies to the Bid Facility, a copy of the draft PIP.

Category 4: Project Development

Proposers must demonstrate they have experience in developing electric generation facilities. Specifically, the Proposer or the principals in its development team must have developed at least one electrical generation facility of similar or larger scale. For the purposes of this criterion, similar scale is defined as follows:

- A project of at least 33% of the proposed Bid Facility capacity, in MW; or
- A project of at least 10% of the proposed Bid Facility capacity, in MW, if the Proposer has also successfully completed the same interconnection process in the same State or Jurisdiction as the proposed Bid Facility.

For a Proposal including a Bid Facility co-located with a qualified energy storage installation, the Proposer must also demonstrate that it has experience in developing at least one energy storage system of similar or larger scale using the same technology as proposed.

Supporting Evidence Documentation Required for Project Development¹⁷

The Proposer must demonstrate it meets the threshold level of project development experience by providing the following document:

- A list of specific projects successfully developed, specifying the nameplate capacity, technology,²¹ commercial operation date, and location using Attachment F.

Category 5: Project Financing

Proposers must demonstrate they have completed a sufficient degree of planning and due diligence on how the project is to be financed by submitting a Financing Plan, as well as describing their experience in successfully financing electrical generation projects.

Proposers must submit a Financing Plan that includes the following:

- A plan to finance the proposed Bid Facility. This should include a reasonably complete description of the Proposer's plan to finance the proposed Bid Facility, including the type of finance approach and the investors (specified, or by type, depending on financing status).
- A plan for revenue streams other than RECs, if any, for the proposed Bid Facility. If applicable, describe the plans to monetize energy and, if applicable, capacity and ancillary services produced by the proposed Bid Facility. Please include:
 - the type of transaction (for example, PPA, forward energy and/or capacity sale, financial hedge, etc.).
 - If hedges have been secured for the proposed Bid Facility, please describe what proportion of the annual energy production has been secured and for what duration.
- If applicable, the Proposer should include and describe whether:
 - the proposed Bid Facility is under construction (with supporting evidence).²²
 - the financing for project has been arranged and closed, along with a description of the type of financing commitment.
 - the Proposer is in the process of arranging financing for the facility, or provide a description of the plan to arrange financing.

²¹ Resource and prime mover, e.g. solar; e.g., wind. Not meant to distinguish between different solar technologies, for example.

²² For projects described as "under construction", Proposers must provide evidence of authorization to proceed, or similar, for an EPC contract, a major equipment purchase or similar material non-refundable capital commitment to constructing the project. A project qualifying for federal tax credits based on IRS begun construction thresholds or safe harbors will not qualify to be considered 'under construction' for this purpose solely by meeting associated IRS thresholds for PTC or ITC qualification, although activity to meet such qualification may be provided as contributing evidence.

- If available, the Proposer should include documentation of financial closing or financing commitment(s) which address any contingencies.

To document the project finance experience of the Proposer or its affiliates,²³ the Proposer must complete Attachment G, for previously financed renewable or non-renewable energy electric generation facilities, specifying:

- Project, experience with similar technology,²⁴ capacity (MW), location, operating status.
- Year of financial closing.
- Type of finance approach used, describing as fully as possible (for instance, project finance, balance sheet finance commitment, tax equity, YieldCo, host ownership, etc.). Identify whether projects were financed alone or together with other facilities; if the latter, describe the portfolio financed together.
- Value of financing (\$), by type of financing, if applicable.
- Description of Power & REC offtake arrangements (e.g., PPA(s), REC contracts, merchant, net metering, etc.).
- Clear identification of whose experience (corporate, affiliate, or individual's) is being described.

For a Proposal including a Bid Facility co-located with a qualified energy storage installation, describe experience financing energy storage installations alone and/or co-located with renewable energy facilities in similar detail to the requirements for renewable energy facilities described above.

Supporting Evidence Documentation Required for Project Financing¹⁷

The Proposer must demonstrate it meets the threshold level of project financing experience by providing the following documents:

- A copy of the Financing Plan as described above.
- Summary description of previous project financing experience using Attachment G.

²³ Proposer, its affiliates, or a senior executive or finance professional who is a principal of the Proposer. Experience of vendors or contractors to the bidding company do not count towards this requirement.

²⁴ Similar technology means the same resource and prime mover (e.g. solar or wind). It is not meant to distinguish between different solar technologies, for example.

Category 6: Resource Assessment

Proposers must have conducted a resource assessment for the Bid Facility based on the Bid Facility's technology as follows:

- Solar: A P(50)²⁵ annual energy production estimate based on output from system performance model, using industry standard tools such as PVWatts, PVSyst, Helioscope or System Advisory Model (SAM).
- Wind: A P(50)²⁵ annual energy production estimate based on at least 6 months of site data that has been annually and climatologically adjusted via correlations with a high quality reference station with correlation data or detailed site-specific modeling by an independent meteorologist.
- Fuel Cell: Provide confirmation from the gas utility that gas is available at the proposed site at sufficient pressure and quantity to operate as proposed.
- Hydroelectric: For new hydroelectric projects, provide a P(50)²⁵ annual energy production estimate prepared by an independent Professional Engineer. For hydroelectric upgrades, the engineering report for the Bid Facility provided through the Certification process documenting the expected P(50)²⁵ for the Bid Facility will be sufficient to fulfil the Resource Assessment threshold eligibility criteria.
- Ocean/Tidal: A feasibility study by a qualified independent 3rd party demonstrating adequate resources for life of the project.
- Biomass/Biogas: A feasibility study by a qualified independent 3rd party demonstrating adequate resources for life of the project.

Supporting Evidence Documentation Required for Resource Assessment

All Proposers must demonstrate the proposed Bid Facility meets the threshold level of resource assessment by providing a feasibility study, modeled annual energy production estimate or gas utility confirmation by providing documentation for the Bid Facility as described above.

3) Project Schedule

The Threshold Eligibility Application package must include a completed Project Schedule Form detailing key development milestones, included as Attachment H.¹⁷

4) Bid Deposit

The Threshold Eligibility Application package must be accompanied by a Bid Deposit, in the form of electronic wire deposit (preferred) or certified funds, in an amount determined by the Nameplate Capacity of the Bid Facility. Proposers must indicate that

²⁵ P(50) represents the annual energy production expected to be exceeded 50% of the time. This value shall be the expected value (i.e., the mean) based on (i) multi-year historical resource data or (ii) as applicable to the Bid Facility based on the criteria listed for the associated resource.

they have submitted a Bid Deposit with their application and by attaching proof of Bid Deposit, such as a receipt. No interest will be paid on any Bid Deposit.

Required Bid Deposit amounts are as follows:

Nameplate Capacity:	Bid Deposit Required:
Less than 5.00 MW	\$5,000
5.00 – 19.99 MW:	\$20,000
20.00 – 49.99 MW:	\$50,000
50.00 MW or more:	\$100,000

For information about how Bid Deposits are to be provided to NYSERDA and how they will be returned see Section XIII.

IX.STEP ONE NOTICE OF QUALIFICATION

NYSERDA will evaluate Step One Threshold Eligibility Application Packages including all Threshold Eligibility Supporting Evidence Documentation for completeness and against the minimum eligibility qualification criteria specified in this RFP.

- Proposers whose Threshold Eligibility Application Packages are found not to satisfy the minimum thresholds or to be deficient in some other respect will receive notification that they are not eligible to participate in Step Two.
- Proposers deemed qualified to submit a Step Two Bid Proposal will be emailed a Notice of Qualification, which will include the Maximum Contract Tenor described below as well as instructions on how to submit a Step Two Bid Proposal.

Maximum Contract Tenor

Information provided with the Step One Threshold Eligibility Application Packages will be used to determine the Maximum Contract Tenor available to the Bid Facility; the Notice of Qualification provided after Step One will include the Maximum Contract Tenor. The Contract Tenor offered for a Bid Facility will be limited by the term of the Maximum Contract Tenor. For all Bid Facilities, not in Commercial Operation as of June 2, 2017, the Maximum Contract Tenor will be calculated as the lesser of:

- (1) 20 years, or
- (2) The Bid Facility's Useful Life.

For all Bid Facilities in Commercial Operation as of June 2, 2017, the Maximum Contract Tenor applicable to the project's bid will be calculated as the lesser of:

- (1) 20 years (240 months) minus the number of years (months) between the year (month) of Commercial Operation and June 2017 (rounded to the nearest full year), or
- (2) The Bid Facility's Useful Life minus the number of years (months) between the year (month) of Commercial Operation and June 2017 (rounded to the nearest full year).

For a Returned to Service Facility, the date of Commercial Operation for purposes of calculating the Maximum Contract Tenor shall be the original date of Commercial Operation prior to the outage. For a Relocated Facility, the date of Commercial Operation for purposes of calculating the Maximum Contract Tenor shall be the first date of Commercial Operation in the original control area.

The following table lists the Useful Life by resource for use in the calculations of Maximum Contract Tenor for this RFP. This table was developed using references from published industry sources.

Table 1. Default Values for Useful Life used to determine Maximum Contract Tenor

<u>Resource</u>	<u>Useful Life (years)</u>
Anaerobic Digestion	20
Biomass/Liquid Biofuel	20
Fuel Cell ²⁶	20
Hydroelectric (New or Upgrade)	50
Landfill Gas to Electricity	15
Solar PV	20
Tidal/Ocean	10
Wind	20

X. STEP TWO BID PROPOSALS

Proposers receiving a Notice of Qualification will be invited to submit a Step Two Bid Proposal. The submission of a Bid Proposal will constitute a binding offer to contract under the terms of the RES Standard Form Agreement (Attachment I); such offer must remain open for a period of at least sixty (60) days from the deadline for submittal of a Step Two Bid Proposal.

A. Deadline for Submitting a Step Two Bid Proposal

The Step Two Bid Proposal must be completed via electronic submission on-line before the deadline. The complete Step Two Bid Proposal must be **received*** by NYSERDA no later than **5 p.m. EDT on Thursday, September 28, 2017 via electronic submission.** NYSERDA recommends that you reserve ample time to address the Step Two Bid Proposal requirements for each Bid Facility.

²⁶ Proposers for Fuel Cell Bid Facilities offering a Contract Tenor more than 10 years on the Bid Proposal form will be required to provide, prior to NYSERDA's execution of an Agreement, an executed Bid Facility operations and maintenance agreement with the Bid Facility's host customer for a term which is greater than or equal to the proposed Contract Tenor.

Unless the proposed Bid Facility is in operation (i.e., the proposed Bid Facility is applying with an SoQ), the Step Two Bid Proposal requires Proposers to include supporting evidence or documentation for the Project Viability category. NYSERDA encourages Proposers to assemble required supporting evidence/documentation well in advance of starting a submission. The application website will close promptly at 5 p.m. EDT on Thursday, September 28, 2017. Submissions in process will be truncated upon the 5 p.m. deadline.

The Notice of Qualification will include instructions on how to submit a Step Two Bid Proposal. All electronic signatures must be provided as indicated. Failure to provide any information requested may result in the Step Two Bid Proposal being declared non-responsive and rejected. Additional information and materials beyond what is identified in this RFP may be requested by NYSERDA.

The Bid Proposal must be complete in all respects and uploaded using NYSERDA's specified website in accordance with the instructions provided. Proposer is responsible for the accuracy of all information delivered to NYSERDA. NYSERDA will only consider Bid Proposals that are substantially complete and include all the applicable and required information and representations.

B. Submitting a Step Two Bid Proposal

With the Notice of Qualification, Proposers will be provided with a complete Step Two Bid Proposal package that consists of relevant instructions and access to the following:

- 1) Bid Proposal Form;
- 2) Bid Price Form;
- 3) Incremental Economic Benefits Claims Form;
- 4) Project Viability – Instructions on process to provide documentation to demonstrate the current level of progress in any of the six Project Viability Categories beyond the documentation provided in Step One;
- 5) Project Viability – Instructions on how to pledge additional Contract Security (if so elected);
- 6) Operational Flexibility and Peak Coincidence Form;
- 7) NYSERDA/NYPA Bid Coordination Form.

If the proposed Bid Facility is currently in operation, the Step Two Bid Proposal package must include:

- 1) Bid Proposal Form;
- 2) Bid Price Form;
- 6) Operational Flexibility and Peak Coincidence Form;
- 7) NYSERDA/NYPA Bid Coordination Form.

If there are eligible incremental economic benefits attributed to the proposed Bid Facility currently in operation, Proposers may also include this form (see Incremental Economic Benefits Claims below). Proposed Bid Facilities that are currently in operation will automatically be given maximum available points awarded for the following Project Viability categories:

- 1) Site Control
- 2) Interconnection
- 3) Permitting
- 4) Project Development
- 5) Project Financing

For all Proposers submitting attachments, each page should state the Bid Facility Name, NYGATS ID, and the page number. Proposers should seek to balance responsiveness with brevity. Unnecessary attachments or length of responses beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal.

1) Bid Proposal Form

NYSERDA will provide Qualified Proposers with a Bid Proposal Form based on project type and status. Proposers will be responsible for submitting one fully completed Bid Proposal Form with each Bid Proposal. The Bid Proposal Form requests relevant details about the Proposer and Bid Facility, and includes an attestation by the Proposer regarding the accuracy and truthfulness of the information and documentation provided by the Proposer.

In completing the Bid Proposal Form, the Proposer will also provide the quantity of Tier 1 RECs (Bid Quantity) offered to NYSERDA annually and the Contract Tenor, subject to the following restrictions:

- Proposers may submit bids for any Contract Tenor of a minimum of one year and a maximum of the Maximum Contract Tenor identified in the Bid Facility's Notice of Qualification.
- For wind, solar, and hydroelectric resource types, the Expected Annual Eligible Production shall not exceed the P(50) annual energy production provided under Step One, Resource Assessment or a refined P(50) provided under Step Two, (Project Viability, Category 6, Resource Assessment) (See Appendix 2).
- The Bid Quantity Percentage shall be no less than thirty percent (30%) and no greater than one hundred percent (100%) of the Expected Annual Eligible Production.

2) Bid Price Form

NYSERDA will provide Qualified Proposers with a Bid Price Form. Proposers will be responsible for submitting one fully completed Bid Price Form with each Bid Proposal. The Bid Price Form provides the nominal price to be paid for each Tier 1 REC generated from the Bid Facility and accepted by NYSERDA for the term of the Contract Tenor.

3) Incremental Economic Benefits Claims

One of the non-price evaluation criteria will consider the Incremental Economic Benefits expected to accrue to New York because of the development, construction/modification, and operation of the Bid Facility. Incremental Economic Benefits are those that a Proposer can demonstrate: (1) will accrue after an award under this RFP, and (2) would not have accrued but for the award of a contract under this RFP.

Incremental Economic Benefits previously claimed with respect to a Bid Facility that is subject to a pending award under a previous solicitation or that is the subject of a current NYSERDA RPS or RES contract are not eligible for evaluation.

Proposers must provide complete information along with the supporting documentation or requested data in the following four categories:

- 1) Long-Term New York State Jobs;
- 2) Payments/Benefits to New York State and/or its Municipalities;
- 3) Payments for Renewable Fuels and Resource Access;
- 4) In-State Purchases, Consumption of Goods, and Short-term Employment.

Independent audit and verification of the actual Incremental Economic Benefits of the Bid Facility, and comparison to the level of claimed Incremental Economic Benefits, will be required after the first three years of the Contract Delivery Term, as described in Section XIV. See Appendix 1 for a detailed description of eligibility and the evaluation and scoring process for Incremental Economic Benefits.

4) Project Viability – Additional Documentation

One of the non-price evaluation criteria will consider the Bid Facility's Project Viability. Project Viability scoring will be made based on the information provided in the Step One Threshold Eligibility Application package and any supplemental information provided in the Step Two Bid Proposal in each of the following six categories:

- 1) Site Control;
- 2) Interconnection;
- 3) Permitting;
- 4) Project Development;
- 5) Project Finance;
- 6) Resource Assessment.

Proposers receiving a Notice of Qualification for participation in Step Two will be provided with the opportunity to demonstrate that they have exceeded the minimum eligibility threshold(s) beyond the information provided in Step One Threshold Eligibility Application Packages. NYSERDA will review in total the Minimum Threshold Eligibility and Project Viability information and documentation received in Step One and Step Two, which may result in the Bid Facility receiving additional points in Step Two. See Appendix 2 for a detailed description of the evaluation and scoring process for Project Viability.

5) Project Viability – Pledge of Additional Contract Security

Proposers may pledge to commit amounts above the \$9/MWh minimum initial required contract security specified in Section XIII(3), to be provided within 10 business days following notification of an award. Proposers may note the pledge per MWh above the minimum in their Step Two Bid Proposal on the Bid Proposal form. Points will be awarded based on the size of the pledge relative to the maximum proposed pledge of all submissions on a \$/MWh basis. The maximum proposed pledge of additional security will receive 100% of the points allocated to this criterion.

6) Operational Flexibility and Peak Coincidence

One of the non-price evaluation criteria will consider the Bid Facility's value in terms of its contribution towards Operational Flexibility and Peak Coincidence.

Proposers must provide complete information along with the supporting documentation or requested data to allow the TEP to complete an evaluation of the following three Operational Flexibility and Peak Coincidence categories:

- 1) Load Matching;
- 2) Dispatchability;
- 3) If applicable, Energy Storage.

See Appendix 3 for a detailed description of the evaluation and scoring process for Operational Flexibility and Peak Coincidence.

C. Energy Storage Configurations

Energy Storage capabilities are new to the RES procurement, market rules are developing and are expected to evolve as the Energy Storage marketplace matures. Bid Proposals may include an electrical storage system co-located with a Bid Facility that must be configured so as not to allow the storage to be charged from the grid. If proposed for inclusion, Energy Storage must have an energy storage capability of at least one hour.²⁷

Energy Storage must be installed and operate consistent with NYGATS rules and be located either (i) behind a single wholesale or retail revenue meter, or (ii) be independently metered from the eligible renewable technology.

If a Step Two Bid Proposal includes Energy Storage, the Proposer must:

- 1) include a detailed description of the Energy Storage component, including the Storage Unit(s), Interconnection Facilities up to the Point of Interconnection, Prevention Equipment, and Protective Apparatus together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the facility, and

²⁷ i.e., the ratio of peak capacity (MW) to energy storage (MWh).

- 2) install commercially available, factory new equipment carrying a minimum 10-year warranty and must have at least one year of documented commercial performance at the time of application and (i) be listed to ANSI UL 9540, or 1973, and (ii) inverters must be listed to UL 1741, and (iii) that meets the latest National Electric Code 2017 requirements, including the newly published Article 706, Energy Storage Systems,²⁸ and
- 3) for Proposals with a Contract Tenor in excess of 10 years, prior to NYSERDA's execution of an Agreement, provide an executed energy storage operations and maintenance agreement for a term which is greater than or equal to the proposed Contract Tenor.

XI. STEP TWO BID PROPOSAL EVALUATION

NYSERDA will employ a scoring system comprised of four evaluation components totaling 100 points:

- 1) Incremental Economic Benefits: 10 points
- 2) Project Viability: 10 Points
- 3) Operational Flexibility and Peak Coincidence: 10 Points
- 4) Bid Price: 70 Points

Pursuant to the [February 22, 2017 PSC Order](#) and the subsequent [Final Phase 1 Implementation Plan](#), a Technical Evaluation Panel (TEP), consisting of NYSERDA staff, DPS Staff, and Independent Evaluators (outside reviewers who possess unique proficiency in the evaluation of energy generation projects) will evaluate and award points for the non-price evaluation components of each Bid Proposal. The evaluation for each of these categories is described below.

TEP scoring will be conducted independently (without knowledge of bid prices) of Bid Price evaluation. The Bid Price evaluation will be conducted by NYSERDA.

A. Scoring Criteria

1. Incremental Economic Benefits: 10 Points

The TEP will evaluate and award up to 10 points to Bid Proposals based on the degree to which each Bid Proposal demonstrates a contribution to the four economic benefits categories listed in Section XI(3). Only those economic benefits meeting the eligibility criteria and falling within the defined categories in Section XI(3) will be considered for evaluation. The TEP will award a maximum of 10 points across the four categories in proportion to the level of eligible claims, leveled across Proposers by dividing the eligible claims by the Bid Capacity (\$/MW). **See Appendix 1 for a detailed description of eligibility and the scoring process for Incremental Economic Benefits.**

²⁸ Equipment may also be eligible if system certification is obtained from a nationally recognized testing laboratory indicating that the technology meets the safety requirements of a nationally recognized standard.

2. Project Viability: 10 Points

The TEP will evaluate and award up to 10 points to Bid Proposals based on the extent to which the Bid Proposal demonstrates that the Bid Facility has exceeded the Minimum Eligibility Thresholds in the six categories listed in Section IX(4) as well as the Proposer's offer of additional contract security as described in Section XI(4). The TEP will award a maximum of 10 points across the combined seven categories in proportion to the level of achievement demonstrated. **See Appendix 2 for a detailed description of the scoring process for Project Viability.**

3. Operational Flexibility and Peak Coincidence: 10 Points

The TEP will evaluate and award up to 10 points to Bid Proposals based on the Operational Flexibility and Peak Coincidence evaluation of submissions in the three categories listed in Section XI(5). The TEP will award a maximum of 10 points across the three categories in proportion to the level of value demonstrated. **See Appendix 3 for a detailed description of the scoring process for Operational Flexibility and Peak Coincidence.**

4. Bid Price: 70 Points

For evaluation purposes only, Bid Prices will be converted according to the following calculation to allow for an equitable comparison between bids of varying Contract Tenor:

$$\text{Bid Price Evaluation Metric} = \frac{\text{NPV of Expected Contract Payments}}{\text{Bid Quantity} \times \text{Contract Tenor}}$$

Where:

$$\text{NPV of Expected Contract Payments} = \sum_{2017}^{2040} \frac{(\text{Bid Price} \times \text{Calendar Year Bid Quantity})_t}{(1 + i)^{t-2017}}$$

t = Calendar Years 2017 - 2040

i = 6.66%²⁹

- Bid Facilities not operating as of June 2, 2017, will be evaluated as if the Contract Delivery Term commences on December 1, 2019.
- Bid Facilities operating as of June 2, 2017, will be evaluated as if the Contract Delivery Term commences on December 1, 2017.

NYSERDA will employ a maximum acceptable Bid Price Evaluation Metric; NYSERDA will not award a contract for a Bid Facility where the Bid Price Evaluation Metric is above the maximum acceptable Bid Price Evaluation Metric.

²⁹ The discount rate for Bid Price evaluation (DISCo Discount Rate or DDR) was established by the New York State Department of Public Service Office of Accounting, Audits and Finance.

Bids will be sorted in ascending order per the Bid Price Evaluation Metric. The lowest bid per the Bid Price Evaluation Metric will receive the maximum points available for the Bid Price component (70 points). For all other bids, points will be awarded in proportion to where a Bid Facility's Bid Price Evaluation Metric falls within the range of all Bid Price Evaluation Metrics (e.g., from lowest Bid Price Evaluation Metric to the highest eligible Bid Price Evaluation Metric). Bids which yield a Bid Price Evaluation Metric above the maximum acceptable Bid Price Evaluation Metric will be ineligible for award.

B. Evaluation & Selection

Selection will be based on the TEP's final ranking, subject to the Portfolio Risk Assessment and the RFP's procurement target.

1. Preliminary Rank Order

A preliminary final ranking of Bid Proposals will be developed by the TEP based on the points awarded based on the Operational Flexibility and Peak Coincidence Evaluation, points awarded based on the Project Viability Evaluation, points awarded based on the Incremental Economic Benefits Evaluation, and sum of points awarded for the Bid Price Evaluation Metric.

2. Portfolio Risk Assessment

Following the development of the preliminary rank order, NYSERDA and DPS, in consultation with the TEP, will then consider whether to apply the following factors as they may apply to the preliminary award group in making a final award group recommendation, using information provided by the relevant Proposers.

The following portfolio risk assessment limits center around the ability of the portfolio to be constructed at the proposed locations and within the required timeframe. If considering whether to apply any of the limits, NYSERDA and DPS will consider the potential cost impact of such decision (relative to the generation portfolio that otherwise would have been selected), only exercising such a limit should the impact on the generation-weighted average cost of the portfolio increase by less than 10 percent with the application of the portfolio limits.

Such limits will include:

- Diversity of resources: NYSERDA and DPS may constrain any eligible technology to comprise no more than 80 percent (80%) of the award group on an annual generation basis.
- Diversity of owners: NYSERDA and DPS may constrain any owner or affiliate of an owner to comprise no more than 80 percent (80%) of the award group on an annual generation basis.

- Developer limitation: NYSERDA and DPS may limit awards to a specific project owner to a capacity of no more than five times the renewable capacity that the owner has successfully brought to commercial operation in the past.

3. Final Award Group

After completing the Portfolio Risk Assessment and any necessary processes below, NYSERDA and DPS will arrive at a final award group. NYSERDA and DPS may also establish a waitlist of Bid Facilities in rank order, below those Bid Facilities offered an initial award. Bid Proposals represent offers to contract and must remain open for a period of at least sixty (60) days from the deadline for submittal of a Step Two Bid Proposal.

NYSERDA reserves the right to reject or accept any or all bids. NYSERDA may consider information provided by Proposer in response to Section XV(E) or otherwise obtained by NYSERDA as to indictments, convictions enforcement proceedings or investigations in accepting or rejecting a bid. NYSERDA also reserves the right to solicit revised Bid Prices and/or to make counteroffers as it deems appropriate. Notification of a re-bid, counteroffer or selection will be made by voice communication and email to the Proposer's Designated Agent(s), as identified on the Bid Price Form of this RFP. Proposer's Designated Agent(s) must be authorized to respond and to commit to counteroffers on behalf of Proposer.

NYSERDA will notify Proposers with Bid Facilities contained in the final award group (Award Notification).

XII. POST-AWARD PROCESS

1. Reconciliation with PSoQ

If necessary, NYSERDA will work with the proposer to rectify any discrepancies between a Bid Facility's PSoQ and the Step Two Bid Proposal. This may include the values associated with a Bid Facility's Nameplate Capacity, Capacity Factor, Expected Average Annual Production, and Expected Annual Eligible Production.

2. Confidentiality

The Proposer shall not distribute any press release or contact the media until after the contract is executed by both parties and any New York State press releases regarding the awards have been issued. If the Proposer wishes to contact the press regarding the award, the Proposer must collaborate with NYSERDA's Large-Scale Renewables Team and the Director of Communications to prepare any press release and/or to plan for any announcement.

3. Provision of Contract Security

Unless otherwise agreed by NYSERDA in writing, Contract Security in the amount of the product of the Bid Quantity and \$9.00 will be required within 10 business days of the Award Notification Date. If the Proposer pledged an additional amount of Contract

Security in the Step Two Bid Proposal, this additional amount will also be due within 10 business days of the Award Notification Date.

4. Provision of Contract for Execution

NYSERDA will prepare a conformed copy of the RES Standard Form Agreement (Attachment I) which will be delivered to Proposer, in a manner to be agreed upon, for Proposer's execution and return.

NYSERDA may withdraw and rescind awards to Proposers who fail to provide Contract Security within 10 business days of the Award Notification or who fail to execute the RPS Standard Agreement within a reasonable amount of time.

5. Documents Required for Contracting Purposes

NYSERDA requires the following documents prior to contract execution:

- Pursuant to Tax Law Section 5-a, a completed ST-220-CA (available at www.tax.ny.gov). See: https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- A signed IRS W-9 form (available at www.irs.gov). See: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>
- Certificate of Incorporation

6. Statement of Qualification

For Bid Facilities that apply to this RFP with a PSoQ, are awarded a contract and enter commercial operation, a Statement of Qualification (SoQ) must be applied for in NYGATS and must be granted by NYSERDA before payments under the RES Standard Form Agreement will be made. When applying for an SoQ through Operational Certification, the Proposer must submit information and documentation necessary for NYSERDA to verify that the Bid Facility has been constructed and has achieved commercial information. This information will allow NYSERDA to determine if a Bid Facility is operating as proposed. This information includes the installed generating capacity of the Bid Facility, the date under which it entered Commercial Operation, and any deviations from the as-proposed configuration and/or operations. Deviations in the capacity of the Bid Facility, configuration, and/or operations may result in contractual adjustments.

Once a facility receives an SoQ, NYSERDA will make payments for RECs properly transferred to NYSERDA under the terms in the RES Standard Form Agreement (Attachment I). REC payments will be based on monthly invoicing, in accordance with the terms of the RES Standard Form Agreement. More information on the Statement of Qualification process is available on NYSERDA's website.³⁰

³⁰ For more information, please visit NYSERDA's NYGATS page on Certification: <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Certification>

XIII. BID DEPOSITS

All Bid Deposits must be clearly labeled with a unique identifier comprised of the facility's NYGATS ID and the RFP Tracking Number, in the format: GENXXXXX_RESRFP17-1 or PROXXXXX_RESRFP17-1. Only facilities that have registered with and achieved approval from the NYGATS system are eligible to submit a Step One Threshold Eligibility Application package.

Bid Deposits provided via electronic wire deposit must have this unique identifier included within the Payment Details/ Description. Bid Deposits provided via cashier's check must have this unique identifier clearly labeled within the Memo or elsewhere on the check.

If the Proposer is submitting multiple Step One Threshold Eligibility Application Packages for more than one unit on the same meter, a separate Bid Deposit must be submitted for each unit, and the Bid Facility must be clearly identified on the payment method in addition to the unique identifier, e.g.

Project Name, GENXXXXX_RESRFP17-1 or PROXXXXX_RESRFP17-1

Electronic Bid Deposit Instructions:

If paying via ACH:

Name of Bank: Bank of America

For the Account of: NYSERDA MAC 30

ABA #: 021000322

Account #: 6010316543

Description/reference: (NYGATS ID followed by RFP Tracking Number, e.g., GENXXXXX_RESRFP17-1 or PROXXXXX_RESRFP17-1

If paying via wire:

Name of Bank: Bank of America

For the Account of: NYSERDA MAC 30

ABA #: 026009593

Account #: 6010316543

Description/reference: (NYGATS ID followed by RFP Tracking Number, e.g., GENXXXXX_RESRFP17-1 or PROXXXXX_RESRFP17-1

If paying via Certified Funds:

If the Bid Deposit is provided via a cashier's check or other certified funds, the Bid Deposit must be clearly labeled with the facility's NYGATS ID followed by RFP Reference, e.g., GENXXXXX_RESRFP17-1 or PROXXXXX_RESRFP17-1, and sent to:

Joanne Sullivan, RESRFP17-1

NYS Energy Research and Development Authority

17 Columbia Circle

Albany, NY 12203-6399

Return of Bid Deposit.

Bid Deposits will be refunded to Proposers who elect not to submit a Step Two Bid Proposal, or are deemed ineligible by NYSERDA to participate in Step Two. Bid Deposits will be refunded to Proposers whose Bid Proposals have not been selected for an award, if not before, immediately upon the expiration of the time during which the Bid Proposal remains an open offer.

Bid Deposits for Bid Facilities that have been deemed eligible to participate in both the NYSERDA and NYPA will be refunded to Proposers in full for Bid Facilities that properly exercise the unilateral option to withdraw described in Section VI.

Bid Deposits will be refunded to Proposers whose Bid Proposals have been selected by NYSERDA, upon execution of the RES Standard Form Agreement (Attachment I), and:

- 1) for Operating Facilities with a SoQ, upon (i) unless otherwise agreed by NYSERDA in writing, NYSERDA's receipt that a Forward Transfer of NYGATS Certificates has been created, and (ii) the first Tier 1 REC transfer to NYSERDA's designated account has occurred.
- 2) for not yet operational Facilities with a PSoQ, upon NYSERDA's receipt of Contract Security as described in Section XIII (3).

Bid Deposits will not be refunded if a facility is awarded a contract under RESRFP17-1 and Proposer fails to execute NYSERDA's RES Standard Form Agreement within a reasonable time following notification of an award.

XIV. SELECT PROVISIONS FROM RES STANDARD FORM AGREEMENT

Some of the key terms and conditions that will be included in the agreement with proposals that receive an award are listed below. In the event of any inconsistency between the description in the RFP and the Agreement, the terms of the Agreement shall control. Capitalized terms may refer to terms defined in the Agreement (Proposer in RFP = Seller in Agreement).

DELIVERY REQUIREMENTS

Section 3.01. Bid Facilities in the NYCA. The electricity associated with the Tier-1 Renewable Energy Certificates for Bid Facilities located within the New York Control Area must either be (1) delivered into a market administered by the NYISO for end-use in New York State, (2) delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO; or (3) delivered through a Dedicated Generation Meter, in accordance with Section 2.10.

Section 3.02. External Bid Facilities. The electricity associated with the Tier-1 Renewable Energy Certificates for Bid Facilities in control areas adjacent to the New York Control Area shall be scheduled, transmitted, delivered to and settled in the NYISO energy market in each hour, and be accompanied with documentation of a unit-specific contract path between the Injection Point in the control area of origin to the Delivery Point in New York that includes the provision of transmission or transmission rights for delivering the generation via the NYISO using the North American Electric Reliability Corporation (NERC) tag fields Sending and Receiving Control Areas (CA) and Purchasing/Selling Entity (PSE) Name and Number. Compliance with this Delivery Requirement shall be verified by NYGATS which shall require an attestation from the importer that the information contained in the NYISO schedule is accurate and that the electricity associated with the import is being delivered solely from the selected resource. The Tier-1 Renewable Energy Certificates must follow the NYGATS Operating Rules for Unit-Specific Imports of Energy and Attributes under the Energy Scheduled and Delivered methodology. The number of Unit-Specific Import Certificates that will be created will be the lesser of the hourly energy schedule of the import, or the hourly meter reading of the Bid Facility.

Section 3.03. Bilateral Sales. Bilateral sales for electricity associated with the Quantity Obligation produced by the Bid Facility are permissible provided the Seller can demonstrate that the purchaser of the electricity associated with the Quantity Obligation is a New York State Load Serving Entity (LSE), or one or more New York State end-users.

PAYMENT

Section 4.02. Payment. The amount payable in a given month shall be calculated as the lesser of: (1) the multiplicative product of (a) the Actual Eligible Production of the Bid Facility during the prior month; (b) the Bid Quantity Percentage; and (c) the Bid Price, and (2) the number of Tier-1 Renewable Energy Certificates Transferred into the NYSERDA NYGATS Account multiplied by the Bid Price. NYSERDA will not pay for Tier-1 Renewable Energy Certificates beyond one hundred and twenty percent (120%) of the Bid Quantity for any Contract Year.

Section 4.03. Prompt Payment Policy. NYSERDA will make payments to the Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit C. Such payments shall be made by check or wire transfer to an account designated by the Seller. NYSERDA will not pay any invoice not accompanied by all information required in accordance with Section 6.01.

Section 4.04. Maximum Commitment/Limitation. The maximum number of Tier-1 Renewable Energy Certificates NYSERDA shall be obligated to purchase under this Agreement shall be equal to one hundred and twenty percent (120%) of the Bid Quantity multiplied by the number of years in the Contract Delivery Term.

ADJUSTMENTS

Section 5.02. Other Adjustments. NYSERDA may adjust its contractual Payment obligations under this Agreement under the following circumstances:

- (a) NYSERDA may adjust amounts payable to Seller to reflect any costs borne by NYSERDA, if any, for participation in any renewable energy attribute accounting system operating in the Bid Facility's local control area, including all fees and charges, if any, for the delivery, registration and/or retirement of the attributes or certificates in such renewable energy attribute accounting system.
- (b) Should Seller fail to Transfer Tier-1 Renewable Energy Certificates to the NYSERDA NYGATS Account in a number at least 80% of the Bid Quantity for three (3) consecutive Contract Years, NYSERDA may at its option upon Notice to Seller, modify this Agreement by adjusting the Bid Quantity for the remainder of the Contract Delivery Term to equal the highest Actual Annual Eligible Production during any Contract Year over that three-year period multiplied by the Bid Quantity Percentage.
- (c) Should Seller fail to reasonably demonstrate that the total dollar amount of Incremental Economic Benefits having accrued to New York as a result of the development, construction, modification, and operation of the [Bid Facility/Upgrade from the Award Notification Date] through the end of the first three (3) Contract Years of operation (Verified Total Dollars), divided by Installed Bid Capacity, is at least 85% of Expected Total Dollars divided by the Bid Capacity, NYSERDA may

at its option upon Notice to Seller, modify this Agreement by reducing the Bid Price payable for the remainder of the Contract Delivery Term. Such reduction in the Bid Price will be made by an amount equal to the percentage shortfall between the Verified Total Dollars divided by the Installed Bid Capacity compared to the Expected Total Dollars divided by the Bid Capacity.

- (d) Should the Installed Bid Capacity differ from the Bid Capacity, Seller agrees that NYSERDA may at its option upon Notice to Seller modify the Contract by adjusting the Bid Quantity, Bid Quantity Percentage, or other relevant terms to reflect the Installed Bid Capacity.
- (e) For Bid Facilities that include Storage, should the Storage component not reach Commercial Operation with the proposed Storage capacity in MW on or before the Commercial Operation Milestone Date, NYSERDA may, upon Notice to Seller, reduce the Bid Price to an amount equal to \$_____ [a number to be agreed upon by the Parties and calculated by proportionately (installed Storage capacity/proposed Storage capacity) reducing any additional points awarded based on the Storage component in Step Two of the evaluation process and determining the Bid Price that would have been necessary to maintain the Bid Proposal's initial ranking].

ECONOMIC BENEFITS REPORT

Section 6.03. Economic Benefits Report. Within sixty (60) days of the third anniversary of the commencement of the Contract Delivery Term, Seller shall submit an economic benefits report prepared by a New York State certified, independent certified public accountant, demonstrating the actual Incremental Economic Benefits that resulted from the construction and operation of the Bid Facility. To fulfill this requirement, the Seller's independent certified public accountant will be required to prepare an "agreed upon procedures" report in accordance with the procedures outlined in the Economic Benefits Audit Protocol and Economic Benefits Verification Standards that were released with the Step One Notice of Qualification provided to Seller. The Economic Benefits Audit Protocol will serve as a requirements document to guide the independent audit, allowing auditors to understand the process they are asked to perform. The Economic Benefits Verification Standards will define valid expense claims and standardize submission and documentation processes and best practices. The audit will verify the economic benefits created by the Bid Facility under the categories and within the eligibility requirements listed in RESRFP17-1. The Economic Benefits Report will be funded at the Seller's expense.

CONTRACT SECURITY; COMMERCIAL OPERATION MILESTONE DATE; SELLER EXTENSION OF THE MILESTONE DATES

Commercial Operation Milestone Date: The Commercial Operation Milestone Date shall be November 30, 2019. The Commercial Operation Milestone Date may be extended (see Article II, Purchase and Sale of Rights to Tier-1 Renewable Energy Certificate, Section 2.07 and Article XV, Contract Security).

Section 15.01. Seller shall provide to NYSERDA Contract Security, in the form of cash, certified funds, or a Letter of Credit conforming to the requirements according to the following schedule and conditions:

- (a) Within ten (10) Business Days of the Award Notification Date, unless otherwise agreed to by NYSERDA, Seller must provide Contract Security in an amount equal to the product of (1) Bid Quantity and (2) nine dollars (\$9.00) [plus any amount pledged by Seller as a part of a RESRFP17-1 Step Two Bid Proposal]. **NYSERDA may rescind and cancel the award to Proposer/Seller under RESRFP17-1 should Seller fail to provide Contract Security within such 10-day period;**
- (b) On or before November 30, 2018, Seller must provide additional Contract Security in an amount equal to the product of (1) Bid Quantity and (2) six dollars (\$6.00). **Failure to provide the additional Contract Security by November 30, 2018 will constitute a default and may result in termination of this Agreement.**

Section 15.02. Extension of Commercial Operation Milestone Date. Seller may elect to extend the Commercial Operation Milestone Date as follows:

- (a) On or before October 30, 2019, Seller may elect to extend the Commercial Operation Milestone Date from November 30, 2019 to May 31, 2020 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00);
- (b) On or before April 30, 2020, Seller may elect to extend the Commercial Operation Milestone Date from May 31, 2020 to November 30, 2020 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b) and 15.02 (a), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00);
- (c) On or before October 30, 2020, Seller may elect to extend the Commercial Operation Milestone Date from November 30, 2020 to May 31, 2021 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b) and 15.02 (a) and (b), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00);

- (d) On or before April 30, 2021, Seller may elect to extend the Commercial Operation Milestone Date from May 31, 2021 to November 30, 2021 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b) and 15.02 (a), (b) and (c), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00).

Section 15.03. Executed Interconnection Agreement. In lieu of Contract Security seller may provide under Section 15.02(c) and/or (d), Seller may extend the Commercial Operation Milestone Date from November 30, 2020 to November 30, 2021 by providing to NYSERDA proof that an interconnection agreement has been entered into by the NYISO or its counterpart in an adjacent control area, the Connecting Transmission Owner, and the Seller or a legal representative of the Seller. Bid Facilities seeking to satisfy the electricity delivery requirement through options 2 or 3 of Section 3.01 may provide proof that a comparable interconnection agreement has been entered into with all the necessary sites, service providers and parties that will be enable and permit the transmission of the energy from the Bid Facility to the point of its consumption.

REFUND/RETENTION OF CONTRACT SECURITY

Section 15.06. Refund of Security. Amounts provided by Seller as Contract Security will be refunded to Seller by NYSERDA as follows:

- (a) In their entirety, upon the achievement by the Bid Facility of an SoQ (Operational Certification) if the Installed Bid Capacity is equal to or greater than the Bid Capacity.
- (b) At a prorated amount, upon the achievement by the Bid Facility of an SoQ (Operational Certification), if the Installed Bid Capacity is less than the Bid Capacity. Such amount that will be refunded, expressed as a percentage of the total Contract Security, will be equal to the Installed Bid Capacity divided by the Bid Capacity.

Section 15.07. Retention of Security. Amounts provided by Seller as Contract Security will be retained by NYSERDA as follows:

- (a) In their entirety if Seller fails to provide to NYSERDA, on or before November 30, 2018, Contract Security in the amount required under Section 15.01(b), above.
- (b) At a prorated amount if the Installed Bid Capacity is less than the Bid Capacity. Such amount that will be retained, expressed as a percentage of the total Contract Security, will be equal to the Bid Capacity minus the Installed Bid Capacity divided by the Bid Capacity.

PERMITS/APPROVALS

Section 17.04. Permits and Approvals. The Seller shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Bid Facility over the duration of the Contract Delivery Term. Neither the RES Program nor selection under RESRFP17-1 in any way replaces or modifies the necessity or applicability of any permit or approval process including SEQRA by any jurisdiction. NYSERDA's obligations to make payments to Seller are conditional on the acquisition by Seller of all such permits and approvals. Upon request by NYSERDA Seller must demonstrate such acquisition and/or provide copies of all permits and approvals acquired. Seller shall provide prompt Notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process ("Process") by any federal or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the Bid Facility, as well as of any modification, penalty and/or fine that may be imposed or occur as a result of such a Process or violation. Upon the filing by Seller of an Article 10 Application, Seller shall promptly notify NYSERDA and shall comply with any restrictions NYSERDA may impose regarding communication with NYSERDA staff.

XV. GENERAL CONDITIONS

A. 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." Additional 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.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

B. 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 <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

Threshold Eligibility Application form (Attachment B) calls for a signature certifying that the Proposer will comply with State Finance Law sections 139-j and 139-k and 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.

C. Tax Law Section 5-a

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

D. 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 Proposers, 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
30 South Pearl Street
Albany, NY 12245

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

Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245

E. 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, investigation, enforcement proceeding 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.

F. Confidentiality

NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6). Information in any tangible form including any document that Proposer wishes to be protected from disclosure to third parties, including any information provided as a part of a Bid Proposal Package, must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

The FOIL Law (Public Officers Law § 87(2)(d)) provides an exception 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." If NYSERDA receives a request from a third party for information or a document received from Seller and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations (email foil@nyserda.ny.gov for additional information).

XVI. LIST OF ATTACHMENTS

Appendix 1 – Incremental Economic Benefits Appendix
Appendix 2 – Project Viability Appendix
Appendix 3 – Operational Flexibility and Peak Coincidence Appendix
Appendix 4 – NYSERDA and NYPA Frequently Asked Questions

Attachment A – Instructions for Electronic Submission of the Threshold Eligibility Application
Attachment B – Threshold Eligibility Application Form
Attachment C – Summary Description of Control Status by Parcel
Attachment D – Environmental Assessment Form
Attachment E – List of Required Permits
Attachment F – List of Project Development Experience
Attachment G – List of Project Financing Experience
Attachment H – Project Schedule Form
Attachment I – RES Standard Form Agreement
 Exhibit A – Standard Terms and Conditions for all NYSERDA Agreements
 Exhibit B – Letter of Credit
 Exhibit C – Prompt Payment Policy Statement
 Exhibit D – Requirements for Biomass-Fueled Bid Facilities

APPENDIX 1 – INCREMENTAL ECONOMIC BENEFITS APPENDIX

TABLE OF CONTENTS

Introduction	41
Incremental Economic Benefits Categories	42
Category 1: Long-Term New York State Jobs	42
Category 2: Payments/Benefits to New York State and/or its Municipalities	42
Category 3: Payments for Renewable Fuels and Resource Access	43
Category 4: In-State Purchases, Consumption of Goods, and Short-term Employment	43

INTRODUCTION

The Bid Proposal evaluation process for RES Tier 1 REC solicitations includes the application of an Incremental Economic Benefits evaluation that makes up 10% (10 points) of the overall Step Two scoring as described in Section XII(2) Incremental Economic Benefits of the RFP. The inclusion of the Incremental Economic Benefits evaluation reflects the importance of positive impacts of the RES procurements on New York's economy. The Incremental Economic Benefits criterion employed in this RFP is intended to differentiate bids based on their effectiveness at meeting this objective.

As a part of Step Two, Proposers will be invited to demonstrate all the necessary information and documentation to evaluate the Bid Facility for its contribution to each category. NYSERDA may request additional documentation as a part of its review of Step Two Bid Proposals.

Incremental Economic Benefits are those that a Proposer can demonstrate: (1) will accrue after an award from this RFP, and (2) would not have accrued but for the award of a contract under this RFP. Only those Incremental Economic Benefits falling within the categories defined below will be considered, and in no instance, will NYSERDA or its Technical Evaluation Panel (TEP) consider any indirect benefits or those created by any "multiplier effect" or other attribution method under which the creation of peripheral spending and jobs might be credited to direct capital infused into the economy. Proposers are not permitted to apply escalation rates or cost of living adjustments.

Incremental economic benefits previously claimed with respect to a Bid Facility that is subject to a pending award under a previous solicitation or that is the subject of a current NYSERDA RPS or RES Standard Form Agreement are not eligible for evaluation.

As described in Section XIV of the RFP, independent verification of the actual Incremental Economic Benefits of the Bid Facility, and comparison to the level of claimed Incremental Economic Benefits (Expected Total Dollars), will be required after the end of the first three years of the Contract Delivery Term where the Bidder will submit an economic benefits report prepared by a New York State certified, independent certified public accountant, demonstrating the actual Incremental Economic Benefits that resulted from the construction and operation of the Bid Facility under the categories and within the eligibility requirements listed in the RFP. The Economic Benefits Report will be funded at the Bidder's expense. Should the Bidder fail to reasonably demonstrate that the total dollar amount of Incremental Economic Benefits divided by Installed Bid Capacity, is at least 85% of Expected Total Dollars divided by the Bid Capacity, NYSERDA may at its option upon Notice to Seller, modify the Agreement by reducing the Bid Price payable for the remainder of the Contract Delivery Term.

INCREMENTAL ECONOMIC BENEFITS CATEGORIES

The total of 10 points for Incremental Economic Benefits has been distributed among four categories. The Proposer will provide the Expected Total Dollars for each category; the Expected Total Dollars will then be divided by the Bid Capacity of the Bid Facility for TEP evaluation purposes only.

The following table lists the Incremental Economic Benefits categories and the points available in each.

	Category	Maximum Points Awarded
1	Long-Term New York State Jobs	3.0
2	Payments/Benefits to New York State and/or its Municipalities	2.7
3	Payments for Renewable Fuels and Resource Access	2.3
4	In-State Purchases, Consumption of Goods, and Short-term Employment	2.0

The remainder of this Appendix will present the individual informational components of each of the four evaluation categories that make up the Incremental Economic Benefits criterion.

Additional information and instructions may be provided to each Proposer with the Notice of Qualification inviting the Proposer to submit a Step Two Bid Proposal.

CATEGORY 1: LONG-TERM NEW YORK STATE JOBS

Describe the degree to which the operation of the Bid Facility will directly create (add) long term jobs (jobs lasting more than 3 years) in New York. Examples of such jobs include, but are not limited to, those associated with operations and maintenance, plant management, or similar. List and describe the type of jobs including the position title, specific role and responsibilities, and the expected duration of such jobs. Provide the number of jobs, in Full Time Equivalents (FTEs), and the expected average annual salary/and or total compensation and direct benefits (excluding overhead for normal operations) for all jobs. Provide expected total dollars for compensation/salaries and benefits from the Award Notification Date through the end of the first three (3) Contract Years of operation (Expected Total Dollars).

CATEGORY 2: PAYMENTS/BENEFITS TO NEW YORK STATE AND/OR ITS MUNICIPALITIES

Describe the degree to which the operation of the Bid Facility will provide new or increased local property tax revenues to school districts, cities, towns or other taxing jurisdictions in New York, or alternatively, Payments in Lieu of Taxes (PILOT) or other

alternative taxing mechanisms and forms of compensation. List and describe separately all tax payment, PILOT arrangements and/or “host” community payment agreements with all affected New York jurisdictions. All other taxes, including New York State sales taxes and local sales taxes, paid by Seller are eligible only under Category 4. Provide expected total dollars paid to all taxing jurisdictions and municipal entities from the Award Notification Date through end of the first three (3) Contract Years of operation (Expected Total Dollars).

CATEGORY 3: PAYMENTS FOR RENEWABLE FUELS AND RESOURCE ACCESS

Describe the degree to which the operation of the Bid Facility will provide royalties, production-based payments, land lease or land use payments or other forms of compensation, associated with securing rights to or directly acquiring fuel or access to wind resources for the Bid Facility (e.g., wind, biomass, biogas). Examples include payments for leases of land in New York, payments associated with the production of electricity, fuel purchases of biomass sourced or harvested in New York, and purchases for landfill gas produced in New York. Payments for non-renewable fuels such as natural gas are not eligible for consideration in this category or any Economic Benefits category. Provide total dollars expected to be paid from the Award Notification Date through the end of the first three (3) Contract Years of operation (Expected Total Dollars).

CATEGORY 4: IN-STATE PURCHASES, CONSUMPTION OF GOODS, AND SHORT-TERM EMPLOYMENT

Describe the degree to which local and state economic activity will increase as a result of:

- a) the purchase and consumption of local goods and services by non-NY-resident workers, such as, but not limited to, food, lodging, vehicles, equipment, fuel, and/or
- b) the purchase of materials sourced from within New York such as, but not limited to, gravel, steel, concrete and similar materials and/or the purchase and use of equipment and products manufactured or assembled within New York and/or the use of rental equipment or similar supplies sourced from within New York. Wind turbine components not manufactured within New York State will not be considered and should not be included, and/or
- c) ongoing operations and maintenance expenses which are anticipated through the first three (3) years of Commercial Operation, and/or
- d) employment of New York workers on a short-term basis (less than 3 years). Illustrative examples include direct employment of NYS construction, rail and port workers, contractors and laborers, engineering or environmental service providers, consultants, financial service advisors, and legal service providers associated with the development and construction/modification of the Bid Facility. List and describe the type of jobs and the expected duration of such jobs. Provide the number of jobs, in Full Time Equivalents (FTEs), and the expected average annual salary and benefits for all jobs. Provide expected total dollars for salaries and benefits through the first three (3) Contract Years of operation.

List each type of purchase, service, or employment that will be used and provide total dollars, including New York State and local sales taxes, expected to be spent on all the purchases, consumption of local/in-state goods, or short-term employment from this category from the Award Notification Date through the end of the first three (3) Contract Years of operation (Expected Total Dollars).

APPENDIX 2 - PROJECT VIABILITY APPENDIX

TABLE OF CONTENTS

Introduction	46
Project Viability Categories	46
Category 1: Site Control	47
Category 1.A: Generation Facility Site Control	48
Category 1.B: Interconnection Right-of-Way Control	48
Supporting Evidence Documentation Required for Site Control	49
Category 2: Interconnection	49
Supporting Evidence Documentation Required for Interconnection	52
Category 3: Permitting	52
Supporting Evidence Documentation Required for Permitting	55
Category 4: Project Development	55
Supporting Evidence Documentation Required for Project Development	56
Category 5: Project Finance	57
Category 5.A: Financing Experience	57
Category 5.B: Hedging Plan	58
Supporting Evidence Documentation Required for Project Finance	59
Category 6: Resource Assessment	59
Supporting Evidence Documentation Required for Resource Assessment	61
Category 7: Contract Security Above the Minimum	61
Supporting Evidence Documentation Required for Contract Security Pledged	61

INTRODUCTION

The Bid Proposal evaluation process for RES Tier 1 REC solicitations includes the application of a Project Viability evaluation criterion that makes up 10% (10 points) of the Step Two scoring as described in Section XII(2), Project Viability of the RFP. The inclusion of the Project Viability evaluation reflects the importance of project feasibility and ultimate project completion toward meeting the RES procurement goals. Proposers will initially submit information and attachments with their Step One Threshold Eligibility Application Packages that will confirm that the Bid Facility meets the required Minimum Threshold Eligibility Criteria, though Proposers may include with their Step One application documentation that they have exceeded the Minimum Threshold Eligibility Criteria in any of the categories (see RESRFP17-1 Section IX).

If the progress by a Bid Facility exceeds the minimum threshold in any category, documentation as to the additional level of progress achieved should be provided by the Proposer in Step One.³¹ As a part of Step Two, Proposers will be invited to demonstrate that they have exceeded the required Minimum Threshold Eligibility Criteria, including but not limited to any additional progress made between the submittal dates for Steps One and Two.

As a part of the Step Two evaluation, the Technical Evaluation Panel (TEP) will award additional points to generation facilities that have demonstrably exceeded the Minimum Threshold Eligibility Criteria under the individual Project Viability categories described below. Projects achieving only the Minimum Threshold Eligibility Criteria will receive no points for Project Viability.

NYSERDA may request additional documentation as a part of its review of Step One Application Packages, Step Two Bid Proposals or both.

PROJECT VIABILITY CATEGORIES

The total of 10 points for Project Viability has been distributed among seven categories. For Categories 1 through 6, each Bid Proposal will be eligible for the maximum points available in that category, depending on the extent to which it exceeds the Minimum Eligibility Thresholds. For Category 7, points will be awarded in a manner proportionate to the amount of additional Contract Security pledged as compared to all other Bid Proposals.

³¹ For example, under Category 3, Permitting Progress, for a Bid Facility subject to Article 10, the documentation required to demonstrate achievement of the minimum threshold consists of a draft Public Involvement Program Plan (PIP). If a PIP has, in fact, been filed, attach a copy of the PIP that was filed. The filed PIP will satisfy the Minimum Eligibility Threshold and will also be considered as a part of the Project Viability evaluation in Step Two.

The following table lists the Project Viability categories and the points available in each:

	Category	Maximum Points Awarded
1	Site Control	2.0
2	Interconnection	2.0
3	Permitting	2.0
4	Project Development	1.0
5	Project Finance	1.0
6	Resource Assessment	1.0
7	Contract Security Above the Minimum	1.0

The remainder of this Appendix will present the individual informational components of each of the seven evaluation categories that make up the Project Viability criterion. **The tables shown below provide relevant details on descending levels of progress within each category.**

Additional information and instructions may be provided to each Proposer with the Notice of Qualification inviting the Proposer to submit a Step Two Bid Proposal.

CATEGORY 1: SITE CONTROL

The Site Control evaluation category has two subcategories: Generation Facility Site Control, and Interconnection Right-of-Way (ROW) Site Control.

The Minimum Eligibility Thresholds for Site Control are described in Section IX(2) of RESRFP17-1. They require that the Proposer have entered *an exclusivity agreement or letter of intent* with the site owner(s) for percentages of the site (depending on site size) and the Interconnection Right-of-Way.

Under Step Two, Generation Facility Site Control will be evaluated according to the proportion of the total land area where the Bid Facility and interconnection facilities are or will be sited that the Proposer has under its control through *ownership, executed lease or executed binding option for ownership or lease*.³²

³² Note that the Minimum Threshold Eligibility Criteria require the existence of exclusivity agreements or letters of intent. In order to receive additional points under Step Two, Proposers will be required to have ownership interests or lease agreements enforceable by the Proposer without further material agreement with the owner(s).

The Project Viability evaluation will award additional points based on the demonstration of additional site ownership or control. Proposed Bid Facilities that are currently in operation will receive maximum points awarded for this category.

CATEGORY 1.A: GENERATION FACILITY SITE CONTROL

Generation Facility Site Control Criterion		
Measure of Generator Site Control	Percent of Site Controlled (as a % of total parcel area)	Maximum Points Awarded
Own, executed lease for, or executed binding option for a parcel	100%	1.50
Own, executed lease for, or executed binding option for a parcel	75%	1.25
Own, executed lease for, or executed binding option for a parcel	50%	1.00
Own, executed lease for, or executed binding option for a parcel	25%	0.50

CATEGORY 1.B: INTERCONNECTION RIGHT-OF-WAY CONTROL

Interconnection right-of-way (ROW) control will be evaluated and awarded points under Step Two by the level of progress toward ROW control that the Proposer has achieved through either *ownership, executed lease, executed option, or by virtue of the interconnection ROW being controlled by or assignable to the interconnecting utility* that will own interconnection facilities. Proposed Bid Facilities that are currently in operation will receive maximum points awarded for this category.

Interconnection ROW Control Criterion	Maximum Points Awarded
100% of total area is either (i) owned, or under executed lease or executed binding option by the Proposer, <i>or</i> (ii) controlled by or assignable to the interconnecting utility that will own interconnection facilities	0.50
50 % of total area is either (i) owned, or under executed lease or executed binding option by the Proposer, <i>or</i> (ii) controlled by or assignable to the interconnecting utility that will own interconnection facilities	0.25

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR SITE CONTROL

Unless the Bid Facility is currently in operation, the Proposer may demonstrate that it has exceeded the Minimum Threshold Eligibility Criteria for Generation Facility and ROW Site Control by providing updated site control maps and summary descriptions by parcel, demonstrating the percentage of the site controlled.

CATEGORY 2: INTERCONNECTION

Proposer demonstration of progress toward generation facility interconnection (IC) differs based on the size of the generation facility and the jurisdictional authorities governing the interconnection (i.e., FERC, a regional transmission operator,³³ a state agency, or a non-US agency).

The Minimum Eligibility Thresholds for Interconnection are described in Section IX(2) of RESRFP17-1.

The following two tables present the criteria that will be used to evaluate interconnection progress in excess of the Minimum Eligibility Threshold. The first table is relevant to most grid-connected generators in the United States and the second table is relevant to Canadian generators, generators not in other categories, and eligible behind-the-meter (BTM) generators.

The Project Viability evaluation will award additional points based on the demonstration of progress in the interconnection process; Bid Facilities in operation or those with executed interconnection (IC) agreements will be awarded the maximum points available for this category.

³³ New York Independent System Operator (NYISO) or adjacent RTOs that include New England Independent System Operator (NE-ISO), PJM.

Grid-Connected Generators (U.S.)

Large Generator (>20 MW) NYISO or similar IC Authority in Adj. U.S. Control Area ³⁴	Small Generator (up to 20 MW) NYISO or similar IC Authority in Adj. U.S. Control Area ³⁵	Small Generator Non-FERC Interconnection ³⁶	Maximum Points Awarded
Operating/interconnected, or executed IC agreement or equivalent relevant to scale and jurisdictional requirements			2.0
Evidence provided that Facilities Study is complete and Proposer has accepted the Cost Allocation, or equivalent evidence of progress	Evidence provided that the utility company has completed the Coordinated Electric System Interconnection Review (CESIR), or equivalent evidence of progress		1.6
Evidence provided that Feasibility Study and System Impact Study (SIS) (or equivalent) are complete. Documentation of agreement with ISO has been reached to forego either of these, if relevant	[no process equivalent, n/a]		1.2
Evidence provided that Feasibility Study (or equivalent) is complete	Evidence provided that utility has provided at least a Preliminary Analysis Report (or equivalent) that indicates the project is feasible including cost estimate for any required upgrades		0.6

³⁴ FERC Jurisdiction, Large Generator Interconnection

³⁵ FERC Jurisdiction, Small Generator Interconnection, inclusive of 2 MW Fast Track

³⁶ Connecting Transmission Owner (CTO) Interconnection under state jurisdiction (typically utility distribution less than 5MW).

Canadian Generators, Generators Not in Other Categories, Eligible BTM Generators

Ontario & Quebec; Generators not in another category	Behind-the-Meter Generators (if eligible)	Maximum Points Awarded
Operating, interconnected, or has secured Ontario Energy Board Leave to Construct or a Generator License or equivalent.	Operating/interconnected.	2.0
Evidence provided that facilities study or equivalent is complete and Proposer has accepted the cost allocation	Formal determination from the interconnecting utility resulting from a completed feasibility study that IC is permissible	1.6
Evidence provided that feasibility study and System Impact Study (SIS) (or equivalent) are complete. Documentation of agreement with IC authority has been reached to forego either of these, if relevant	Determination from the interconnecting utility that IC is feasible but that further study is necessary	1.2
Evidence provided that System Feasibility Impact Study (for IESO) (or equivalent) is complete	Informal determination from the interconnecting utility that IC is feasible	0.6

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR INTERCONNECTION

The Proposer may demonstrate that it has exceeded the Minimum Threshold Eligibility Criteria for Interconnection by providing the following documents with either its Step One Minimum Threshold Eligibility Application (preferred) or its Step Two Bid Proposal:

- A brief narrative summary of IC status including (but not limited to) stage of IC process completed (with applicable dates) and underway (with expected dates), IC authority, and if applicable, queue numbers.
- Copies of associated agreements or other evidence supporting the claimed level of progress as listed in the tables above.

CATEGORY 3: PERMITTING

The Minimum Eligibility Thresholds for Permitting are described in Section IX(2) of RESRFP17-1.

The following two tables present the criteria necessary to evaluate permitting progress in excess of the Minimum Eligibility Thresholds. The first table covers informational requirements for wind, ground mounted solar, biomass, biogas, hydroelectric, and generators in other jurisdictions. The second table covers informational requirements for building mounted solar, fuel cells, and ocean and tidal energy facilities.

The Step Two Project Viability evaluation will award additional points based on the level of progress in the permitting process; projects in operation or those that have acquired all non-ministerial necessary permits and approvals will be awarded the maximum points available for this category.

Wind, Ground-Mounted Solar, Biomass/Biogas, Hydro

Hydroelectric in U.S. Jurisdictions ³⁷	Wind, Ground-Mounted Solar in NY	Biomass / Biogas in NY	Wind, Ground-Mounted Solar, Biomass or Biogas Requirements for Jurisdictions other than NY, and Canadian Hydroelectric	Maximum Points Awarded
Bid Facility is already operating, has permission to operate or has secured all non-ministerial permits.				2.0

³⁷ This approach does not reduce points for hydro licenses that may expire during the proposed contract term.

Hydroelectric in U.S. Jurisdictions ³⁷	Wind, Ground-Mounted Solar in NY	Biomass / Biogas in NY	Wind, Ground-Mounted Solar, Biomass or Biogas Requirements for Jurisdictions other than NY, and Canadian Hydroelectric	Maximum Points Awarded
Draft application including Exhibit E (Environmental Report) or Preliminary licensing proposal submitted	All requirements under State Environmental Quality Review Act (SEQRA) fully defined or fulfilled. Letter of negative declaration or conditional negative declaration from lead agency; or final Environmental Impact Statement (EIS) accepted. If applicable, provide documentation that Article 10 hearing has been conducted.		All requirements for environmental approval defined or fulfilled (e.g. Environmental Compliance Approval [ECA] or Environmental Activity and Sector Registry [EASR] registration in Ontario; Environmental Quality Act [EQA] assessment in Quebec)	1.6
Provide Environmental Impact Study Plan	Letter or signed approval form demonstrating that Local Zoning/ Ordinance requirements (such as Special Use/ Conditional Use Permit [SUP/CUP] or Permit by Rule [PBR] satisfied	Letter or signed approval form demonstrating that Local Zoning/ Ordinance requirements (such as CUP/SUP/PBR) satisfied. Draft Air Permit issued for review by New York State Department of Environmental Conservation (DEC) or equivalent authority	Local Zoning/Ordinance requirements satisfied (e.g. confirmation / comment letters from Ministry of Natural Resources [MNR] and Ministry of Tourism, Culture and Sport [MTCS] [ON] obtained)	1.2

Hydroelectric in U.S. Jurisdictions ³⁷	Wind, Ground-Mounted Solar in NY	Biomass / Biogas in NY	Wind, Ground-Mounted Solar, Biomass or Biogas Requirements for Jurisdictions other than NY, and Canadian Hydroelectric	Maximum Points Awarded
Evidence that FERC licensing process has been initiated and notice of intent filed	Documentation that local zoning process underway demonstrated by initial applications and preliminary documents having been submitted. If applicable, evidence that the Lead Agency for SEQRA process identified and engaged. If applicable, evidence that Article 10 public involvement plan (PIP) has been submitted.			0.4

Building Mounted Solar, Fuel Cells, Ocean and Tidal, All Jurisdictions

Building-Mounted Solar	Fuel Cells	Ocean & Tidal ³⁸	Maximum Points Awarded
Operating or has secured all permits	Operating or has secured all permits	Bid Facility is already operating, has permission to operate or has secured all non-ministerial permits.	2.0
In addition to meeting all requirements below, all other ministerial permit applications submitted consistent with list provided in threshold eligibility requirements	In addition to meeting all requirements below, all other ministerial permit applications, and air permit application, submitted consistent with list provided in the threshold eligibility requirements	All requirements for environmental approval defined or fulfilled (e.g. ECA or EASR registration in Ontario; EQA assessment in Quebec)	1.6

³⁸ To meet the “Key environmental & siting permit needed to proceed with the project is complete” scoring level, facilities must demonstrate that all FERC and state environmental/siting permits are complete and all other non-ministerial environmental/siting documents are approved or under final review. The key environmental/siting permits are those that are necessary for construction of the Bid Facility to proceed. To demonstrate that other documents are approved or under final review, the Proposer must identify all necessary permits and the status associated with their review and approval.

Building-Mounted Solar	Fuel Cells	Ocean & Tidal ³⁸	Maximum Points Awarded
Copy of construction permit issued by local jurisdictional authority	Copy of construction permit issued by local jurisdictional authority. For projects requiring zoning applications, letter or signed approval form demonstrating that local zoning/ ordinance requirements satisfied.	Evidence that the key environmental & siting permit needed to proceed with the project is complete	1.2
Construction permit application submitted	Construction permit application submitted	Evidence that the permitting process has started (i.e. key permit application submitted)	0.4

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR PERMITTING

The Proposer may demonstrate that it has exceeded the Minimum Threshold Eligibility Criteria for Permitting by providing the following documents with either its Step One Minimum Threshold Eligibility Application (preferred) or its Step Two Bid Proposal:

- List of permits and approvals and evidence supporting level of progress (e.g. letters, permits) as described in the tables above.

CATEGORY 4: PROJECT DEVELOPMENT

The Minimum Eligibility Thresholds for Project Development are described in Section IX(2) of RESRFP17-1.

The bidding company or the principals in its development team will be evaluated according to the extent of their prior experience in successfully developing similar projects.

The Step Two Project Viability evaluation will award additional points based on the level of Project Development experience demonstrated; proposals that demonstrate the development of two or more facilities of comparable scale³⁹ and similar technology,⁴⁰ at least one of which is in the state in which the Bid Facility is located, will be awarded the maximum points available for this category. Proposed Bid Facilities that are currently in operation will receive maximum points awarded for this category.

³⁹ Comparable scale is 50% or more of the proposed capacity.

⁴⁰ Similar technology is the same resource and prime mover, e.g. solar, wind. It is not meant to distinguish between different solar technologies, for example.

Developer / Corporate Experience ^{41 42}	Maximum Points Awarded
Have developed two or more facilities of comparable scale ³⁹ and similar technology ⁴⁰ , at least one of which is in the state in which the facility is located.	1.0
Have developed two or more facilities of comparable scale ³⁹ and similar technology ⁴⁰ , or one or more facilities of comparable scale ³⁹ and similar technology ⁴⁰ in the state in which the facility is located.	0.8
Have developed one or more facility of similar technology ⁴⁰ and comparable scale ³⁹ , or two or more facilities of any renewable energy technology of comparable scale ³⁹	0.6
Have developed two or more facilities of any renewable energy technology of similar or larger scale ⁴³	0.4
Have developed one or more facilities of any renewable energy technology of similar or larger scale ⁴³ , or with renewable energy projects which in aggregate are of equal total capacity	0.2

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR PROJECT DEVELOPMENT

Unless the Bid Facility is currently in operation, the Proposer may demonstrate that it has exceeded the Minimum Threshold Eligibility Criteria for Project Development by providing the following documents with its either its Step One Minimum Threshold Eligibility Application (preferred) or Step Two Bid Proposal:

- List of specific projects successfully developed, specifying the nameplate capacity, technology⁴⁴, commercial operation date (COD), and location

⁴¹ The bidding company or the principals in its development team must have the required experience successfully developing projects as indicated in this table. Experience of vendors or contractors to the bidding company or the principals in its development team **do not count** towards this experience requirement.

⁴² If the Proposer is proposing a Bid Facility with a combination of generation and energy storage; for such a proposal to receive any points above the minimum threshold, the Proposer must also demonstrate its level of experience in developing at least one energy storage system of similar or larger scale using the same technology as proposed. The Proposer's experience with energy storage will be evaluated on the same scale as shown on the table, by replacing renewable energy technology, wherever it appears, with energy storage using a similar technology.

⁴³ 'Similar scale' is defined as follows: A project of at least 33% of the proposed Bid Facility capacity; or A project of at least 10% of the proposed Bid Facility capacity if the Proposer has also successfully completed the same interconnection process as required for the Bid Facility.

⁴⁴ Categorized by resource and prime mover, e.g. solar; e.g., wind. Not meant to distinguish between different solar technologies, for example.

supporting the claimed scoring level; for each project, identify whose experience is being claimed (e.g., corporate or specific individual that is a Proposer principal).

CATEGORY 5: PROJECT FINANCE

The Minimum Eligibility Thresholds for Project Finance are described in Section IX(2) of RESRFP17-1.

Proposals will be evaluated according to the level project financing experience of the Proposer, a Proposer's affiliate, or certain Proposer's principals, and the level of progress with respect to developing and implementing an energy and capacity market commodity revenue hedging plan, as described in the two tables below.

CATEGORY 5.A: FINANCING EXPERIENCE

Experience of the Proposer, the Proposer's affiliate, or a senior executive or finance professional who is a principal of the Proposer ⁴⁵ in financing projects ⁴⁶	Maximum Points Awarded
(i) The proposed Bid Facility is operating, or (ii) Evidence that the entirety of the proposed Bid Facility has been financed and is under construction ⁴⁷ , or (iii) Evidence to demonstrate that project financing for 100% of installed cost has been secured either through a specific "balance sheet" financing commitment or project financing, without contingencies other than award of a NYSERDA contract, interconnection approval and receipt of all necessary permits	0.5
Have financed at least 3 projects of at least the same capacity (MW) and similar technology ⁴⁸	0.38
Have financed at least 2 projects of at least the same capacity (MW) and similar technology ⁴⁸ OR at least 3 renewable energy projects of at least the same capacity (MW)	0.25

⁴⁵ Experience of vendors or contractors to the bidding company or the principals in its development team **do not count** towards this experience requirement.

⁴⁶ If the Proposer is proposing a Bid Facility with a combination of generation and energy storage; for such a proposal to receive any points above the minimum threshold, the Proposer must also demonstrate that it has experience in financing at least one energy storage system of similar or larger scale using the same technology.

⁴⁷ For projects described as 'under construction', Proposers must provide evidence of authorization to proceed, or similar, for an EPC contract, or a major equipment purchase or similar material non-refundable capital commitment to constructing the project. A project qualifying for federal tax credits based on IRS begun construction thresholds or safe harbors will not qualify to be considered 'under construction' for this purpose solely by virtue of meeting associated IRS thresholds for PTC or ITC qualification, although activity to meet such qualification may be provided as contributing evidence.

⁴⁸ Same resource and prime mover, e.g. solar; e.g., wind. Not meant to distinguish between different solar technologies, for example.

Experience of the Proposer, the Proposer's affiliate, or a senior executive or finance professional who is a principal of the Proposer ⁴⁵ in financing projects ⁴⁶	Maximum Points Awarded
Have financed at least 1 project, or a portfolio of projects financed together, of at least the same capacity (MW) and similar technology ⁴⁸ OR financing of any electric generation technology over the past three years that in aggregate amount to at least twice the same capacity (MW) of the proposed Bid Facility.	0.13

CATEGORY 5.B: HEDGING PLAN

Plan for Hedging Energy and Capacity Commodities Scoring Scale and Associated Standard	Maximum Points Available
Evidence provided of energy and capacity hedge commitment conditioned only on proposed Bid Facility reaching commercial operation, corresponding to at least 90% of the [Bid Quantity * Contract Tenor].	0.5
Evidence provided of energy hedge commitment conditioned only on proposed Bid Facility reaching commercial operation, corresponding to at least 75% of the [Bid Quantity * Contract Tenor]; OR Bid Facility to have at least 80% of production consumed behind a retail meter or eligible for Net Energy Metering.	0.4
Specific and credible ⁴⁹ hedging/offtake plan with one or more creditworthy entities, and identified for at least 75% of the [Bid Quantity * Contract Tenor], and documentation of experience securing energy commodity hedge of similar scale.	0.3
Specific and credible ⁴⁹ hedging/offtake plan with one or more creditworthy entities, and identified for at least 40% of the [Bid Quantity * Contract Tenor].	0.2
Specific and credible ⁴⁹ hedging/offtake plan with one or more creditworthy entities, and identified for at least 20% of the [Bid Quantity * Contract Tenor].	0.1

⁴⁹ The hedging or offtake plan must be specific and credible, and if a hedge has been entered into, the hedging counterparty must be minimally creditworthy. This means that one or more hedging/PPA counterparties are named in the plan, and that counterparty credit ratings (by Moody's, S&P, or Fitch) are provided. If the counterparty is not rated by a major rating agency, then information sufficient to determine the counterparty's ability to satisfy the terms of the hedging plan or PPA must be provided (e.g., audited financial statements). The plan shall include the quantity and duration of the hedge or PPA, by counterparty. If the hedging counterparty is an end-use customer, information about the customer type (institutional, governmental, commercial, industrial), and its load should be provided.

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR PROJECT FINANCE

Unless the Bid Facility is currently in operation, the Proposer may demonstrate that it has exceeded the Minimum Threshold Eligibility Criteria for Project Finance by providing the following documents with its either its Step One Minimum Threshold Eligibility Application (preferred) or Step Two Bid Proposal:

- A list of specific projects successfully developed, specifying the nameplate capacity, technology⁵⁰, commercial operation date (COD), and location
- Summary of financing including any hedging commitments, plan or strategy; documentation of financial closing, or in the event of balance sheet financing or project financing, documentation supporting use and commitment thereof, as appropriate.

CATEGORY 6: RESOURCE ASSESSMENT

The Minimum Eligibility Thresholds for Resource Assessment are described in Section IX(2) of RESRFP17-1.

Proposals will be evaluated based on the level of progress in assessing the quality and accessibility of the renewable resource for the proposed Bid Facility. The content of a resource assessment varies by generating technology. The following tables present informational requirements necessary to evaluate the quality of the Proposer's resource assessment based on the resource type.

⁵⁰ Categorized by resource and prime mover, e.g. solar; e.g., wind. Not meant to distinguish between different solar technologies, for example.

Biomass/Biogas, Solar, Wind, Hydro, Ocean & Tidal Scoring Scale and Associated Standard

Biomass/ Biogas	Solar	Wind	Maximum Points Awarded
Provide evidence of contract of five years' duration or longer for the required resource with supplier for >75% of fuel required ⁵¹	Provide a report from 3rd party independent Professional Engineer or analyst ⁵² , accounting for site-specific shading, refining the P(50) annual energy production estimate submitted in Step One. ⁵³	Provide a report from 3 rd -party independent Professional Engineer, meteorologist or analyst ⁵² refining the P(50) annual energy production submitted in Step One using proposed project layout, and based on at least one year of wind data of collected at the Bid Facility site, specifying all relevant loss factors. ⁵⁴	1.0
Provide evidence of 2+ year contract for required resource with supplier for >75% of fuel required ⁵¹	n/a	n/a	0.8

⁵¹ For biogas, evidence of fuel self-supply may be substituted.

⁵² 3rd-party report must be performed by independent expert unaffiliated with the Proposer.

⁵³ The report must include the nearby measuring point/station used or system performance model for insolation data; and the specific system design input parameters used to generate the profile, using assumptions consistent with the proposed Bid Facility, including the system's azimuth, tilt, whether fixed or single axis tracking is used, inverter efficiencies, and any other parameters varied from default assumptions.

⁵⁴ Supporting documentation must reference the source of data and the assumed turbine power curve.

Hydro, Ocean, Tidal and Fuel Cell Scoring Scale and Associated Standard

Hydro, Ocean & Tidal	Fuel Cells	Maximum Points Awarded
Provide a report from 3 rd party independent Professional Engineer ⁵² refining the P(50) annual energy production estimate submitted in Step One.	Provide evidence that (i) system is interconnected and operating, or (ii) delivery service is currently in place to the site to provide natural gas at sufficient pressure and quantity to operate the system as proposed, and natural gas supply is provided either under gas utility tariff, or under a supply contract for >75% of fuel required.	1.0

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR RESOURCE ASSESSMENT

The Proposer may demonstrate that it has exceeded the Minimum Threshold Eligibility Criteria for Resource Assessment by providing the following documents with its either its Step One Minimum Threshold Eligibility Application (preferred) or Step Two Bid Proposal:

- The tables above describe all supporting evidence required to document progress in excess of the Minimum Threshold Eligibility Criteria.

CATEGORY 7: CONTRACT SECURITY ABOVE THE MINIMUM

Under this category, Proposers may pledge to commit amounts above the \$9/MWh minimum required contract security specified in Section XIII(3) of RESRFP17-1; the minimum required amount plus any amount pledged must be provided within 10 business days following Award Notification.

Scoring Scale and Associated Standard	Contract Security Pledged	Maximum Points Awarded
100%	Highest Proposer pledge per MWh above the minimum gets full credit for this category.	1.0
Scaled to maximum between 0 – 100% of category points	$[\text{bid pledged security } (\$/\text{MWh}) / \text{maximum bid security } (\$/\text{MWh})] * \text{Maximum points}$	Up to 0.99; Scaled

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR CONTRACT SECURITY PLEDGED

- Proposer will be asked to indicate, if elected, a pledge of additional security in the Step Two Bid Proposal.

APPENDIX 3 - OPERATIONAL FLEXIBILITY AND PEAK COINCIDENCE APPENDIX

TABLE OF CONTENTS

Introduction	63
Operational Flexibility and Peak Coincidence Categories	63
Category 1: Load Matching	64
Supporting Evidence Documentation Required for Load Matching	65
Category 2 - Dispatchability	66
Supporting Evidence Documentation Required for Dispatchability	67
Category 3. Energy Storage (if applicable).....	67
Supporting Evidence Documentation Required For Energy Storage.....	68

INTRODUCTION

The Bid Proposal evaluation process for RES Tier 1 REC solicitations includes the application of an Operational Flexibility and Peak Coincidence evaluation criterion that makes up 10% (10 points) of the Step Two scoring as described in Section XII(3) Operational Flexibility and Peak Coincidence of the RFP. The inclusion of this criterion is intended to incentivize renewable resources that provide grid services for cost minimization and reliability by addressing integration issues resulting from increased penetration of intermittent renewables, better matching generation to load, and encouraging dispatchable resources to balance the electric system, optimize generation dispatch, minimize operating reserve requirements, and address grid congestion and constraints. The Operational Flexibility and Peak Coincidence criterion employed in this RFP are intended to differentiate bids based on their effectiveness at meeting these objectives, as best possible under current market rules.

As a part of Step Two, Proposers will be invited to demonstrate all the necessary information and documentation to evaluate the Bid Facility for its contribution to each category. NYSERDA may request additional documentation as a part of its review of Step Two Bid Proposals.

OPERATIONAL FLEXIBILITY AND PEAK COINCIDENCE CATEGORIES

The total of 10 points for Operational Flexibility and Peak Coincidence has been distributed among three categories.

The following table lists the Operational Flexibility and Peak Coincidence categories and the points available in each:

	Category	Maximum Points Available
1	Load Matching	4.0
2	Dispatchability	3.0
3	Energy Storage (if applicable)	3.0

The remainder of this Appendix will present the individual informational components of each of the three evaluation categories that make up the Operational Flexibility and Peak Coincidence criterion. **The tables shown below provide relevant details on levels of scoring within each category.**

Additional information and instructions may be provided to each Proposer with the Notice of Qualification inviting the Proposer to submit a Step Two Bid Proposal.

CATEGORY 1: LOAD MATCHING

The Load Matching category evaluates a Bid Facility's ability to avoid over-generation, or producing energy at times and in locations where production can be problematic. Over-generation, for purposes of this criterion, means generation during periods when the system cannot accommodate the excess generation. The quantity of hours with negative locational based marginal prices, (LBMPs or spot energy prices) are a primary market indicator of locations where there is insufficient load to absorb the excess energy and/or transmission to export the energy. Production during these times in these zones could result in curtailments (including inducing curtailment of other renewable energy sources), and generally less efficient operation of the system. Additional generation, especially with production occurring during these low net load (or low LBMP) hours, could pose even greater issues with higher penetration.

This metric seeks to score a Bid Facility's impact accordingly with higher scores favoring resources that are less likely to exacerbate issues of curtailment, negative energy pricing, and low-load dispatch challenges based on a Bid Facility's expected energy production during the hours with lowest load in the Bid Facility's location.

The Load Matching category therefore evaluates proposals based on the location (NYISO market Zone) of the Bid Facility. For Bid Facilities located outside of the NYISO market Zones, the applicable Zone for evaluation purposes is the NYISO delivery Zone for the Bid Facility.

Scoring will reflect periods where adding additional generation could create or exacerbate over-generation. Bid Facilities located in Zones G through K will receive 100% of the category points and do not need to provide further documentation to obtain the maximum points in this category.⁵⁵ Bid Facilities located in Zones A through F will receive a score in proportion to its capacity factor during the lowest ten percent (10%) of historic annual load⁵⁶ hours for NYISO Zones A through F in aggregate. The lowest ten percent (10%) of historic annual load hours for NYISO Zones A through F in aggregate is called the Over-Generation Period (OGP).

⁵⁵ Over-generation resulting from additional electricity production is typically not an issue in Zones G-K, but poses potential issues in Zones A-F.

⁵⁶ Historic annual load will be based on 2016 data adjusted for leap year (removal of February 29th).

The Load Matching category scoring approach is summarized in the table below:

Bid Facility Zone ⁵⁷	Scoring	Maximum Points Awarded
Zones G-K	100% of category points (no P(50) annual expected hourly production profile is required)	4.0
Zones A-F	Score⁵⁸ = 75% of category points * [1-CF_{OGP}] where CF _{OGP} = Bid Facility's average capacity factor during the lowest 10% of aggregated Zone load hours	Up to 3.0; Scaled ⁵⁸

For Bid Facilities proposing co-located energy storage, the score for this category is based on the characteristics of only the Bid Facility. The role of energy storage in potentially reshaping the production profile is captured in the Energy Storage category.

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR LOAD MATCHING

For Bid Facilities located in Zones A through F, the applicable capacity factors for evaluation purposes will be determined based on the Bid Facility's technology, as follows:

Solar: Proposers must provide, in a spreadsheet provided by NYSERDA, a typical year's 8,760 hourly production profile consistent with the P(50) output from the system performance model used in the Step One Application or, if applicable, the report from a 3rd party independent Professional Engineer or analyst as provided in Step Two (for Project Viability, Category 6).

The hourly production profile will be used by the TEP to calculate the system's capacity factor during the bottom 10% of load hours based on annual aggregate NYISO load data for Zones A through F.

Wind: Proposers must provide, in a spreadsheet provided by NYSERDA, a typical year's 8,760 hourly production profile consistent with the P(50) output from the model used in the Step One Application or, if applicable, the report from a 3rd party independent Professional Engineer, meteorologist or analyst as provided in Step Two (for Project Viability, Category 6).

⁵⁷ For imports, the applicable Zone for evaluation purposes is the NYISO delivery Zone for the Bid Facility.

⁵⁸ A Bid Facility with 0% average capacity factor (or no generation) during the lowest 10% of aggregated Zone load hours would receive 75% or 3.0 points of the Load Matching points available. A Bid Facility with 100% average capacity factor during the lowest 10% of aggregated Zone load hours would receive 0% or 0 points of the Load Matching points available. Bid Facilities with average capacity factors between 0% and 100% would receive between 75% (3.0 points) and 0% (0 points) of Load Matching points available, based on the Bid Facility's average capacity factor.

The hourly production profile will be used by the TEP to calculate the system's capacity factor during the bottom 10% of load hours based on annual aggregate NYISO load data for Zones A through F.

Biogas, biomass, landfill gas, and fuel cells, and ocean facilities: These Bid Facilities will be assigned default capacity factors based on an assumption of equal production in every hour. The assumed capacity factor during the lowest 10% of load hours will therefore be treated as 95%.

Hydroelectric and tidal facilities: Proposers must provide, in a spreadsheet provided by NYSERDA, a typical year's 8,760 hourly production profile consistent with the P(50) output used in the Step One Application or, if applicable, the report from a 3rd party independent Professional Engineer, as provided in Step Two (for Project Viability, Category 6).

The hourly production profile will be used by the TEP to calculate the system's capacity factor during the bottom 10% of load hours based on annual aggregate NYISO load data for Zones A through F.

CATEGORY 2 - DISPATCHABILITY

This category addresses the concern associated with the potential for increasing integration costs that may be experienced to accommodate increasingly higher intermittent resource penetration. The purpose of the Dispatchability category is to attribute points relative to a Bid Facility's ability to mitigate future system integration burdens on the system at higher future renewable energy penetrations.

Scores in this category will favor Bid Facilities that place the least integration burden on the system. The TEP will assign category points based on the characteristics listed in the table below. For Bid Facilities proposing co-located energy storage, the score for this category is based on the characteristics of only the Bid Facility (the role of energy storage in potentially reshaping the production profile is captured in the Energy Storage category). **Imports are not eligible for Dispatchability points.**

Characteristic	Eligible Resource	Maximum Points Awarded
Dispatchable or Predictable resources visible to NYISO for resource commitment purposes	Biomass, hydroelectric, biogas, landfill gas and fuel cell	3.0

Characteristic	Eligible Resource	Maximum Points Awarded
Intermittent and variable generation included in NYISO forecast and required to provide the NYISO Real Time economic offers as flexible resources	Wind ⁵⁹	2.0
Intermittent and variable generation included in NYISO forecast	Solar	1.0
Not visible in advance to NYISO	Behind-the-meter	0

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR DISPATCHABILITY

All Bid Facilities located within the NYCA will be scored based on the Bid Facility's eligible technology as described in the table above; supporting evidence is not required.

CATEGORY 3. ENERGY STORAGE (IF APPLICABLE)

Energy storage can provide various grid services and operational flexibility benefits, such as load shifting, regulation, operating reserves, and local distribution support. The bigger the system (capacity relative to the coupled renewable energy system) and the more hours of storage available (MWh relative to MW capacity), the greater the benefits. However, market rules today are not clear as to how energy storage can qualify to provide those services to NYISO, the electric distribution company, or the generator.

Thus, contributions of energy storage cannot be easily measured, but potential contributions can be valued. For the purposes of the Operational Flexibility and Peak Coincidence evaluation criteria, this scoring category values the ability to move energy over time to address the full range of challenges posed by intermittent renewables.

For purposes of this RFP, Bid Facilities may propose a co-located electrical storage installation, subject to eligibility criteria specified in Section VII(B) and XI(C) of this RFP.

⁵⁹ Wind is required to provide to NYISO real-time economic offers per Technical Bulletin 154: http://www.nyiso.com/public/webdocs/markets_operations/documents/Technical_Bulletins/Technical_Bulletins/Technical_Bulletins/tb_154.pdf

TEP scoring will be based on a combination of Effective Hours of Storage and the Capacity Ratio where:

$$\text{Effective Hours of Storage}^{60} = \text{Storage Energy (MWh)} / \text{Storage Capacity (MW)}$$

$$\text{Capacity Ratio} = \text{Storage Capacity (MW)} / \text{Bid Facility Capacity (MW)}$$

Energy Storage Scoring Matrix (Maximum Points Available):

		Capacity Ratio			
		0-5.00%	5.00-9.99%	10.00-14.99%	> 15.00%
Effective Hours of Storage	1 hour	1.35	2.05	2.30	2.50
	2 hours	1.50	2.20	2.45	2.70
	3 hours	1.60	2.35	2.60	2.85
	4+ hours	1.75	2.50	2.75	3.00

SUPPORTING EVIDENCE DOCUMENTATION REQUIRED FOR ENERGY STORAGE

Proposers must provide:

- Documentation of meeting the energy storage qualification requirements in Section XI(C).
- Documentation of the physical/technical parameters, i.e. the peak capacity (MW) and the energy (MWh) capability of the energy storage system, sufficient for the TEP to calculate a score for this category.

⁶⁰ Bid Proposal must have a minimum of 1 hour Effective Hours of Storage to be considered for points in this category.

APPENDIX 4 - NYSERDA AND NYPA FREQUENTLY ASKED QUESTIONS

- 1) Will bid submissions be shared between NYSERDA and NYPA?
 - a. The NYSERDA solicitation is separate from the NYPA solicitation, and both NYPA and NYSERDA will be following their respective guidelines for the administration of their solicitations. To facilitate the coordination of the solicitations, Proposers are required to complete a NYSERDA/NYPA Coordination Form (when submitting a NYSERDA Step Two Bid Proposal) which will be shared between NYSERDA and NYPA. The bid submissions themselves will not be shared.
- 2) What if one Bid Facility is selected in both solicitations?
 - a. Mechanisms are in place so that a proposal cannot be selected for both solicitations. If a Proposer elects to participate in both solicitations, on October 31, 2017 the Proposer will be notified of their status in the NYPA solicitation and based on that information, should choose whether to remain in NYSERDA's process. If a Proposer remains in both solicitations and the Proposer receives an award from NYSERDA as a part of NYSERDA's initial award group, it will be automatically removed from NYPA's solicitation. Detailed guidance, including circumstances where a waitlist is established by NYSERDA, can be found in Section V of NYSERDA's RFP and Section 6 of NYPA's RFP, and should be reviewed carefully by those Proposers that choose to submit proposals in both solicitations.
- 3) What's the difference between the solicitations?
 - a. The solicitations seek different products. NYSERDA is seeking a REC only product for up to a 20-year term. NYPA is seeking a variety of products, including bundled and REC only products at different term lengths. Please refer to each solicitation for the specific products requested.
- 4) Will NYSERDA be present at the Proposer's conference for NYPA?
 - a. No, NYSERDA will be hosting a Proposer's webinar on June 14, 2017. Questions on coordination are welcome at both events, and Proposers are encouraged to submit their questions in writing to facilitate a written response.
- 5) Will staying in the NYPA solicitation preclude the Bid Facility from bidding into future NYSERDA solicitations?
 - a. No. If a proposal proceeds through the NYPA solicitation process and is ultimately not chosen, it can enter into future NYSERDA solicitations. Furthermore, if a proposal is in contract negotiations with NYPA if a subsequent NYSERDA solicitation commences, it is free to bid into

NYSERDA's subsequent solicitation, but should indicate to NYSERDA its status with NYPA and withdraw from NYSERDA's future solicitations if it executes a contract with NYPA.

- 6) If a proposal is chosen by NYSERDA, how would it withdraw from NYPA's solicitation?
 - a. If a proposal receives an award from NYSERDA as part of NYSERDA's initial award group, and is still in NYPA's solicitation, it will be automatically withdrawn from NYPA's solicitation.
- 7) Can different Bid Facilities be submitted to each RFP?
 - a. Yes. If different Bid Facilities are submitted to each RFP, the coordination guidelines do not apply. However, the submissions must follow the rules in Section V of the NYSERDA RFP and Section 6 of the NYPA RFP. The Proposer may not submit the same Bid Facility in both solicitations and represent it as a different project to each. Products from a single facility may also not be split between the two solicitations.
- 8) If a Bid Facility is selected in the NYSERDA RFP but then does not enter into a contract, is the Bid Facility still eligible for the NYPA RFP?
 - a. If a Bid Facility is included in NYSERDA's initial award group, it is then excluded from NYPA's solicitation. If the Bid Facility is waitlisted with NYSERDA, and declines a NYSERDA award, the Bid Facility may remain in NYPA's solicitation.

**Attachment A – Instructions for Electronic Submission of the
Threshold Eligibility Application**

NYSERDA RESRFP17-1

Applications Due: July 13, 2017 5 p.m. EDT

Please read all instructions before applying.

Section A. Important Reminders Before Applying

- Visit [NYSERDA's Renewable Energy Standard \(RES\) Tier 1 Solicitations for Long-term Contracts webpage](https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts)¹ to review the application materials and process in full. *NYSERDA recommends reserving ample time to address the Step One Threshold Eligibility Application requirements for each bid facility.*
- Review the Step One Threshold Eligibility Application, determine all applicable requirements, and gather documentation/files needed to complete the application process **prior** to starting to the submission process. Please use NYSERDA-provided standard templates when applicable. Please see Attachment B – Threshold Eligibility Application Form Section H Checklist (page 7) for a complete list of applicable attachments.
- Submit one Step One Threshold Eligibility Application Form and associated attachments for each Bid Facility.
- NYSERDA correspondence including the award/non-award notification letter will be sent to the e-mail address of the **Primary Contact listed in Section A on the Step One Threshold Eligibility Application**. A confirmation of the submission will be sent to the Authorized Representative as explained in Step 9.
- **The electronic application system closes promptly at 5 pm Eastern Daylight Time on July 13, 2017.** Only completed SeamlessDocs Applications will be accepted by the deadline. Applications in progress or attempted application submissions after 5 pm will be locked out of the system.
- E-mail, mail, or facsimile submittals will not be accepted.
- Incomplete applications may be subject to disqualification. It is the applicant's responsibility to ensure that all required documentation has been included in the application.

¹ <https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts>

Section B. Online Submission

- 1) Click application hyperlink on the [RES Tier 1 Solicitations for Long-term Contracts](#)¹ page to begin the online submission process using the SeamlessDocs Application.
- 2) To Save and Continue an application at a later time, or to pause during the application process in SeamlessDocs, click the save icon (shown at right) located next to the Submit and Sign button at the bottom right of the webpage. You will be prompted to enter your name and email address (shown below). Any progress made will be saved and accessible at a later time. Instructions on how to return to the SeamlessDocs Application will be sent to the registered email address, including a temporary password which must be used to regain access to the application.

A screenshot of a web form titled "Register to Continue" with the subtitle "Enter your name and email so you can continue with this form later." The form contains three input fields: "First Name", "Last Name", and "Email". Below these fields is an orange "Register" button and a grey "Login Here" button.

- 3) At any point before submitting the application, you may download or print a copy of your application using the Download and Print Document icons (shown at right) located at the bottom left of the webpage.



- 4) To include attachments with your application, click the paperclip icon on the bottom left of the webpage (shown at right). Upload attachments as instructed.



Attachment Details

Include the i) Bid Facility's name, ii) NYGATS ID, and iii) associated Project Viability Category or other descriptor (e.g., Project Schedule, Proof of Bid Deposit) in the attachment filename in the form of:

Project_Name_NYGATS_ID_Category/Descriptor.

Limit file names to **100** characters.

Do not use spaces in the file name.

You may submit Word, Excel, PDF, or Zip files. Individual files should be less than **250MB** file size.

Examples: Happy_Wind_Farm_GEN12345_Site_Control.pdf
Happy_Solar_Project_PRO67890_Project_Finance.xls

- 5) Once all attachments have been uploaded, click the “Continue” button (shown at right) in the bottom righthand corner of the attachments webpage to finalize your application and submit it to NYSERDA.

An orange rectangular button with the word "Continue" in white text.

- 6) When ready to submit your application, provide an Authorized Representative’s electronic signature by either i) clicking “Click to Sign” below the Signature line on page 6 or ii) clicking the orange Submit & Sign button in the lower right of the webpage. **Important: If you have not provided attachments, the Application will direct you to attach files. It is the applicant’s responsibility to ensure that all required documentation has been included in the application.** After the attachments have been uploaded, scroll to the bottom of the attachments webpage and click “Continue”. After submitting your signature, you may need to click “Next” and then “Apply Signature” (shown below).

An orange rectangular button with the word "Next" in white text.An orange rectangular button with the text "Apply Signature" in white text.

- 7) After applying the Authorized Representative’s signature, click the Finalize & Submit button (shown at right), and then review the attached files.

An orange rectangular button with the text "Finalize & Submit" in white text.

You will be able to save a copy
after your submission.

- 8) After submitting the Application, a brief popup will indicate that the application is being processed (shown below).

You Have Completed Your Document

Please wait while we process your submission.

- 9) When processing is finished, the webpage will indicate that the document has been successfully signed. In addition, an auto-generated confirmation e-mail will be sent to the e-mail address provided for the Authorized Representative. **Please save this e-mail.**
- 10) On the confirmation page, you will have the option to download a copy of the application, or email a copy of the application, using the download or envelope (email) icons (shown at right), located in the top right of the confirmation page.



IMPORTANT: The document has not been submitted to NYSERDA until the Authorized Representative Signs and submits the application. PLEASE NOTE: THE APPLICATION MUST BE SIGNED and SUBMITTED BY THE AUTHORIZED REPRESENTATIVE BY THE DEADLINE TO BE RECEIVED BY NYSERDA. See Step 8.

Section C. Insufficient provision of required documentation:

In the case of the submission of application(s) that are later discovered to be incomplete (missing required documentation), follow these instructions:

1. Use the link and receipt number received in the application email confirmation.
2. Upload and submit the missing documentation. Save the confirmation e-mail received after this new submission.
3. NYSERDA will accept additional documentation until the deadline, July 13, 2017 at 5 pm EDT.

Section D. Submission errors:

In the case of the submission of application(s) that are later discovered to contain inaccurate information, follow these instructions:

1. Re-start the process and **resubmit the entire application**. Save the confirmation e-mail received after this new submission.
2. Immediately forward both confirmation e-mails (original and resubmission) to proposals@nyserda.ny.gov with a copy to res@nyserda.ny.gov with the subject line of “**Resubmittal for RESRFP17-1**”
3. NYSERDA will accept the second submission as the final application. The first submission will be disregarded.

Application help:

Please contact the Designated Program Contact in the RFP or use res@nyserda.ny.gov for assistance with the application process.

Attachment B - RESRFP17-1 Step One Threshold Eligibility Application Form

This application must be **completed, signed, and submitted** through the Seamless Docs web application. Please review RESRFP17-1 and associated instructions, including **Attachment A. Instructions for Electronic Submission of the Threshold Eligibility Application**, for requirements prior to completing this Application. Terms used in this form are defined in the Definitions section of RESRFP17-1 Attachment I- RES Standard Form Agreement. The Primary Contact in Section A will receive all RESRFP17-1 correspondence. Proposers are responsible for promptly notifying NYSERDA of any changes to the information contained within this application. Information provided should be consistent with the Bid Facility's SoQ or PSoQ.

A. General Information

Bid Facility's NYGATS ID:	Certification Status:	SoQ	PSoQ
Proposer:	Parent Company of Proposer:		

Proposer Address:

Address Line 1: _____ Address Line 2: _____
City: _____ State: _____ Zip: _____

Primary Contact/Project Sponsor:

Prefix: _____ Title: _____
First Name: _____ Last Name: _____
Phone Number: _____ Email Address: _____
Confirm Email Address: _____

Primary Contact/Project Sponsor Address:

Address Line 1: _____ Address Line 2: _____
City: _____ State/Province: _____ Zip: _____

B. Bid Facility Information

Name of Bid Facility:	Description of Site (including geographic location, other uses of the site):
General Description of Bid Facility (for fuel-based facilities, provide a brief description of fuels used):	

B. Bid Facility Information Continued

Describe the point of interconnection, including the planned substation and any planned generator lead lines:
(if available, please attach a single-line diagram attachment)

Summary of Generating Equipment

(e.g. the manufacturer and number of units of major equipment):

If applicable, Interconnection Queue Number:

Nameplate Capacity (MW):

Estimated Annual Bid Quantity (MWh): (non-binding)

B1. Relocated Facilities (if applicable)**B2. Return to Service Facilities (if applicable)**

Original Commercial Operation Date in previous location:

Please indicate the dates of the 48 consecutive month outage:

Please describe the original facility characteristics, including previous location and length of operation (for Relocated Facilities), or an explanation of the outage (for Return to Service Facilities):

B3. Energy Storage (if applicable). The Energy Storage component must be co-located with the Bid Facility, the Energy Storage system cannot charge from the grid, and must meet all technical standards as outlined in RESRFP17-1.

Actual or Expected Operation Date of Energy Storage:	Energy Storage Capacity (MW): (non-binding)	Energy Storage (MWh): (non-binding)
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Describe Energy Storage System and Equipment as outlined in Section VII. Eligibility for this RFP. Please provide details including a description of the manufacturer and number of units of major equipment.

C: Bid Deposit

Please select the applicable Bid Deposit from the following:

Facility Nameplate Capacity:	Bid Deposit Required:
Less than 5.00 MW:	\$5,000
5.00 – 19.99 MW:	\$20,000
20.00 – 49.99 MW:	\$50,000
50.00 MW or more:	\$100,000

D. Proposer Must Answer the Following Questions

Yes

No

Have you been indicted/convicted for a felony within the past 5 years? (if yes, attach explanation)

Are you a Minority or Women-Owned Business Enterprise?

Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors?

Has the Bid Facility been the basis or subject of any award or funding through NYSERDA as described in the RFP? (If yes, attach a description of such assistance or support)

Do you wish to have information submitted in your Threshold Eligibility Application Package (including data on this form) treated as proprietary or confidential trade secret information?

E. Disclosure of Prior Findings of Non-Responsibility	Yes	No
Has any Government Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years?		
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law?		
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Government Entity?		
If you answered yes to any of the questions above in Section E, please provide details regarding the finding of non-responsibility.		
<p>Date if Finding of Non-responsibility:</p> <p>Basis of Finding of Non-responsibility: (Add additional pages as necessary)</p>		
Has any Government Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information? If yes, provide details below.	Yes	No
<p>Government Agency or Authority:</p> <p>Date of Termination or Withholding of Contract:</p> <p>Basis of Termination or Withholding: (Add/upload additional pages as necessary)</p>		
<p>Is the Proposer the subject of any investigation or enforcement proceeding, pending or complete, civil or criminal, and based on either law or regulation, or any other matter that must be disclosed under Article XV, Section (E) of RESRFP17-1?</p> <p>Note that 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.</p>	Yes	No

F. Project Viability Documentation

This Application and the documentation attached must demonstrate that this Bid Facility meets or exceeds the minimum eligibility thresholds for project viability. The documentation required to meet the minimum eligibility thresholds are detailed below for each component of project viability. Indicate for each component of project viability which level of documentation will be uploaded, consistent with the Supporting Evidence Documentation Required as described in Appendix 2. Project Viability Appendix:

Category 1: Site Control - Provide evidence of meeting the minimum threshold eligibility requirements or the furthest progress achieved for Site Control. This will include:

- Map of site layout indicating project and parcel boundaries, to scale, with parcel designation by owner.
- Summary description (table) of control status by parcel with parcel designation tied to site map using Attachment C.
- If available, a one-line diagram.

Documentation meets or exceeds the minimum threshold eligibility requirements for this category.

Category 2: Interconnection - Provide a summary or other evidentiary documentation confirming the extent of interconnection activities and the payment of any necessary fees. Information provided shall address meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Interconnection (e.g., drafted or filed Interconnection request). For Behind-the-Meter Generators, Proposer must also provide a draft of all interconnection request documents.

Documentation meets or exceeds the minimum threshold eligibility requirements for this category.

Category 3: Permitting - Provide evidence of meeting the minimum threshold eligibility requirements or the furthest progress achieved for Permitting. This will include:

- A completed Environmental Assessment form in Attachment D.
- List of required permits, using Attachment E.
- If Article 10 applies to the Bid Facility, a copy of the draft PIP.

Documentation meets or exceeds the minimum threshold eligibility requirements for this category.

Category 4: Project Development - Provide evidence of meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Project Development. This will include:

- A list of specific projects successfully developed, specifying the nameplate capacity, technology, commercial operation date, and location using Attachment F.

Documentation meets or exceeds the minimum threshold eligibility requirements for this category.

Category 5: Project Financing - Provide evidence of meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Project Finance. This will include:

- A copy of the Financing Plan as described in Section IX. Step One Threshold Eligibility Application Package of the RFP.
- Summary description of previous project financing experience using Attachment G.

Documentation meets or exceeds the minimum threshold eligibility requirements for this category.

Category 6: Resource Assessment - Provide evidence of meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Resource Assessment. This will include:

- A feasibility study, modeled production estimate or gas utility confirmation for the Bid Facility as described in Section IX. Step One Threshold Eligibility Application Package of the RFP.

Documentation meets or exceeds the minimum threshold eligibility requirements for this category.

G. Signature

I, the undersigned certify that I am an Officer or otherwise authorized representative of the above-noted Proposer, and that all statements herein are true and accurate.

I understand that NYSERDA and the Department of Public Service reserve the right to request additional information to confirm or clarify the information reported in this Application and to demonstrate the eligibility of this Bid Facility under Tier 1 of the New York RES, and I agree to provide any such information promptly. I also understand that NYSERDA and the PSC, or their authorized agents, may audit any applicant to verify the accuracy of any information included as part of this Application. I further understand that NYSERDA must be notified promptly of any material change in the information provided in this Application. I understand that final verification of this information will be required before the first payment under any contract awarded with NYSERDA can be made. I understand that failure to provide information as requested by NYSERDA, to allow an audit, or to accurately complete this Application may disqualify this Bid Facility from consideration under any RES competitive procurement and/or may result in contract termination by NYSERDA.

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 RES Standard Form Contract and that I accept all terms unless otherwise noted herein, and that the application requirements noted in RESRFP17-1 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 application may be disqualified if the requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.

I hereby certify that the information and documentation submitted in connection with this Threshold Eligibility Application Package is complete, true, and accurate to the best of my knowledge.

Authorized Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____

Date Signed: _____

Proposers will be prompted to upload any required attachments after signing if not attached prior to the signature.

H. Checklist

Instructions: Proposers will upload supporting evidence documentation as described in Section IX. Step One Threshold Eligibility Application Package of the RFP. It is recommended that Proposers who have exceeded the minimum threshold eligibility requirements provide evidence of the furthest level of progress for each Category as described in Appendix 2. Project Viability Appendix.

The following are completed and will be provided as uploaded attachments, consistent with the Supporting Evidence Documentation Required as described in the RFP:

Category 1: Site Control - Provide evidence of meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Site Control. This will include:

- Map of site layout indicating project and parcel boundaries, to scale, with parcel designation by owner.
- Summary description (table) of control status by parcel with parcel designation tied to site map using Attachment C - Summary Description of Control Status by Parcel.
- If available, a one-line diagram.

Category 2: Interconnection - Provide a summary or other evidentiary documentation confirming the extent of interconnection activities and the payment of any necessary fees. Information provided shall address meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Interconnection (e.g., drafted or filed Interconnection request). For Behind-the-Meter Generators, Proposer must also provide a draft of all interconnection request documents.

Category 3: Permitting - Provide evidence of meeting the minimum threshold eligibility requirements or the furthest progress achieved for Permitting. This will include:

- A completed Environmental Assessment form in Attachment D - Environmental Assessment Form.
- List of required permits, using Attachment E - List of Required Permits.
- If Article 10 applies to the Bid Facility, a copy of the draft PIP.

Category 4: Project Development - Provide evidence of meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Project Development. This will include:

- A list of specific projects successfully developed, specifying the nameplate capacity, technology, commercial operation date, and location using Attachment F - List of Project Development Experience.

Category 5: Project Financing - Provide evidence of meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Project Finance. This will include:

- A copy of the Financing Plan as described in Section IX. Step One Threshold Eligibility Application Package
- Summary description of previous project financing experience using Attachment G - List of Project Financing Experience.

Category 6: Resource Assessment - Provide evidence of meeting the minimum threshold eligibility requirements and/or the furthest progress achieved for Resource Assessment. This will include:

- A feasibility study, modeled production estimate or gas utility confirmation for the Bid Facility as described in Section IX. Step One Threshold Eligibility Application Package.

Project Schedule - Provide a completed Project Schedule Form detailing key milestones and projected completion dates. This will include:

- A completed Project Schedule template included as Attachment H - Project Schedule Form.

Proof of Bid Deposit - Provide evidence that a Bid Deposit has been submitted in an amount determined by the Nameplate Capacity of the Bid Facility as described in Section IX. Step One Threshold Eligibility Application Package.

Attachment C - Summary Description of Control Status by Parcel

Generator Control Statuses

No Control
Letter of Intent
Exclusivity Agreement
Executed Binding Option
Executed Lease
Ownership

Right of Way Control Statuses

No Control
Letter of Intent
Exclusivity Agreement
Executed Binding Option
Executed Lease
Ownership
Interconnecting Utility Ownership

Instructions:

Complete both the Generator Site Control and the Right of Way Site Control worksheets. Include all land that the operating or proposed Bid Facility generator and interconnection right-of-way sites occupy or will occupy.

Use the relevant Assessor's Parcel Numbers (APN) directory for the Bid Facility's appropriate Jurisdiction to determine accurate parcel numbers for the generator and right-of-way sites. e.g.,

<https://www.tax.ny.gov/research/property/assess/gis/taxmap/>

<http://publicrecords.onlinesearches.com/New-York-Assessor-and-Property-Tax-Records.htm>

<https://gis.ny.gov>

Indicate the map reference number of each parcel that is associated with a number provided on the submitted site layout map.

Indicate the control status of each parcel of land using only the options provided.

RESRFP17-1

Attachment C - Summary Description of Control Status by Parcel

Acreage with No Control:	0.00
Acreage with Letter of Intent:	0.00
Acreage with Exclusivity Agreement:	0.00
Total Acreage Uncontrolled:	0.00

Acreage with Executed Binding Option:	0.00
Acreage with Executed Lease:	0.00
Acreage with Ownership:	0.00
Total Acreage Controlled:	0.00

Percent of Total Generator Site Controlled: #DIV/0!

[illegible]

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RESRFP17-1

Attachment C - Summary Description of Control Status by Parcel Right-of-Way Site Control

Acreage with No Control:	0.00
Acreage with Letter of Intent:	0.00
Acreage with Exclusivity Agreement:	0.00
Total Acreage Uncontrolled:	0.00

Acreage with Executed Binding Option:	0.00
Acreage with Executed Lease:	0.00
Acreage with Ownership:	0.00
Acreage Owned by Interconnecting Utility:	0.00
Total Acreage Controlled:	0.00

Percent of Total Generator Site Controlled: #DIV/0!

[illegible]

Attachment D - Environmental Assessment Form

Instructions: Proposers with Bid Facilities claiming the minimum threshold eligibility for Category 3: Permitting must complete and attach this form to the Step One Threshold Eligibility Application.

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
3.a. Total acreage of the site of the proposed action? _____ acres b. Total acreage to be physically disturbed? _____ acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland			
5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	N/A <input type="checkbox"/> <input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>	

11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	NO	YES
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
16. Is the project site located in the 100 year flood plain?	NO	YES
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? NO YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? NO YES If Yes, briefly describe: _____ _____ _____	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES

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RESRFP17-1

Attachment E - List of Required Permits

[illegible]

Attachment F - List of Project Development Experience

Interconnection Jurisdiction	Notes
Large-FERC	Facilities 20 MW capacity or greater, controlled by NYISO or a similar interconnection authority in adjacent U.S. control area.
Small-FERC	Facilities less than 20 MW capacity or greater, controlled by NYISO or a similar interconnection authority in adjacent U.S. control area.
Small-Non-FERC	Facilities less than 20 MW capacity that are not visible to/ controlled by NYISO or a similar adjacent U.S. control area.
Canada/Other	All facilities located in Canada or not defined by other provided interconnection jurisdictions.
Behind-the-Meter	All behind-the-meter generation facilities.

Instructions:

Complete the Project Development Experience worksheet.

Only identify projects other than the proposed Bid Facility.

Only identify the Interconnection Jurisdiction from the list of provided options. For more information on the interconnection jurisdiction types, see Appendix 2 - Project Viability Appendix.

Bid Facility Name:

NYGATS ID:

RESRFP17-1

Attachment F - List of Project Development Experience

[illegible]

Bid Facility Name:

NYGATS ID:

RESRFP17-1

Attachment G - List of Project Financing Experience

Project Name	Location (Address)	Nameplate Capacity (MW)	Technology	Status (Operating/ Under Construction)	Commercial Operation Date (if applicable)
Relevant Entities Involved (Principal, Project Sponsor, Parent Company, etc.)	Type of Finance Approach Used (Project Finance, Balance Sheet Finance Commitment, Tax Equity, YieldCo, Host Ownership, etc.) Describe in Detail	Power/REC Offtake Agreements Used (if applicable)		Year of Financial Closing	Value of Financing (\$)
				Financed Individually or as part of a Portfolio (Describe if part of Portfolio)	
Project Name	Location (Address)	Nameplate Capacity (MW)	Technology	Status (Operating/ Under Construction)	Commercial Operation Date (if applicable)
Relevant Entities Involved (Principal, Project Sponsor, Parent Company, etc.)	Type of Finance Approach Used (Project Finance, Balance Sheet Finance Commitment, Tax Equity, YieldCo, Host Ownership, etc.) Describe in Detail	Power/REC Offtake Agreements Used (if applicable)		Year of Financial Closing	Value of Financing (\$)
				Financed Individually or as part of a Portfolio (Describe if part of Portfolio)	
Project Name	Location (Address)	Nameplate Capacity (MW)	Technology	Status (Operating/ Under Construction)	Commercial Operation Date (if applicable)
(Principal, Project Sponsor, Parent Company, etc.)	Type of Finance Approach Used (Project Finance, Balance Sheet Finance Commitment, Tax Equity, YieldCo, Host Ownership, etc.) Describe in Detail	Power/REC Offtake Agreements Used (if applicable)		Year of Financial Closing	Value of Financing (\$)
				Financed Individually or as part of a Portfolio (Describe if part of Portfolio)	

Attachment H - Project Schedule Form

Name of Bid Facility:

NYGATS ID:

Instructions: Complete this form in its entirety and attach extra sheets if necessary.

Milestone Date (actual or anticipated)	Development and Construction Milestones	Fully Describe the Status
	Execution of lease, purchase and/or option agreements, as applicable, which provide Bidder with site control for the Bid Facility.	
	Completion of all interconnection studies for the Bid Facility.	
	Completion of an independent engineering study, or similar assessment, of the wind resource capability and associated energy production estimates.	
	Execution of interconnection agreement for the Bid Facility.	
	All governmental permits that are required to commence construction of (or, if applicable, modification of) the Bid Facility are filed and have been deemed complete by such governing entity.	
	Execution of binding contract(s) for major equipment of the Bid Facility (or major equipment required for modification of the Bid Facility).	
	Closing of financing for the Bid Facility (or conditions for self-financing of construction of Bid Facility have been met).	
	Commencement of construction of the Bid Facility (or planned modifications to the Bid Facility), including all ground and civil work.	
	Foundations for the Bid Facility are laid (if applicable).	
	Major equipment is delivered to the site of the Bid Facility.	
	Start-up testing of the Bid Facility commences (if applicable, after planned modifications).	
	Commercial Operation Date (if applicable, after planned modifications).	
	Other, please specify.	

RESRFP17-1 – ATTACHMENT I

RES STANDARD FORM AGREEMENT

BY AND BETWEEN

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

[NAME OF SELLER]

Dated: _____, 2017

Agreement No. _____

This Agreement ("Agreement") is entered into as of _____, 2017 (the "Effective Date") by and between the New York State Energy Research and Development Authority ("NYSERDA"), a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and _____ ("Seller"), a [insert as appropriate], having a principal business address of _____. NYSERDA and Seller are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

WHEREAS, the New York State Public Service Commission ("PSC") through its "Order Adopting a Clean Energy Standard"¹ (August Order) established a Clean Energy Standard Program, to consist of a Renewable Energy Standard (RES) and a Zero-Emissions Credit (ZEC) requirement; and

WHEREAS, the RES requires each New York electric load-serving entities to serve their retail customers by procuring new renewable resources, evidenced by the procurement of qualifying RES Tier-1 Renewable Energy Certificates; and

WHEREAS, the August Order directs and authorizes NYSERDA, as the central procurement administrator of the RES program, to issue and conduct solicitations for the procurement of RES Tier-1 Renewable Energy Certificates for sale to New York electric load-serving entities; and

WHEREAS, on February 22, 2017² the PSC approved the proposed Clean Energy Standard Phase 1 Implementation Plan, with revisions; and

WHEREAS, on March 24, 2017, NYSERDA and the Department of Public Service filed the Clean Energy Standard Final Phase 1 Implementation, which includes implementation mechanisms regarding, among other things, eligibility, long term procurement through the issuance of competitive Request for Proposals (RFP); and

WHEREAS, NYSERDA has conducted a competitive solicitation in the form of RESRFP17-1 to procure Tier-1 Renewable Energy Certificates; and

WHEREAS, NYSERDA RESRFP17-1, which is incorporated herein and made part hereof, provided, among other things, that this RES Standard Agreement ("Agreement") would be employed to govern the rights and obligations of the Parties; and

WHEREAS, Seller has participated in RESRFP17-1 and has been selected by NYSERDA as a winning Proposer with respect to the [name of facility] ("Bid Facility"); and

¹ See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, "Order Adopting a Clean Energy Standard," issued and effective August 1, 2016.

² *Id.* "Order Approving Phase 1 Implementation Plan," issued and effective February 22, 2017 (February Order).

WHEREAS, the Seller agrees to sell to NYSERDA, and NYSERDA agrees to purchase from Seller, the Tier-1 Renewable Energy Certificates associated with the energy production of the Bid Facility described in the Bid Proposal submitted in response to RESRFP17-1 during the Contract Delivery Term, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, this Agreement has been entered into by the Parties to define, among other things, their rights and obligations concerning the Tier-1 Renewable Energy Certificates associated with the generation of electric energy by the Bid Facility, the delivery by Seller of Tier-1 Renewable Energy Certificates to NYSERDA, and payments by NYSERDA to Seller during the term of this Agreement.

Article I

Definitions

The terms defined in this Article I, whenever used in this Agreement (including in any Exhibit hereto), shall have the respective meanings indicated below for all purposes of this Agreement (each such meaning to be equally applicable to the singular and the plural forms of the respective terms so defined). All references herein to a Section, Article or Exhibit are to a Section, Article or Exhibit of or to this Agreement, unless otherwise indicated. The words “hereby”, “herein”, “hereof”, “hereunder” and words of similar import refer to this Agreement as a whole (including any Exhibit) and not merely to the specific section, paragraph or clause in which such word appears. The words “include”, “includes”, and “including” shall be deemed, in every instance, to be followed by the phrase “without limitation.” Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to “dollars” and “\$” shall be deemed references to the lawful money of the United States of America.

Actual Annual Production: The amount, in MWh, of the total electric energy produced by the Bid Facility during any Contract Year, measured at the Injection Point.

Actual Annual Eligible Production: The amount, in MWh, of the Actual Eligible Production during a full Contract Year.

Actual Eligible Production: The amount, in MWh, of the electric energy produced by the Bid Facility/Upgrade during any period within a Contract Year, measured at the Injection Point, except that:

- (i) for an Upgrade, the Actual Eligible Production shall be the product of (a) Actual Production of the Bid Facility, multiplied by (b) the percentage of the Actual Production resulting from the upgrade established through Provisional/Operational Certification. Should the Installed Bid Capacity equal the Bid Capacity, the Actual Eligible Production percentage shall equal [percentage]% of the Actual Production.
- (ii) for a Fuel-Based Bid Facility that has never used eligible fuels, the Actual Eligible Production shall reflect the eligible biomass generation only, determined as the Actual Production of the entire Bid Facility, multiplied by the BTU input ratio of (a) the biomass fuel heat input to (b) the total fuel heat input, consistent with how such terms

are applied for Provisional/Operational Certification (See Exhibit D, which is annexed hereto and made part hereof);

- (iii) for a Fuel-Based Bid Facility that used eligible fuels, including co-firing with ineligible fuels, before January 1, 2015, the Actual Eligible Production shall reflect only that Actual Production using eligible biomass, biogas, or liquid bio-fuel above the historical baseline production established through Provisional/Operational Certification (See Exhibit D, which is annexed hereto and made part hereof).

Actual Production: The amount, in MWh, of the total electric energy production of the Bid Facility during any period within a Contract Year.

Article 10: Article 10 provides for the siting review of new or modified major electric generating facilities in New York State by the Board on Electric Generation Siting and the Environment (Siting Board) in a unified proceeding for the application of numerous state and local permits. See NYS Public Service Law §§ 160, *et seq.*

Award Notification Date: For purposes of this Agreement, the Award Notification Date will be [Month] [Day], 2017.

Bid Capacity: Bid Capacity shall equal the Bid Quantity Percentage multiplied by the Nameplate Capacity of the Bid Facility. [In the case of Upgrades, the Bid Capacity shall equal the Bid Quantity divided by the Expected Average Annual Production, multiplied by the Nameplate Capacity.] The Bid Capacity under this Agreement shall be ___ MW.

Bid Facility: The electric generating station that has been identified and described in the Threshold Eligibility Application Form through which the Bid Facility was found to be eligible for participation in this RESRFP17-1.

Bid Price: A single fixed production payment, expressed in \$/MWh, applicable to each Tier-1 Renewable Energy Certificate offered as performance throughout the Contract Delivery Term. Subject to Article V, for all transactions contemplated and consummated under this Agreement the Bid Price shall be \$ ____.

Bid Quantity: The amount, in MWh, of Tier-1 Renewable Energy Certificates the Bid Facility expects to proffer as performance under this Agreement during each Contract Year during the Contract Delivery Term. The Bid Quantity must be the same for each Contract Year throughout the Contract Delivery Term, subject to adjustments pursuant to Article IV (Payment) and Article V (Adjustments). [This number will equal the Expected Annual Eligible Production multiplied by the Bid Quantity Percentage.] Subject to Article V, for all transactions contemplated and consummated under this Agreement the Bid Quantity shall be _____ MWh.

Bid Quantity Percentage: The percentage of the Bid Facility's Actual Eligible Production that will be committed to performance under this Agreement. The Bid Quantity Percentage must be at least 30% and may not exceed 100% of the Expected Annual Eligible Production, and will be applied to Actual Eligible Production in any period during the Contract Delivery Term to establish compliance with contract requirements. For all transactions contemplated and consummated under this Agreement the Bid Quantity Percentage shall be ____%.

Business Day: Means any day except a Saturday, Sunday or a New York State or NERC recognized holiday.

Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy and associated Tier-1 Renewable Energy Certificates, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Injection Point have been obtained.

Commercial Operation Milestone Date: The Commercial Operation Milestone Date shall be November 30, 2019. The Commercial Operation Milestone Date may be extended (see Article II, Purchase and Sale of Rights to Tier-1 Renewable Energy Certificate, Section 2.07 and Article XV, Contract Security).

Contract Delivery Term: The period of performance under this Agreement. The Contract Delivery Term will commence on the first day of the month after the Bid Facility commences Commercial Operation. For Bid Facilities in Commercial Operation as of the Award Notification Date, unless otherwise agreed to in writing by NYSERDA, the Contract Delivery Term shall commence on the first day of the month after the Effective Date of this Agreement. The Contract Delivery Term shall extend for the term of the Contract Tenor.

Contract Security: All amounts provided to NYSERDA as defined in Article XV (Contract Security) of this Agreement.

Contract Tenor: The duration, in years, of the Contract Delivery Term as defined on the Bid Proposal form submitted for the Bid Facility. The Contract Tenor under this Agreement shall be ____ years.

Contract Year: A 12-month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof within the Contract Delivery Term.

Customer-Sited Bid Facility: A Bid Facility interconnected on the customer side of a retail electric meter.

Delivery Point: For Bid Facilities located within the New York Control Area, the generator bus or location where (a) the administrator of the wholesale power market, (b) the operator of the transmission/distribution utility, public authority or municipal electric company, or (c) in the case of customer-sited generation, the dedicated generation meter at which a third party, measures, or otherwise determines, energy production from the Bid Facility. For Bid Facilities located outside of the New York Control Area, the generator bus or location where the NYISO measures energy delivery from the Bid Facility into the New York market.

Expected Total Dollars: The total dollar amount of Incremental Economic Benefits, as presented in the Bid Proposal, expected to accrue to New York as a result of the development, construction, modification, and operation of the Bid Facility from the Award Notification Date through the end of the first three (3) Contract Years. The Expected Total Dollars under this Agreement shall be \$_____.

Fuel-Based Bid Facility: Fuel-Based facilities include biogas, biomass, liquid biofuel, and fuel cells.

Upgrade: The [Name of Bid Facility], as proposed by Seller in the Threshold Eligibility Application Package and Bid Proposal in response to RESRFP17-1.

Incremental Economic Benefits: Incremental Economic Benefits are financial expenditures benefitting New York State within the categories specified in Section XI of RESRFP17-1 and are those that a Seller can demonstrate: (1) will accrue subsequent to an award under RESRFP17-1, and (2) would not have accrued but for the award of this Agreement. Economic benefits previously claimed with respect to a Bid Facility that is subject to a pending award under a previous solicitation or that is the subject of a current NYSERDA Agreement are not Incremental Economic Benefits.

Injection Point: For Bid Facilities located within the New York Control Area, the Injection Point shall be the Delivery Point. For Bid Facilities located outside of the New York Control Area, the generator bus or location where the administrator of the local control area measures energy delivery from the Bid Facility into the local market.

Installed Bid Capacity: Installed Bid Capacity shall equal the gross generating capacity, in MW, of the [Bid Facility/Upgrade] that achieves Operational Certification (SoQ) multiplied by the Bid Quantity Percentage. [In the case of co-firing, the Installed Bid Capacity shall equal the Bid Quantity Percentage multiplied by the portion of the gross generating capacity (MW) that has been repowered, upgraded and or retrofitted as determined by Operational Certification (SoQ).]

Nameplate Capacity: The gross generating capacity of the entire Bid Facility, post upgrade, in MW. The Nameplate Capacity under this Agreement shall be __ MW.

New York Control Area (NYCA): The control area that is under the control of the NYISO which includes transmission facilities listed in the ISO/TO Agreement Appendices A-1 and A-2, as may be amended from time-to-time.

New York Generation Attribute Tracking System (NYGATS): The tracking system that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating generation attribute certificates, including Tier-1 Renewable Energy Certificates. NYGATS will create exactly one Tier-1 Renewable Energy Certificate per MWh of RES eligible generation.

Non-Fuel Based Bid Facility: Non-Fuel based facilities include hydroelectric, solar, tidal/ocean, and wind.

NYGATS Forward Certificate Transfer: A Forward Certificate Transfer is an automated monthly transfer of Certificates over a designated timeframe. The Seller will continue to be responsible for providing the Static Data and Dynamic Data required of Projects, notwithstanding the Forward

Certificate Transfer. See Section 10.3 of the NYGATS Operating Rules at: <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>

NYISO: The New York Independent System Operator, Inc., is the administrator of the wholesale power markets in New York and manages the physical electrical operations of the New York Control Area (NYCA).

NYSERDA NYGATS Account: The NYGATS account established by NYSERDA into which Seller shall transfer Tier-1 Renewable Energy Certificates as performance under this Agreement.

Operational Certification: Under the Orders, a Statement of Qualification (SoQ) must be granted through the Operational Certification process before payment under this Agreement may be made by NYSERDA. Operational Certification verifies that the Bid Facility has been constructed and/or will operate in accordance with the proposal submitted, for which Provisional Certification (PSOQ) was granted and for which an award was made. An Operational Certification application should be submitted after the Bid Facility enters Commercial Operation and the Bid Facility is registered in NYGATS. For Bid Facilities including a Storage component, NYSERDA will verify the installed Storage capacity and confirm that it has been installed consistent with the Bid Proposal (see Article IV). For Fuel-Based Bid Facilities, the Seller will be required to provide additional information as outlined in Exhibit D to this Agreement. Once a SoQ has been issued, NYSERDA will make payments consistent with Section IV.

Operating Rules: The NYGATS Operating Rules (the “Operating Rules”), the General Terms of Use and other guidelines posted to the NYGATS website at: <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>

Proposer: An individual or entity submitting a Threshold Eligibility Application Package and Bid Proposal in response to RESRFP17-1. Such entity need not be the owner of the Bid Facility, but must have secured rights to the Tier-1 Renewable Energy Certificates from the Bid Facility sufficient to satisfy all performance requirements stated in RESRFP17-1 and this Agreement.

Quantity Obligation: Shall mean, for any period during the Contract Delivery Term, the number of MWh calculated as the Bid Quantity Percentage multiplied by the Actual Eligible Production; subject, however, to adjustments pursuant to Article V, Adjustments.

RES Standard Agreement: The standard contractual document issued as a part of RESRFP17-1 to be entered into by NYSERDA and selected Sellers, which shall define, among other things, their rights and obligations concerning the Transfer of Tier-1 Renewable Energy Certificates to NYSERDA, and the payments by NYSERDA during the term of the agreement. The RES Standard Agreement includes this document and Exhibit A (Standard Terms and Conditions for all NYSERDA Agreements); B (Letter of Credit Form); C (Prompt Payment Policy Statement) and (D) Requirements for Biomass-fueled Bid Facilities.

SEQRA: New York's State Environmental Quality Review Act.

Tier-1 Renewable Energy Certificate: The electronic record of generation data created by NYGATS and representing all of the attributes of one MWh of electricity generation from a RES

Tier-1 Bid Facility registered with the NYGATS tracking system. The attributes represented in each Tier-1 Renewable Energy Certificate include all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of Actual Eligible Production by a Bid Facility, include but not limited to: (i) any direct emissions or any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter and other pollutants; (ii) any direct or avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs made unnecessary for compliance in such program as a result of performance under this Agreement, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (iv) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above. If the Bid Facility is a biomass or landfill gas facility and the Seller receives any tradable credits, benefits, emissions reductions, offsets, and allowances based on the greenhouse gas reduction benefits attributed not to the production of electricity but rather to its fuel production, collection, conversion or usage, it shall provide NYSERDA or its designee with sufficient credits, benefits, emissions reductions, offsets, and allowances to ensure that there are zero net GHGs associated with the production of electricity from such Bid Facility.

Transfer/Transferred: The delivery of Tier-1 Renewable Energy Certificates to the NYSERDA NYGATS Account designated by NYSERDA. Seller shall register the Bid Facility in NYGATS and deliver the Tier-1 Renewable Energy Certificates by NYGATS Forward Certificate Transfer. Transfer shall be a necessary part of Seller Performance. See Article II; Section 2.03; and Article IV.

Verified Total Dollars: The total dollar amount of Incremental Economic Benefits verified by NYSERDA to have accrued to New York as a result of the development, construction, modification, and operation of the [Bid Facility/Upgrade] from the Award Notification Date through the end of the first three (3) Contract Years.

Article II

Purchase and Sale of Tier-1 Renewable Energy Certificates

Section 2.01. On the terms and subject to the conditions and provisions of this Agreement, Seller agrees to sell, assign, convey, deliver and Transfer to NYSERDA, and NYSERDA agrees to purchase from the Seller, all right, title and interest in the Tier-1 Renewable Energy Certificates associated with the Quantity Obligation generated by the [Bid Facility/Upgrade] during each month of the Contract Delivery Term.

Section 2.02. Such right, title and interest shall include perpetual and exclusive rights to the Tier-1 Renewable Energy Certificates, including but not limited to the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure rules: (a) that the energy associated with Tier-1 Renewable Energy Certificates was generated by the Bid Facility; and (b) that New York State and or the RES Program is responsible for the environmental benefits including reductions in emissions and/or other pollution or any other environmental benefit resulting from the generation of the energy associated with the Tier-1 Renewable Energy Certificates.

Section 2.03. Seller shall Transfer the Tier-1 Renewable Energy Certificates to the NYSERDA NYGATS Account via a Forward Certificate Transfer on a monthly basis in a percentage equal to the Bid Quantity Percentage. At the time of Transfer by Seller to NYSERDA, the Tier-1 Renewable Energy Certificates shall be free and clear of all liens, judgments, encumbrances and restrictions.

Section 2.04. Seller agrees that it may not and shall not apply for or otherwise seek to achieve compliance under Section 242-8.7 (CO₂ budget units that co-fire eligible biomass) of the CO₂ Budget Trading Program (6 NYCRR Part 242), or any other state program operating as a part of the Regional Greenhouse Gas Initiative, on the basis of any MWh or emission of CO₂ or reduction in emissions of CO₂ or other benefit associated with the Tier-1 Renewable Energy Certificates or for any activity constituting performance under this Agreement.

Section 2.05. In the event that Seller becomes entitled to or must apply for or take some other action under any emission-trading, emissions recordation or other regime other than the RES in order to secure a claim, title, credit, ownership, or rights of any type, nature or sort ("Title") to any attributes associated with the Tier-1 Renewable Energy Certificates, or any certification, registration, verification or other memorialization of the creation of such attributes by the Bid Facility to which Seller may be entitled, Seller shall (i) notify NYSERDA of such opportunity, and, if requested to do so by NYSERDA, Seller shall (ii) take all actions necessary to apply for and secure such Title, to the maximum extent to which Seller is entitled, (iii) provide NYSERDA with evidence of taking such action; and (iv) convey such Title to NYSERDA whenever so secured.

Section 2.06. NYSERDA's obligations under this Agreement are expressly conditioned on the eligibility of Seller's Bid Facility, at the time of execution of this Agreement and throughout the duration of the Contract Delivery Term, under the RES eligibility rules and requirements as stated at Appendix A to the August Order [and, where appropriate, upon

compliance by Seller with the requirements of Exhibit D]. NYSERDA and/or its designee shall have reasonable access to the Bid Facility for the purpose of verifying the continuing eligibility of the Bid Facility and its operation. Bid Facilities selected under this RFP will not be subject to subsequent changes in RES eligibility rules; however, in the event that the Bid Facility fails to maintain eligibility consistent with the RES requirements as adopted by the August Order, such ineligibility will extend to the attributes emanating from the Bid Facility. See also Section 17.04 Permits and Approvals.

Section 2.07. Commercial Operation Milestone Date. NYSERDA's obligations to purchase Tier-1 Renewable Energy Certificates and to make payment under this Agreement are conditional on the commencement by the Bid Facility of Commercial Operation at a minimum of 80% of the Bid Capacity on or before the Commercial Operation Milestone Date. The Commercial Operation Milestone date shall be November 30, 2019. Seller may elect to extend the Commercial Operation Milestone Date; See Article XV.

Section 2.08. NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the Tier-1 Renewable Energy Certificates NYSERDA shall acquire under this Agreement, at any time and from time to time to any entity and on such terms and conditions as NYSERDA may desire. Any financial or other consideration received by NYSERDA from any such action shall inure solely to NYSERDA's benefit, to be applied as determined by NYSERDA as the central procurement administrator of the RES Program or a successor, and shall not affect the Seller's rights or obligations under the terms of this Agreement.

Section 2.09. Verification/Metering. The Actual Production and Actual Eligible Production of the Bid Facility must be capable of accurate and verifiable measurement at the Injection Point by the local ISO, a transmission utility, public authority, municipal electric company, and in the case of a Customer-Sited Bid Facility, an independent third party through a Dedicated Generation Meter. Unless specifically agreed to by NYSERDA in writing, the Bid Facility must be separately metered and must be functionally represented by a single and discrete Injection Point.

Section 2.10. Dedicated Generation Meter. Seller must provide, install, and maintain a dedicated generation meter at the Injection Point that shall be compliant with the requirements and standards stated in the NYGATS Operating Rules at Section 5.3. Revenue Metering Standards. Data collected from the meter will be available to NYSERDA, and will be used by NYSERDA to verify the monthly Actual Eligible Production.

Article III

Bid Facility Electricity Delivery Requirements.

Section 3.01. Bid Facilities in the NYCA. The electricity associated with the Tier-1 Renewable Energy Certificates for Bid Facilities located within the New York Control Area must either be (1) delivered into a market administered by the NYISO for end-use in New York State, (2) delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO; or (3) delivered through a Dedicated Generation Meter, in accordance with Section 2.10.

Section 3.02. External Bid Facilities. The electricity associated with the Tier-1 Renewable Energy Certificates for Bid Facilities in control areas adjacent to the New York Control Area shall be scheduled, transmitted, delivered to and settled in the NYISO energy market in each hour, and be accompanied with documentation of a unit-specific contract path between the Injection Point in the control area of origin to the Delivery Point in New York that includes the provision of transmission or transmission rights for delivering the generation via the NYISO using the North American Electric Reliability Corporation (NERC) tag fields Sending and Receiving Control Areas (CA) and Purchasing/Selling Entity (PSE) Name and Number. Compliance with this Delivery Requirement shall be verified by NYGATS which shall require an attestation from the importer that the information contained in the NYISO schedule is accurate and that the electricity associated with the import is being delivered solely from the selected resource. The Tier-1 Renewable Energy Certificates must follow the NYGATS Operating Rules for Unit-Specific Imports of Energy and Attributes under the Energy Scheduled and Delivered methodology. The number of Unit-Specific Import Certificates that will be created will be the lesser of the hourly energy schedule of the import, or the hourly meter reading of the Bid Facility.

Section 3.03. Bilateral Sales. Bilateral sales for electricity associated with the Quantity Obligation produced by the Bid Facility are permissible provided the Seller can demonstrate that the purchaser of the electricity associated with the Quantity Obligation is a New York State Load Serving Entity (LSE), or one or more New York State end-users.

Article IV

Payment

Section 4.01. Invoices. Seller shall submit monthly invoices throughout the term of this Agreement for the Tier-1 Renewable Energy Certificates transferred by Seller into the NYSERDA NYGATS Account and associated with the Actual Eligible Production in the prior month during the Contract Delivery Term. Invoices shall be submitted electronically to NYSERDA's online invoice system at: <https://services.nyserda.ny.gov/Invoices/> or, if this project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Contractor Portal with the Contractor's log-in credentials. If electronic submission is not possible, invoices may be addressed to NYSERDA, "Attention: Accounts Payable." Invoices shall reference the purchase order number, which will be generated and provided to the Contractor upon contract

execution, and the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall include a statement of the amount due and payable by NYSERDA to Seller, which amount shall be calculated in accordance with Section 4.02. Invoices must reflect the quantity of Tier-1 Renewable Energy Certificates Transferred to the NYSERDA NYGATS Account for the prior month. NYSERDA may not pay any Invoice submitted more than two (2) months after Transfer of Tier-1 Renewable Energy Certificates for which payment is requested. Invoices must be accompanied by information and data, as specified in Section 6.01, sufficient for NYSERDA to verify compliance with the Bid Facility Electricity Delivery Requirements and other requirements as may be outlined in this Agreement.

Section 4.02. Payment. The amount payable in a given month shall be calculated as the lesser of: (1) the multiplicative product of (a) the Actual Eligible Production of the Bid Facility during the prior month; (b) the Bid Quantity Percentage; and (c) the Bid Price, and (2) the number of Tier-1 Renewable Energy Certificates Transferred into the NYSERDA NYGATS Account multiplied by the Bid Price. NYSERDA will not pay for Tier-1 Renewable Energy Certificates beyond one hundred and twenty percent (120%) of the Bid Quantity for any Contract Year.

Section 4.03. Prompt Payment Policy. NYSERDA will make payments to the Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit C. Such payments shall be made by check or wire transfer to an account designated by the Seller. NYSERDA will not pay any invoice not accompanied by all information required in accordance with Section 6.01.

Section 4.04. Maximum Commitment/Limitation. The maximum number of Tier-1 Renewable Energy Certificates NYSERDA shall be obligated to purchase under this Agreement shall be equal to one hundred and twenty percent (120%) of the Bid Quantity multiplied by the number of years in the Contract Delivery Term. The maximum aggregate amount payable by NYSERDA to Seller hereunder is (\$ _____.00).

Article V

Adjustments

Section 5.01. True-Up Adjustments. NYSERDA may adjust payments to subsequent invoices consistent with adjustments by NYGATS pursuant to its Operating Rules based on NYISO or other local control area billing settlement true-up procedures, based on actual metered production data measured at the Injection Point, actual and verified data reflecting compliance with the Bid Facility Electricity Delivery Requirements, and/or based on the number of Tier-1 Renewable Energy Certificates Transferred.

Section 5.02. Other Adjustments. NYSERDA may adjust its contractual Payment obligations under this Agreement under the following circumstances:

- (a) NYSERDA may adjust amounts payable to Seller to reflect any costs borne by NYSERDA, if any, for participation in any renewable energy attribute accounting system operating in the Bid Facility's local control area, including all fees and charges, if any, for

the delivery, registration and/or retirement of the attributes or certificates in such renewable energy attribute accounting system.

- (b) Should Seller fail to Transfer Tier-1 Renewable Energy Certificates to the NYSERDA NYGATS Account in a number at least 80% of the Bid Quantity for three (3) consecutive Contract Years, NYSERDA may at its option upon Notice to Seller, modify this Agreement by adjusting the Bid Quantity for the remainder of the Contract Delivery Term to equal the highest Actual Annual Eligible Production during any Contract Year over that three-year period multiplied by the Bid Quantity Percentage.
- (c) Should Seller fail to reasonably demonstrate that the total dollar amount of Incremental Economic Benefits having accrued to New York as a result of the development, construction, modification, and operation of the [Bid Facility/Upgrade from the Award Notification Date] through the end of the first three (3) Contract Years of operation (Verified Total Dollars), divided by Installed Bid Capacity, is at least 85% of Expected Total Dollars divided by the Bid Capacity, NYSERDA may at its option upon Notice to Seller, modify this Agreement by reducing the Bid Price payable for the remainder of the Contract Delivery Term. Such reduction in the Bid Price will be made by an amount equal to the percentage shortfall between the Verified Total Dollars divided by the Installed Bid Capacity compared to the Expected Total Dollars divided by the Bid Capacity.
- (d) Should the Installed Bid Capacity differ from the Bid Capacity, Seller agrees that NYSERDA may at its option upon Notice to Seller modify the Contract by adjusting the Bid Quantity, Bid Quantity Percentage, or other relevant terms to reflect the Installed Bid Capacity.
- (e) For Bid Facilities that include Storage, should the Storage component not reach Commercial Operation with the proposed Storage capacity in MW on or before the Commercial Operation Milestone Date, NYSERDA may, upon Notice to Seller, reduce the Bid Price to an amount equal to \$_____ [a number to be agreed upon by the Parties before execution and calculated by proportionately (installed Storage capacity/proposed Storage capacity) reducing any additional points awarded based on the Storage component in Step Two of the evaluation process and determining the Bid Price that would have been necessary to maintain the Bid Proposal's initial ranking].

Article VI

Records and Reports

Section 6.01. Monthly Reports. NYSERDA will require the Seller to provide access to generation data, including detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Bid Facility was delivered, from the entity or party in control of any meter through which the energy associated with the Quantity Obligation was delivered, and from the administrator of any attribute accounting system operating in such control area. Seller may be required to waive confidentiality, as to NYSERDA, for the direct transfer to NYSERDA by an energy market administrator or the operator of the transmission and/or distribution system into which the energy from the Bid Facility

is delivered of transactional and/or delivery information and data pertinent to the verification of attribute creation and electricity delivery. [Where appropriate, Seller must also provide a Monthly Fuel Report, completed in accordance with Exhibit D.]

Section 6.02. Progress Reports/Material Change. Beginning on the first such date following the Effective Date, and continuing through the commencement of the Contract Delivery Term, Seller shall provide quarterly written Progress Reports to NYSERDA, on March 1, June 1, September 1, and December 1, which reports shall be in letter form, through a method specified by NYSERDA, and which shall describe at a minimum (1) Seller's progress in obtaining and securing all required environmental or other permits and/or local approvals; (2) the status of development and/or construction planning or activities with regard to the Bid Facility; (3) the status of the interconnection process between the Bid Facility and the administrator of the control area; (4) purchases, delivery, and/or installation of any major equipment associated with the Bid Facility; and (5) an estimated date for Commercial Operation. Such reports shall also include an updated Project Schedule Form (RESRFP17-1 Attachment H), copies of any permits or approvals granted and/or copies of any correspondence of any type denying or refusing any permit or approval. Upon NYSERDA's request, Seller shall also provide an independent engineer's or similar third party's assessment of the long-term expected energy production of the Bid Facility. Seller shall notify NYSERDA within ten (10) days of any event that could reasonably cause a material delay in any of the activities listed above.

Section 6.03. Economic Benefits Report. Within sixty (60) days of the third anniversary of the commencement of the Contract Delivery Term, Seller shall submit an economic benefits report prepared by a New York State certified, independent certified public accountant, demonstrating the actual Incremental Economic Benefits that resulted from the construction and operation of the Bid Facility. To fulfill this requirement, the Seller's independent certified public accountant will be required to prepare an "agreed upon procedures" report in accordance with the procedures outlined in the Economic Benefits Audit Protocol and Economic Benefits Verification Standards that were released with the Step One Notice of Qualification provided to Seller. The Economic Benefits Audit Protocol will serve as a requirements document to guide the independent audit, allowing auditors to understand the process they are asked to perform. The Economic Benefits Verification Standards will define valid expense claims and standardize submission and documentation processes and best practices. The audit will verify the economic benefits created by the Bid Facility under the categories and within the eligibility requirements listed in RESRFP17-1. The Economic Benefits Report will be funded at the Seller's expense.

Section 6.04. Additional Documents. Within 10 Business Days of Notice of Award under RESRFP17-1, Seller shall provide to NYSERDA:

- (a) certificates, dated as of the most recent practicable date prior to the Effective Date, issued by the [insert - jurisdiction of Seller's organization] Secretary of State confirming the corporate good standing of the Seller;
- (b) a certificate of an appropriate officer of the Seller, dated as of the Effective Date, in form and substance reasonably satisfactory to NYSERDA and certifying: (1) the names and signatures of the officers of the Seller authorized to sign any documents to be delivered

hereunder, and (2) the accuracy and completeness of resolutions of the Seller, authorizing and approving all matters in connection with the transactions contemplated thereby.

Seller shall promptly provide NYSERDA with updated and corrected versions of the above-referenced certificates upon any change in the information provided therein.

Section 6.05. Maintenance of Records. The Seller shall keep, maintain, and preserve at its principal office throughout the term of this Agreement and for a period of seven (7) years following the expiration of this Agreement, full and detailed books, accounts, and records pertaining to Seller's performance under the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Seller in the course of such performance.

Section 6.06. Site Control. Within one hundred and twenty days of the Award Notification Date, Seller shall provide documentation demonstrating rights-of-way or full control of the acreage needed for any interconnection facilities, and, should the Bid Facility site acreage exceed fifteen (15) acres, within one hundred and twenty days of the Award Notification Date, documentation demonstrating full control of the Bid Facility site acreage.

Article VII

Audit

Section 7.01. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records pertaining to Seller's performance under this Agreement, at the office or offices of the Seller where they are then being kept, maintained and preserved. If such books, accounts and records are not kept at an office within the State of New York, within a reasonable time of a request by NYSERDA, Seller shall make such books, accounts and records available to NYSERDA at NYSERDA's offices or at an agreed upon location within the State of New York. Any payment made under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein which are found by NYSERDA on the basis of any audit of the Seller by an agency of the United States, the State of New York or NYSERDA not to constitute a properly invoiced amount.

Section 7.02. Eligibility Audit. NYSERDA may require periodic audits of the Bid Facility to verify that the Bid Facility remains eligible under the eligibility rules and requirements adopted by the PSC in the August Order. Seller shall provide NYSERDA with written Notice prior to any material modification of the Bid Facility, including but not limited to any modification that is expected to result in a change in the Nameplate Capacity of the Bid Facility, and shall provide to NYSERDA a written description of the planned modification.

Article VIII

Assignments

Section 8.01. General Restrictions. Except as specifically provided otherwise in this Article VIII, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Seller'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. Such consent shall not be unreasonably withheld.

Section 8.02. Seller may, without NYSERDA's prior written consent, grant a security interest in or assign this Agreement as collateral in connection with financing arrangements; Seller shall promptly notify NYSERDA of the completion and the nature of any such grant or assignment.

Section 8.03. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment.

Article IX

Seller's Warranties and Guarantees

Section 9.01. As a material inducement to NYSERDA to enter into this Agreement, Seller makes the following warranties and guarantees, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

- (a) (1) that Seller is a [corporation/limited liability company/partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (2) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to own its assets or lease and operate its properties and carry on its business as now being or as proposed to be conducted, to construct, finance, own, maintain and operate the Bid Facility, to execute and deliver this Agreement, and to consummate the transactions contemplated herein; and (3) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary;
- (b) that the execution, delivery and performance by Seller, the entry into this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement: (1) have been duly authorized by all requisite corporate action (including any required action of its members); and (2) will not (i) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency or any provision of the limited liability company agreement or other governing documents of Seller; (ii) violate, conflict with,

result in a breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any indenture, agreement (including the respective limited liability company agreements of Seller), mortgage, deed of trust, note, lease, contract or other instrument to which Seller is a party or by which it or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of the Seller;

- (c) that the Bid Facility is or will be eligible under the August Order and that it will remain so throughout the Contract Delivery Term.
- (d) that the Tier-1 Renewable Energy Certificates Transferred to NYSERDA under this Agreement, are free and clear of any liens, encumbrances and/or defects of title;
- (e) that the attributes included in the Tier-1 Renewable Energy Certificates Transferred to NYSERDA under this Agreement shall not have otherwise been, nor will be sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;
- (f) that Seller 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;
- (g) that this Agreement will be duly executed and delivered by Seller and will constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof;
- (h) that the Seller has no 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 Seller's performance under this Agreement will infringe any patent or otherwise interfere with any other right of any person;
- (i) as of the Effective Date, that there are no existing undisclosed or threatened material legal actions, claims, or encumbrances, or liabilities that may adversely affect Seller's performance of this Agreement or NYSERDA's rights hereunder;
- (j) that Seller has no knowledge that any information or document or statement furnished by the Seller in connection with this Agreement or the documents submitted to NYSERDA under RESRFP17-1 contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading;
- (k) that Seller shall not, and shall not cause or permit any voluntarily abandonment of the development, construction or operation of the Facility; and
- (l) Seller certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

Article X

NYSERDA's Warranties and Guarantees

Section 10.01. As a material inducement to Seller to enter into this Agreement, NYSERDA makes the following warranties and guarantees, as of the Effective Date all of which shall survive the execution and delivery of this Agreement:

- (a) that NYSERDA is an instrumentality of the State of New York and a public authority and public benefit corporation, created under the New York State Public Authorities Law, validly existing and in good standing under the laws of the State of New York;
- (b) that NYSERDA has all necessary power and authority to execute and deliver this Agreement and all other agreements contemplated herein and hereby and to consummate the transactions contemplated hereby and thereby. The execution and delivery by NYSERDA of this Agreement and all other agreements contemplated herein and hereby and the consummation of the transactions contemplated hereby and thereby have been or, if not yet executed and delivered, will be when executed and delivered, and no other actions or proceedings on the part of NYSERDA are necessary to authorize this Agreement or any other agreement contemplated herein and hereby or the consummation of the transactions contemplated hereby and thereby;
- (c) that the execution, delivery and performance by NYSERDA of this Agreement will not (1) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency or, any provision of the Public Authorities Law; (2) violate, conflict with, result in a material breach of or constitute (alone or with notice or lapse of time or both) a material default or event of default under any indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which NYSERDA is a party or by which NYSERDA or any of its property is bound; or (3) result in the creation or imposition of any lien upon any property or assets of NYSERDA. This Agreement will not conflict with any other agreement or contract to which NYSERDA is a party;
- (d) that this Agreement has been duly executed and delivered by NYSERDA and constitutes the legal, valid and binding obligation of NYSERDA enforceable against NYSERDA in accordance with the terms thereof;
- (e) that NYSERDA is familiar with and in compliance with all general and specific laws, except where the failure to so comply would not result in a material adverse effect on NYSERDA's ability to perform its obligations; and
- (f) that there is no action, suit or claim at law or in equity, or before or by a governmental authority pending or, to the best knowledge of NYSERDA after due inquiry, threatened against NYSERDA or affecting any of its properties or assets which could reasonably be expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

Article XI

Indemnification

Section 11.01. Indemnification. Seller 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, reasonable attorneys' and/or experts' 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 Seller's performance under this Agreement. The obligations of Seller 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 XII

Insurance

Section 12.01. Maintenance of Insurance; Policy Provisions. The Seller, at no cost to NYSERDA, shall maintain or cause to be maintained, commencing with the Effective Date and continuing throughout the duration of the Contract Delivery Term, insurance of the types and in the amounts specified in Section 12.02 (Types of Insurance). All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) name or be endorsed to cover NYSERDA and the State of New York 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 12.02. Types of Insurance. Seller shall be required to maintain 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 [insert: \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of personal injury or sickness or death of any one person; [insert \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of personal injury, sickness or death in any one accident or disaster; and [insert \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of property damage in any one accident or disaster.

Section 12.03. Delivery of Policies; Insurance Certificates. Within 30 days of the effective date of this Agreement, Seller shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article XII and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event that any policy furnished or carried pursuant to this Article XII will

expire on a date prior to the expiration date of this Agreement, Seller, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and Seller 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 Seller shall deliver to NYSERDA a certified copy of each policy.

Article XIII

Events of Default

Section 13.01. Event of Default. For the purposes of this Agreement, “Event of Default” shall mean any of the following:

- (a) Representations and Warranties. Any representation or warranty made in this Agreement that shall prove to have been false or misleading in any material respect as of the time made or deemed to be made; or
- (b) Other Obligations. A Party shall default in the performance of any of its obligations under this Agreement and such default shall continue un-remedied for a period of 30 days after the defaulting Party receives Notice or otherwise has actual knowledge thereof; or
- (c) Voluntary Proceedings. A Party shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) make a general assignment for the benefit of its creditors; (c) commence a voluntary case under the Bankruptcy Code; (d) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (e) fail to convert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (f) take any corporate action for the purpose of effecting any of the foregoing; or
- (d) Involuntary Proceedings. A proceeding or case shall be commenced against a Party, without its application or consent, in any court of competent jurisdiction, seeking (a) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets; or (c) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue un-dismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 or more days; or an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or
- (e) Judgments. A judgment or judgments for the payment of money in the amount of \$5,000,000 or more shall be rendered by a court or courts against Seller, and the same shall not be paid or otherwise discharged for a period of more than 60 days unless such judgment has been stayed, released or vacated; or

- (f) Unauthorized Transfer. The transfer or attempted transfer by Seller to any transferee other than NYSERDA of any Tier-1 Renewable Energy Certificates associated with the Quantity Obligation or any attribute included in any Tier-1 Renewable Energy Certificate Transferred to NYSERDA; or
- (g) Commercial Operation. Failure of the Bid Facility to commence Commercial Operation at a minimum of 80% of the Bid Capacity on or before the Commercial Operation Milestone Date (November 30, 2019, unless extended pursuant to Article II, Section 2.07 of this Agreement); or
- (h) Abandonment. Seller's abandonment of the Bid Facility or its intentional delay of completion of construction in connection therewith; or
- (i) Failure to Produce. The failure by the Bid Facility to generate energy in a quantity sufficient to support the creation of Tier-1 Renewable Energy Certificates in a number equaling at least 65% of the Bid Quantity during any Contract Year; or
- (j) Insufficient Transfer. The failure by the Bid Facility to Transfer Tier-1 Renewable Energy Certificates to the NYSERDA NYGATS Account in a number equaling at least 65% of the Bid Quantity during any Contract Year; or
- (k) Failure to Transfer Tier-1 Renewable Energy Certificates. The failure by Seller to Transfer Tier-1 Renewable Energy Certificates, in conformity with Article II; or
- (l) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA, on or before November 30, 2018, additional Contract Security, in an amount equal to six dollars (\$6.00) per MWh multiplied by the Bid Quantity (See Section 15.01(b)).

Section 13.02. Effect of an Event of Default. In addition to any other remedy available to it under this Agreement or under applicable Law, upon any occurrence of an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement until the earlier of such time as (a) such Event of Default has been cured, or (b) the non-defaulting Party has elected to terminate this Agreement pursuant to Article XIV below.

Article XIV

Termination

Section 14.01. Termination. This Agreement may be terminated:

- (a) at any time by either NYSERDA or Seller if: (1) an Event of Default occurs (and following the expiration of any applicable cure period), (2) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (3) the non-defaulting Party has not waived such Event of Default in writing;

- (b) at any time by the mutual written consent of Seller and NYSERDA;
- (c) unless otherwise mutually agreed upon by NYSERDA and Seller in writing, on the expiration of the Contract Delivery Term (subject to Section 18.03 of this Agreement);
- (d) by NYSERDA, if any information or document or statement furnished by the Seller in connection with this Agreement or the documents submitted to NYSERDA under RESRFP17-1 are found to contain any untrue statement of a material fact or have omitted a material fact;
- (e) by NYSERDA in the event it is found that the certification filed by the Seller in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete;
- (f) by NYSERDA in the event it is found that Seller made material misrepresentations the certification filed by the Seller in accordance with New York State Tax Law Section 5-a was intentionally false when made.

Section 14.02. Effect of Termination. Except as otherwise set forth in Section 18.03 below, in the event of a termination of this Agreement as provided in Section 14.01 above, neither Party shall have any further right or obligation hereunder. In addition, the Parties hereto agree that, in the case of a termination based on the default of Seller, irreparable damage would occur in the event that NYSERDA could not obtain Tier-1 Renewable Energy Certificates pursuant to this Agreement from the date of Event of Default in which Seller was the defaulting party, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect to compel specific performance of this Agreement to compel the Transfer of all Tier-1 Renewable Energy Certificates associated with the Quantity Obligation that the [Bid Facility/Upgrade] produces following the date of any termination for such an Event of Default in accordance with the terms hereof, including Payment, together with any other remedy at law or equity available to NYSERDA in connection therewith, without the necessity of demonstrating the inadequacy of money damages. Notwithstanding the foregoing, for any termination by NYSERDA or Seller prior to the date of commencement of Commercial Operations, NYSERDA shall be entitled only to Stipulated Damages pursuant to Article XV.

Section 14.03. Good Faith Negotiation. Both Parties agree that, should any dispute arise during the term of this Agreement, the Parties will make a good faith, though non-binding effort to reconcile any difference or dispute before the filing of an action in any court.

Article XV

Contract Security

Section 15.01. Seller shall provide to NYSERDA Contract Security, in the form of cash, certified funds, or a Letter of Credit conforming to the requirements according to the following schedule and conditions:

- (a) Within ten (10) Business Days of the Award Notification Date, unless otherwise agreed to

by NYSERDA, Seller must provide Contract Security in an amount equal to the product of (1) Bid Quantity and (2) nine dollars (\$9.00) [plus any amount pledged by Seller as a part of a RESRFP17-1 Step Two Bid Proposal]. **NYSERDA may rescind and cancel the award to Proposer/Seller under RESRFP17-1 should Seller fail to provide Contract Security within such 10-day period;**

- (b) On or before November 30, 2018, Seller must provide additional Contract Security in an amount equal to the product of (1) Bid Quantity and (2) six dollars (\$6.00). **Failure to provide the additional Contract Security by November 30, 2018 will constitute a default and may result in termination of this Agreement.**

Section 15.02. Extension of Commercial Operation Milestone Date. Seller may elect to extend the Commercial Operation Milestone Date as follows:

- (a) On or before October 30, 2019, Seller may elect to extend the Commercial Operation Milestone Date from November 30, 2019 to May 31, 2020 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00);
- (b) On or before April 30, 2020, Seller may elect to extend the Commercial Operation Milestone Date from May 31, 2020 to November 30, 2020 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b) and 15.02 (a), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00);
- (c) On or before October 30, 2020, Seller may elect to extend the Commercial Operation Milestone Date from November 30, 2020 to May 31, 2021 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b) and 15.02 (a) and (b), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00);
- (d) On or before April 30, 2021, Seller may elect to extend the Commercial Operation Milestone Date from May 31, 2021 to November 30, 2021 by providing to NYSERDA, in addition to the amounts provided under Section 15.01 (a) and (b) and 15.02 (a), (b) and (c), Contract Security in an amount equal to the product of (1) Bid Quantity and (2) two dollars (\$2.00).

Section 15.03. Executed Interconnection Agreement. In lieu of Contract Security seller may provide under Section 15.02(c) and/or (d), Seller may extend the Commercial Operation Milestone Date from November 30, 2020 to November 30, 2021 by providing to NYSERDA proof that an interconnection agreement has been entered into by the NYISO or its counterpart in an adjacent control area, the Connecting Transmission Owner, and the Seller or a legal representative of the Seller. Bid Facilities seeking to satisfy the electricity delivery requirement through options 2 or 3 of Section 3.01 may provide proof that a comparable interconnection agreement has been entered into with all the necessary sites, service providers and parties that will be enable and permit the transmission of the energy from the Bid Facility to the point of its consumption.

Section 15.04. Letter of Credit. A Letter of Credit shall be a clean unconditional and irrevocable standby letter of credit in favor of NYSERDA as beneficiary, issued for direct payment by a bank which is a member of the New York Clearinghouse Association, substantially in the form of the letter of credit attached hereto as Exhibit B (“Letter of Credit”), in a face amount equal to the Contract Security amount, and which Letter of Credit shall provide that the issuing bank will pay to NYSERDA amounts in aggregate up to that same face amount upon presentation of only the Sight Draft in the amount to be drawn and the Payment Certificate, in the form of Annex A and Annex B, respectively, to the Letter of Credit, and have an expiration date not shorter than one (1) year. Should the Bid Facility not have commenced Commercial Operation by a date 30 days prior to the expiration date of the letter of Credit, and Seller not having provided NYSERDA or arranged with NYSERDA to provide a substitute Letter of Credit prior to such expiration, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA until a substitute Letter of Credit has been provided, or for application against subsequent obligations of Seller.

Section 15.05. Replacement. Any assignee within Article VIII of this Agreement shall, simultaneously with its receipt of the assignment, deliver to NYSERDA a Replacement Letter of Credit meeting the requirements of this Article, and NYSERDA shall, within twenty (20) Business Days after receipt of a compliant Replacement Letter of Credit, return the original Letter of Credit to Seller. Upon the failure of an assignee to deliver a compliant Replacement Letter of Credit to NYSERDA simultaneously with its receipt of the assignment, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA for application against subsequent obligations of Seller and/or the assignee under this Agreement.

Section 15.06. Refund of Security. Amounts provided by Seller as Contract Security will be refunded to Seller by NYSERDA as follows:

- (a) In their entirety, upon the achievement by the Bid Facility of an SoQ (Operational Certification) if the Installed Bid Capacity is equal to or greater than the Bid Capacity.
- (b) At a prorated amount, upon the achievement by the Bid Facility of an SoQ (Operational Certification), if the Installed Bid Capacity is less than the Bid Capacity. Such amount that will be refunded, expressed as a percentage of the total Contract Security, will be equal to the Installed Bid Capacity divided by the Bid Capacity.

Section 15.07. Retention of Security. Amounts provided by Seller as Contract Security will be retained by NYSERDA as follows:

- (a) In their entirety if Seller fails to provide to NYSERDA, on or before November 30, 2018, Contract Security in the amount required under Section 15.01(b), above.

- (b) At a prorated amount if the Installed Bid Capacity is less than the Bid Capacity. Such amount that will be retained, expressed as a percentage of the total Contract Security, will be equal to the Bid Capacity minus the Installed Bid Capacity divided by the Bid Capacity.

Section 15.08. Stipulated Damages. NYSERDA and Seller hereby agree, acknowledge and stipulate that NYSERDA's retention of amounts provided by Seller as Contract Security pursuant to Article XV, in the proportions stated within this Article, is fair and reasonable under the circumstances and in light of the uncertainty and inability to adequately quantify the harm that would result to NYSERDA as a result of the events that permit NYSERDA to retain such amounts of the Contract Security.

Article XVI

Force Majeure

Section 16.01. 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, or strikes. Variability in the frequency or force of the wind, of rainfall, or of water levels will in no event constitute force majeure events. Failure by Seller to obtain or secure any permit or approval or delay in obtaining any permit or approval of any sort with regard to Seller's performance under the Agreement shall not constitute a force majeure event.

Article XVII

Compliance with Certain Laws

Section 17.01. Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

Section 17.02. Laws of the State of New York. Seller shall comply with all of the requirements set forth in Exhibit A hereto.

Section 17.03. All Legal Provisions Deemed Included. It is the intent and understanding of the Seller 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 Seller, 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 17.04. Permits and Approvals. The Seller shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Bid Facility over the duration of the Contract Delivery Term. Neither the RES Program nor selection under RESRFP17-1 in any way replaces or modifies the necessity or applicability of any permit or approval process including SEQRA by any jurisdiction. NYSERDA's obligations to make payments to Seller are conditional on the acquisition by Seller of all such permits and approvals. Upon request by NYSERDA Seller must demonstrate such acquisition and/or provide copies of all permits and approvals acquired. Seller shall provide prompt Notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process ("Process") by any federal or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the Bid Facility, as well as of any modification, penalty and/or fine that may be imposed or occur as a result of such a Process or violation. Upon the filing by Seller of an Article 10 Application, Seller shall promptly notify NYSERDA and shall comply with any restrictions NYSERDA may impose regarding communication with NYSERDA staff.

Section 17.05. Other Legal Requirements. The references to particular laws of the State of New York in this Article 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 Seller to comply with all legal requirements.

Article XVIII

Additional Provisions

Section 18.01. Forward Contract. Each Party represents and warrants to the other that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code, that this Agreement is a "forward contract" within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be "contractual rights" as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

Section 18.02. Taxes/Costs. Seller shall be responsible for and obligated to pay all present and future taxes, fees, levies and costs that may be assessed by any entity including but not limited to NYGATS with respect to Seller's provision of Tier-1 Renewable Energy Certificates to NYSERDA, or with respect to the measurement, tracking, and verification and participation in NYGATS necessary for the creation and Transfer of the Tier-1 Renewable Energy Certificates and/or the energy with which they are associated, into the NYSERDA NYGATS account.

Section 18.03. Term. Unless terminated earlier under this Article, this Agreement shall expire upon the expiration of the Contract Delivery Term. Upon such date or upon earlier Termination of this Agreement under Article XIV, neither Party shall have any further obligation

to the other, except that Sections 5.02(a), 7.01, 11.01, 15.08, 17.01, 18.04, 19.02, 20.01, 21.02, 21.03, 21.04, and NYSERDA's Payment obligation under Article IV shall survive.

Section 18.04. Waiver. Either Party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered by the other Party pursuant hereto, or (c) waive compliance with any of the agreements or conditions of the other party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No provision of this Agreement will be deemed to have been waived unless the waiver is in writing; no delay by NYSERDA in exercising its rights hereunder, including the right to terminate this Agreement, shall be deemed to constitute or evidence any waiver by NYSERDA of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

Section 18.05. Independent Contractor. The status of the Seller under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Seller and its respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. Nothing in this Agreement shall be construed as creating a partnership, joint venture or other relationship between NYSERDA and Seller for any reason.

Section 18.06. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

Section 18.07. Seller Expense. Seller shall, at its own expense, make all arrangements necessary to: (1) register the Bid Facility and Transfer Tier-1 Renewable Energy Certificates to the NYSERDA NYGATS Account, and (2) interconnect the Bid Facility with a transmission or distribution system and to comply with the Bid Facility Electricity Delivery Requirements. This requirement encompasses Seller's purchasing or arranging for all services including without limitation transmission, ancillary services, any control area services, line losses and transaction fees necessary to deliver energy to the New York Control Area, in accordance with all rules and protocols of the NYISO, throughout the Contract Delivery Term.

Section 18.08. Environmental Disclosure. The Parties agree that, at the time of the execution of this Agreement, New York employs NYGATS for the tracking, registration, and

trading of generation attributes, including renewable or environmental attributes or credits, and that NYGATS will be used by the New York State Department of Public Service to accomplish verification of the transactions consummated hereunder as part of the Environmental Disclosure Program.

Section 18.09. Covenant. Seller hereby covenants and promises that the Bid Facility is or will be eligible under the August and February Orders and that it will remain so throughout the Contract Delivery Term.

Article XIX

Notices, Entire Agreement, Amendment, Counterparts

Section 19.01. 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:

- (1) via certified or registered United States mail, return receipt requested;
- (2) by personal delivery;
- (3) by expedited delivery service; or
- (4) 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:

To Seller:	Company Attn: Name Address Line 1 Address Line 2 City, State Zip code e:mail Address:
To NYSERDA:	NYSERDA Attn: Office of the General Counsel 17 Columbia Circle Albany, New York 12203-6399 e:mail address: pete.keane@nyserda.ny.gov
With a copy to:	NYSERDA Attn: Large-Scale Renewables 17 Columbia Circle Albany, New York 12203-6399 e:mail address: res@nyserda.ny.gov

- (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 [or Canadian] 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 of an email acknowledgement of receipt.
- (c) The parties may, from time to time, specify any new or different address in the United States [or Canada] 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 19.02. Entire Agreement; Amendment. This Agreement, including the Exhibits hereto, embodies the entire agreement and understanding between NYSERDA and the Seller and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.

Section 19.03. 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 XX

Publicity

Section 20.01. Publicity. Seller and/or the Bid Facility owner will collaborate with NYSERDA's Communications Unit, or RES program staff, with regard to the preparation of any press release, public announcement, publication or media interview with respect to the Parties' entry into this Agreement or the subject matter thereof or which concerns NYSERDA or the RES Program. Staff can be contacted by calling 518-862-1090. In any such press release, public announcement publication, or media interview Seller and/or the Owner of the Bid Facility and/or its employees shall credit NYSERDA and the funding participation of the Renewable Energy Standard in the activities of the Bid Facility. Seller will not represent that positions taken or advanced by Seller represent the opinion or position of NYSERDA, the PSC or the State of New York.

Article XXI

Confidentiality

Section 21.01. Seller may be required to waive confidentiality, as to NYSERDA, for the direct transfer to NYSERDA by an energy market administrator or the operator of the

transmission and/or distribution system into which the energy from the Bid Facility is delivered of transactional and/or delivery information and data pertinent to the verification of attribute creation and electricity delivery.

Section 21.02. Freedom of Information Law. Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6).

Section 21.03. Claim of Confidentiality. Information of any tangible form including any document that Seller wishes to be protected from disclosure to third parties, including any information provided as a part of a Bid Proposal Package submitted in response to RESRFP17-1, must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

Section 21.04. Trade Secrets/Commercial Information. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception 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." If NYSERDA receives a request from a third party for information or a document received from Seller and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

Seller

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF _____)
SS:
COUNTY OF _____)

On the ____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary

EXHIBIT A

REVISED 5/12

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS³

(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 Agreement. 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

³ NYSERDA's Standard Forms and Agreements can be found on NYSERDA's website:
<https://www.nyserda.ny.gov/Funding-Opportunities/Standard-Forms-and-Agreements>

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.state.ny.us/coog/foil2.html>) and NYSERDA's Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDAREgulations.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 A, the terms of this Exhibit A 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 Agreement 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 Agreement, 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 www.ogs.ny.gov/about/regs/ida.asp).

EXHIBIT B
LETTER OF CREDIT

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 20__

BENEFICIARY:

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
17 COLUMBIA CIRCLE, ALBANY, NEW YORK 12203-6399

LADIES AND GENTLEMEN:

BY THE ORDER OF:

[SELLER]

[SELLER'S ADDRESS]

WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: _____ IN YOUR FAVOR FOR THE ACCOUNT OF _____ (THE "SELLER") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [STATE IN WORDS] U.S. DOLLARS AVAILABLE BY YOUR DRAFTS AT SIGHT ON [INSERT NAME AND ADDRESS OF ISSUING BANK], NEW YORK, NEW YORK, USA, WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX A HERETO (THE "SIGHT DRAFT"); AND
2. A DATED PAYMENT CERTIFICATE PURPORTEDLY SIGNED BY A DULY AUTHORIZED OFFICER OF NYSERDA IN THE FORM OF ANNEX B HERETO (THE "PAYMENT CERTIFICATE").

MULTIPLE DRAWINGS ARE PERMITTED IN AMOUNTS NOT TO EXCEED, IN COMBINATION, THE AGGREGATE AMOUNT.

DRAWINGS PRESENTED BY FACSIMILE TO FACSIMILE NUMBER _____ ARE ACCEPTABLE; PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT BE PRESENTED.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR PAYMENT CERTIFICATE AND SIGHT DRAFT PRESENTED IN FULL COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT ON OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE EXPIRATION DATE HEREOF. THIS LETTER OF CREDIT WILL EXPIRE ON [INSERT DATE].

PAYMENT AGAINST CONFORMING DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT SHALL BE MADE BY US AT OR BEFORE 2:00 P.M., NEW YORK TIME, ON THE NEXT (OR, IN THE CASE OF A PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE SECOND NEXT) BANKING DAY AFTER PRESENTATION.

ALL PAYMENTS MADE BY US UNDER THIS LETTER OF CREDIT WILL BE MADE IN IMMEDIATELY AVAILABLE FUNDS AND WILL BE DISBURSED FROM OUR OWN FUNDS. IF REQUESTED BY YOU, PAYMENT UNDER THIS LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK FUNDS TO YOUR ACCOUNT IN A BANK ON THE FEDERAL RESERVE WIRE SYSTEM. BENEFICIARY'S BANK [INSERT NAME AND ACCOUNT NUMBER].

THIS LETTER OF CREDIT IS NOT TRANSFERABLE. ONLY YOU MAY MAKE ANY PAYMENT CERTIFICATE AND SIGHT DRAFT UNDER THIS LETTER OF CREDIT.

ANY SIGHT DRAFT DRAWN HEREUNDER MUST BE MARKED "DRAWN UNDER [INSERT NAME AND ADDRESS OF ISSUING BANK], STANDBY LETTER OF CREDIT NUMBER _____ DATE _____."

ALL BANK CHARGES INCLUDING BUT NOT LIMITED TO, FEES OR COMMISSIONS, SHALL BE FOR APPLICANT'S ACCOUNT.

MISCELLANEOUS

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED OR TO WHICH IT RELATES (INCLUDING, WITHOUT LIMITATION, THE AGREEMENT) AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR INSTRUMENT.

WE HEREBY AGREE WITH YOU THAT EACH DULY COMPLETED PAYMENT CERTIFICATE AND SIGHT DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO US ON OR BEFORE THE EXPIRY DATE. THE OBLIGATION OF [ISSUING BANK] UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF [ISSUING BANK], AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 600 (PROVIDED, HOWEVER, THAT DRAWINGS PERMITTED HEREUNDER SHALL NOT BE DEEMED TO BE DRAWINGS BY INSTALLMENTS WITHIN ARTICLE 32 OF THE UCP) AND AS TO MATTERS NOT GOVERNED BY THE UCP, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. FEDERAL LAW.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF OUR STANDBY LETTER OF CREDIT UNIT, INCLUDING THE LETTER OF CREDIT REFERENCE NUMBER AS IT APPEARS ABOVE.

[NAME AND ADDRESS OF ISSUING BANK]

AUTHORIZED SIGNATURE
OF OFFICER OF ISSUING BANK

Annex A to Exhibit B - Irrevocable Standby Letter of Credit

SIGHT DRAFT

Letter of Credit No. _____

Date of Letter of Credit: _____

Date of Draft: _____

FOR VALUE RECEIVED

Pay on Demand to: THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
AUTHORITY, U.S. _____ Dollars (U.S. \$_____). The amount of
this draft does not exceed the amount available to be drawn by the Beneficiary under the Letter of Credit.

Charge to account of [Name of Seller].

Drawn under [Name of Bank] Letter of Credit No. _____.

Payment by the bank pursuant to this drawing shall be made to _____, ABA
Number _____, Account Number _____, Attention:
_____, Re: _____.

To: [Issuing Bank]
[Address]
Attention: _____

As Beneficiary

By: _____
[Name and Title]

Annex B to Exhibit B - Irrevocable Standby Letter of Credit

PAYMENT CERTIFICATE

To:
[Issuing Bank]
[Address]

Re: Irrevocable Standby Letter of Credit No: _____ [Insert]

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to [Issuing Bank], with reference to the Irrevocable Standby Letter of Credit No: [Insert] ("Letter of Credit"), that Seller, having provided the Letter of Credit to the New York State Energy Research and Development Authority ("NYSERDA") as Security for performance under NYSERDA Agreement No. _____ ("Agreement") in the aggregate amount of \$_____, ("Letter of Credit Amount") either [check the appropriate space]:

_____ Seller failed to provide to NYSERDA, on or before the first Effective Date of the Agreement, Contract Security in the amount required under Section 15.01(b) of the Agreement, under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

_____ Seller has failed to perform in that Seller's Bid Facility has failed to attain a Statement of Qualification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date of November 30, 2019; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ Seller has failed to perform in that Seller's Bid Facility has failed to attain a Statement of Qualification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date of May 31, 2020; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ Seller has failed to perform in that Seller's Bid Facility has failed to attain a Statement of Qualification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date of November 30, 2020; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ Seller has failed to perform in that Seller's Bid Facility has failed to attain a Statement of Qualification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date of May 31, 2021; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ Seller has failed to perform in that Seller's Bid Facility has failed to attain a Statement of Qualification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date of November 30, 2021; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ The Installed Bid Capacity is less than the Bid Capacity; under which circumstance, NYSERDA is authorized to draw a percentage of the Letter of Credit Amount, such percentage will be equal to the Bid Capacity minus the Installed Bid Capacity divided by the Bid Capacity.

_____ Seller has assigned its rights under the Agreement and the assignee has not delivered to the undersigned Beneficiary a replacement letter of credit satisfying the requirements of the Agreement; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ the Letter of Credit is currently set to expire within thirty (30) days and the Seller has not made arrangements acceptable to the undersigned Beneficiary to provide a substitute letter of credit prior to such

expiration; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit or the Agreement, referenced above.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this payment Certificate as of the ____ day of _____.

As Beneficiary

By: _____
[Name and Title]

EXHIBIT C

NYSERDA PROMPT PAYMENT POLICY STATEMENT

504.1. Purpose and Applicability. (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.⁴

(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 of this Agreement.

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

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

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

⁴ This is only a summary; the full text of Part 504 can be accessed at:
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

(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 Article XIX of 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.

EXHIBIT D

REQUIREMENTS FOR BIOMASS-FUELED BID FACILITIES

I. BIOMASS PROJECTS – ALL FUEL TYPES

This section prescribes basic requirements that apply to all biomass power generation facilities. Additional requirements apply to facilities that use a combination of eligible and ineligible fuels, and fuels derived from mixed waste streams such as Construction and Demolition (C&D) debris, Landfill Gas or Renewable Pipeline Gas. Provisions related to procurement or delivery of biomass fuels do not apply to projects where the fuel is produced at the same facility that generates the power such as a landfill gas project that generates power on site.

A. BASIC REQUIREMENTS

Basic requirements for all Sellers include:

- Seller is required to have fuel procurement contracts to ensure that the biomass fuels specification is consistent with the definition of eligible fuels.
- For Sellers using harvested or silvicultural waste wood, a Forest Management Plan is required. Harvested/silvicultural wood suppliers are required to be in compliance with the Forest Management Plan and to prepare harvest plans for each parcel.
- For each fuel delivery, the Seller must implement a plan to sample/inspect fuel for compliance with eligibility specifications that includes procedures for fuel inspection and delivery acceptance or rejection. For gaseous or liquid fuels derived from eligible solid biomass resources the Seller must certify the eligible content of the feedstocks used to produce the fuel for each fuel producer.
- Prior to Operational Certification/Statement of Qualification (SOQ)¹, the Seller must obtain all environmental approvals and permit modifications required by NYSDEC.
- For Operational Certification/SOQ the contractor must submit a Fuel Management, Measurement, and Calibration Plan described below.

B. SUBMISSION OF A FUEL MANAGEMENT, MEASUREMENT, AND CALIBRATION PLAN

Prior to Operational Certification/SOQ, the Seller must submit a Fuel Management, Measurement, and Calibration Plan (The Plan). The Plan is intended to demonstrate to NYSERDA that the facility has in place the procedures to track fuel deliveries and inspect the quality of fuel deliveries. The Plan must cover all aspects of fuel procurement and onsite operations important to ensuring the terms of the contract are met. In general, fuel procurement, inspection of deliveries, onsite fuel management, fuel flow measurement and sampling for testing should be addressed.

¹ For additional information regarding RES Statement of Qualification (SoQ), please visit NYSERDA's Eligibility and Certification page: <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Certification>

Facilities that fire exclusively eligible fuels will need to prepare a relatively brief Fuel Management, Measurement, and Calibration Plan, aimed primarily at fuel delivery inspection and quality assurance. A sample plan outline is included in the [RES Biomass Power Guide](#) for the Renewable Energy Standard (RES) Program which can be downloaded from the NYSERDA RES Program web site. The Plan must include the following information:

1. FUEL PROCUREMENT

Identify fuel procurement QA/QC provisions that ensure fuel suppliers have an effective QA/QC program in place to provide biomass fuels from secondary sources meeting the criteria for RES eligibility. Describe the process for certifying suppliers to meet RES requirements. If harvested fuels are used then the facility's Forest Management Plan can be referred to in this section.

2. FUEL MANAGEMENT AND INSPECTION

How fuel is to be managed and inspected must be documented. The plan should address delivery, inspection, and storage and management of the fuel up to point of firing. Facilities may receive deliveries of biomass fuels through a variety of modes: for example, truckloads of wood chips, a tanker of renewable diesel, or landfill gas flowing through piping. The Plan's details should include how the fuel is to be sampled and inspected for ineligible fuels or contaminants prior to delivery acceptance and/or use. For example, a solid fuel facility must describe how trailers of wood chips will be inspected prior to or during unloading and how material will be handled if inspection reveals ineligible fuel contamination that has entered the eligible fuel handling system. Additional requirements are set forth in Sections II, III and IV of this exhibit for facilities that fire a combination of eligible and ineligible fuels or Clean MRF Fuels.

3. OPERATING PROCEDURES

Facilities must also provide operating procedures that facility staff will use to inspect, monitor and measure fuels, and document the execution of these procedures. Such procedures should be prepared in a way that facilitates their distribution to plant personnel, including how and when to take fuel samples, and inspect fuel unloading for ineligible contaminants in the eligible fuel stream. Such procedures should be posted at all necessary locations, including sampling points and fuel delivery stations.

4. FUEL FLOW MEASUREMENT AND SAMPLING

A key aspect of the plan is a description of how, where, and with what frequency fuel flow measurement and fuel sampling of eligible fuels will be performed. Special requirements are placed on facilities that fire Clean MRF Fuels or a mix of eligible and ineligible fuels. These requirements are addressed in subsequent Sections of this exhibit. For all facilities, the method of measuring fuel flow will depend on the methods of delivery. Generally, for solid and liquid biofuels truck scales will be the standard method for measuring fuel intake. The Plan should describe how deliveries are weighed in and out and how the scales are maintained and calibrated for accuracy. Additional requirements are set forth in subsequent Sections of this exhibit for facilities that fire a combination of eligible and ineligible fuels or Clean MRF Fuels.

5. FUEL TESTING AND ANALYSIS

For eligible fuels derived from secondary sources (all fuels that do not come directly from wood harvested on forested land as chips or roundwood in accordance with an approved Forest Management Plan and Harvest Plan), RCRA metals² and copper analyses should be performed to establish a baseline fuel composition. The plan must describe how these analyses are conducted for each combination of fuel supplier (fuel broker) and fuel source, at least once every six months. Additional requirements are set forth in Sections II, III and IV of this exhibit for facilities that fire a combination of eligible and ineligible fuels or Clean MRF Fuels.

C. FOREST MANAGEMENT AND HARVEST PLANS

For any facility planning to use biomass harvested from forest land (chipped or roundwood) the facility must prepare a Forest Management Plan which sets forth the requirements and environmental safeguards for every harvest. The form and content of the plan is described in the [RES Biomass Power Guide](#). For each harvest of forest biomass, a harvest plan must be prepared in accordance with the Forest Management Plan and kept on file for the duration of the RES contract at the Power Generating Facility.

D. REPORTING REQUIREMENTS

Initial Reports

Facilities must provide the Fuel Management Measurement and Calibration Plan including the results of the RCRA metals and copper analyses for secondary sources of biomass.

For Facilities procuring biomass from wood harvested on forested land as chips or roundwood, a Forest Management Plan must be submitted and approved for Operational Certification/SOQ.

Monthly Reports

Facilities must prepare a monthly fuel delivery and inspection log that will be available for review by NYSERDA on request. For each fuel delivery, the record must include the supplier name and address, the fuel source, the fuel weight, description of the composition and physical characteristics, and a statement of inspection (pass/fail) to determine the integrity of the fuel. Reports related to procurement or delivery of biomass fuels do not apply to projects where the fuel is produced at the same facility that generates the power such as a landfill gas project that generates power at the same site. However, these on-site fuel and power production facilities must track and report the amounts for fuel produced for power production. This documentation may be requested for the purposes of verifying the electricity output by fuel source as indicated in NYGATS by the facility.

Semiannual and Annual Reports

Facilities must provide the results of the RCRA metals and copper analyses for secondary sources of biomass for each supply source and fuel type.

² “RCRA Metals” refers to EPA analytical method EPA SW-846, for the measurement of lead, arsenic, chromium, selenium, mercury, silver, cadmium, and barium.

II. Projects Using Eligible and Ineligible Fuels

II. BIOMASS PROJECTS USING ELIGIBLE AND INELIGIBLE FUELS

Projects that use a combination of eligible and ineligible fuels must track the use of eligible fuels and ineligible fuels and the energy produced by each fuel category. This category of projects also includes Renewable Pipeline Gas which is transported by a common carrier and therefore comingled with ineligible fuels. This Section contains the requirements and methods for the measurement and accounting of Actual Eligible Production. Actual Eligible Production reporting requirements vary between projects using solid biomass fuels and those using liquid biofuels or bio-gas fuels such as Renewable Pipeline Gas (RPG), Landfill Gas (LFG), biogas from anaerobic digestion, and syngas from biomass gasification.

A. GENERATION FROM A MIX OF ELIGIBLE BIOMASS AND INELIGIBLE FUELS

Additional record keeping and reporting is required for plants using a mix of eligible and ineligible fuels. The amount of eligible generation from the plant (or generation unit) is proportional to the amount of input energy provided by the eligible fuel. The data collected shall be used to determine the daily heat input provided by the eligible solid biomass and the total daily heat input of all fuels to determine the Actual Eligible Production of the net electricity generated and sold in a monthly reporting period. This documentation may be requested for the purposes of verifying the electricity output by fuel source as indicated in NYGATS by the facility.

Solid Biomass Fuels

- The Seller is required to take samples from eligible and ineligible fuel streams for purposes of both fuel quality control and energy measurement. The Seller is required to maintain sample integrity and to have written fuel sampling procedures for handling, storage and shipping to the analysis lab.
- Continuous mass flow measurements are required for all fuels as fed to the boiler. A Fuel Management, Measurement, and Calibration Plan pursuant to guidelines herein must be submitted to and approved by NYSERDA before Operational Certification/SOQ will be granted. Such plan must include procedures to ensure compliance with the requirements of this Contract when the equipment for fuel flow measurement is out of service.
- Approved test and measurement protocols for composition, moisture content and heat content are listed in the Test Methods Section below. If an alternative method is to be used it must to be submitted to NYSERDA in advance for approval by NYSERDA.
- **If Clean MRF is one of the Fuels, requirements of Section III also apply**

Non-Pipeline Quality Bio-Gas Fuels (Such As Landfill Gas, Anaerobic Digester Gas) In Combination with Ineligible Fuels (Such As Natural Gas)

- Sufficient metering must be in place at the landfill collection/processing facility to allow accurate accounting of gas produced, collected, and used in energy conversion on a daily basis. If the landfill gas generator and the electric generator are not owned and operated by the same organization and collocated, contracts must be in place to allow this

II. Projects Using Eligible and Ineligible Fuels

information to be shared in compliance with the other requirements listed in this section.

- The volume of metered gas collected and used from either the landfill gas collection system or the anaerobic digester system should be reported in units of standard cubic feet (scf).
- The total (gross) amount of electricity generated using the eligible/ineligible fuel gas mixture must be reported on a daily basis.
- Approved test and measurement protocols for composition, moisture content and heat content are listed in Test Section below. If an alternative method is to be used it must be submitted to NYSERDA in advance for approval by NYSERDA.

Pipeline Quality Bio-Gas Fuels (RPG)

- Common carrier RPG resources shall be considered eligible only if sourced and used in the same state to generate power delivered to New York.
- Contracts for RPG transported over common carrier must be new contracts with respect to the date established in the RFP for project eligibility. The Seller must notify the gas producer as part of the new RPG contract, or modification, that the gas contract is being purchased for conversion to RES eligible power and is subject to the accounting rules of the RES program, that could include some of the provisions listed above for the use of non-pipeline quality gas.
- The RPG producer/supplier must certify that the gas delivered under contract is produced from new resources (i.e., new or expanded RPG production systems).
- The Seller must keep and provide sufficient records on physical delivery from common carrier, gas consumption, and gas quality to pro rate the Seller's monthly electrical generation based on the ratio of the total RPG contract gas energy and the total gas energy used. A report detailing the use of eligible and ineligible fuels shall be required.
- The Seller shall provide reporting of the total net electricity (net electricity in this context refers to the electric generation sold to the grid) generated as a direct result of the above measured eligible bio-gas fuel delivered to the conversion system. Total electricity shall be measured in MWh or kWh.

B. SUBMISSION OF A FUEL MANAGEMENT, MEASUREMENT, AND CALIBRATION PLAN

For Operational Certification/SOQ the Seller must submit to NYSERDA a Fuel Management, Measurement and Calibration Plan as described in Section I. For facilities firing a mix of eligible and ineligible fuels additional requirements include:

II. Projects Using Eligible and Ineligible Fuels

1. FUEL PROCUREMENT

Describe fuel sources and estimate delivered proportions for each fuel type (e.g. harvested wood, Clean MRF Fuel). Identify fuel procurement QA/QC provisions that ensure fuel suppliers have an effective QA/QC program in place to provide biomass fuels from secondary sources meeting the criteria for RES eligibility. Describe the process for certifying suppliers to meet RES requirements. If harvested fuels are used, then the facility's Forest Management Plan can be referred to in this section.

2. FUEL MANAGEMENT AND INSPECTION

In order to use the accepted method for accurate measurement of heat input, facilities must maintain eligible biomass fuel deliveries as a separate fuel stream up to the main fuel feed line or surge bin. Specifically, mixing on the storage pile of other long term storage device is not acceptable unless there are extenuating physical conditions at the facility site that can be shown to make this requirement an undue burden.³

The Fuel Management and Inspection Plan should address delivery, inspection, and storage and management of the fuel up to the fuel feed lines for firing the boiler or combustion chamber or loading the surge bin in preparation for immediate firing. Any deviation from these principals will require NYSERDA review and consent.

3. OPERATING PROCEDURES

No additional requirements

4. FUEL FLOW MEASUREMENT AND SAMPLING

Multi-fuel power generation systems are subject to power production measurement and accounting rules that are designed to ensure that only the renewable portion of power generation is purchased under the RES program procurements. This requires accurate accounting of the eligible renewable portion of the power production at the plant based on the following:

- a. An accurate and separate measurement and accounting of the RES program eligible and ineligible fuels heat input to the conversion device; and
- b. An apportionment of total electricity generation based on the fraction of the total conversion device heat input provided by the RES program eligible fuel source.

The Seller will maintain and calibrate all equipment used for mass (solid fuels) and volumetric (liquid or gaseous) flow measurement and associated control devices in accordance with the procedures and calibration schedule set herein. A calibration schedule for each of the key equipment components must be provided. These schedules should be based on vendor recommendations or industry best practices. In any case, the following minimum standards apply:

- a. Gravimetric scales for ineligible fuels shall be calibrated no less than twice per year;
- b. Belt scales for eligible fuels shall be calibrated no less than once per month.
- c. Gas analysis and metering equipment are to be calibrated no less than once a year. If

³ If NYSERDA grants an exception to the separate fuel storage and metering rule, a plan for tracking and accounting for the eligible fuel firing must also be approved.

II. Projects Using Eligible and Ineligible Fuels

any meter required is not under the contractor's direct control, the contractor must provide other evidence of demonstrating that such meters are in proper working order.

The seller will maintain a calibration log that includes:

- a. A description of the calibration protocol
- b. Certifications for weighing and measurement systems used in calibration
- c. Record of measured variance and adjustments made to the equipment as a result of calibration
- d. Signature and date for the calibration technician
- e. If the calibration protocol deviates from the manufacturer's recommendations, such deviations should be noted and explained separately
- f. As a separate attachment, the Seller should include copies of the manufacturer cut sheets, if available, specifying the system's accuracy, general operating characteristics and a written description or copy of the manufacturer's calibration requirements.

All scales and meters shall be calibrated by a third Party annually, and the results of such calibration must be provided to NYSERDA with the first invoice for each contract year.

Measurement and Sampling Requirements for Sellers Using Solid Biomass Fuels

The plan must describe the sampling equipment and procedures for maintaining sample integrity until delivery to the lab. The Seller is required to take grab samples from the as-fired eligible biomass fuel stream once every three-hour period. The Seller shall create a daily "super sample" from these grab samples. This "super sample" shall be sealed or stored in an environment that prevents decomposition of biomass and prevents moisture evaporation from the biomass. This "super sample" must be tagged with the date on which it was collected and logged in a Seller supplied sampling log. The Seller shall send the daily "super sample" to a lab within 24 hours of collection for a proximate analysis. Laboratory proximate analysis of moisture content in the biomass fuel must include an accounting for evaporative losses by adding condensed moisture in the sealed container to the moisture measured in the biomass sample. The proximate analysis result of the "super sample" shall be used to calculate daily as-fired heat input values. The Seller shall maintain documentation of sample timeliness, analysis and actions taken if analysis is delayed. The lab shall analyze the "super samples" within five business days of receipt. If a sample is delayed being shipped to the laboratory, the Seller shall notate any samples analyzed greater than six days from collection on the monthly invoice.

Measurement and Sampling Requirements for Sellers Using Liquid Biofuels

Eligible liquid fuels should be sampled and analyzed similarly to solid fuels. The seller is required to take grab samples once every three hours, which shall be combined into a daily super-sample which is sent to a lab for analysis. Care should be taken that the liquid is stored in such a way that no evaporation, leaching, or container degradation compromises the sample integrity.

Measurement and Sampling Requirements for Sellers Using Non-Pipeline Quality Bio-Gas Fuels (Such As Landfill Gas, Anaerobic Digester Gas)

Continuous metering of eligible and ineligible fuel flows is required. The average methane

II. Projects Using Eligible and Ineligible Fuels

content (% volume) of the bio-gas metered during the reporting period must be measured continuously using analyzers to generate a monthly weighted average or sampled and analyzed using an approved sampling protocol. This value shall be used for calculating heating input of the eligible fuel gas stream in the reporting periods after the sample's collection and prior to the next sample by incorporating data found in the baseline gas composition data. A statement of the composition of any natural-gas fired at the site from the supplier, including heating value must be kept on record. Monthly supplier bills may be used to validate the composition of the delivered natural gas in lieu of gas testing if such bills contain information on the heating value of the delivered gas.

If gas is being extracted from multiple landfill cells or multiple digester systems, individual metering and testing may be required if the composition of the resulting gas streams is materially different. The end use of the bio-gas or bio-gas mixture (electricity, thermal, flared, losses, export to end-user via common carrier, etc.) should be reported as a percentage by volume.

An ultimate bio-gas fuel composition analysis (annual baseline) is required. This test must be performed annually and must include trace hydrocarbons and other combustible gases in the fuel. The heating value for the fuel should be reported on a basis consistent with other reporting heating values required. The estimated heating value of the bio-gas (Btu/scf) used for electricity production and the basis for the estimate (higher or lower heating value) should be documented monthly through laboratory testing or may be calculated using an annual baseline test and measurement of methane content.

If bio-gas is to be fired with solid or liquid ineligible fuels, then the measurement of the non-gaseous fuels shall be subject to rules governing the use of each fuel.

Measurement and Sampling Requirements for Sellers Using Pipeline Quality Bio-Gas Fuels (RPG)

Metering at the point of conversion to RPG and at the end use must be sufficient to verify contract volumes associated with RPG contracts.

Critical metering points at the point of RPG injection to the common carrier and the point of withdrawal shall be subject to a calibration protocol. Operational Certification/SOQ shall be conditioned on a plan for such calibration being submitted to and approved by NYSERDA.

Sufficient metering must be in place at the landfill collection/processing facility to allow accurate accounting of gas produced, collected, and the resulting volumes and energy content of the gas converted to RPG on a daily basis. Additional measurement or monitoring systems required to allocate the RPG produced to RPG delivery contracts may be required.

5. FUEL TESTING AND ANALYSIS

The Plan will provide procedures and schedules for testing the samples in accordance with the accounting requirements for eligible energy production. The Plan will identify the third-party labs that will conduct the testing of the chemical composition of the fuel. The labs used must not be affiliated with the Seller, and must be experienced with the analytical testing.

C. TESTING AND ANALYSIS METHODS

Test Methods for Cofiring Eligible and Ineligible Fuels

Eligible Solid Fuels

The test methods in Table 1 are required to determine the values used to calculate the RES eligible generation from cofired solid biomass fuels. The use of alternatives may be approved, but approval must be sought in advance of using alternative methods in any report.

Table 1 Test Methods for Eligible Solid Fuels

Fuel Type	Measurement	Testing Method	Testing Frequency
Directly Harvested (<i>associated with an FMP</i>)	Proximate Analysis	ASTM Standard Method of Proximate Analysis (D5142)	Grab or in-line samples taken every 3-hour period. Such grab samples are to be measured in a single “Super Sample” at the end of each 24-hour operating period.
Not Directly Harvested (<i>not associated with an FMP</i>)	Proximate Analysis	ASTM Standard Method of Proximate Analysis (D5142)	Grab or in-line samples taken every 3-hour period. Such grab samples are to be measured in a single “Super Sample” at the end of each 24-hour operating period.
	RCRA Metals Analysis	EPA SW-846, for lead, arsenic, chromium, selenium, mercury, silver, cadmium, and barium	Once for each combination of supplier and source on a semiannual basis

Ineligible Solid Fuels

The test methods in Table 2 are required to determine the values used to calculate the amount of ineligible generation from ineligible fuels. The use of alternatives may be approved, but approval must be sought in advance of using alternative methods in any report.

Table 2 Test Methods for Ineligible Solid Fuels

Measurement	Test or Measurement Method	Frequency
Fuel Composition	ASTM Standard Test Method of Ultimate Analysis (D5373)	Once for each combination of supplier and source on a semiannual basis
Proximate Analysis	ASTM Standard Method of Proximate Analysis (D5142)	If needed, from one “Super Sample” assembled each day from grab samples taken every 3-hour period

II. Projects Using Eligible and Ineligible Fuels

Test Methods for Gaseous Fuel Cofiring**Eligible Gaseous Fuels**

The following test methods in Table 3 are required to determine the heating values for bio-gas fuels. The use of alternatives may be approved, but approval must be sought in advance of using alternative methods in any report.

Table 3 Test Methods for Eligible Gaseous Fuels

Measurement	Test or Measurement Method	Frequency
Fuel Composition	ASTM D2650 - 10 Standard Test Method for Chemical Composition of Gases by Mass Spectrometry	Semiannually for each source (individual testing may be required by cell or digester)
Methane Content – Continuous	Continuous Methane Analyzer	Continuous
Methane Content – Sample Average	If a Continuous Methane Analyzer is not used then periodic analysis of landfill gas composition using statistically valid samples using calibrated portable gas meters and delivering a confidence level of 95% may be used.	Monthly

Ineligible Gaseous Fuels

The following test methods in Table 4 are required to determine the values for ineligible gaseous fuels in the calculations below. The use of alternatives may be approved, but approval must be sought in advance of using alternative methods in any report.

Table 4 Test Methods for Ineligible Gaseous Fuels

Measurement	Test or Measurement Method	Frequency
Fuel Composition	Heating value data from pipeline or utility supplier (may be derived from supplier invoice)	Monthly

Test Methods for Liquid Fuel Cofiring**Eligible Liquid Fuels**

The following test methods in Table 5 are required to determine the heating values for liquid fuels. The use of alternatives may be approved, but approval must be sought in advance of using alternative methods in any report.

Table 5 Test Methods for Eligible Liquid Fuels

Measurement	Test or Measurement Method	Frequency
Proximate Analysis	Testing methods will be determined based on the type of liquid fuel used	Grab samples taken every 3-hour period. Such grab samples are to be measured in a single “Super Sample” at the end of each 24-hour operating period.

Ineligible Gaseous Fuels

II. Projects Using Eligible and Ineligible Fuels

The following test methods in Table 6 are required to determine the values for ineligible liquid fuels in the calculations below. The use of alternatives may be approved, but approval must be sought in advance of using alternative methods in any report.

Table 6 Test Methods for Ineligible Liquid Fuels

Measurement	Test or Measurement Method	Frequency
Fuel Composition	Testing methods will be determined based on the type of liquid fuel used	Once for each combination of supplier and source on a semiannual basis

D. CALCULATING ELIGIBLE RENEWABLE GENERATION

The following equations shall be used to calculate the amount of eligible renewable generation produced at a facility cofiring eligible and ineligible fuels. Equations 1 and 2 are the basic equations for calculating the Renewable Energy Generations (MWh/month) measured during the monthly reporting period. Recognizing that the total heat input to the generating unit will be derived from multiple fuels, the cofiring percentage is generically calculated as expressed in the following equations:

Equation 1: Biomass Cofiring Percentage

$$\text{Cofiring Percentage} = \frac{\text{Heat Input}_{\text{biomass}}}{\text{Heat Input}_{\text{total}}}; \text{ where}$$

$$\text{Heat Input}_{\text{total}} = \text{Heat Input}_{\text{biomass}} + \text{Heat Input}_{\text{ineligible fuel}}$$

$$\text{Heat Input}_{\text{Biomass}} = \text{HHV}_{\text{biomass}} \times \text{Biomass Mass Flow Rate}$$

$$\text{Heat Input}_{\text{Ineligible}} = \text{HHV}_{\text{ineligible fuel}} \times \text{Ineligible Fuel Mass Flow Rate}$$

$$\text{HHV} = \text{High Heating Value (Btu/lb) measured on the same moisture basis as the Mass Flow Rate}$$

For this purpose, the biomass heat input must be based on RES eligible biomass fuels. The cofiring percentage can then be used to apportion the total generation as follows:

Equation 2: Renewable Energy Generation

$$\text{Generation}_{\text{Renewable}} = \text{Generation}_{\text{Total}} \times \text{Cofiring Percentage};$$

The principles for calculating the biomass generation from direct cofiring in a gas- or liquid fueled plant mirror those outlined for a solid fuel plant. The key variables for calculating the renewable generation component remain the heating value of the fuel, fuel flow rate, and total boiler heat input. However, gas and liquid fuels can be used in a wider array of conversion devices, which introduces some additional complexity. The [RES Biomass Power Guide](#) Appendix B provides a guide of acceptable methods for calculating the cofiring percentage and consequently apportioning the total generation as *Renewable* and *Non-Renewable*.

II. Projects Using Eligible and Ineligible Fuels

E. ADDITIONAL REPORTING REQUIREMENTS

In addition to the reports specified in Section I the seller must provide the following:

Monthly Reports

Facilities that use Eligible and Ineligible fuels must report the results of fuel sample testing each month. NYSERDA will provide the invoice templates, in Excel file spreadsheets that include tables for reporting the fuel composition and amount of fuel fired for each distinct type of eligible and ineligible fuel used at the facility. Each test result must be backed up by the laboratory analysis report that must be kept on file at the facility for the length of the RES contract. This documentation may be requested by for the purposes of verifying the electricity output by fuel source as indicated in NYGATS by the facility.

Semiannual and Annual Reports

Fuel Composition test results for each combination of supplier and source on a semiannual basis.

III. CLEAN MRF FUELS

The term “Clean MRF Fuel” referred to in the Contract shall mean clean biomass separated from the mixed waste stream of Construction & Demolition (C&D) debris at a permitted Material Reclamation Facility (MRF) or C&D processing facility. Use of Clean MRF Fuel is subject to the fuel quality assurance and control procedures described below. Note, these provisions are not applicable to clean wood separated at the source (the construction or demolition site).

A. REQUIREMENTS

Requirements for the use of Clean MRF Fuels include:

- Separation of the clean biomass from C&D Debris at a MRF or C&D Processing Facility
- Approval of a Beneficial Use Determination by NYSDEC (BUD) for the use of the fuel (or equivalent for Clean MRF fuels produced in other states).
- Initial and monthly sampling and testing of the fuel product to the fuel quality standard adopted by the PSC in PSC Order CASE 09-E-0843⁴
- Fuel flow measurement, reported using templates provided by NYSERDA, for the separate accounting of generation produced from clean MRF fuels each month.

Since portions of the MRF fuel deliveries may not meet the RES fuel quality standard the facility must abide by the general provisions of Section I and the special provisions for cofiring eligible and ineligible fuel found in Section II.

B. SUBMISSION OF A FUEL MANAGEMENT, MEASUREMENT, AND CALIBRATION PLAN

For Operational Certification/SOQ the Seller must submit to NYSERDA a Fuel Management, Measurement and Calibration Plan as described in Sections I and II. For facilities firing Clean MRF Fuels, additional requirements beyond those prescribed in Sections I and II are described below, which must be addressed in the Plan.

1. FUEL PROCUREMENT

Describe the fuel sources and estimate delivered proportions of each fuel type (e.g. harvested wood, Clean MRF Fuel). Identify fuel procurement QA/QC provisions that ensure all Clean MRF Fuel suppliers have an effective QA/QC program in place to provide biomass fuels from the C&D waste stream meeting the criteria for RES eligibility. Describe the process for certifying suppliers to meet RES requirements. The Plan shall provide for NYSERDA’s review and approval of each Clean MRF supplier. If harvested fuels are used then the facility’s Forest Management Plan can be referred to in this section.

⁴Rulemaking Allowing Clean Wood Separated from Construction and Demolition Waste at Material Reclamation Facilities to be Eligible for Use as Biomass Fuel in the Renewable Portfolio Standard Program. Niagara Generation, LLC, Retail Renewable Portfolio Standard, Order Approving Petition with Modifications, State of New York Public Service Commission, Case 09-E-0843, November 22, 2010, p 16-17.

2. FUEL MANAGEMENT AND INSPECTION

To ensure that the Clean MRF meets fuel quality standards referenced in the PSC Order CASE 09-E-0843, the Plan from the Seller must provide the fuel inspection procedures for the Clean MRF. The fuel quality specification should reference the fuel quality test limits listed in Section C below. As stated in the New York Public Service Commission (PSC) Order the Seller shall maintain supply contracts only with facilities permitted to receive and process C&D debris by the state in which they are located. The Seller should only accept Clean MRF Fuels from MRFs that have been approved by NYSERDA.

3. OPERATING PROCEDURES

No additional requirements

4. FUEL FLOW MEASUREMENT AND SAMPLING

Laboratory analytical testing of fuel samples is required initially for Operational Certification/SOQ and then monthly for reporting RES eligible energy production and invoicing. The facility may choose to use either of the following options for monthly fuel sampling:

Option 1: Regular sampling of as-fired Clean MRF Fuel prior to fuel blending for firing (*Preferred Method*)

Grab samples from the unblended as-fired eligible Clean MRF Fuel stream will be taken once every 3-hour period at a collection station prior to blending and/or transport to the boiler. Fuel Quality Testing will be conducted using a monthly aggregated “super sample.” *This method requires the facility to have a separate storage and fuel feed system for the Clean MRF Fuels, similar to the requirements of cofiring facilities.*

Option 2: Random sampling each delivery of Clean MRF Fuel at the power generating facility

For this option, grab samples are withdrawn from the interior of the load at predetermined intervals that span the load. This method allows for random sampling of the load since the operator cannot visually select the sample from the top of the load. The facility may propose an alternative random method for NYSERDA consideration if it prevents operators from preferentially selecting the cleanest sample material. Samples can then be bagged and labeled for testing. “Super samples” are aggregated from individual samples collected over a month’s time. The facility will take a minimum of three samples for each load using a procedure that ensures random sampling from the delivery vehicle. Delivery samples will be identified with the supplier and the portion unused in the super sample will be preserved until the monthly test results are received by the facility and reported to NYSERDA.

Preparation and Testing of Monthly Samples

Individual fuel samples taken each month must be ground and combined and thoroughly mixed to make up the month’s test sample (“super sample”) shipped to the lab. The monthly super sample should be shipped on the next business day following the close of the month. Up to three weeks will be allowed from the day that samples are shipped to the lab for the completion of all tests. In practice this means that invoices to NYSERDA for one month of renewable power production will likely be submitted at the earliest in the fourth week of the

month following production to allow for the inclusion of test results. If the fuel test results exceed the limits for contamination then the Clean MRF Fuel portion of the total fuel fired that month and the associated generation will be ineligible under the RES.

To ensure the proper measurement and accounting for monthly RES eligible generation for each month the following additional requirements for both Options 1 and 2 must be met. Monthly Samples will be subject to a proximate analysis to determine moisture content and higher heating value. If the monthly Clean MRF Fuel deliveries fail to pass the RES fuel quality test criteria the entire and full amount of monthly generation from Clean MRF Fuels must be deducted from the invoice as ineligible fuel using the same methods for reporting of cofired eligible biomass and ineligible fuels. Specifically, data regarding the heating value and mass flow of the rejected load and the energy conversion efficiency of the unit will be used to determine the amount of energy generation disqualified from the RES invoice.

Use of Subsamples

The Facility may wish to collect subsamples that collectively represent the entire amount of Clean MRF Fuel fired in the month. Subsamples may represent fuel fired over a smaller time interval (weeks or days), fuel delivered by each supplier in the month, or equal increments of fuel mass flow fired (every 10 tons). As long as the subsample increments collectively represent the entire amount of fuel fired in the month they may be treated as subsamples for fuel quality analysis. In the event that the monthly super sample fails to meet the Clean MRF Fuel Quality standard, the facility may order additional tests performed for all the subsamples to determine what portion of the fuel fired is ineligible. The portion of the monthly fuel fired that is determined to be ineligible on a heat input basis by subsample testing will be deducted from the eligible fuel portion and reported separately as ineligible fuel fired in the month.

5. FUEL TESTING AND ANALYSIS

The testing requirements for use of Clean MRF Fuels are specified in Section C. The Plan will identify the third-party labs that will conduct the testing of the chemical composition of the fuel. The labs used must not be affiliated with the Seller and experienced with the analytical testing.

C. ANALYSIS AND TEST METHODS FOR USING CLEAN MRF FUELS

Test protocols for contaminants typically found in C&D wastes were adopted by the PSC in the 2010 Order.⁵ To assure accurate test results, it is critical that the samples be thoroughly ground and mixed to homogenize the sample material prior to testing. The list of contaminants and test methods for measuring contaminant concentrations are provided in Table 7. Different versions of the same test method, designated by the test method suffix letter, are acceptable. Where the performing lab has a choice, the latest version should be used. If the facility's chosen lab prefers an alternative test method to the PSC accepted method it must conduct a comparative analysis. The comparative analysis must statistically prove that the alternative method is equally precise

⁵ Contaminant Limits established in the 2010 Order are maximum concentration limits for any MRF Clean Fuel.

and repeatable as the PSC approved method. The alternative method cannot be used until approved by NYSERDA.

In Table 8 A and B and Table 9 the test reporting forms are provided. The reporting form in Error! Reference source not found. Table 8 A includes the limits for concentrations of contaminants in eligible Clean MRF Fuels. Contaminant Limits listed in the second column of the reporting form above were adopted by the PSC. Different versions of the same test method as designated by the test method suffix letter are all acceptable.

Table 7 Test Methods for Clean MRF Fuels- Analysis Basis: Dry Matter (Moisture Free)

Contaminant	Primary Test or Measurement Method	Approved Alternate Method	Frequency
Arsenic, Cadmium, Chromium, Lead, Selenium, Silver, Titanium, Zinc	EPA SW 846-6010C – Inductively Coupled Plasma-Atomic Emission Spectrometry	EPA 200.7 Rev 4.4 – Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission	monthly
Mercury	EPA SW 846-7471 – Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique)	None	monthly
Total Pesticides	EPA SW 846-8081B – Organochlorine Pesticides by Gas Chromatography	None	monthly
Total Herbicides ⁶	EPA SW 846-8151A – Chlorinated Herbicides by GC Using Methylation or Pentafluorobenzoylation Derivatization	EPA SW846-SV 8270 for Pentachlorophenol ONLY	monthly
Polychlorinated Biphenyls (PCBs)	EPA SW 846-8082A – Polychlorinated Biphenyls (PCBs) by Gas Chromatography	None	monthly
O, M, & P Cresols	EPA SW 846-8270D – Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)	None	monthly
Chlorine	ASTM D6721 - Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry	None	monthly
Plastics	Visual Inspection	None	each delivery
Total Non-wood ⁷	Visual Inspection	None	each delivery

⁶ EPA SW846-SV 8270 can be used as an alternate test method to EPA SW 846-8151A for pentachlorophenol

⁷ Non-wood does not include soil and metal fasteners which are noncombustible

Table 8A MRF Fuel Quality Testing Form - Limits in PPM Analysis Basis: Dry Matter (Moisture Free)

MRF Fuel Quality Testing			Monthly Super Sample Results (ppm)
MRF Fuel Quality Analysis	Limit (total)	EPA Test Method	
Arsenic (ppm)	50.00	SW 846-6010C	
Cadmium (ppm)	20.00	SW 846-6010C	
Chromium (ppm)	200.00	SW 846-6010C	
Lead (ppm)	250.00	SW 846-6010C	
Selenium (ppm)	20.00	SW 846-6010C	
Silver (ppm)	100.00	SW 846-6010C	
Titanium (ppm)	300.00	SW 846-6010C	
Zinc (ppm)	200.00	SW 846-6010C	
Mercury (ppm)	0.20	SW 846-7471	
Total Pesticides ⁽¹⁾ (ppm)	0.16	SW 846-8081B	
Total Herbicides ⁽²⁾ (ppm)	0.50	SW 846-8151A	
PCBs (ppm)	20.00	SW 846-8082A	
O, M, and P Cresols (ppm)	1,200.00	SW 846-8270D	
Chlorine (ppm)	1,500.00	ASTM D6721	
Meets Standard?			Yes/No

Notes 1 and 2: Totals for all Pesticides and Herbicides are calculated in Table 9 (Specific Pesticides and Herbicides to be Analyzed) and reported on this form.

Table 8 B Contaminants Evaluated by Visual Inspection on each Delivery

Contaminant	PSC Acceptance Limits	Inspection Results
Plastics	1% dry weight	
Total Non-wood	1% dry weight	

Table 9 below lists the full set of Herbicides and Pesticides required to be analyzed. The Totals on this supporting form should be entered into the total Herbicides and Pesticides rows of the reporting form in Table 8A.

Table 9 Specific Pesticides and Herbicides to be Analyzed

(1)Pesticides tested for include:			Monthly Super Sample
Analyte	Cas Number	EPA Test Method	
4,4'-DDD	72-54-8	SW 846-8081B	
4,4'-DDE	72-55-9	SW 846-8081B	
4,4'-DDT	50-29-3	SW 846-8081B	
Aldrin	309-00-2	SW 846-8081B	
alpha-BHC	319-84-6	SW 846-8081B	
beta-BHC	319-85-7	SW 846-8081B	
Chlordane, Total	57-74-9	SW 846-8081B	
delta-BHC	319-86-8	SW 846-8081B	
Dieldrin	60-57-1	SW 846-8081B	
Endosulfan I	959-98-8	SW 846-8081B	
Endosulfan II	33213-65-9	SW 846-8081B	
Endosulfan sulfate	1031-07-8	SW 846-8081B	
Endrin	72-20-8	SW 846-8081B	
Endrin aldehyde	7421-93-4	SW 846-8081B	
Endrin ketone	53494-70-5	SW 846-8081B	
Heptachlor	76-44-8	SW 846-8081B	
Heptachlor epoxide	1024-57-3	SW 846-8081B	
Lindane	58-89-9	SW 846-8081B	
Methoxychlor	72-43-5	SW 846-8081B	
Total:			-

(2)Herbicides tested for include:			Monthly Super Sample
Analyte	Cas Number	EPA Test Method	
2,4,5-T	93-76-5	SW 846-8151A	
2,4,5-TP	93-72-1	SW 846-8151A	
2,4-D	94-75-7	SW 846-8151A	
4-Nitrophenol	100-02-7	SW 846-8151A	
Dalapon	75-99-0	SW 846-8151A	
Dicamba	1918-00-9	SW 846-8151A	
Dichlorprop	120-36-5	SW 846-8151A	
Dinoseb	88-85-7	SW 846-8151A	
Pentachlorophenol	87-86-5	SW 846-8151A or EPA SW 846-SV 8270	

Requirements:	1. Analysis Basis: HHV - As Received; All Other Analytes - Dry Basis (Moisture Free)
	2. Testing was performed using the EPA/ASTM test method listed for each analyte
Clarifications:	1. EPA SW864-SV 8270 can be used as an alternate test method to EPA SW 864-8151A for pentachlorophenol
	2. Different versions of the same test method are acceptable designated by the test method suffix letter.

D. ADDITIONAL REPORTING REQUIREMENTS

In addition to the reports specified in Sections I and II the seller must provide the following:

Monthly Reports

Facilities that use Clean MRF fuels must create a monthly super sample representing all the MRF fuel used in the month and provide the results of fuel quality testing in the form of Table 8 A and Table 9 along with the invoice to NYSERDA each month. Each test result report must be backed up by the laboratory analysis report that must be kept on file at the facility for the length of the RES contract. The Facility must also report results of a proximate analysis to determine moisture content and higher heating value for monthly super samples of the Clean MRF Fuel. The contaminants listed in Table 8 B are visually inspected and reported in the fuel delivery logs.

In the event that the test results show that one or more contaminants in the fuel exceed the limits specified in Table 8, the entire Clean MRF fuel supply for that month must be reported as ineligible fuel and subtracted from the total biomass generation reported for the period.

The Facility may wish to collect subsamples that collectively represent the entire amount of Clean MRF Fuel fired in the month. Subsamples may represent fuel fired over a smaller time interval (weeks or days), fuel delivered by each supplier in the month, or equal increments of fuel mass flow fired (every 10 tons). As long as the subsample increments collectively represent the entire amount of fuel fired in the month they may be treated as subsamples for fuel quality analysis. In the event that the monthly super sample fails to meet the Clean MRF Fuel Quality standard, the facility may order additional tests performed for all the subsamples to determine what portion of the fuel fired is ineligible. The portion of the monthly fuel fired that is determined to be ineligible on a heat input basis by subsample testing will be deducted from the eligible fuel portion and reported separately as ineligible fuel fired in the month.

Additional documentation may be requested by NYSERDA for the purposes of verifying the electricity output by fuel source as indicated in the [NYGATS Operating Rules](#).

Initial Reports

Accompanying the Fuel Management Measurement and Calibration Plan report should be the initial fuel quality test summary in the form of Table 8A and Table 8B.

IV. Biomass Recovered from Mixed Waste Streams

IV. BIOMASS RECOVERED FROM MIXED WASTE STREAMS

These contract provisions apply to facilities using biomass recovered from municipal mixed-waste streams or other waste biomass specifically listed in the PSC Orders⁸. These provisions do not apply to clean MRF Fuels.

For biomass recovered from municipal mixed-waste streams or other waste biomass listed in the PSC Orders, the RES program requires a primary conversion step to liquid or gaseous fuels. ***For this reason, this section refers to the raw biomass used at the facility as a biomass feedstock, which is distinct from the final fuel product used to generate electricity. The feedstock conversion step produces a clean biomass fuel used for power generation.*** Power generation facilities that choose to use these types of biomass must demonstrate that emissions from electric energy production from the use of the adulterated feedstocks are equal to or less than the emissions for the process using unadulterated biomass feedstocks.

The biomass feedstock must be produced at a permitted solid waste facility in compliance with all NYSDEC standards for operation (or an equivalent set of state standards for solid waste management outside of New York) and is subject to the NYSDEC BUD review process. The feedstock production facility must have a regular routine independent monitoring program that pays NYSDEC (or approved third-party⁹) monitors to ensure that its biomass processing is consistent within facility permits and conditions. In addition, these feedstock production facilities are required to employ sorting techniques that recover the biomass fraction of mixed waste. As Part of the Operational Certification/SOQ process the power generating facility will be required to provide copies of the solid waste BUD and air permits.

A. SUBMISSION OF A FUEL MANAGEMENT, MEASUREMENT, AND CALIBRATION PLAN

For Operational Certification/SOQ the Seller must submit to NYSERDA a Fuel Management, Measurement and Calibration Plan as described in Section I. For this class of fuels the fuel testing portion of the plan must address the special requirements for the Pollutant Precursor Screening Analysis and Comparative Emissions Testing. The results of comparative emissions testing will be submitted to NYSERDA in a separate report as a key element of the Operational Certification/SOQ process. Topics to be addressed in the Plan beyond what is required in Section I are described below.

⁸ From the PSC Order 8/1/2016 Appendix A: Agricultural by-products such as leather and offal and food processing residues that are converted into a biogas or liquid biofuel. Adulterated forms of wood, such as plywood and Particle board, may be used as a feedstock for biogas or liquid biofuel conversion technologies if it can be demonstrated that the technology employed would produce power with emissions comparable to that of biogas or liquid biofuel using only unadulterated sources as feedstock.

⁹ All out of state projects will be required to utilize a third-party monitor to ensure that its biomass processing is consistent with facility permits and conditions. Projects located out of state will be required to meet the same standard, but these projects will necessarily rely on monitoring services provided by an approved third party monitor.

IV. Biomass Recovered from Mixed Waste Streams

Fuel Procurement

Identify all mixed waste sources. The biomass feedstocks must be provided by permitted solid waste facilities in compliance with all NYSDEC standards for operation (or an equivalent set of state standards for solid waste management outside of New York). Identify fuel procurement QA/QC provisions that ensure that fuel suppliers have an effective QA/QC program in place to provide consistent biomass mixed waste fuels conforming to the fuel specification approved for comparative testing. Describe the process for certifying suppliers to meet RES requirements.

1. FUEL MANAGEMENT AND INSPECTION

The feedstock production facility must describe or provide documentation for the independent monitoring program that pays for NYSDEC (or approved third-party) monitors to ensure that its biomass processing is consistent within facility permits and conditions. Independent monitors must be identified in the plan and evidence of their qualifications provided.

2. OPERATING PROCEDURES

No additional requirements.

3. FUEL FLOW MEASUREMENT AND SAMPLING

No additional requirements.

4. FUEL TESTING AND ANALYSIS

To operationally certify a power generation facility using adulterated biomass feedstocks listed in the PSC Orders for the RES program, the following steps must be taken for comparative emissions testing and analysis. The standard for eligibility is demonstration that emissions from electric energy production using biogas or liquid biofuel derived from the adulterated feedstock is equal to or less than the emissions for the process using unadulterated biomass feedstocks. The Plan must address how each step of the process will be accomplished according to the specifications below. Additional guidance is provided in the [RES Biomass Power Guide](#) on the NYSERDA RES Website.

Step 1 – Pollutant Precursor Screening Analysis– The facility must submit an ultimate and proximate feedstock analysis as well as compound- and element- specific analyses of the adulterated feedstock(s). These chemical analyses for feedstock screening must include the components of the feedstock that, under the combustion conditions present in the proposed biomass facility, could produce air pollutants of concern. In this methodology, they will be called “precursor” compounds and elements. Test results from these analyses enable NYSERDA and the facility to determine the air emissions testing regime that will be required to demonstrate RES compliance. The sampling protocol for sample collection and analysis must provide assurance that the feedstock analyses are representative of the feedstocks that will be used at the facility. At a minimum, the air pollutants that NYSERDA is concerned with are those for which the facility was required to test in permitting, plus the air pollutants listed in the pollutants of concern column of Table 10 below. The limits are based on typical feedstock analyses for forest-harvested wood, in the expectation that most adulterated

IV. Biomass Recovered from Mixed Waste Streams

feedstock will be significantly wood-derived.

Any precursor elements or compounds that are found in the proposed feedstock in greater concentration than in the unadulterated biomass sample will be listed for testing along with its associated air pollutant(s) generated in combustion in the test report submitted to NYSERDA. The associated air pollutant(s) will be included in the comparative air emissions test. The screening analysis report to NYSERDA should also include a copy of the air permit, listing the feedstocks that the facility is permitted to convert. NYSERDA will review and then either recommend approval of the report and pollutant list to the Office of Clean Energy (OCE) or return the report to the facility with a list of deficiencies noted. The facility may choose to resubmit a revised analysis and list or withdraw the adulterated feedstock from consideration.

Table 10 Precursors to Pollutants of Concern for Adulterated Biomass

	Precursor	Air Pollutants of Concern	Precursor Limit (ppm, dry basis)
	Mercury (Hg)	mercury	0.17
	Organic Matter	benzo-a-pyrene	n/a ¹⁰
	Chlorine (Cl)	hexachlorobenzene; 2,3,7,8-tetrachlorodibenzo-p-dioxin; 2,3,7,8-tetrachlorodibenzofuran; polychlorinated biphenyls	370
RCRA Metals	Arsenic	elemental and organic compound emissions	5
	Cadmium		0.9
	Chromium		17
	Lead		4.4
	Zinc		200
	Polychlorinated Biphenyls (PCBs)	PCBs, PCDDs	<i>detectable</i>
	Plastics, Total Non-wood	hexachlorobenzene; 2,3,7,8-tetrachlorodibenzo-p-dioxin; 2,3,7,8-tetrachlorodibenzofuran (via HCl); polyaromatic hydrocarbons	1% by dry weight

Step 2 – Comparative Emissions Test Protocol Development – Comparative emissions testing requires that air emissions generated by firing the fuel produced from the unadulterated feedstock(s) and from the corresponding adulterated feedstock(s) be measured

¹⁰Benzo-a-pyrene emissions tend to be a function of combustion conditions, rather than of the type or chemical composition of the fuel used. For this reason, there will be no precursor screening for this pollutant of concern; all facilities will be required to include it in their comparative emissions testing protocol.

IV. Biomass Recovered from Mixed Waste Streams

separately and the results compared. Based on the prescribed list of pollutants to be tested, the facility will develop a test plan for comparative air emissions measurement. Wherever possible, the protocol will use ASTM, EPA or DEC approved test methods. A protocol for measuring each air pollutant must be provided. The facility owner's comparative test plan is required to specifically address the issue of feedstock variability so that the full range of permitted feedstock compositions is evaluated. The Plan will include the approved list of pollutants to be measured and NYSERDA will review the plan and then either recommend approval to OCE or return it to the facility with a list of deficiencies noted. The facility must resubmit a revised plan. It is possible that a facility may have a technology or adulterated feedstock that precludes effective comparative emissions testing because the technology is not compatible with typical unadulterated feedstocks. If this is the case and alternative testing plan may be submitted for NYSERDA consideration. The [RES Biomass Power Guide](#) provides additional guidance on acceptable alternative plans.

Step 3 – Emissions Testing and Reporting - The facility must make all arrangements to conduct the comparative emissions test. NYSERDA may send a test monitor (either contractor or other state agency) to observe the tests and report any deviations from the test plan. The report from the emissions testing contractor including the statistical analysis of the results must be submitted to NYSERDA. The executive summary of the test report should clearly state which pollutants were found to be within the prescribed limits and which pollutants exceeded the limits.

B. ANALYSIS AND TEST METHODS FOR USING BIOMASS RECOVERED FROM MIXED WASTE STREAMS

Screening Analysis methods approved by NYSERDA are listed in Table 11. Alternative methods may be proposed and submitted to NYSERDA for approval. The facility will submit to NYSERDA the results of the chemical analyses shown in Table 11 plus any analyses required to measure concentrations of precursors to air pollutants listed in the facilities air permits (e.g. sulfur).

IV. Biomass Recovered from Mixed Waste Streams

Table 11 Adulterated Biomass Screening Analysis Methods

RCRA Metals	Precursor	Test Method for Solid Materials
	Mercury (Hg)	EPA SW 846-7471 – Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique)
	Organic Matter	<i>not screened for; a function of combustion conditions</i>
	Chlorine (Cl)	ASTM D6721 - Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry
	Arsenic	EPA SW 846-6010C – Inductively Coupled Plasma-Atomic Emission Spectrometry
	Cadmium	
	Chromium	
	Lead	
	Zinc	
	Polychlorinated Biphenyls (PCBs)	EPA SW 846-8082A – Polychlorinated Biphenyls (PCBs) by Gas Chromatography
	Plastics, Total Non-wood	Flotation or air separation ¹¹

For the Comparative Emissions Test the unadulterated feedstock should be selected by the facility for compatibility with its conversion technology, which may be designed for feedstocks of a specific size, moisture, and chemical composition. The adulterated feedstock(s) used for testing should be representative of the full range of feedstocks permitted for use. **The choice of both adulterated and unadulterated feedstocks must be clearly indicated in the Plan submitted to NYSERDA, and the unadulterated baseline feedstock is subject to NYSERDA approval.** A Partial list of approved test methods is provided in Table 12.

¹¹ The specific methodology for performing this separation and measurement must be submitted to and approved by NYSERDA before the screening tests are performed.

IV. Biomass Recovered from Mixed Waste Streams

Table 12 Comparative Air Emissions Tests

Pollutant of Concern	Test For	Analytical Test Method
benzo-a-pyrene	polycyclic aromatic hydrocarbons (PAH)	EPA SW 846 Method 0010 (<i>Modified Method 5 Sampling Train</i>) with EPA SW 846 Method 8270D (<i>Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry</i>)
hexachlorobenzene (HCB)	hexachlorobenzene (HCB)	EPA SW 846 Method 0010 (<i>Modified Method 5 Sampling Train</i>) with EPA SW 846 Method 8270D (<i>Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry</i>)
2,3,7,8-tetrachlorodibenzo-p-dioxin	polychlorinated dibenzo-p-dioxins/ dibenzofurans (PCDD/F)	EPA Method 23 (<i>Determination of Polychlorinated Dibenzo-p-dioxins and Polychlorinated Dibenzofurans from Municipal Waste Combustors</i>)
2,3,7,8 – tetrachlorodibenzo-furan		
arsenic	inorganic and organic metals emissions	40 CFR Part 60, Appendix A, Method 29 (<i>Metals Emissions from Stationary Sources</i>)
cadmium		
chromium		
alkylated lead compounds		
mercury		
zinc		
polychlorinated biphenyls (PCB)	polychlorinated biphenyls (PCB)	EPA SW 846 Method 0010 (<i>Modified Method 5 Sampling Train</i>) with EPA SW 846 Method 8270D (<i>Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry</i>)

C. ADDITIONAL REPORTING REQUIREMENTS

In addition to the reports specified in Section I the seller must provide the following:

Initial Reports

The Fuel Screening Analysis Report and the Comparative Emissions Test Report prior to Operational Certification/SOQ.