

**New York Climate Progress**  
Program Opportunity Notice (PON) 4534  
**\$10,000,000 Available**

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

Proposals Due: Round 1: January 6, 2021  
Round 2: April 14, 2021  
by 3:00 p.m. Eastern Time\*

**Program Summary:** This New York State Energy Research and Development Authority (NYSERDA) Program Opportunity Notice (PON) 4534, New York Climate Progress, will consider applications from climate technology companies with promising solutions that can help New York catalyze its economic recovery while advancing progress towards the State's nation-leading climate goals. The purpose of the New York Climate Progress program is to provide bridge funding to early stage, in market, climate technology companies in New York State that, while adversely affected by the pandemic and related economic dislocation, have demonstrated potential to rapidly scale their products and services in the State and deliver strong economic outcomes. This program will offer catalytic investment, spur economic activity, protect and produce New York jobs, ensure that critical technology companies reach scale, and support companies most likely to achieve business success. This funding will be provided in the form of a convertible note. All, some, or none, of the available funds may be awarded through PON 4534. NYSERDA reserves the right to add or reduce time and/or funding to awarded contracts.

**Proposal Submission:** Online submission is preferable. Proposers may submit Word, Excel, or PDF files (file formats include csv, doc, docx, gif, jpeg, jpg, pdf, png, ppt, pptx, pps, ppsx, tif, txt, xls, xlsx, and zip). Individual files should be 100MB or less in file size. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility. Files should not be scanned. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. NYSERDA will also accept proposals by mail or hand-delivery if online submission is not possible. For detailed instructions on how to submit a proposal (online or paper submission), click the link "[Application Instructions and Portal Training Guide \[PDF\]](#)" located in the "Current Opportunities" section of NYSERDA's website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

No communication intended to influence this procurement is permitted. Interested parties with questions may contact Michael Shimazu (Designated Contact) at (518) 862-1090, ext. 3478 or by e-mail [michael.shimazu@nyserda.ny.gov](mailto:michael.shimazu@nyserda.ny.gov) or Corinne Allen (Designated Contact) at (212) 971-5342, ext. 4327 or by e-mail [corinne.allen@nyserda.ny.gov](mailto:corinne.allen@nyserda.ny.gov) (for technical questions). If you have contractual questions concerning this solicitation, contact Venice Forbes (Designated Contact) at (518) 862-1090, ext. 3507 or [venicesolicitations@nyserda.ny.gov](mailto:venicesolicitations@nyserda.ny.gov). Contacting anyone other than the Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offeror, and (2) may result in the proposer not being awarded a contract.

**\* All proposals must be received by 3 p.m. Eastern Time on the date(s) noted above. Late, faxed, or emailed proposals will not be accepted.** Incomplete proposals may be subject to disqualification. It is the proposer's responsibility to ensure that all pages have been included in the proposal. Please note: for online submission, there are required questions that you will have to answer in addition to

uploading attachments and you should allot at least 60 minutes to enter/submit proposals. The online proposal system closes promptly at 3 p.m. Eastern Time, files in process or attempted edits or submission after 3 p.m. Eastern Time on the date above, will not be accepted. If changes are made to this solicitation, notification will be posted on the “Current Opportunities” section of NYSERDA’s website (<https://www.nyserdera.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

## **I. INTRODUCTION**

New York State has supported many companies that have been on the forefront of the development of technologies, products, and services to combat climate change. Solutions offered by a number of these companies are critical to achieving the nation-leading goals of New York State’s Climate Leadership and Community Protection Act (CLCPA). With targeted infusions of capital, many of these companies will reach subsequent commercial milestones and support economic growth foundational to New York’s efforts on the road to economic recovery.

The Climate Leadership and Community Protection Act (CLCPA), signed into law by Governor Andrew M. Cuomo last July, requires the State to achieve a carbon free electricity system by 2040 and reduce greenhouse gas emissions 85 percent below 1990 levels by 2050, setting a new standard for states and the nation to expedite the transition to a clean energy economy. The new law will drive investment in clean energy solutions such as wind, solar, energy efficiency and energy storage. The CLCPA mandates nation-leading clean energy targets: nine gigawatts of offshore wind by 2035, six gigawatts of distributed solar by 2025, and three gigawatts of energy storage by 2030, while calling for an orderly and just transition to clean energy that creates jobs and continues fostering a green economy. It also directs New York State agencies to invest 35 percent with a goal of 40 percent of clean energy program resources to benefit disadvantaged and environmental justice communities.

This funding will be provided in the form of a short-term debt instrument that, under certain circumstances, can be converted into company stock in lieu of repayment, thus becoming part of the company’s permanent capital. The funds are intended to be provided on concessionary terms that provide financial relief while positioning the company to raise and / or generate additional capital in the future to resume its growth path. We believe this catalytic investment will help boost a green recovery and enable the success of New York State’s most promising early stage companies.

The broad purpose of NYSERDA’s Innovation program is to support technologies and companies that will help New York State reach its climate targets. Within that context, the aims of New York Climate Progress include:

- Boosting the growth of climate technology firms as a strategy to build back the economy in New York
- Catalyzing new investment and de-risking long-term company success and climate impact
- Protecting and creating green jobs
- Supporting companies with scalable high impact potential to support the State’s achievement of its climate goals

## **II. PROGRAM REQUIREMENTS**

### **Available Funding, Awards, and Terms**

Up to \$10,000,000 in loans will be available through this New York Climate Progress program. Funding is provided via a promissory note that may be converted into company stock upon certain circumstances, including a qualified financing of the company. Terms include 24-month maturity, 4%

simple interest, 20% conversion discount, and no valuation cap on conversion. These and other terms are described on the Term Sheet attached (Attachment B). The maximum loan available is \$500,000.00. Companies may propose an award value up to \$500,000.00 in their application. Loan proceeds may be used for general corporate purposes, with certain exclusions described in the Term Sheet. NYSERDA will determine award amounts based on company applications, evaluation, and available funding.

Before disbursement of any funds awarded under this PON, applicants must secure a minimum Cost Share of 25% within 6 months after the award date. For clarity, the requirement is that every three dollars of NYSERDA funding be matched by at least one dollar of Cost Share, so that the Cost Share represents a minimum of 25% of the combined funds. Applicants are encouraged to provide greater than 25% Cost Share if possible. NYSERDA will not fund awardees who fail to secure the minimum required Cost Share within 6 months after the award date. Cost Share can be demonstrated through presentation of the appropriate legal agreements including but not limited to; stock purchase, grant contract, loan documents, and proof of payment in the form of a bank statement.

A key strategic goal of the New York Climate Progress program is to help facilitate future rounds of private capital financing for proposers. To that end, attachments C and D will include customary contractual terms, including repayment or conversion upon receipt of funds by proposers in connection with such future financing. In the event of a conversion event under attachments C and D, NYSERDA's intention, in accordance with its internal policies, is to refrain from exercising voting rights available to it as a contractual matter, absent extraordinary circumstances.

In all events, including conversion triggers, the New York Climate Progress program will have only one convertible note investment in connection with any proposer outstanding for the duration of the solicitation.

## **Definitions**

Climate Technology: Innovation that supports decarbonization of the economy through hardware, software, technology-enabled services, data analytics, or processes that broadly reduce energy consumption, increase resource efficiency, reduce greenhouse gas emissions and/or enable the transition to a sustainable and decarbonized economy.

Innovation Firm: A company based on an innovation unique to the firm with patents, trade secrets, or other intellectual property.

Cost Share: Non-NYSERDA investment in the company in the form of grants, equity, or debt which is funded after the application date and prior to 6 months after receipt of NYSERDA's award letter.

Demonstrated Benefit to New York State: "Demonstrated benefit to New York State" is defined as business or related activity that companies are involved with in New York State. Examples of activities that represent a "Demonstrated Benefit to New York State" include:

- Having some portion of a company's workforce (beyond at least one employee), such as research and development, manufacturing, and/or sales, based in New York State; and/or
- Benefiting supply chain partners, vendors, investors, and/or service providers in New York State; and/or
- Having an addressable market of current or future customers within New York State

## Eligibility, Proposer Requirements, and Exclusions

### Eligibility

The following eligibility criteria must be met in order for the proposal to be evaluated and scored:

- New York Employee Requirement: The proposer must employ at least one individual in New York State. A company meets this criterion only if it files a Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (NYS-45).
- Alignment with Climate Technology Definition: The proposer's primary business employs Climate Technology, as defined above, to drive the company's competitive advantage and/or product uniqueness.
- Early stage innovation firm: The proposer must be an Innovation Firm, as defined above, have raised less than \$25,000,000 to date in private capital, have less than \$10,000,000 in annual revenue, and have fewer than 50 employees.
- In market: The proposer must have a product or service in the market, the value proposition of which has been clearly acknowledged and verified by actual customers. Companies can meet this criterion by demonstrating one or both of the following events:
  - Sales and/or Revenue: showing product sales in their historical financial statements within the last 12 months.
  - Paid Customer Projects: providing documentation of ongoing paid customer projects and/or customer intent to purchase. Types of eligible paid customer projects include pilot projects and joint development agreements. Companies can demonstrate customer intent to purchase by documenting letters of intent or purchase orders within the last 12 months.
- Satisfactory performance on NYSERDA projects: The proposer must be in good standing with respect to all requirements of past or current NYSERDA projects, if any, including the delivery of required reporting and recoupment.

### Proposer Requirements

A proposer must meet the following requirements in order to receive funding under this program.

- The proposer must be a private for-profit company
- The proposer must exhibit a Demonstrated Benefit to New York State. See the Definitions section above
- The proposer must contribute Cost Share greater than or equal to 25% of the combined funding from NYSERDA and Cost Share sources within 6 months of receiving an award letter

### Exclusions

In addition, the following companies are not eligible for consideration under the New York Climate Progress program:

- Companies whose primary business is project development
- Companies whose primary business is consulting or contract research, or professional services firms
- Companies involved in the sale of fossil fuel-based solutions, or products and services that facilitate the consumption of fossil fuels
- Companies whose products emit substantial greenhouse gases or other environmental pollutants through operation or disposal
- Companies with a third-party shareholder holding more than 40% of the economic or voting interest in the company, directly or through affiliates

### **Priority Technology Areas**

NYSERDA encourages companies with non-fossil-fuel based solutions in the following categories:

- Building Technologies such as clean heating and cooling, Real Time Energy Management, building materials, and thermal storage
- Zero Carbon Energy Generation and Storage including long duration and thermal storage businesses and other generation or storage applications
- Climate Finance Solutions including innovative or catalytic financing and insurance solutions that price or analyze climate risk, pay for performance and shared savings structures, customer acquisition tools, and X-as-a-Service related business model innovations
- Clean Transportation including companies working on zero-carbon advanced mobility solutions, Hydrogen, EVs and EV infrastructure, and customer adoption of clean transport solutions
- Regenerative Solutions that support the sharing or circular economy, recovery, re-use, upcycling, and non-hazardous waste recycling
- Negative Emission Technologies across greenhouse gas emitting industries that offer a minimum opportunity for 1 Gigaton of CO<sub>2</sub>e avoidance or removal at scale
- Natural Carbon Solutions including solutions in agriculture, forestry, and non-fuel forestry products that sequester carbon

NYSERDA also encourages companies with climate technologies in the following categories:

- B-Corps and other companies that have committed to principles in line with CLCPA goals of environmental and social justice

### **Proposal Due Dates**

NYSERDA will accept proposals for evaluation in two rounds. The due date for the first round is January 6, 2021. The due date for the second round is April 14, 2021. NYSERDA may elect to award any, all or none of the available funds under this solicitation in either round.

A proposer may apply in either or both rounds, but no proposer may receive more than one award under this solicitation.

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

To help ensure NYSERDA is timely with the contracting of awards and disbursement of funds under this program, NYSERDA will not allow any exceptions to NYSERDA's standard terms and conditions in the

Form Note Purchase Agreement (Attachment C) and Form Promissory Note (Attachment D). All proposers should review these standard terms and conditions in the Form Note Purchase Agreement and Form Promissory Note in detail before deciding to move forward with a proposal to ensure they do not have any exceptions with them. NYSERDA will terminate discussions with any proposers selected for funding that attempt to retroactively negotiate the terms and conditions during the contracting process.

### **Letters of Commitment or Support**

Proposers should include letters of commitment or support from customers, investors, partners or other organizations critical to the development, implementation, and success of the company, including those who are verifying the proposer's "in-market" status as defined above. Absence of letters of commitment or interest may be interpreted as a lack of support for the proposer. Letters may not be solicited from NYSERDA personnel or through NYSERDA personnel. Proposers must submit as a requirement of application at least one letter of attestation from an existing lead investor and/or from multiple existing investors testifying to a company's track record, and support for the company to receive an award.

### **Non-responsiveness**

A proposal may be considered non-responsive, and therefore ineligible, if it fails to comply with the requirements above, the Proposal Requirements of Section III, or the General Conditions of Section V. Note that all required components of a proposal must be provided in order to be assured that it is responsive to this solicitation.

### **Confidential Information**

As further described in Section V of this document, 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 exempt it from disclosure, including a written statement of the reasons why the information should be exempted. 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." See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <https://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

## **III. PROPOSAL REQUIREMENTS**

The proposer's goal should be to concisely present the information needed to fully address the Proposal Evaluation criteria in Section IV. Proposals that grossly exceed the content limits or fail to follow the format guidelines provided in this section or in the attached Eligibility Questionnaire and Application Form, or other guidance documents, may be rejected as non-responsive.

Any proposer that believes proprietary information must be submitted to provide an adequate and responsive proposal must comply with the Section V instructions for submitting proprietary material.

**Proposals must include the Eligibility Questionnaire and Application Form, and Required Attachments**, some of which must be in the templates provided as attachments to this solicitation.

NYSERDA cannot commit to following up with those who submit proposals that are incomplete or require follow-up questions or clarification. As a result, proposers should make every effort to ensure that their proposals are as responsive, accurate, and complete as possible prior to their submission. Incomplete or inaccurate proposals may significantly reduce the likelihood of receiving an award.

**A complete proposal is comprised by all the required elements listed below. These elements should be combined into a single document in the following order for online submission. Proposals that are not complete may be rejected as non-responsive and will not be eligible for review.**

**1) A complete Eligibility Questionnaire and Application Form that addresses questions within the solicitation (Attachment A)**

**2) Required Documents**

a) Pitch Deck(s) (if you have multiple versions, i.e., a technical sales-oriented pitch deck and an investor deck, please include both)

b) Greenhouse Gas Reduction Estimate Calculation (Refer to question # 27 in the Application)

c) Financial statements (balance sheet, income statement, statement of cash flows) for past 2 calendar years, presented on a quarterly accrual basis

d) Forecast financial statements (balance sheet, income statement, statement of cash flows) with all assumptions documented, presented on an accrual basis: quarterly for 12 months and annually for 5 years post application date

e) Resumes, compensation and bios of key executive team members and board members

f) Organizational chart including titles and reporting lines

g) Most recent certificate of incorporation

h) Current anonymized capitalization table (including all outstanding debts)

i) Detailed fundraising plan, including investors targeted and any verbal commitments the company has secured, for current rounds as well as future rounds through expected cash breakeven date

j) Letter(s) of Attestation from an existing lead investor and/or from multiple existing investors testifying to a company's track record, and deservedness to receive an award

k) Letter(s) of intent, purchase order(s), pilot and/or demonstration agreement, joint development agreement and/or documents that support the "In Market" eligibility factor

**3) Optional Attachment(s)**

a) A third-party assessment of emissions specific climate impact (such as a Life Cycle Analysis, Emissions Reduction Potential, or other relevant methodology)

b) Additional letters of support

## **State Finance Law**

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

## **Annual Metrics Reports**

If awarded, the proposer will be required to submit to NYSERDA's Project Manager on an annual basis, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the reference company. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract is executed. Reports shall be submitted by January 31st for the previous calendar years' activities (i.e. reporting period). Please see Attachment (Attachment E): Sample Metrics Reporting Guides for the metrics that you will be expected to provide and the reporting schedule / NYSERDA may decline to contract with awardees that are delinquent with respect to metrics reporting for any previous or active NYSERDA agreement.

## **IV. PROPOSAL EVALUATION**

Complete proposals from proposers that meet solicitation eligibility requirements above will be reviewed by an External Investment Committee using the Evaluation Criteria below listed in order of importance. At NYSERDA's discretion, proposers may be requested to interview with all or part of the Investment Committee to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview.

### **Evaluation Criteria**

#### **Quality of the Investment**

- Market and Business Outlook
  - The degree to which the proposer demonstrates that proceeds from any award under this program plus Cost Share and cash on hand at the time of application will enable subsequent funding milestones, commercial milestones, and / or additional fundraising events.
  - The degree of the company's customer traction, commercial success and momentum measured in part by the quality and/or quantity of 'in market' events submitted
  - General financial health: Ability of the company to remain financially viable and conserve cash as necessary while maintaining growth
  - Viability and robustness of the company's value proposition and business model in a reviving economy
  - Scalability of the solution and business model

- Sufficient technical or other competitive advantages that enable the proposer to grow within its market
- Potential to offer NYSERDA a significant risk-adjusted return on the convertible note
- Management Team
  - Strength of the company's current management team
  - Strength of technology team
  - Management team's experience, financial prudence, and capacity to execute against stated goals while pursuing company growth in a period of economic uncertainty
  - Integrity of application materials submitted by the team in the program application

**Impact of Solution**

- Amount of climate impact (such as greenhouse gas mitigation) enabled by the company's technology and/or solution(s)
- Evidence (including patents, trade secrets, and/or other intellectual property) that the Company's solutions are unique, scalable, and present substantial opportunity to support New York's climate goals
- Alignment with NYSERDA's stated sector focus areas

**Program Policy Factors:**

NYSERDA reserves the right to accept or reject proposals – or adjust award amounts – based on the following Program Policy Factors:

- The degree to which the proposed investment provides a Demonstrated Benefit to New York State. *See the definitions section for more information on Demonstrated Benefit to New York.*
- The findings of legal and other due diligence. Adverse findings such as prior fraudulent activity, regulatory action or irregularities or a history of corporate or personal litigation or bankruptcy, amongst other findings, may result in the rejection of proposals.
- Availability of funding.

**V. GENERAL CONDITIONS**

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject

enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <https://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

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

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department.

The Department has created a second form that must be completed by a prospective contractor prior to contracting and filed with NYSERDA. See, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**Contract Award** - NYSERDA anticipates making one or more awards under this solicitation. Award will be made in the form of the Form Note Purchase Agreement (Attachment C) and the Form Promissory Note (Attachment D). NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

**Accessibility Requirements** - If awardees from this solicitation will be posting anything on the web, or if the awardee will produce a final report that NYSERDA will post to the web, the following language must be included. NYSERDA requires contractors producing content intended to be posted to the Web to adhere to New York State's Accessibility Policy. This includes, but is not limited to, deliverables such as: documents (PDF, Microsoft Word, Microsoft Excel, etc.), audio (.mp3, .wav, etc.), video (.mp4, .mpg, .avi, etc.), graphics (.jpg, .png, etc.), web pages (.html, .aspx, etc.), and other multimedia and streaming media content. For more information, see [NYSERDA's Accessibility Requirements](#).

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

**Disclosure Requirement** - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

**Vendor Assurance of No Conflict of Interest or Detrimental Effect** - The proposer shall disclose any existing or contemplated relationship with any other person or entity, including any known relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the proposer or former officers and employees of NYSERDA, in connection with proposer's rendering services as proposed. If a conflict does or might exist, please describe how your company would eliminate or prevent it. Indicate what procedures will be followed to detect, notify NYSERDA of, and resolve any such conflicts.

The proposer must disclose whether it, or any of its members, or, to the best of its knowledge, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

**Public Officers Law** – For any resulting awards, the Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). Proposers are reminded of the following Public Officers Law provision: contractors, consultants, vendors, and subcontractors may hire former NYSERDA employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a

matter before NYSERDA, for a period of two years following their separation from NYSERDA service. In addition, former NYSERDA employees are subject to a “lifetime bar” from appearing before any state agency or authority or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with NYSERDA.

Any awardee will be required to certify that all of its employees, as well as employees of any subcontractor, whose subcontract is valued at \$100,000 or more who are former employees of the State and who are assigned to perform services under the resulting contract, shall be assigned in accordance with all Ethics Requirements. During the term of any agreement, no person who is employed by the contractor or its subcontractors and who is disqualified from providing services under the contract pursuant to any Ethics Requirements may share in any net revenues of the contractor or its subcontractors derived from the contract. NYSERDA may request that contractors provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. NYSERDA shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed would be in conflict with any of the Ethics Requirements. NYSERDA shall have the right to terminate any contract at any time if any work performed is in conflict with any of the Ethics Requirements.

**Due Diligence** – NYSERDA, at its discretion, may conduct broad due diligence to validate any or all elements of an application and to assess applicants’ prospects of success, including gathering information to assess a proposal relative to any of the topics listed in evaluation criteria, whether or not such topic is explicitly addressed in a proposal. NYSERDA may conduct due diligence on some or all proposals based on NYSERDA’s current guidelines at the time of a review. NYSERDA staff may follow up with proposers to request additional information or clarification regarding applicant’s proposal, including questions regarding applicant’s business prospects and resources, whether or not those questions are specifically related to the elements of the proposal. Additionally, customized due diligence may be conducted by internal or external staff or contractors based on questions on any proposal raised by NYSERDA staff and/or the Investment Committee. Due diligence may include (but is not limited to): interviews of independent references and background checks of team members; assessment of prior business experience of any team member associated with a proposal; research on intellectual property claims; customer and partner reference checks; market research on the applicants’ target market and any other related or possibly competitive technology or market area; research to validate any assumptions on current or future revenues, costs, capital needs, and financing prospects for proposers’ business, including similar (or unrelated) technologies, processes, or competitive solutions; review of corporate documents and contracts; or any other research that could reasonably inform the evaluation of a proposal, the prospects for commercial success of the proposers’ business (whether directly related to, or unrelated to the specific elements in a proposal), or the potential return on NYSERDA’s investment. Due diligence may include discussions with proposers’ former and current business partners, employees, investors, customers, and competitors. Due diligence may be conducted by NYSERDA personnel or contractors including members of the Investment Committee, before, during, or after a scoring process, and prior to finalization of a contract award, any information gleaned in diligence may be used to score or re-score a proposal, apply Program Policy Factors, or disqualify the proposal.

## **VI. ATTACHMENTS**

The following Attachments are templates for certain required portions of the proposal. They should be used for this purpose, then combined with other portions of the proposal in a single PDF document for online submission.

Attachment A – Eligibility Questionnaire and Application Form

In addition, the following Attachments are provided for reference.

Attachment B – Term Sheet

Attachment C – Form Note Purchase Agreement

Attachment D – Form Promissory Note

Attachment E – Metrics Reporting Guide