



Emerging Technologies Demonstration  
Projects-Residential HVAC  
Program Opportunity Notice (PON) 3127  
**\$3.5 million Available**

### **SUMMARY OF REVISIONS**

The following change has been made to PON 3127, Emerging Technologies Demonstration Projects-Residential HVAC:

- Added language clarifying that sites in municipal electric and rural electric cooperatives are eligible to participate.



**NYSERDA**

**Emerging Technologies Demonstration Projects - Residential HVAC  
Program Opportunity Notice 3127  
Up to \$3.5 Million Available**

**Proposals Due: April 21, 2016, by 5:00 PM EST\***

NYSERDA seeks to accelerate market adoption of commercially available, but underused technologies and proven building strategies for the residential building sector. Multi-site demonstration projects proposed under this solicitation will validate the use of high efficiency heating, ventilating, and air-conditioning (HVAC) equipment in existing residential building retrofits, through a comprehensive planning, design, installation, commissioning, and measurement and verification process. This Program Opportunity Notice (PON) seeks to address barriers to widespread adoption of heat pumps, including cold-climate split-system air-source heat pumps and ground-source heat pumps, and low-capacity (maximum input rating of less than 45,000 Btu/hour) natural gas furnaces, by demonstrating and validating the energy savings, cost-effectiveness and other performance indicators of these systems. Up to \$3.5 million is available under this PON to fund multiple demonstration projects with broad geographic distribution across the state. NYSERDA intends to fund multiple proposals, but will not cap the value of any one proposal. Proposals that are funded must include a detailed plan for accelerating market growth for the eligible HVAC system types through technology transfer and outreach activities.

NYSERDA will host **pre-bid webinars** on **January 27, 2016, from 1:00 -2:00 pm** and **March 17, 2016, from 10:00 am to 11:00 am** to provide an overview of the services requested and requirements of this PON. Potential proposers will have the opportunity to ask clarifying questions to help prepare a response to the solicitation. To register for the March 17 webinar, please [CLICK HERE](#).

**Proposal Submission:** Proposers are strongly encouraged to use NYSERDA's online electronic proposal submission portal. If submitting electronically, proposers must submit the proposal in either PDF or MS Word format with a completed and signed Proposal Checklist (Attachment A) and Disclosure of Prior Finding of Non-Responsibility Form (Attachment B), in PDF format. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than by scanning. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on this PON's webpage, which is located in the "Current Opportunities" section of NYSERDA's website. **Instructions for submitting electronically are located in that section as Attachment F to this PON.**

Please note that if a proposer chooses not to use the electronic submission process, proposers must submit one (1) paper copy and one (1) CD of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. **Proposals must be clearly labeled and submitted to: Roseanne Viscusi, PON 3127, NYS Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399**

Technical questions concerning this solicitation must be directed to Daniel Farrell at (518) 862-1090, ext. 3490 or [daniel.farrell@nyserda.ny.gov](mailto:daniel.farrell@nyserda.ny.gov). Contractual questions concerning this solicitation must be directed to Nancy Marucci at (518) 862-1090, ext. 3335 or [nancy.marucci@nyserda.ny.gov](mailto:nancy.marucci@nyserda.ny.gov).

No communication intended to influence this procurement is permitted. 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) 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.

\*Late, incomplete, or unsigned applications will be returned. Faxed or e-mailed applications will not be accepted. Applications will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).

## I. INTRODUCTION

The **Emerging Technologies Demonstration Projects - Residential HVAC** initiative seeks to accelerate the market uptake of commercially available, but underused building technologies and strategies in the residential sector, that will deliver significant and measurable energy savings and greenhouse gas (GHG) reductions for existing homes and residential buildings. This PON is primarily funded through NYSERDA's [Technology and Market Development \(T&MD\)](#) portfolio, and is a component of the Advanced Building Technologies initiative, which seeks to address New York-specific building needs and barriers to full market adoption of new and/or underutilized building technologies and practices. New York's residential buildings account for more than 35 percent of total electricity consumption in the state, and are responsible for nearly 28 percent of net energy consumption in the state. In addition, the residential sector accounts for almost 18 percent of the state's GHG emissions. Opportunities for energy efficiency gains beyond traditional retrofit techniques and HVAC system replacements have been limited by the underuse of emerging technologies that often face barriers to widespread adoption.

This PON seeks proposals for multi-site demonstration projects throughout the State that address the barriers to wider commercialization of eligible HVAC systems in the existing residential building market (not new construction or substantial renovation (gut rehabilitation) projects). Proposals must include a minimum of five demonstration sites in a single market area and each site must demonstrate the same HVAC technology. Up to \$3.0 million is available for sites located in System Benefits Charge (SBC) territory<sup>1</sup>. Additionally, up to \$500,000 is available for sites located in PSEG-Long Island service territory, or sites served by municipal electric systems or rural electric cooperatives. Eligible emerging technologies include: 1) air-to-water and air-to-air split system heat pumps (specifically, cold climate air-source heat pumps, including ductless and ducted "mini-split" systems); 2) ground-source heat pumps (GSHPs) including water-to-air and water-to-water units; and, 3) low-capacity modulating gas furnaces (maximum input rating of less than 45,000 Btu/hour).

Known market barriers for these systems include, but are not limited to: lack of consumer and installer awareness/demand; lack of high-quality field performance data in New York; small trained installer base; under-developed supply chain; higher up front material, increased design and/or labor costs; technical challenges relating to heating load calculations, energy modeling, energy savings calculations, controls strategies, and installation/commissioning; and uncertainties with regard to system performance. Other barriers specific to split system air-source heat pumps (ASHPs) include: perceptions of poor cold-climate performance; consumer concerns about appearance of indoor units (for mini-splits). Air-to-water and variable refrigerant flow (VRF) heat pump systems are not the primary target of this solicitation, but may be proposed if the size or complexity of the building warrants it as the appropriate system choice and substantial market transformation benefits can be achieved through the demonstration.

## II. DEFINITIONS

**Commercially Available:** A technology, building strategy, or approach that has been available in the marketplace for at least six months, can be accessed through standard sales or distribution channels, has manufacturer or independent third-party performance data publicly available, offers an industry-standard manufacturer's warranty, has been successfully demonstrated or installed, and for which marketing and sales efforts are underway.

**Demonstration Partner Clearinghouse:** To support a teaming approach, NYSERDA has created a clearinghouse for potential demonstration partners. The clearinghouse contains contact information for companies that have expressed interest in participating in a PON 3127 demonstration project. Proposers are encouraged, but not required, to review the clearinghouse for potential demonstration partners; proposers do not have to list their business on the Demonstration Partner Clearinghouse. The clearinghouse can be found online at: <http://www.nyserda.ny.gov/resetac-clearinghouse>.

---

<sup>1</sup> Customers served by one of the following investor-owned utilities: Central Hudson Gas and Electric, Consolidated Edison, National Grid, New York State Electric and Gas, Orange and Rockland, and Rochester Gas and Electric.

Demonstration Site – For purposes of this PON, the house or dwelling unit where HVAC equipment is replaced.

Eligible Project Costs Project costs eligible for funding under this PON or for inclusion as cost-share include the incremental costs associated with planning, design and product specifications related to the demonstration components and scope of work, equipment upgrades, measurement and verification, and technology transfer activities associated with the project(s). For the HVAC system itself, eligible incremental costs under this PON cannot exceed 50 percent of the cost of standard replacement equipment.

Emerging Technology A commercially available product, technology, or building strategy that is underused. Products must be code compliant and have cost data and any applicable performance testing data available.

Technology Transfer Activities involving promotion of the technology, building strategy, or approach and associated demonstration results to stakeholders in the residential energy sector, resulting in significant market development. Technology transfer activities may include, but is not limited to, the development of videos, training, case studies or technical papers; the presentation of information at webinars, seminars, or conferences; and media or open house events.

### III. ELIGIBILITY

#### a. Services Requested

This PON seeks proposals for multi-site demonstration projects that will increase market adoption of Emerging Technologies in residential HVAC equipment, including heat pumps (specifically, cold-climate split system air-source heat pumps and ground-source heat pumps) and modulating, low-capacity natural gas furnaces, in the residential retrofit market. Demonstration projects must incorporate building envelope and HVAC system energy use and GHG emissions reductions (relative to minimum efficiency equipment), increase awareness of opportunities for residential applications for eligible HVAC technologies, and identify and address barriers to widespread adoption of the eligible Emerging Technologies through technology transfer activities.

#### b. Program Eligibility

- i. Proposals must include a minimum of five (5) demonstration sites, in an identified market area (e.g. New York City, Hudson Valley, Western New York, etc.) in the existing residential building market.
- ii. Proposal must specifically address market barriers for the eligible HVAC technology, including but not limited to those noted on page 2 of the Introduction.
- iii. Demonstration sites must be located in New York State, and be physically located in the service territory of a utility that participates in the SBC, PSEG-Long Island service territory, or a municipal electric system or rural electric cooperative administered by the New York Power Authority (NYPA).
- iv. Demonstration projects must include a Home Performance with ENERGY STAR (HPwES) contractor in good standing with NYSERDA as a team member<sup>2</sup>. The contractor must hold appropriate Building Performance Institute (BPI) credentials (e.g. Envelope, Heating, and AC/Heat Pump). Demonstration projects included in the proposal may also participate in a related NYSERDA program, such as HPwES or EmPower New York, but this is not a requirement. However, all health and safety procedures and ventilation requirements shall be met per BPI standards.
- v. It is expected that renewable energy system(s), which may include either or both [solar photo-voltaic \(PV\)](#) and [solar thermal \(ST\)](#), or other on-site market-ready renewable energy system, will be installed to offset a significant portion of the electrical load for the buildings. For projects with renewable energy systems, the installer will need to be a key member of the project development team. Solar

---

<sup>2</sup> To be considered in good standing in a NYSERDA program, the contractor or installer must have a participation status designation of Full in their respective program. For more information on participation status in NYSERDA's residential programs, please refer to the Partnership Agreement for that program.

photovoltaic (PV) or solar thermal installers that are part of a demonstration team must also be a participant in NYSERDA's applicable (solar PV or solar thermal) deployment program, and be in good standing in that program.

- vi. Retrofit projects in both the market rate and affordable (income-qualified) housing market segments are eligible for funding.
- vii. Retrofit projects must meet the general eligibility criteria for NYSERDA's residential programs, which includes: detached or attached single-family homes and residential structures with four (4) or fewer dwelling units, constructed using building techniques common to wood-framed residential construction, which can be served by residential scale HVAC equipment (e.g. maximum furnace input rating of 225,000 Btu/hour). Housing for income-qualified tenants and/or owners (affordable housing projects) are also eligible for PON 3127 funding, provided that the building configuration conforms to the guidelines above.
- viii. **Eligible technologies (systems) include only the following:**
  - Single- or multi-port ductless ASHPs (ductless mini-splits)
  - Single-port ASHPs with compact duct layouts (ducted mini-splits)
  - Variable Refrigerant Flow (VRF) heat pumps
  - Air-to-water heat pumps
  - Ground source heat pumps (GSHPs) including water-to-air and water-to-water systems
  - Low-capacity modulating (condensing) gas furnaces, with maximum input capacity of less than 45,000 Btu/hour.

Associated controls, thermostats and energy management systems, including but not limited to manual or automatic controls such as occupancy sensors, outdoor temperature resets for heating equipment, and web-connected thermostats which allow for demand response capability, are not eligible technologies per this PON, but are expected to be included as part of an effective HVAC system control strategy for the demonstration projects.

- ix. Demonstration projects are required to include cost-effective energy efficiency retrofit scopes of work, including building envelope improvements to reduce energy loads, and must incorporate one of the below approaches:
  - Replacement of an existing electric-resistance, oil, propane, or natural gas heating system at or near the end of its useful life with a heat pump (ASHP or GSHP); air-conditioning (if it exists) could be central or room, but will be replaced by the heat pump;
  - Adding an ASHP indoor unit or port to a zone (or zones) without removing existing heating system. In this scenario, the primary benefit may be shoulder-season heating and cooling, with the existing heating system left in place as back-up or for very cold periods. For this use case, the heat pump and existing system will typically have separate thermostats, therefore a control system and occupant education strategy must be proposed to avoid situations where the existing (back-up) system is firing excessively, or the heat pump turns on in cooling mode to counteract the existing heating system;
  - Replacement of an existing natural gas furnace with a low-capacity unit; potential for replacement or re-configuration of existing duct system with small-diameter ducts;
  - Deep-Energy Retrofit -- the ASHP or GSHP will replace existing electric-resistance, oil or propane heating system (and any cooling equipment, if it exists); coupled with extensive (exterior) shell work, and installation of solar PV system, home will achieve net-zero or near net-zero energy use (measured at the site) on an annual basis.

- x. All equipment and materials installed must be commercially available, proven in the field, have an industry-standard manufacturer's warranty, and meet all applicable codes and testing requirements. **Please note: PON 3127 will not fund research and development activities, including product testing.** HVAC equipment installed must hold best-in-class designation through ENERGY STAR, AHRI, CEE or other reputable third-party certifier. If a GSHP is installed, ground-source (or geothermal) heat pump heat pump installer must have current International Ground Source Heat Pump Association (IGSHPA) certification, or proof of satisfactory completion of manufacturer's certification program. Air-to-air heat pump equipment installed must meet the criteria (and be completely and currently listed) on [Northeast Energy Efficiency Partnership's \(NEEP\) cold-climate heat pump specification](#) web site at the time of installation.
- c. **Potential for Replication**  
To impact the market for Emerging Technologies and practices outlined in the residential sector, it will be necessary for very advanced energy-efficiency performance retrofits to push beyond demonstration projects to the broader residential sector. To this end, the design and implementation of demonstration projects under this solicitation must have the potential to be scalable and achieve similar results in comparable residential structures. Versions of project documents (bid documents, system layouts or schematics) must be developed so that they can be made publicly-available and utilized, i.e. no identifying information regarding the owner and/or location of the building. Proposals shall include information on known construction trades knowledge gaps that should be addressed to facilitate making advanced energy efficiency performance the rule rather than the exception. **Retrofit strategies should be planned and accomplished such that minimal disruption of occupant's daily lives will occur (i.e. substantial or gut-rehabs that require occupant(s) to vacate, or of existing vacant buildings, are not eligible).**
- d. **Demonstration Project Completion**  
Demonstration projects should be completed in a timeframe that will allow for the results to impact **current market barriers** to the broader adoption of the subject approaches and technologies in the residential sector.
- e. **Measurement and Verification (M&V) and Data Collection**  
NYSERDA will engage a third-party M&V technical services contractor to conduct M&V activities in a consistent manner across all of the demonstration sites. These M&V activities will primarily focus on determining actual energy and utility bill savings and overall effectiveness of the demonstration project, through any needed data collection activities. Data collection is not necessarily limited to energy use: other data of interest (such inside and outside temperatures, system airflows, relative humidity, etc.) may also be collected, as they relate to occupant comfort and overall effectiveness of the retrofit approach. **The M&V Technical Consultant will work directly with the successful participants to coordinate M&V planning, site access, instrumentation and data collection, and any needed system troubleshooting.** M&V methods will follow recognized and published industry standards or protocols for collecting and evaluating quantitative and qualitative data at building sites, such as the appropriate option under the International Performance Measurement and Verification Protocol (IPMVP), Federal Energy Management Program (FEMP) M&V Guidelines, or American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Guideline 14, or other appropriate protocols. Due to seasonal variations/patterns of energy use, monitoring must be conducted for a period of at least nine (9) months and include summer, winter, and a shoulder season. If data is not collected for twelve (12) months, data will be annualized to reflect a full year of usage. Once M&V is completed, the results will be weather-normalized and compared to predicted project energy savings.

Occupant/user response to the installed HVAC system and associated envelope work will be required in order for the M&V Technical Consultant to complete its M&V activities. Additionally, Occupant/User consent will be required in order for the M&V Contractor to obtain energy usage information. The Proposer shall support the M&V process planned and executed by the assigned Technical Consultant

contracted by NYSERDA. Proposers should not include M&V activities in the budgets provided with their proposals. The extent to which proposers will be involved in occupant satisfaction surveys will be negotiated on a case-by-case basis, with successful proposers. Proposers must identify high-level data that should be obtained as a part of occupant satisfaction work, as part of their proposals.

**f. Technology Transfer**

Proposers will be required to collaborate on technology transfer activities to communicate the results of the demonstration projects to the residential energy community, including builders, contractors, designers, and installers, in addition to consumers. Proposals must include plans for conducting technology transfer activities, which may include videos, webinars, seminars, conference presentations trade publications, and social media, and explain how these activities will lead to significant market development. New and/or innovative technology transfer strategies or approaches are welcomed to achieve greater scale in tech transfer. If the homeowner or occupant agrees to a public event, such as an open house or model home event, these may be conducted. NYSERDA will take the lead in and assume the cost of developing case studies, however the proposer will be required to provide key project details, photos, evaluation data and/or results, and other relevant data to be determined on a project-by-project basis. A final report documenting the project design and outcomes shall be developed.

**g. Teaming**

Proposers are encouraged to work in teams consisting of industry professionals<sup>3</sup> to develop proposals and conduct demonstration projects to draw on the expertise and resources from the various actors in the residential energy sector and to maximize technology transfer opportunities. In addition to the required BPI certified contractor, NYSERDA suggests that teams include an engineering professional or energy consultant, and manufacturer's representative, at a minimum. Teams may also include design professionals, renewable energy system installers, workforce training institutions, retailers, wholesalers, or other service providers. While not a requirement of this PON, the extent to which proposals involve teaming and complementary skill sets increasing the likelihood of success of the demonstrations and market development, will be factors considered in the proposal evaluation.

To support the development of team proposals, a clearinghouse for potential demonstration partners has been created by NYSERDA and is available online at: <http://www.nyserda.ny.gov/resetac-clearinghouse>. Companies listed in the clearinghouse have expressed an interest in participating in demonstration projects for emerging technologies. NYSERDA cannot guarantee that the companies listed in the clearinghouse will participate in a given project: the proposer should be prepared to conduct outreach to additional companies for the purpose of creating a complete and effective team. For contractual and project management purposes, the proposer should be the team leader and the primary contact for NYSERDA throughout the duration of the project and will be the entity contracting with NYSERDA.

**h. Proposer Qualifications**

Proposers and proposing team members should hold applicable professional experience and/or qualifications (licenses, certifications, and/or accreditations) necessary for the relevant design, construction, or retrofit work. If a team is proposed, proposals must also demonstrate that the teaming arrangement is sufficiently representative of the residential energy field and is directly applicable and consistent with the goals of this PON.

**i. Cost-Effectiveness**

---

<sup>3</sup> Industry professionals in the residential sector include consumers, home performance and energy services contractors, builders, architects and design professionals, product manufacturers, workforce training organizations, retailers and wholesalers, and other trade professionals and service providers.

An assessment of the cost-effectiveness of the proposed technology or building strategy must be conducted and include a simple customer payback calculation<sup>4</sup> for the proposed technology or strategy. The simple payback should indicate the length of time in years necessary to recover the incremental costs of purchasing and installing, or implementing the proposed technology or strategy through bill savings. The assessment should include an identification of the inputs used to calculate the payback period including the incremental and installation costs, energy consumption, electricity and/or gas prices utilized, and estimated useful life of the installed equipment. Costs related only to the demonstration, such as data collection and analysis or technology transfer initiatives, should be omitted from the calculation. While it is not required that the proposed technology or strategy be cost-effective within a certain timeframe, preference will be given to technologies and strategies that are more cost-effective or have the potential to be most cost-effective in the near future. For technologies or strategies that are not currently cost-effective (i.e. payback period exceeds average useful measure life), proposals should describe the factors that will contribute to achieving cost-effectiveness of the technology or strategy and the estimated timeframe for doing so.

**j. Final Project Report**

Upon completion of the demonstration project, the contractor will submit a final report to the NYSERDA Project Manager that will include the following:

- Overview of the demonstration project, detailing the methods used in developing, implementing, and monitoring the demonstration sites;
- Identification of the technologies or building retrofit strategies that were demonstrated, including the relevant product data;
- Identification and discussion of the barriers to broad adoption of the technology or retrofit strategy and how the results of the demonstration overcome those barriers;
- Quantitative and qualitative assessment results, including the data points identified in Subsection e, Measurement and Verification and Data Collection (note that NYSERDA will require delivery of all data and analysis accomplished by NYSERDA's M&V contractor to the demonstration contractor for inclusion in the report);
- Description of the operating performance of the demonstrated technology or building strategy, including the quality of performance and the identification of any performance barriers associated with the technology or building strategy;
- Cost-effectiveness calculations, including simple payback, updated to reflect learning from the demonstrations. List all inputs used in the payback analysis, including incremental cost of technology or strategy, installation costs, estimated energy savings, and measure life. If the technology or strategy is not currently cost-effective, discuss the likelihood of its achieving cost-effectiveness in the future;
- Discussion of the impact that the project will have on the market adoption of the technology or building retrofit strategy; and
- Summary of planned community and general public marketing of the results.

The format of the Final Project Report will follow NYSERDA's established reporting guidelines and content must be agreed upon between the Proposer and NYSERDA Project Manager prior to finalization.

**k. Proposer's Responsibility**

The Proposer will be responsible for the timely completion of the requirements described in this PON and the resulting contract. The selected Proposer assumes overall responsibility for coordinating all members of the demonstration team as noted in the proposal, and producing agreed-upon deliverables on time and within budget. The Proposer is also responsible for ensuring that the demonstration projects are coordinated with the appropriate NYSERDA residential energy services program, and that the project meets the requirements for and adheres to the guidelines for that program, beyond the demonstrated technology.

---

<sup>4</sup> A simple payback calculation does not take into account compounded savings or discount and inflation rates.

**I. NYSERDA's Responsibility**

A NYSERDA Project Manager will be the primary contact at NYSERDA for the Proposer and will be responsible for managing and overseeing all tasks undertaken by the selected Proposer including but not limited to approving tasks and any subsequent deliverables. In addition, the Project Manager will review and approve plans for site selection, data collection, and M&V prior to the commencement of the demonstration project. The Project Manager will also coordinate the development of any case studies and media communication with the Proposer and NYSERDA's Marketing Department.

**m. Available Funds, Eligible Costs, and Payments**

Up to \$3.5 million is available for PON 3127 and NYSERDA expects to receive and fund multiple proposals through this competitive solicitation. The Proposer or proposing team is strongly encouraged to contribute to the cost of the demonstration project in the form of cost-sharing and/or in-kind contributions. The level of cost-share or in-kind contribution provided will be considered in the evaluation process.

Funding available through this PON is intended to offset the **incremental cost** of the demonstration project after proposer cost share, customer (homeowner) contribution, and any applicable NYSERDA program incentives are considered. Incremental costs that are eligible under this PON may not be eligible for incentives or funding under any other NYSERDA or Utility Program. Incremental project costs include planning, design and product specifications related to the demonstration components and scope of work, equipment upgrades, measurement and verification, and technology transfer activities associated with the project(s). For the HVAC system itself, eligible incremental costs under this PON cannot exceed 50 percent of the cost of standard replacement equipment. This means, for example, in an existing home being retrofitted, eligible costs for reimbursement or cost-share include: the additional (incremental) costs of the design work and over-and-above costs associated with any installed materials or components related to the demonstration components of the project; M&V activities; reporting, and technology transfer. **Other retrofit costs, including those needed to meet the requirements of a related NYSERDA program, are not eligible for reimbursement through this PON, and those costs, along with any incentives that may be provided by the related NYSERDA program, cannot be considered as cost-share for purposes of the demonstration projects.** For example, any customer contracts established through HPwES will specify the incremental costs associated with the Eligible HVAC Technology being demonstrated through this PON (over standard replacement equipment meeting minimum HPwES efficiency requirements.)

Payments will be based on the completion of tasks, on a milestone basis, as outlined below:

1. Payment 1: 10 percent of award following approval of the Statement of Work (SOW), project timeline, site selection plan, and executed demonstration site agreements;
2. Payment 2: 60 percent of the award following design/specification work, and completion/execution of the retrofit strategy, including installation of specified components;
3. Payment 3: 30 percent of award following completion of all M&V and data acquisition, submission and approval of final project report, and satisfactory completion of all technology transfer obligations.

**IV. PROPOSAL REQUIREMENTS**

For proposers not utilizing the NYSERDA electronic submittal portal, proposers must submit one (1) paper copy and one (1) CD of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to: Roseanne Viscusi, PON 3127, NYS Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399. A completed and signed Proposal Checklist (Attachment A) must be attached as the front cover of your proposal,

which must contain an original signature. **Late proposals will be returned and proposals lacking the appropriate completed and signed Proposal Checklist may be returned. Faxed or e-mailed copies will not be accepted.**

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the PON number, and the page number. The proposal must be in the following format:

**PON Proposal Checklist:** The Proposal Checklist to be completed is attached to this PON. The checklist must be attached to two (2) copies of Part I of the proposal. At least one (1) copy must contain an original signature.

**Section 1: Introduction and General Information (1 page)**

Proposers should summarize the main objectives of their demonstration project, key information about their organization and proposed team members, and their qualifications to perform and complete the services requested under this PON.

**Section 2: Technology Identification, Market Assessment, and Value of Demonstration Project (1-3 pages)**

Identify the HVAC technology and building retrofit strategy that is proposed for demonstration; where applicable, include information on the manufacturer, certifications achieved, and any available cost and performance data. Include a brief assessment of the market for this technology or practice, including background on the market penetration of the technology or practice, a description of the existing market including sales data, potential future market size, or other evidence that the technology or practice is commercially available, yet underutilized and should be part of a demonstration project. Identify any unique characteristics of the most promising market for the technology or strategy, as applicable. This may include building size, configuration, vintage, current heating systems or fuel, or other characteristics.

Identify confirmed or perceived barriers that have limited market adoption of the Eligible Technology. Explain how the proposed demonstration will help overcome these barriers. Identify target market, including the customer and building types for which the technology or approach is most appropriate, identify and plan activities to develop the supply chain (manufacturers, distributors, installers, service and maintenance professionals) and identify and plan targeted outreach/marketing. Articulate any additional benefits, including economic benefits to New York State, that will be achieved through the demonstration projects.

Estimate the potential energy and energy cost (bill) savings associated with the eligible HVAC technology and building retrofit strategy. Include cost estimates for each of the components of the technology or building strategy, including design, specification, equipment, installation, commissioning, operations and maintenance, and technology transfer. Provide an assessment of the cost-effectiveness of the proposed technology or strategy in terms of a payback calculation. List all inputs used in the payback analysis, including incremental cost of technology or strategy, installation costs, estimated energy savings, and measure life. If the technology or strategy is not currently cost-effective, discuss the likelihood of its achieving cost-effectiveness in the future.

This section should also include a discussion on the potential for the demonstration project to be replicated, including how the building strategy or approach could be implemented to achieve similar results at broader scale in comparable residential structures, and how the demonstration will result in significant market development. **Retrofit strategies should be planned and accomplished such that minimal disruption of occupant's daily lives will occur (i.e. substantial or gut-rehabs that require occupant(s) to vacate, or of existing vacant buildings, are not eligible).**

**Section 3: Staffing Plan and Management Structure (1 page)**

Proposals should identify all members of the proposing team, including the team lead (primary contractor). Provide a clear description of the roles and responsibilities of each team member in completing the demonstration project. Provide an organizational chart for the team and a plan for coordinating team resources. Resumes for key personnel should be provided in an appendix.

**Section 4: Qualifications (1 – 2 pages)**

Describe the qualifications and expertise for each team member, and how the team member will contribute to successful completion of the objectives of this PON. List and describe any relevant experience or projects that have been completed by members of the proposing team. Indicate which team members were responsible for each project described. In particular, describe the expertise and experience of the team member(s) who will be responsible for coordinating with NYSERDA's M&V contractor, and for any additional data collection and analysis. Include the name and telephone number of at least three (3) references who are familiar with previous work of the any of the team members. Summaries of prior work may be submitted as an appendix.

**Section 5: Statement of Work (2-3 pages)**

The Statement of Work (SOW) is a detailed work plan of how the Proposer will accomplish the objectives of the Program and is the primary contractual document that identifies the deliverables and milestones, and also provides a basis for payment. The SOW should clearly articulate strategies consistent with the Eligibility section of this PON and detail the approach and rationale for accomplishing tasks necessary to implement the demonstration projects. Tasks should include planning, site selection, design, installation, coordination related to M&V and data collection, reporting, and technology transfer. The SOW should include general details on the plans for each task; specific plans for the completion of these tasks should be included in Section 6. Include deliverables, such as final schedules, plans, reports, photos, or presentation slides, as appropriate, for the tasks.

Provide a schedule and timeline for the completion of each task in the SOW, as well as dates for deliverables. The schedule may be provided in the form of "months after contract award." Proposer should indicate whether there are specific timeframes, such as seasons, or specific start dates, necessary for any tasks to ensure data validity or to maximize technology transfer opportunities.

**Section 6: Detailed Plans (6-8 pages)**

This section should include specific details for accomplishing the site identification, project planning and execution, and technology transfer components of the demonstration project(s). The plans should be structured as follows:

*Demonstration Site Identification and Recruitment (1-2 pages)*

Identify the demonstration sites. If they are not yet identified, describe how and when identification will take place, and note any challenges that will have to be overcome in order to secure sites. Provide the number, geographic distribution, and general building characteristics (such as existing HVAC system and fuel source) of the demonstration sites that will be included in this project. Building characteristics should include those that are representative of the target market, such as vintage, building configuration and construction quality, mechanical system(s), and market segment (e.g. affordable), where applicable. If demonstration sites have already been recruited, provide letters of commitment as an appendix.

*Retrofit Planning and Execution (3-4 pages)*

Proposals should include a detailed plan for the retrofit strategy planning/scoping process; the project execution plan and timeline, including team member roles and responsibilities; the proposed envelope retrofit scope; the HVAC system proposed to be installed; any post-retrofit commissioning or quality assurance procedures; also describe occupant education activities, if this is an anticipated need.

*Technology Transfer (2-3 pages)*

Outline strategies for communicating the results of the demonstration projects and engaging stakeholders within the residential energy field including consumers, home performance contractors, builders, architects and engineers, retailers and wholesalers, trade associations, and workforce education and training institutions. Be specific regarding annual events or conferences that may be used as a venue for presentations. Also include plans for coordinating with NYSERDA's M&V contractor and NYSERDA to produce case studies and news releases.

**Section 7: Cost Proposal (Use Attachment D: CPPF)**

A total project budget, including cost elements, must be provided using the attached Contract Pricing Proposal Form (CPPF), Attachment D. Provide a task budget that details total costs and cost elements per task. If applicable, provide a budget for each subcontractor or team member involved with the project. Provide detailed budget breakdowns (using the Supporting Schedule for the CPPF) for materials, equipment, travel, and any other costs.

Cost sharing is not required, however the level of cost share provided is a consideration for proposal evaluation. It is recommended that proposers and team members (such as manufacturers) that stand to benefit from the demonstration project share in the cost of the project. Cost sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts which have already been undertaken. The proposer or proposing team cannot claim as cost-share any expenses that have already been incurred prior to being notified they are a successful proposer. Cost-sharing applies only to incremental costs associated with the demonstration project, and cannot include any costs that would have been part of a typical retrofit that did not include the technology or strategy being demonstrated. Costs related to requirements of, or incentives from, related NYSERDA programs, such as HPwES, also cannot be included as cost-share. Show the cost-sharing plan in the following format (expand table as needed):

	Cash	In-Kind Contribution	Total
<b>NYSERDA</b>	\$		\$
<b>Proposer</b>	\$	\$	\$
<b>Others (list individually)</b>	\$	\$	\$
<b>Total</b>	\$	\$	\$

Attach supporting documentation to support indirect cost (overhead) rate(s) included in your proposal as follows:

- Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projections; based on federal government or other independently-approved rates).
- If rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval.
- If rate(s) is based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculation should provide enough information for NYSERDA to evaluate and confirm that the rate(s) are consistent with generally accepted accounting principles for indirect costs.

NYSERDA reserves the right to audit any indirect rate presented in the proposal and to make adjustment for such difference. Requests for financial statements or other needed financial information may be made if deemed necessary.

**Appendices:**

- Resumes of Key Personnel
- Summaries of Prior Work
- References
- Letters of Commitment
- Other Supporting Materials

### **Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k**

Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws is available at: <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist (Attachment A) including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form (Attachment B). Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

## **V. PROPOSAL EVALUATION**

All proposals received by the due date and meeting the submission requirements established in this PON will be reviewed and ranked by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected external technical experts. Final proposal rankings and contract awards will be determined based on the following criteria, listed in order of importance. Final awards shall be based upon proposal evaluation and geographic distribution across New York State.

### **Responsiveness to the Program Components and Requirements of the PON (25 points)**

- Does the proposal comply with eligibility and proposal requirements?
- Are the proposed materials, equipment and/or system components commercially available, as defined in Section II, and underused in the residential sector?
- Is the proposed building retrofit strategy well-articulated?
- How well does the proposal identify and address market barriers?
- Does the proposal identify the demonstration sites or provide a viable plan for site recruitment?
- How well does the Statement of Work describe the rationale and approach the proposer will take to accomplish the goals of the project?
- Is the proposed project timeline realistic and sufficient to address current market barriers for the subject technologies and/or practices?
- Does the proposal demonstrate attention to detail on the part of the proposer? Is the proposal clearly-written and well organized?

### **Technology Transfer Plan (20 points)**

- Is the technology transfer plan adequate to communicate the results of the project to the diverse stakeholders in the residential energy field?
- Are the technology transfer strategies proven or innovative in ways likely to succeed in significantly developing the market?
- Does the plan make good use of existing venues or annual events, and maximize opportunities related to the various team members?

### **Potential for Replication (20 points)**

- Does the demonstrated technology or building strategy have potential for wide-scale replication in the residential sector? Is this clearly described in the proposal?
- Do the proposed activities under Technology Transfer Plan address significant barriers to replicability?
- Is the proposed technology or building approach currently cost-effective? If not, what is the likelihood that it will become cost-effective in the next several years?

### **Project Cost and Value (10 points)**

- How significant is the potential market opportunity relative to the proposed project cost?

- Is the funding requested adequate and reasonable to achieve the proposed results?
- Are proposed costs and indirect rates reasonable relative to other proposals?

**Qualifications, Experience, and Management Structure (10 points)**

- Does the proposal include a teaming arrangement, with structure/roles and responsibilities clear?
- Does the team represent diverse stakeholders from the residential energy sector?
- Does the proposal demonstrate that the proposer and team members have necessary qualifications and experience to undertake the demonstration projects as proposed?
- How well does the management plan coordinate team resources?
- Do references confirm the ability of the team to perform this work?

**Affordable Housing (5 points)**

- Are the buildings designated as affordable housing, or for income-qualified tenants and/or owners?

**Cost Sharing (5 points)**

- Does the proposed project include cost sharing? If so, how does the level of cost share compare to other proposals being evaluated?
- Does the level of cost share demonstrate a significant contribution by the proposer or team members?
- Are the parties most likely to benefit from success contributing to the cost-share?

**Economic Benefit to New York State (5 points)**

- Does the proposed project provide economic benefit to New York State?
- Has the proposing team demonstrated knowledge of New York State markets and an ability to reach relevant New York State stakeholders?

**VI. PRE-BID WEBINAR**

NYSERDA hosted informational webinars on **January 27, 2016 from 1:00 pm to 2:00 pm** and March 17, 2016 from 11:00 am to noon, to provide an overview of the services requested and requirements of this PON. Potential proposers will be able to ask clarifying questions to help prepare a response to the solicitation.

**VII. 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 exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://nyserda.ny.gov/~media/Files/About/Contact/NYSERDARegulations.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  
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

**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>

The attached Proposal Checklist (Attachment A) calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form (Attachment B) includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

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

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

**Contract Award** - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement (Attachment D) to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal (see Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately eight (8) weeks from the proposal due date whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement. **NYSERDA reserves the right to adjust final awards based upon geographic distribution across New York State.**

**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.

**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.

\*\*\*\*\*

#### **VIII. Attachments:**

- Attachment A- Proposal Checklist
- Attachment B- Disclosure of Prior Findings of Non-Responsibility Form
- Attachment C- Instruction to Contract Pricing Proposal Form (CPPF)
- Attachment D- Contract Pricing Proposal Form (CPPF)
- Attachment E- Instructions for Electronic Submission
- Attachment F- Sample Agreement



**ATTACHMENT A  
PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		Due Date	
<b>Primary Contact</b> (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is <b>not</b> a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.		<b>Federal Tax Identification Number:</b>	
Address	City	State or Province	Zip
<b>Secondary Contact</b>		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip

**THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:**

Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page)  
**(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)**
\_\_\_Yes \_\_\_No

Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page "confidential" or "proprietary" (For additional information regarding this, please refer to the section entitled "Proprietary Information" in the solicitation document).
 \_\_\_Yes \_\_\_No

Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg)
 \_\_\_Yes \_\_\_No

Are you a Minority or Women-Owned Business Enterprise?
 \_\_\_Yes \_\_\_No

Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors?
 \_\_\_Yes \_\_\_No

Are you submitting the required number of copies? (See proposal instructions.)
 \_\_\_Yes \_\_\_No

Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page)
 \_\_\_Yes \_\_\_No

**ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?**

<p><b>Provide list of items consistent with Proposal Requirements section of solicitation:</b></p>	Indictment/Conviction of Felony _____ (if applicable) NYSERDA Contracts Awarded _____ (if applicable) Prior and/or Competing Proposals _____ (if applicable) Exceptions to Terms & Conditions _____ (if applicable) Completed and Signed Contract Pricing Proposal Form(s) _____ Disclosure of Prior Findings of Non-responsibility Form _____
----------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**AUTHORIZED SIGNATURE & CERTIFICATION**

I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.

Signature	Name
Title	Organization
Phone	

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

**Attachment B**

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

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



Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information?		Yes
		No

If you answered yes, please provide details:

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



**INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE**

Your cost proposal may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided.

**A. GENERAL**

The schedule must be submitted on NYSERDA's Contract Pricing Proposal Form.

**B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL**

(Title each supporting schedule and cross-reference it to the item number on the Contract Pricing Proposal Form)

**1a. DIRECT MATERIALS - PURCHASED PARTS**

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

- o Description of item
- o Proposed vendor
- o Quantity needed
- o Unit cost
- o Basis for cost (i.e., catalog, prior purchase, quote, etc.)
- o Total cost
- o Evidence of a competitive selection process in accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement.

**1b. OTHER DIRECT MATERIALS**

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

**2. MATERIALS OVERHEAD (also applicable to other Indirect Rate categories: 4. LABOR OVERHEAD and 10. G&A EXPENSE)**

- o If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
- o If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising the proposed period of contract performance.
  - o A description (chart or other) of the organization of the indirect cost center.
  - o The budget of indirect costs, by account, for each proposed indirect expense rate.
  - o The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
  - o Actual incurred rates for the prior three years, including actual base and pool amounts.

**3. DIRECT LABOR**

**a. Commercial Enterprises**

- (1) Attach supporting schedules showing:
  - o Each category or type of labor being estimated
  - o Applicable labor rates per hour (straight-time)
- (2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.

**b. Educational Institutions**

Provide the following for each calendar year of the contract:

- (1) For individuals not on an "actual hours worked" basis:

- o individual's name
  - o annual salary and the period for which the salary is applicable (preferably in weeks)
  - o the proportionate time to be charged to this effort.
- (2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)

4. LABOR OVERHEAD (Same as Instructions for 2. MATERIALS OVERHEAD)

5. OUTSIDE SPECIAL TESTING

- a. Describe the effort.
- b. Provide the units of time (hours, days, weeks), cost rates, and the vendor.
- c. In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.

6. EQUIPMENT

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

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

7. TRAVEL

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

8. OTHER DIRECT COSTS

- a. Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
- b. Provide cost details for the amounts estimated (hours or units, rates, etc.)
- c. If any internal service center rates are applied, provide details similar to that required in Instruction #B.
- d. For computer costs identify the make, model and type of computer, hours of service and appropriate rates, and whether the machine is company owned or leased.

9. SUBCONTRACTORS/CONSULTANTS

- a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
- b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

10. GENERAL & ADMINISTRATIVE (G&A) EXPENSE (Same as instructions for 2. MATERIALS OVERHEAD)

11. FEE OR PROFIT

List the rate proposed for profit. No fee or profit is allowed under product development, demonstration or other certain cost-sharing projects.

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No.	Page
Contractor:			Name of Proposed Project:	
Address:				
Location (where work is to be performed):			NYSERDA funding:	
			Total Project Cost:	
Cost Element	Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding	
1. Direct Materials				
a. Purchased Parts		WORK		
b. Other				
Total Direct Materials				
2. Materials Overhead			Rate:	
3. Direct Labor (specify names/titles)			Hours	Rate/hr
Total Direct Labor				
4. Labor Overhead			Rate %	\$ Base
Total Labor Overhead				
5. Outside Special Testing				
6. Equipment				
7. Travel				
8. Other Direct Costs				
9. Subcontractors/Consultants				
Total Subcontractors/Consultants				
10. General & Administrative Expense			Rate %	Element(s)
11. Fee or Profit (if allowable)			Rate:	
12. Total Estimated Project Cost			#VALUE!	
This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.				
Typed Name and Title:			Signature:	Date:
Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months?    ___ Yes    ___ No				
If yes, identify:				





## **NYSERDA - INSTRUCTIONS FOR SUBMITTING ELECTRONIC PROPOSALS (January 2014)**

Please read the following instructions before submitting a proposal.

1. Locate the Funding Opportunity (PON, RFP, RFQ) on the “**Current Funding Opportunities**” page of NYSERDA’s website at:  
<http://www.nyserdera.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>
2. While on the “**Current Funding Opportunities**” page, click the link/title of the individual Funding Opportunity.
3. While on the individual Funding Opportunity page, click the “**Submit Proposal Online**” button.
4. Enter your e-mail address and click the “Validate Email” button.
5. You will receive an automatic email containing a link to validate your email address. Click the link to be taken back to the Funding Opportunity to begin the online submission process.
6. Upload as many files as needed, one at a time. The electronic file names should include the proposing entity’s name in the title of the document.
7. After clicking the “Upload File” button, a list of your files will appear on the web page. You can delete files from this list if needed.
8. After all necessary files have been uploaded; review the list of documents to ensure that your proposal is complete and accurate.
9. Click the “Submit Proposal button.”
10. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
11. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
12. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address used to submit the proposal.

### **Important Reminders:**

1. Submit only one proposal for each session
2. You may submit Word, Excel, Zip, or PDF files. PDF files must be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
3. E-mail or facsimile submittals will not be accepted.

### **If you make an error:**

If after you click “Submit Proposals” you discover that the document(s) you submitted are incomplete or inaccurate follow these instructions:

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

### **If you need help:**

If you need help with this electronic proposal submission process, please contact Rosanne Viscusi at [rosanne.viscusi@nyserdera.ny.gov](mailto:rosanne.viscusi@nyserdera.ny.gov) or 518-862-1090 ext. 3418.

## ATTACHMENT F – SAMPLE AGREEMENT

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

#### AGREEMENT

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period: **[Optional for defined-scope R&D projects]**
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

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

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

**[CONTRACTOR]**

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

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

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

\_\_\_\_\_  
Notary Public

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

##### Definitions

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

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and Exhibits A, B, C, D, and E hereto, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

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

Contract Administrator: NYSERDA's Director of Contract Management, Cheryl L. Earley, or such other person who may be designated, in writing, by NYSERDA.

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

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

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

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

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

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

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

***[If Sections 8.02 and 8.03 of this Sample Agreement are applicable, the following Definitions shall be included:]***

(b) Payments to NYSERDA Definitions:

Practical Application: To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, under conditions indicating that the benefits of the invention are available to the public on reasonable terms.

Product: [PRODUCT OR TECHNOLOGY DEFINITION], and including any improvements, enhancements or modifications thereto.

New York State Product: The Product will be considered a New York State Product if Contractor demonstrates that either: (1) in excess of 50% of the value or value added to such Product was added within the geographical boundaries of the State of New York; “value added” means any separable component of the Product, contributed by the Contractor or paid for by the Contractor to others, for parts, components, and services, and all manufacturing costs, including but not limited to labor, labor overhead, materials, and G&A, but excluding profit; or (2) in excess of 75% of the nonmanufacturing selling and administrative costs, allocated on a per unit basis for the Product, derive from within the geographic boundaries of New York State; such costs include those associated with the selling of the Product, shipping, administrative salaries, executive salaries, administrative office expenses, sales commissions, advertising, marketing, and research and development, but excluding: (a) any separable component of the Product paid for by the Contractor to others for parts, components, and services, and (b) and any other manufacturing or product costs. Qualification as a New York State Product shall be determined using generally accepted accounting principles and shall be capable of being proven by an audit conducted in accordance with generally accepted auditing standards.

License/Franchise: A grant of authority by Contractor to another person to make, use, or sell the Product.

Licensing Revenue: Gross revenue of any kind or character derived by Contractor from a Licensing or Franchising of the Product.

Sale: A sale or lease of the Product by the Contractor or any parent, subsidiary, affiliate or assignee thereof.

Sales Revenue: Gross revenue, excluding returns and allowances such as sales tax, freight, and insurance, if applicable, derived from Sales.

## Article II

### Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified at Item 3, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

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

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

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

- 1)

- 2)
- 3)
- 4)

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

### Article III

#### Deliverables

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

### Article IV

#### Payment

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

#### ***[CASE I: Cost Reimbursable]***

(a) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of

the employee's wage rate as shown in the Budget or the actual wages paid to the employee and applicable at the time the Work is performed.

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

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs, all at the fixed rate as shown in the Budget. Contractor hereby warrants and guarantees, in accordance with Section 9.01(k) hereto, that its rates for the foregoing indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

***[For consultant services contracts, where appropriate, insert:]***

(d) Profit: The Contractor shall be paid a profit at a fixed rate as shown in the Budget applied to costs incurred in the performance of the Statement of Work. The percentage for profit shall be applied to all items in the Budget with the exception of travel costs.

***[CASE II: Billing Rates]***

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

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred.

Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

***[Case III – Fixed Fee/Milestone]***

Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event so identified, the Contractor may submit invoices, including documentation reasonably sufficient to demonstrate completion, requesting payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work, including evidence of the Contractor's cost share, if applicable.

Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov). Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and Other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

***[For Milestone contracts , delete the following:]***

(b) Retainage: In accordance with and subject to the provisions of Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA's share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to

the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

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

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Contractor's performance under this Agreement.

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

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter

into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

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

## Article VI

### Schedule; Acceptance of Work

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

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

## Article VII

### Force Majeure

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

## Article VIII

### Rights in Information; Confidentiality

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

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

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

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

(d) No information shall be treated by NYSERDA as confidential unless such information is clearly so marked by Contractor at the time it is disclosed to NYSERDA; see Exhibit C, Section 7 regarding NYSERDA's obligations under the Freedom of Information Law. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, be considered confidential or Proprietary Information.

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

*[If recoupment applies, include the following Sections 8.02 & 8.03:]*

Section 8.02. Rights in the Product.

(a) The Contractor shall have the right to make, use and sell the Product.

(b) Should NYSERDA, or any political subdivision or instrumentality of the State of New York (each, a "New York Purchaser") desire to purchase the Product from Contractor or any parent, subsidiary, affiliate, assignee, licensee or franchisee thereof ("Seller"), Seller shall grant such New York Purchaser terms, including price, that are at least as favorable as the terms granted by Seller to any buyer of the Product within the previous year. During the period of performance of the agreement between New York Purchaser and Seller, if Seller enters into an agreement with any other party that includes terms more favorable than those granted to the New York Purchaser, then the terms granted by Seller to such New York Purchaser shall automatically be deemed to be modified to provide the New York Purchaser with those more favorable terms as of the date such more favorable terms were offered to the other party. Contractor shall notify the New York Purchaser promptly of the existence of such more favorable terms and the New York Purchaser shall have the right to receive the more favorable terms immediately. If requested in writing by the New York Purchaser, Contractor shall amend the agreement with such New York Purchaser to contain the more favorable terms and conditions. Contractor shall include these terms in any distribution, licensing or franchising agreement concerning the Product.

The sale price for any Sale made to NYSERDA pursuant to this Section shall be discounted by the applicable amount due to NYSERDA by Contractor pursuant to Section 8.03(a) or (b) hereof. The amount of this discount shall be credited towards the aggregate amount due by Contractor to NYSERDA pursuant to Section 8.03(c) hereof.

(c) Should a patent application be filed related to the Product, Contractor shall forward to NYSERDA's Project Manager a copy of the United States Patent and Trademark Office filing receipt bearing the patent application number. The Contractor or any assignee acting on behalf of the Contractor shall include, within the specification of any patent application and any patent or certificate issuing thereon related to the Product the following statement: "This invention was made with the support of the New York State Energy Research and Development Authority (NYSERDA) under Agreement Number [Item 1 from Page One] and NYSERDA may have rights in this invention."

(d) Contractor shall notify NYSERDA within three (3) months after a patent is issued related to the Product, and shall provide the patent title, issuance number and a generalized description of the claims set forth therein. If within three (3) years after the issuance date for any patent related to the Product, Contractor fails to demonstrate that Contractor has taken effective steps to bring said patent to the point of Practical Application, then NYSERDA may, by written notice to Contractor, require the Contractor to grant a non-exclusive or exclusive license to such patent to responsible applicants under terms that are commercially reasonable under the circumstances. If Contractor has not executed such license with a responsible applicant within ninety (90) days after such notice, then NYSERDA shall have the right to grant responsible applicants, on Contractor's behalf, a non-exclusive or exclusive license under terms that are commercially reasonable under the circumstances.

(e) The Contractor shall include the foregoing clauses, suitably modified to identify the parties, in all subcontracts which involve the performance of Work under this Agreement. The Subcontractor shall retain all rights provided for the Contractor, and the Contractor shall retain all rights provided for NYSERDA, as set forth above.

(f) The Contractor shall enforce Sections 8.02 and 8.03 hereof against all current or former employees to the extent necessary to protect NYSERDA's rights herein.

#### Section 8.03. Calculation of Payments to NYSERDA.

(a) New York State Product: Upon a Sale of a New York State Product, or at such time as Licensing Revenue become due to the Contractor with respect to a New York State Product, Contractor agrees to pay to NYSERDA: (i) one and one half percent (1.5%) of the Sales Revenue, or (ii) thirty percent (30%) of all License Revenue accruing to the Contractor.

(b) Non - New York State Product: Upon a Sale of a Product that does not qualify as a New York State Product, or at such time as Licensing Revenue become due to the Contractor with respect to a Product that does not qualify as a New York State Product, Contractor shall pay to NYSERDA: (i) five percent (5%) of the Sales Revenue, or (ii) sixty percent (60%) of all Licensing Revenues accruing to the Contractor.

(c) Duration of Payments to NYSERDA: The Contractor's obligation to make payments to NYSERDA shall extend (i) from the date the Contractor first receives Sales

Revenue or Licensing Revenue and continue for a period of fifteen (15) years thereafter; or (ii) until the amount paid by Contractor to NYSERDA attributable to actual Sales Revenue or Licensing Revenue from a New York State Product is equal to one times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement; or (iii) until the amount paid by Contractor to NYSERDA, whether or not derived from any Sales Revenue or Licensing Revenue, is equal to three times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement; whichever occurs first.

(d) Due Date of Payments. Such payments shall be payable in annual installments and shall be paid by the first day of March in the calendar year immediately following the year during which the Contractor receives revenues as described above (the "Due Date"). Any payment not received by the applicable Due Date shall be deemed delinquent. A delinquent payment shall be made with interest with such interest computed commencing with the Due Date of such payment. The annual interest rate payable shall be the "Prime Rate" existing as of the Due Date of such payment plus five (5) percentage points. Such interest shall be compounded on a monthly basis.

(e) Annual Reports. The Contractor shall provide to NYSERDA a written Annual Report detailing the status of development and utilization of the Product. The Annual Report shall provide detail as to all Sales, identifying each buyer or lessee, the number of items sold or leased, the Sales Revenue and/or Licensing Revenue, and calculating the resultant amount earned by, and paid or due to NYSERDA in accordance with paragraph (a) hereof. If the amount due to NYSERDA is calculated in whole or in part in accordance with paragraph (a) hereof, the Annual Report shall include documentation or substantiating information reasonably sufficient to establish that that such Product qualifies as a New York State Product. The Annual Report shall be furnished to NYSERDA not later than February 1 following the calendar year covered by the Report. The Contractor's obligation to provide Annual Reports shall commence on February 1 of the calendar year following either the Contractor's receipt of Final Payment pursuant to Section 4.03 hereto, at such time as Licensing Revenues become due to the Contractor or upon the first Sale, whichever event occurs first. In the event that, for a period of five consecutive years, the Annual Reports indicate that no Sales are made and no payment is due to NYSERDA, the Contractor may cease submittal of annual reports. If, however, Sales are made in subsequent years, or Licensing Revenues become due to the Contractor, the Contractor's obligation to submit Annual Reports shall resume.

(f) Maintenance and Audit of Records. Until such time as the Contractor's payment obligations to NYSERDA pursuant to this Section 8.03 have been met, the Contractor shall keep, maintain, and preserve at its principal office, full and detailed books, accounts, and records in connection with Sales, including any licenses or franchises granted, and the Contractor shall provide to NYSERDA, on a reasonable basis, access to all books and records related thereto.

(g) Licensing or Franchise Agreements. The Contractor shall not enter into any agreement with any party with respect to the licensing, franchising, or assignment of

rights in the Product that contains provisions inconsistent with the Contractor's obligation as set forth in this Article VIII. Further, any such agreement shall specifically provide NYSERDA the right to review the books and records of any party to such agreement to assure compliance with the payment provisions contained in Section 8.03(a) and (b) hereof. The Contractor shall provide copies of any proposed licensing or franchise agreements to NYSERDA and shall not execute any such agreements without the prior written consent of NYSERDA. Such consent shall not be unreasonably withheld, and, in the event that notice of consent or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, such licensing or franchise agreement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days after the lapse of the original review period.

(h) Modification of Payment Terms. Should Contractor provide to NYSERDA a copy of a proposed licensing or franchise agreement under subsection (g), NYSERDA agrees to negotiate, upon Contractor's execution of such licensing or franchise agreement, a modification of the Licensing Revenue terms in subsections (a)(i) and (b)(i) such that the amount of payment due to NYSERDA by Contractor will approximate the amount that would have been due upon a Sale of the Product.

## Article IX

### Warranties and Guarantees

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

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

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

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

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

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

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

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

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

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

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

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

## Article X

### Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted

---

<sup>1</sup>[http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.ashx?sc\\_database=web](http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.ashx?sc_database=web)

against NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XI  
Insurance

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

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

Section 11.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

**[For contracts containing recoupment, insert:]** (c) Upon commencement of marketing of the Product, product liability insurance for bodily injury liability, including death and property damage liability arising out of the use of the Product with minimum

limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster. Product liability insurance naming the NYSERDA and State of New York as additional insureds required under this Agreement shall remain in effect for as long as the payment obligation pursuant to Section 8.03 of this Agreement is in effect.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. **[For contracts containing recoupment, insert:** Upon commencement of marketing of the Product, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Section 11.02 (c) hereof and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA.] In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

## Article XII

### Stop Work Order; Termination

#### Section 12.01. Stop Work Order.

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

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

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

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

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

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

#### Section 12.02. Termination.

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

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law

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

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

### Article XIII

#### Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

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

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

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

**NYSERDA**

Name: Cheryl L. Earley  
Title: Director of Contract Management  
Address: 17 Columbia Circle, Albany, New York 12203  
Facsimile Number: (518) 862-1091  
E-Mail Address: [cle@nyserda.ny.gov](mailto:cle@nyserda.ny.gov)  
Personal Delivery: Reception desk at the above address

**[Contractor Name]**

Name:  
Title:  
Address:  
Facsimile Number:  
E-Mail Address:

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

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

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

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

Article XVI

Publicity

Section 16.01. Publicity.

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

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

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

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

## Article XVII

### Business Reorganizations

Section 17.01. Business Reorganizations. In the event the Contractor proposes to consolidate or merge into or with another corporation or entity, or to sell or dispose of all or a majority of the assets of the Contractor, or to otherwise undertake a reorganization which alters or changes the rights of NYSERDA as provided in this Agreement, before any such action shall be taken, the Contractor shall either:

(a) buy out its obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement by paying NYSERDA an amount equal to three (3) times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement, such aggregate buyout amount to be reduced by the amount(s) credited to Contractor pursuant to Section 8.03, if applicable; or

(b) assign or otherwise transfer to a new entity the Contractor's obligations under this Agreement, including, but not limited to, the obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement. Such assignment or transfer shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the assignment or transfer shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days after the lapse of the original review period.

## EXHIBIT C

REVISED 5/12

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a

manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

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

enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>).

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
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  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

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

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

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

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

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>2</sup>

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

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

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

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

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

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

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

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

---

<sup>2</sup> 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>

NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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

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

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

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

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

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

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

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

**504.4. Payment Procedures.**

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

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after

Receipt of an Invoice of:

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

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

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

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

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

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

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

has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

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

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

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

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

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

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

exceed thirty (30) working days.

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

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

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

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

**Exhibit E**

**NYSERDA Report Format and Style Guide**

# **Purpose**

---

This document explains how to prepare a technical report for the New York State Energy Research and Development Authority (NYSERDA), including typesetting and formatting procedures, and provides electronic data-transfer information.

The finished report deliverable will be published by NYSERDA. Please direct questions about format and style to Diane Welch of NYSERDA's Marketing Services unit at: (518) 862-1090, ext. 3276, or via e-mail: dlw@nyserda.org.

## **Americans with Disabilities Act (ADA) Accessibility Compliance**

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

To meet the needs of persons with visual disabilities, reports must be in a format that allows for conversion of written words of an electronic document into speech, thus allowing the person with a visual disability to hear the text. The formatting of these documents is critical to the success of the conversion from text to speech. Reports submitted to NYSERDA must meet the following requirements:

- Format documents using Microsoft Word Styles
- Use headings in the document
- Use Alternate Text (Alt Text) for images and objects
- Provide captions for all tables, images, and figures
- Use contextual links, do not use long URLs or "click here"

For more information about how to make a document accessible, please refer to <http://www.nyserda.org/resources/>

## **Page Format**

Proper page setup is essential to ensure that your report is published accurately and efficiently. Textual material should be created in Microsoft Word. While other word-processing programs may be able to be converted, file corruption may occur during the process. Reports that are to be published on the web must be submitted as either a Microsoft Word document, or a fully accessible PDF in NYSERDA's approved format, which contains all of NYSERDA's Marketing Department editorial changes.

- Left and Right margins should be set at 1.25 inches; Top and Bottom margins should be set at 1-inch
- Use left-hand justification only
- Spacing should be 1.5 lines
- Block-style paragraphs should be used, with no indentation (except for fifth-level headings, which should be blocked on the left; see Heading Styles on page 6 of this guide)
- There should be 10pt of space between a paragraph and the heading that follows. (Note: the spacing above and below a paragraph or heading should be controlled by the use of Styles, and not through the use of hard or soft returns)

# Report Format and Pagination

---

## Required Components

The following items are required in all technical reports and should be paginated in the following sequence:

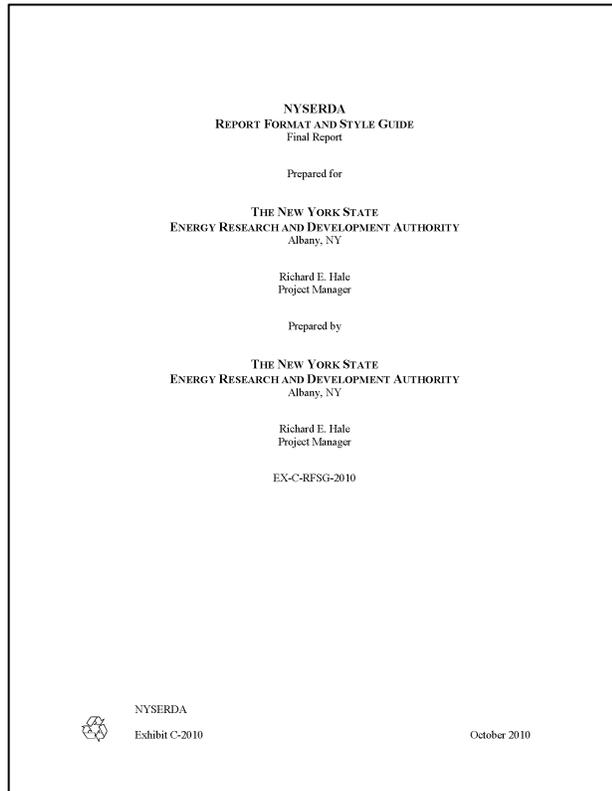
- Title page (no page number)
- Notice (no page number)
- Abstract and Keywords (iii)
- Acknowledgments (optional) (iv)
- Table of Contents, including listings of figures and tables (v)
- Summary (S-1)
- Main Text listed by section number (1-1; 2-1)
- Appendices (A-1; B-1)

Note: Each subsequent section or chapter must begin on a new page, but it is not necessary to start each new section on a right hand (recto) page.

## Title Page

The following information is required:

- Report title and type of report (i.e., final, interim, or summary)
- Name of NYSERDA project manager(s)
- Corporate name, city, and state of contractor(s), including contact person(s) or project manager(s)
- Project co-sponsors, including contact person(s) or project manager(s)
- NYSERDA Agreement number (e.g., NYSERDA 10902)



## **Notice**

All technical reports are required to contain one of the following legal notices or disclaimers:

When NYSERDA is the project's sole sponsor, this notice must be used:

### **NOTICE**

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

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

### **NOTICE**

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

## **Abstract and Keywords**

The Abstract is a brief, approximately 200-word description of project objectives, investigative methods used, and research conclusions or applications. This information will be used when NYSERDA registers the report with the [New York State Library](#) (NYSL), and the [Library of Congress](#) (LOC). A list of keywords that describe the project and identify the major research concept should be submitted with the report. Four to six precise descriptors are generally sufficient and will be used for indexing, registering, and distributing the report through NTIS.

## Acknowledgments

The Acknowledgments must precede the Table of Contents and is generally no longer than two paragraphs in length.

## Table of Contents

The Table of Contents should list section numbers, titles, second-level headings, and their page numbers. Third-level headings also may be listed. If the report contains five or more figures or tables, they should be listed using the style of the Table of Contents. (Reference the "Table of Contents" style in the styles menu of the NYSERDA report Template).

<b>Table of Contents</b>	
<u>Section</u>	<u>Page</u>
Summary .....	S-1
Getting Started .....	1
Purpose .....	1
Page Format .....	1
ADA Accessibility Requirements .....	2
Background .....	2
What is an Accessible Document? .....	2
What is NYSERDA's Responsibility? .....	3
Terminology .....	3
Report Format and Pagination .....	4
Pagination .....	4
Title Page .....	4
Notice .....	4
Abstract and Keywords .....	5
Acknowledgments .....	6
Table of Contents .....	6
Headers and Footers .....	6
Footnotes .....	6
Hyperlinks .....	6
Illustrations .....	7
Images (Photograph) .....	7
Graphics (Logo or Figure) .....	7
Charts or Diagrams .....	7
Captions .....	7
Styles .....	9
Font Styles and Formatting .....	9
Using Styles to Add Structure .....	9
Common Styles .....	9
Headings .....	9

---

v



## Headers and Footers

In addition to using paragraph styles to organize and define the structure of a document, elements such as page numbers, notes, and citations should be placed within a header or footer. These should not be inserted manually because they will not be included within the marked-up structure of the document (for example typing out the number 1, 2, 3, etc. at the top or bottom of every page to insert as page numbers). To add a header or footer to a document, select “Header,” “Footer,” or “Page Number” from the “Header and Footer” groups on the “Insert” tab.

## Footnotes

If possible, please substitute parenthetical in-line text for footnotes in Word to generate a tagged PDF. Any footnoted text will be read out loud by a screen reader immediately after its reference, as if it were inserted inline rather than positioned at the bottom of the page. If inserting parenthetical in-line text is not conducive to your report type, and you are not using Microsoft Word 2007 or higher, the footnotes will not be properly linked to the referenced text when read by the screen reader.

## Hyperlinks

Make sure that all hyperlinks are clearly described in the text surrounding the link. Do not use “Link” or “Click here.” Ensure that the text in the link tells the readers what they are going to find if they click on the link. Listing the URL to a website as a link, for example <http://www.nyserda.org>, is preferred.

## Illustrations

This section explains how to insert an image, photograph, logo, figure, chart or diagram.

- Select the “Insert” tab
- Choose “Picture”
- Browse to the image or graphic
- Click “Insert”

### ***Images (Photograph)***



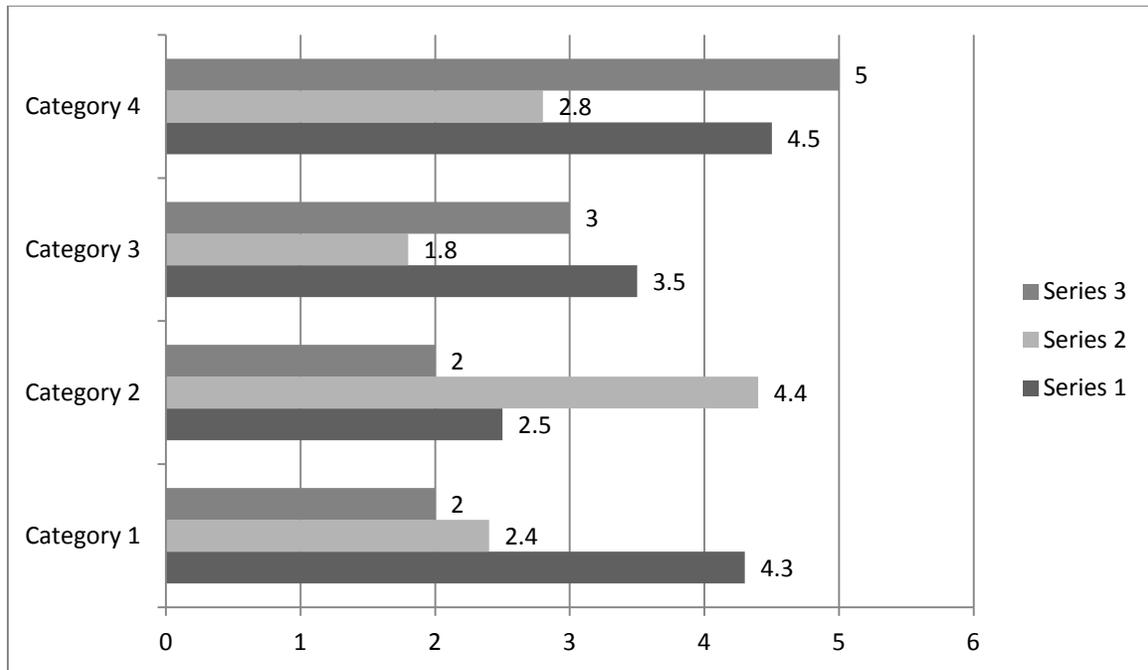
## Graphics (Logo or Figure)



Note 1: Images without substantive content should not have any Alternate Text.

Note 2: Background images or watermarks do not have to be tagged. When the document is converted to a PDF file, these images will not be detected by the screen reader.

## Charts or Diagrams



## Captions

Ensure that the caption text is descriptive, not just a label. Please consider the following examples:

Do not use: “This is a photo of a steam plant.”

Use: “The photo shows the location of the filtering system mounted to the primary stack that collects particulates and unburned gases, which are then rerouted through the secondary burner.”

Do not use: “This is Figure 12.”

Use: “Figure 12 shows that 17% of the targeted age group in the Astoria neighborhood of Queens has participated in this program, versus 43% of the targeted age group in the Park Slope neighborhood of Brooklyn who first participated in an energy-savings competition.”

Photographs, figures, charts, and graphs must be explained in Alt Text for the visually impaired reader.

In some circumstances, it may be necessary to import tables as images. When this is the case, Alt Text must also be included (refer to [NYSERDA’s ADA Accessibility Requirements](#) document located at:

<http://www.nyserdera.org/Resources/ADA-Accessibility-Requirements.pdf> on NYSERDA’s website for assistance with Alt Text).

To insert a caption, right click on the object and select "Insert Caption."

Captions for tables are traditionally inserted above the table

Captions for images and figures are traditionally inserted below the image

## **Tables and Figures**

Tables and figures must be numbered sequentially and titled individually

Place tables and figures as close as possible to the text in which they are mentioned

Distinguish tables from the text by using a table style

Cite a source if the tabular material or figure content has not been generated by the contractor

Figure captions should be complete sentences when appropriate

Use "Figure 1," not "Fig. 1," or "Table 1." in the text, as well as for captions. Examples:

“Table 1 details demand-side management options”

“As shown in Figure 1, the demand-side management program offers numerous options”

Figure captions should use the style “Strong”:

**Figure 1. Demand-Side Management Options in New York State.**

Unless generated by the contractor, a source should always be cited. The figure source should appear after the caption:

Source: Lawrence Berkeley Laboratory)

Photographs and drawings should only be inserted if they are meaningful to the report. The following styles are typically used:

Black-and-white line drawings

Clear halftones (black-and-white photographs)

Color artwork and photos

# Styles

---

## Font Styles and Formatting

All text elements should be set in 10-point Times New Roman; all caption, tables, and figures elements should be in 10-point Arial or Helvetica.

The format of selected text in the document text can be easily changed by choosing a look for the selected text from the “Quick Styles” gallery on the Home tab. One also can format text directly by using the other controls on the “Home” tab. Most controls offer a choice of using the look from the current theme or using a format that is specified directly.

## Using Styles to Add Structure

Microsoft Word does a good job of encouraging the proper use of Styles. The “Styles” group is found on the “Home” Tab. To change a section of text, simply select the text and click on the appropriate style. In addition to making the document look better, “Styles” also allows for the creation of automatic PDF bookmarks, TOC links, and PDF tags.

## Common Styles

### *Headings*

Microsoft Word has nine built-in “Heading” styles. They are called Heading 1, Heading 2, etc. A person would use the “Heading” styles to indicate major headings in a document. Use Heading 1 to indicate a top-level heading. If there is a sub-heading for Heading 1, use Heading 2. If there is a sub-heading for Heading 2, use Heading 3, and so on. Again, it is adding structure to the document and, structurally, the headings should be used in order. For example, do not use Heading 1, then Heading 3 simply because the writer likes the way Heading 3 is formatted. Instead, modify Heading 2 to the writer's liking and use Heading 2 before using Heading 3.

### *Numbered Lists*

The “List Number” style can be used when there is a numbered list. Do not use the buttons on the toolbar to indicate a numbered list. The “List Number” style is more stable and will be easier to maintain.

### *Bulleted Lists*

The “List Bullet” style can be used when there is a list of items, and order does not matter. If the order of the list items is important, use the “List Number” style instead. Do not use the buttons on the toolbar to indicate a bulleted list.

## **Emphasis**

The “Emphasis” style can be used to indicate that a word(s) are important. The default format for the “Emphasis” style is italic. Visually, using the “Emphasis” style on a word or words looks the same as if the writer simply clicked the italic button on the formatting toolbar. However, for someone using a screen reader, it can tell the individual that the writer thinks that word or words are important. A screen reader user will not know if a word is simply italicized, but with the “Emphasis” style, a screen reader user could “learn” that the writer has emphasized that particular text.

## **Strong**

The “Strong” style is similar to the “Emphasis” style except that the default format is bold. It gives structure to words, rather than simply changing the way a word or words look.

## **Title**

The “Title” style is used to indicate the title of the document. There should be only one “Title” style in use in a given document.

## **Body Text or Normal**

The “Body Text” style can be used to indicate the text in the body of the document. The “Normal” style is very similar and can be used instead of the “Body Text” style.

## **Creating New Styles**

If [NYSERDA's Report template](#) does not encompass every style required in your report, you can create additional styles for formatting. There are two ways to do this: “New Styles” or “New Quick Styles.” To create a new style:

- Click the “Styles” dialog box
- Click the “New Style” button
- Complete the “New Style” dialog box

At the bottom of that dialog box, one can choose to add this to the “Quick Style” list or to make it available only in this document. Please note that you should not be changing NYSERDA's template styles, as these are the approved formatting for NYSERDA published documents.

## **Tips**

- Do not fling formatting at text. “Flinging” means creating a style that looks like a heading or subheading, but really is a different font style, size, bold, italicized, etc.
- Screen reading software will read the document as one long series of paragraphs with no differentiation for new topics unless properly formatted with Heading Styles. (Imagine reading a textbook with no difference in text from one paragraph to the next.)
- When documents are converted to other formats (HTML, PDF, PowerPoint, etc.), the heading structure is retained automatically.

# ***Copyrights***

---

## **Intellectual Property**

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

# **Report Submission Guidelines**

---

## **Report Submission Guidelines**

No printed drafts of the report are required. An electronic Word version must be submitted to your NYSERDA Project manager. After review by your Project Manager and Marketing Services staff, a final draft will be returned to the contractor for review, additional corrections, and approval. The contractor is responsible for satisfactorily addressing technical comments from NYSERDA and other co-sponsors. When making editorial corrections, the contractor must ensure that technical content is not compromised. After editorial corrections have been made, the contractor must submit a final electronic "Word" version of the final report. Material may be submitted using one of the following methods:

**FTP Site:**

Install a Secure File Transfer Protocol (SFTP) client. (We recommend [Filezilla](http://filezilla-project.org/download.php) (<http://filezilla-project.org/download.php>))

The following are NYSERDA's SFTP credentials:

Host: 66.109.33.102

Port: 49122

Server Type: SFTP

Logon Type: Normal

User: NYSERDA-General

Password: yedg!n

Email: to your project manager, or NYSERDA's Marketing department: [print@nyserda.ny.gov](mailto:print@nyserda.ny.gov)

Compact disc (CD-ROM):

NYSERDA — Marketing Services

Attn: Diane Welch

17 Columbia Circle

Albany, New York 12203-6399

If you are unable to meet these electronic transfer requirements prior to submitting your report, please contact Diane Welch of NYSERDA's Marketing Services unit at: (518) 862-1090, ext. 3276, or via e-mail: [dlw@nyserda.ny.gov](mailto:dlw@nyserda.ny.gov)