



Residential Financing and Income Verification Services Request for Proposal (RFP) 3240

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

Proposals Due: by November 15, 2016, at 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (“NYSERDA”) is seeking proposals from qualified financing companies (“Originator”) to provide the following services for residential energy efficiency and renewable energy system improvements: (1) loan origination and underwriting services to New York State residents for fixed rate loans between \$1,500 and \$25,000 for terms of 5-, 10- or 15-years; (2) income eligibility verification for NYSERDA financing and incentive applications; and (3) payment of loan funds and incentive funds to participating contractors, to be reimbursed by NYSERDA. The contract term will be for three years with two (1) year extensions at NYSERDA’s option. Additional time and funding may be added at NYSERDA’s discretion.

Proposal Submission: All proposals must be received by NYSERDA by 5:00 P.M, EST, on November 15, 2016. Electronic submission is preferable. NYSERDA will also accept proposals by mail or hand-delivery. If submitting electronically, proposers must submit the proposal in either PDF or MS Word format with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility, in PDF format. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer’s entity name in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on this RFP’s webpage, which is located in the “Current Opportunities” section of NYSERDA’s website (<http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). Instructions for submitting electronically are provided as Attachment C to this RFP.

If mailing or hand-delivering, proposers must submit eight (8) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Jillina Baxter, RFP 3240
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Kevin Hunt at (518) 862-1090, ext. 3259 or kevin.hunt@nyserda.ny.gov (**Designated Contact**) if you have technical questions. If you have contractual questions concerning this solicitation, contact Elsyda Sheldon at (518) 862-1090, ext. 3232 or elsyda.sheldon@nyserda.ny.gov.

No communication intended to influence this procurement is permitted except by contacting the above Designated Contacts. 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 offerer, and (2) may result in the proposer not being awarded a contract.

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

I. INTRODUCTION

NYSERDA is a public benefit corporation established pursuant to Title 9 of Article 8 of the Public Authorities Law of the State of New York. NYSERDA's principal mission is to develop innovative solutions to some of the State's most difficult energy and environmental problems.

NYSERDA is charged with implementing the Green Jobs Green New York (GJGNY) Act of 2009 and the Power NY Act of 2011 which authorized NYSERDA to offer loans to New York State residents for residential energy efficiency technologies and net metered technologies, including solar photovoltaic (PV) installations, on existing buildings.

NYSERDA is seeking proposals from qualified Originators to provide the following services for residential energy efficiency and renewable energy system improvements: (1) loan origination and underwriting services to New York State residents for fixed rate loans between \$1,500 and \$25,000 for terms of 5, 10 or 15 years; (2) income eligibility verification for NYSERDA financing and incentive applications; and (3) payment of loan funds and incentive funds to participating contractors, to be reimbursed by NYSERDA.

Definitions:

Clean Energy Fund ("CEF"): The CEF supports the State's commitment requiring 50% of New York State's electricity to be sourced from renewable sources by 2030. It is designed to reduce the cost of clean energy by accelerating the adoption of energy efficiency to reduce load while increasing renewable energy demand.

Community-Based Organization ("CBO"): An organization which may or may not be under contract to NYSERDA to provide outreach and assistance services within their community to households interested in undertaking energy efficiency or renewable energy improvements. In particular, CBOs assist LMI households with loan and incentive applications.

Contractor ("Contractor"): A qualified contractor participating in NYSERDA's residential energy efficiency or renewable energy programs.

Household Income: Total income of residents within a home that are over the age of 18 and are not full-time students.

Implementation Contractor ("Implementation Contractor"): The program implementer for NYSERDA's residential programs. The Implementation Contractor reviews Contractor work scopes, and informs the Originator that a project is completed and the loan and/or incentive can be funded, among other services.

Loan Servicer ("Loan Servicer"): A company that accepts and processes principal and interest payments, and monitors loans on behalf of NYSERDA.

Low-to Moderate-Income Household ("LMI"): Households with income at or below 80% of the State or Area Median Income, whichever is higher. Various income thresholds within the LMI sector may be used for different types and levels of incentives. Income thresholds are subject to change depending on the needs of individual programs.

Residential Programs: NYSERDA's energy efficiency and renewable energy system programs targeting one-to-four family existing homes. Income-eligible customers of some programs may receive reduced interest rates and additional incentives to help offset the cost of the work.

II. RESIDENTIAL FINANCING OVERVIEW

NYSERDA provides New York State residents with access to two loan products to assist with the installation of energy efficiency or renewable energy projects: (1) On-Bill Recovery (OBR) loan; and, (2) Smart Energy loan

(SEL). The selected Originator will be responsible for originating and funding both loan products on NYSERDA's behalf, with NYSERDA providing reimbursement of the loan amount. The OBR and SEL loan amounts range from \$1,500 to \$25,000 for a terms of 5, 10 or 15 years.

On-Bill Recovery loan

- The OBR loan is associated with a specific electric or gas utility meter, with loan repayment assessed on the borrower's utility bill;
- The homeowner must be a customer of one of the following utilities: National Grid (upstate customers only), Consolidated Edison, PSEG Long Island, Orange & Rockland, New York State Electric and Gas, or Rochester Gas & Electric;
- The loan is unsecured; however, a Program Declaration is recorded in the city/county book of deeds, informing prospective purchasers and interested parties that there is an on -bill recovery loan outstanding that unless satisfied prior to the sale or transfer of the property will become the obligation of the new utility account holder;
- A last owner's search is required, which is initiated by the Originator and accomplished by a title company under contract to NYSERDA;
- The outstanding debt may be assumed by the new 1) property owner upon transfer of the property; or 2) tenant in instances when rental units undergo eligible work and the owner seeks GJGNY financing; and
- This product has a cost effectiveness requirement in that the monthly loan payment may not exceed 1/12th of the estimated average annual energy cost savings from the improvements over the term of the loan.

Smart Energy Loan

- Monthly payments are made to NYSERDA's Loan Servicer. Payment may be made by direct billing or automatic withdrawal;
- The loan is unsecured; and
- The borrower remains responsible for the balance of the loan if the home is sold or the property is transferred to a new owner.

Underwriting Criteria

The selected Originator will underwrite OBR loans and SELs using the current criteria found in Attachment D, Underwriting Guidelines, which is subject to change at NYSERDA's discretion.

Loan approvals will in part depend upon approval of a project scope by the relevant NYSERDA program. The Originator will need to work through NYSERDA program processing systems to verify project status as it relates to loan application approval and payment. The Originator will be responsible for notifying the applicant and updating NYSERDA's data systems of changes in applications status. After the Originator is notified of project completion, the Originator will be responsible for disbursing the loan payment to the Contractor. NYSERDA will then reimburse the Originator for those payments.

Interest Rates

The interest rate charged on loans, per the table below, is dependent upon project type (energy efficiency and/or renewable energy project), income level and credit.

Project Type	Energy Efficiency ¹			Renewable Energy ¹ / Combined ²		
Income Level ³	Smart Energy - Pay by mail	Smart Energy - Auto Pay	On-Bill Recovery	Smart Energy - Pay by mail	Smart Energy - Auto Pay	On-Bill Recovery
Less than or equal to 80%	3.99%	3.49%	3.49%	3.99%	3.49%	3.49%
Greater than 80% up to 120%	5.49%	4.99%	4.99%	5.49%	4.99%	4.99%
Greater than 120% ⁴	Standard Criteria=7.49 Extended Criteria=6.49	Standard Criteria=6.99 Extended Criteria=5.99	Standard Criteria=6.99 Extended Criteria=5.99	Standard Criteria=8.49 Extended Criteria=6.49	Standard Criteria=7.99 Extended Criteria=5.99	Standard Criteria=7.99 Extended Criteria=5.99

- (1) NYSERDA offers several energy efficiency and renewable energy programs that offer GJGNY financing to participants.
- (2) Energy efficiency and renewable energy projects that are in combination with one another.
- (3) Household income is used to determine the interest rate for OBR loans and SELs, and is based on the percentage of State or area (county) median income, whichever is higher, for the household size. NYSERDA will provide relevant median income information to Originator as it is updated.
- (4) Refer to Attachment D for a summary of Standard and Extended underwriting criteria and details of underwriting and documentation requirements.

Loan Volume

Attachment E illustrates overall GJGNY loan growth in both the number of loans and dollar volume, as well as loan growth within each residential program. Data is provided since program inception through March 31, 2016. To summarize, 14,068 loans have closed representing approximately \$165 million in total loans, with an average loan of \$11,728. This has resulted in a compound growth rate of 72% year-over-year. While loan volume has rapidly increased since 2013, future loan volume growth may change as alternative financing options make their way into the New York State market, and as NYSERDA effectuates a tiered interest rate structure for the LMI/non-LMI sectors.

Income Verification Services

The Originator will be responsible for providing income verification services for certain Residential Programs that offer income-eligible incentives. As the LMI programs evolve under the CEF, the number and size of programs making use of income verification services may change. In addition, NYSERDA may issue solicitations for program implementation services which may include income verification services, in which case income verification services provided in a contract awarded through this solicitation may be reduced or terminated.

The Originator will verify income to determine eligibility for certain incentives and interest rates, notify the applicant, Contractor and, if applicable, the CBO, of eligibility, and document eligibility in NYSERDA program data systems. Depending on the residential program, the Originator may also be required to pay the NYSERDA incentive to the Contractor upon notice of project completion, and will be reimbursed by NYSERDA for that payment.

Incentive Application and Payment Volume

The table below shows the number of applications received since 2010 through March 31, 2016, for income verification, as well as the incentives paid by the Originator and reimbursed by NYSERDA.

Total Incentive Applications Received	27,507
Total Incentive Applications Approved	15,551
Number of Total Incentives Paid	10,188
Dollar Volume, Incentives Paid	\$35,666,952

Coordination with Contractors and CBOs

As part of the loan or incentive application process, applicants often depend on their contractor or CBO for assistance. In addition to answering questions from applicants, the Originator may need to work with the Contractor or CBO to help the applicant move forward in the process. This may also include obtaining permission from the applicant to share certain information with the Contractor or CBO, to the extent permitted by law.

III. PROPOSAL REQUIREMENTS

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

In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation may disqualify your proposal.

Format. 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 RFP number, and the page number. The proposal must be in the following format:

1. **Company Information.**

Provide the following required information about the proposer:

- a) Name of business entity (including any “Doing Business As” names)
- b) All entities, except for publicly held corporations or membership non-profits: disclose who your principals/shareholders/partners/members are.
- c) Primary contact for this proposal
- d) Headquarters/Parent Company Location
- e) Date founded and history of firm
- f) Details of entity’s business structure
- g) Internet web site address (if any)
- h) Lending experience in New York
- i) New York State and other pertinent locations and total number of employees at each site
- j) Submit proof of insurability for workers compensation and consultant liability
- k) List of any outstanding litigation that would threaten the viability of the firm or the performance of this contract
- l) Disclose whether you have ever had any lending license or approval suspended or revoked. If so, provide an explanation of the circumstances and the outcome
- m) Disclose whether you have ever been the subject of any judicial, regulatory or administrative proceeding. If so, provide detail on the nature of the proceeding and its outcome

2. **Description of Qualifications.**

- a. **Proposer.** Describe your experience in unsecured loan originations and/or third party loan originations, loan underwriting, and customizing and maintaining internet portal(s) for on-line credit applications intake. If relevant, summarize describe your consumer loan program and/or any consumer loan program(s)

handled for third parties, including length of contract, loan volume (both number and dollar), the method of application intake, complaint resolution process, and reporting requirements.

- b. **Staff.** Identify the individual who will be the Project Lead, and provide the Project Lead's resume. The Project Lead will be NYSERDA's primary point of contact. Clearly state the Project Lead's qualifications to oversee this program, including length of time with the Proposer and in managing consumer loan program(s) and/or third party loan origination programs. Identify the number of staff to be associated with this project, including the number of loan processors, etc., along with the staffs' average years of experience. Identify the Project Lead's backup, and provide the backup's resume and qualifications.
- c. **References.** Submit three (3) references documenting your organizations' experience in originating third party loans and/or unsecured lending, including the following information:
 - i. Program name;
 - ii. Loan volume (both number of loans originated and average dollar per loan);
 - iii. Number of staff assigned to the project;
 - iv. Name, title and employer/organization of reference;
 - v. Telephone number(s); and
 - vi. If applicable, identify any contracts with NYSERDA that you have been a party to, and provide the name of your NYSERDA contact.

3. **Loan Origination System.** The Proposer must have an automated application intake system (the "System") which can accommodate on-line applications in addition to taking loan applications through a toll free number, email and fax. **Failure to have an operational automated application intake system will result in proposal disqualification.** The System must be a web-based, interactive portal which will allow consumers to complete an on-line credit and incentive application, and receive a rapid pre-approval decision, followed by a final loan and incentive decision. The System shall be made available to applicants, Contractors, CBOs and NYSERDA, sharing only the data appropriate for each party based on need, consistent with NYSERDA's policies regarding consumer privacy, and to the extent permitted by law. The System will provide for data exchange between NYSERDA's residential and renewable programs, and possibly others, and the Originator through an automatic Application Program Interface ("API") and through a secure FileTransfer Protocol ("FTP") site for the purpose of fulfilling the tasks as described herein.

Your proposal should clearly indicate the following:

- a) That the Proposer's System is flexible and allows for customization if needed;
- b) Any limits on customization;
- c) The extent of customization needed to meet the requirements of this solicitation, and anticipated time frame to customize your System. Note that the System should be fully operational within three months of contract execution;
- d) Any system barriers that may preclude you from originating loans within three months of contract execution;
- e) The collaborative process and frequency of interactions with NYSERDA throughout the customization process to ensure that your System meets NYSERDA's requirements;
- f) The process for determining loan and incentive pre-approval and approval, including response timeframes and required documentation. Indicate which parts of the process(es), if any, are manually or automatically completed by your System. Explain how you will address any sudden increase or decrease in the volume of applications.
- g) The length of time the Proposer has been using its web-based System;
- h) How much activity the Proposer's System currently experiences (number of total applications and average annual number of applications);
- i) If available, a link to your portal or to a live demonstration site;

- j) The process used for obtaining credit reports and which credit bureau you propose to use for NYSERDA's program; and
- k) The method you propose to use to validate income documented by applicants. Currently, this is done through applicants attaching through the online application system copies of filed tax returns or other documentation. NYSERDA is interested in alternative techniques that could be used to satisfy income documentation and validation as part of DTI calculation and income eligibility determination.

4. **Tasks.**

The tasks found in Section V will provide the foundation for the Statement of Work ("SOW"), a detailed plan or action document that describes how the Proposer will accomplish the project. It specifically delineates each step or procedure required to accomplish the Program's objectives, identifying deliverables and is the basis for payment. As such, it is the primary contractual document.

Describe in detail your approach and methodology to satisfactorily complete each task and subtask. Ensure you address the following minimum requirements:

- a. Provide a description of the data exchange capabilities between the Originator's system and NYSERDA data and program processing systems through using a web-based API and secure FTP site;
- b. Fully describe how the Proposer will originate, underwrite in accordance with NYSERDA's underwriting criteria, and fund loans between \$1,500 and \$25,000;
- c. Discuss fully how the Proposer will provide loan closing documents to borrowers through on-line accessibility, mail and email. Executed documents are to be held in escrow until such time as proposed work has been completed and payment to the Contractor has been authorized;
- d. Discuss your process to verify total household size and income against NYSERDA's income-eligibility guidelines for applicants;
- e. Explain how OBR loan Declarations will be monitored to ensure timely receipt by the Proposer;
- f. Explain how the Proposer will coordinate and communicate effectively with NYSERDA, loan and incentive applicant(s), Contractors, CBOs, and the Implementation Contractor(s) including robust and responsive customer service from application receipt through project completion and funding;
- g. Explain how the Proposer will provide strong and accurate data collection, data quality and data verification; and
- h. Provide a copy of the Proposer's electronic signature policy and any technology currently used for electronic signatures for credit applications or loan agreements.

Program changes will periodically be required and necessitate implementation modifications, such as a change in interest rates, tiered interest rate structure, income eligibility guidelines, program documentation, etc. Such changes may require system(s) modification(s) and coordination with other parties, i.e. Implementation Contractors. Clearly state your ability to respond to such changes in a timely and efficient manner.

5. **Reporting.**

Indicate your ability to provide the required reporting as described in Section V. State your ability to provide additional information (ad hoc reports), within a reasonable timeframe, that may from time-to-time be required. Describe your procedure to ensure reporting/data accuracy. Describe your ongoing data quality assurance protocols.

6. **Pricing.**

Using the pricing sheet found as Attachment F, the Proposer is to provide pricing for the following services. Said pricing can be either a flat fee or performance based, and must be cost effective.

- a) Loan origination, processing, underwriting, document generation, closing and shipment of credit files to the loan servicer;
- b) Processing of income verification requests;
- c) Any discount pricing based on either loan or income verification volume;

- d) Anticipated pricing increases. Such increases are to be stated as a percent of the initial pricing; and
- e) If proposing performance based pricing, clearly indicate any base pricing, if applicable, the pricing range, and how performance is to be measured. Performance is to be easily quantifiable.

Indicate whether System customization costs are included in pricing above or charged separately. If separate, provide detailed cost basis and estimates for System customization work. Identify any risks or unknowns related to those costs. NYSERDA reserves the right to annually seek repricing if it is determined that the Proposer's pricing is too high compared to industry research and standards.

7. Alternative Methods.

At the Proposer's option, provide an alternative(s) to NYSERDA's Tasks. Such alternatives may include faster or more reliable loan intake and/or processing, income verification documentation and processing, etc. Describe in detail

- a) any alternatives to the to the Tasks as outlined in Section V;
- b) tasks and business processes involved in the alternative method;
- c) which, if any Tasks above would be modified or replaced;
- d) benefits you believe such a system will provide NYSERDA's ability to serve New Yorkers, i.e., a reduction in processing time, paper handling, etc.; and
- e) any impacts on pricing.

IV. PROPOSAL EVALUATION AND SELECTION PROCESS

Proposals that meet the solicitation requirements will be reviewed by a Scoring Committee using the Evaluation Criteria below. At NYSERDA's discretion, proposers may be requested to interview with all or part of the Scoring Committee to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview. NYSERDA retains the right to request any additional information pertaining to the Proposer's ability, qualifications, and procedures used to accomplish all work under the contract as it deems necessary to ensure safe and satisfactory work. Failure to provide required information may result in a proposal being deemed nonresponsive, in which case it may not be evaluated further.

1. Tasks

- a) Does the Proposer show an understanding of NYSERDA's needs as outlined in this solicitation?
- b) Does the Proposer's approach to each task and subtask described in Section V demonstrate the ability to effectively accomplish the tasks? If an alternative approach is provided, does it meet the needs of the solicitation and provide other benefits such as improved turnaround times, improved customer service, or lower cost?
- c) Does the Proposer demonstrate that it can meet NYSERDA's programmatic and technical needs, including the ability to provide data exchanges, accurate loan underwriting and the coordination of loan closings, and file transfer to the Loan Servicer?
- d) Does the Proposer have an adequate methodology to determine household size and income for determining loan interest rates and incentive eligibility?
- e) Does the Proposer adequately address the monitoring of OBR Declarations?
- f) Does the Proposer demonstrate it can and will effectively communicate with NYSERDA, applicants, Contractors and CBOs, and provide effective customer service?
- g) Does the Proposer demonstrate its ability to provide accurate data collection, data quality and data verification?
- h) Does the Proposer demonstrate that it can adequately accommodate increases/decreases in the volume of applications?
- i) Does the Proposer demonstrate it has the ability to adequately respond to program changes?

2. Loan Origination System

- a) Is the Proposer's System flexible and customizable enough to accommodate program needs?
- b) Can the Proposer have their System fully operational within the required three months?
- c) Does the proposed collaboration and interaction plan provide for adequate oversight by NYSERDA, and an ability for NYSERDA staff to have confidence in the ability of the Proposer to meet the required timeline for System launch?
- d) Are preapproval and approval timeframes consistent with industry standards and good customer service?

3. Proposer's Qualifications

- a) How extensive is the Proposer's experience in originating unsecured loans/third party loans?
- b) Does the Proposer demonstrate adequate and effective experience with similar programs?
- c) How experienced is the Proposer in creating, customizing and maintaining an on-line intake system?
- d) How extensive is the Project Lead and staff's experience?
- e) Will the Proposer adequately staff the program?
- f) Were resumes for key personnel, including the Project Lead(s), provided and is relevant experience cited?
- g) Are references provided, and are references positive?
- h) Has the participant's performance been satisfactory under previous NYSERDA contracts, if applicable?

4. Reporting

- a) Is the Proposer able to provide the required and accurate reporting metrics in a timely manner?
- b) Does the Proposer indicate its ability to provide ad-hoc data requests in a timely manner?
- c) What data quality assurance protocols or procedures are in-place to ensure reporting accuracy, and how robust are they?

5. Pricing

- a) Is the pricing proposed and any price increases reasonable, justified and cost effective?

V. TASKS

The Originator is expected to complete each of the tasks set forth below, many of which may be performed concurrently. These Tasks will be the basis for the Statement of Work, which will be a part of the contract with the selected Originator. Based on input from the selected Proposer and possible alternative approaches, the Tasks may be changed during contract negotiation to ensure the most successful and cost-effective approach is used to meet the program needs. All applicable New York State and federal banking regulations apply.

Task 1: Kick-Off Meeting

The Originator shall attend a kick-off meeting at NYSERDA's Albany office. The purpose of the meeting is to

- Review all processes, procedures, responsibilities and reporting requirements; and
- Allow time for the Proposer to present its program implementation plan, identifying proposed milestone dates for any required customization of the Originator's Loan Origination System, including testing for application receipt, processing, approval/denial, loan document generation, loan closing and file transmittal to the Loan Servicer.

Representing the Originator shall be the project lead and other staff who will have frequent interactions with NYSERDA.

Deliverable: Within seven business days following the Kick-Off Meeting Originator shall provide draft meeting notes to NYSERDA for review. NYSERDA shall provide Originator with comments within five business days. Originator shall have five business days to review and provide final meeting notes to NYSERDA and other meeting attendees.

Task 2: Income Verification for LMI Programs

The Originator shall be required to verify total household income for applicants who request to be considered for an income-eligible incentive. Interested homeowners shall complete an application and submit it to the Originator for review. Should the Originator determine that a household may qualify for an incentive or no-cost services, Originator is to send the applicant(s) a preapproval letter, informing the applicant(s) of the potential eligibility, and either request from the applicant or a third party as identified by the applicant such information as needed to qualify for incentive.

For each incentive application received, the Originator shall verify household size and income level against income guidelines provided annually by NYSERDA. The current guidelines, by county, are found at <http://www.nyserda.ny.gov/All-Programs/Programs/Assisted-Home-Performance-with-ENERGY-STAR/Income-Guidelines>. If the applicant is approved or denied for an income-eligible incentive, the Originator shall notify applicant(s), Contractor, CBO if applicable, and the appropriate NYSERDA staff of incentive eligibility. Notification is to be made in writing and provided via mail and email (if applicable). Approvals shall be valid for 180 days and notification shall include either the amount of the approved incentive, or the maximum percent or dollar award of the incentive. If denied, a separate notification shall be provided to the applicant(s) that shall include the denial reason. If denied, the notification to the Contractor, CBO and appropriate NYSERDA staff shall not include the denial reason.

Households meeting various income thresholds may be eligible to receive an incentive for a portion of the work, or certain work at no cost. The homeowner may also be eligible for GJGNY financing for the balance of the cost of qualifying measures.

If the Originator determines applicant may qualify for no-cost low income services, Originator shall send the applicant a letter informing the applicant that certain work may be obtained free of charge, with options for obtaining the services. The Originator and NYSERDA shall work together to develop appropriate letter formats to meet various program needs.

Invoicing: The Originator shall invoice NYSERDA for funded incentives. The invoice shall include incentives paid for the prior month categorized by program. Each invoice shall be accompanied by a report specifying cumulative incentives for the month being invoiced and incentives invoiced year-to-date, including supporting documentation.

The Originator shall invoice NYSERDA, not more frequently than once a month, for income verification fees. The invoice shall include fees, as approved by NYSERDA, for performing income verification services categorized by program. Each invoice is to be accompanied by a report specifying cumulative incentives for the month being invoiced and incentives invoiced year-to-date, with supporting documentation.

Deliverables:

1. NYSERDA shall provide Originator with any changes to the incentive income eligibility guidelines;
2. NYSERDA and the Originator shall work together to develop standard template incentive letters to inform applicants of their eligibility status, the letters of which are subject to final approval by NYSERDA; and
3. Originator shall also provide incentive eligibility status to applicants, contractor and CBO, if applicable.

Task 3: Last Owner Searches

NYSERDA presently has three title companies under contract to conduct last owner searches, and to file OBR Declarations, as discussed under Task 6.

For each OBR loan application, the Originator shall contact one of the title companies to request a search. The search shall be conducted as early in the process as is reasonably possible due to the length of time it takes to obtain results. Once received from the county where the project property resides, the title company shall provide the Originator with the search results. Should there be discrepancies between the search result and loan

application, the Originator shall work directly with the title company and/or applicant to rectify. The Originator shall proactively communicate with NYSERDA regarding issues with title companies that are impacting origination efficiency. The title company shall invoice NYSERDA for each search. If the Originator does not contact the title companies to request a search in a timely manner, the Originator shall be responsible for resolving, to NYSERDA's satisfaction, all related borrower issues.

Deliverables:

1. NYSERDA shall communicate contact information and any change(s) in title companies to the Originator;
2. The Originator shall request a last owner search from a title company, on a rotating basis, within one business day of the homeowner(s) loan preapproval. The Originator shall provide information as required by the title company. Once ordered, the Originator shall track each search requested to ensure a response;
3. When the last owner search is returned to the Originator, the Originator shall verify the information provided by the applicant matches that from the search;
4. The Originator shall follow up with a title company on the 10th business day if the search response is not received; and
5. At NYSERDA's request, Originator shall provide NYSERDA with a list of outstanding searches, including the property address, date sent to the title company, and title company selected.

Task 4: Loan Processing, Underwriting and Income Verification for Interest Rate

The Originator shall process and underwrite loan applications based on underwriting guidelines provided by NYSERDA. GJGNY Financing underwriting guidelines are found as Attachment D, and are subject to change. The Originator shall either approve, deny or withdraw all applications received using NYSERDA's underwriting guidelines. The Originator shall be responsible for assuring that each SEL and OBR loan complies with all of the terms and conditions and loan underwriting standards at the time the applicable loan is underwritten; otherwise, the Originator shall be responsible for the total loan amount funded.

The Originator shall be required to verify total household income for each applicant to determine the appropriate income-based interest rate, unless the applicant opts-out of such income screening. Income screening for interest rate determination should be accomplished as part of household income verification for income-eligible incentives, as described in Task 2, whenever applicable.

The Originator shall provide preapproval of loan applications based on underwriting criteria. Preapproval shall be valid for up to 180 days, and subject to terms needed for loan approval, including approval of the project by the relevant program. The Originator shall receive project approval notification through the web-based program management portal or secure FTP data transfer, depending on the program. The Originator shall either approve or deny the loan application upon receipt of any pending documentation provided by the applicant(s), and project approval documentation provided by the applicable program.

Once approved for a loan, Originator shall provide the applicant(s) with a completed note for execution and all program documents requiring applicant(s) signature. The Originator shall allow the loan approval notification to be valid for 240 days.

Applicant(s) may request extensions for loan preapprovals or approvals, subject to NYSERDA approval. If no extension request is received, the Originator shall notify the applicant, Contractor and CBO, if applicable, of the pending withdrawal or cancellation, and give the applicant 30 days to request an extension before withdrawing or canceling the loan application. Applicants shall be subject to re-qualification if a project is undertaken at a later date.

Invoicing: The Originator shall invoice NYSERDA, not more frequently than once a month, for income verification fees not already invoiced through Task 2. The invoice shall include fees, as approved by NYSERDA, for performing income verification services for interest rate determination. Each invoice is to be accompanied by a

report specifying cumulative fees for the month being invoiced and fees invoiced year-to-date, with supporting documentation.

Deliverables:

1. NYSERDA shall provide Originator with current underwriting guidelines, OBR note, and any future updates to these documents and/or interest rate changes;
2. Originator shall either provide NYSERDA with its consumer loan note to be used for SELs, or work with NYSERDA to create a note;
3. NYSERDA and the Originator shall work together to develop standard template loan preapproval, approval and loan withdrawal/cancellation letters, which are subject to final approval by NYSERDA; and
4. No less than quarterly, the Originator shall update the queue of applications whose preapproval or approval has expired by notifying the applicant, Contractor and CBO, if applicable, of pending loan withdrawal or cancellation, and providing 30 days for the applicant to request an extension before withdrawing or canceling the loan.

Task 5: Loan Closing

Upon completion of work, the Originator shall receive electronic notification, along with final project documentation and change order(s) from the Implementation Contractor or NYSERDA staff through the web-based program management portal or secure FTP data transfer, as applicable.

If a change order is presented that increases the requested loan amount, the applicant shall be required by the Originator to be re-qualified for the new loan amount.

If a change order is presented that decreases the requested loan amount up to \$200 less than the amount on the signed loan documents the following must be added to the Certificate of Completion:

- 1) The customer shall add a note with their signature requesting the Contractor be paid the full approved loan amount; and
- 2) The Contractor shall add a note with their signature agreeing to refund the customer the difference between the project cost and loan amount as stated on the note.

If a change order is presented that reduces the approved loan amount on the signed loan documents by more than \$200, the Originator shall ensure revised approval notification is provided and perform a second review of the loan information for the revised loan amount. The Implementation Contractor or appropriate NYSERDA staff shall provide the Originator with a revised workscope approval notification and any applicable program documentation, i.e., revised workscope and cost estimate.

The Originator shall close the loan and provide the loan proceeds to the Contractor within two business days by either check or electronic funds transfer.

Invoicing: The Originator shall invoice NYSERDA not more than weekly for loans and associated origination fees funded the prior week.

Deliverable:

1. Upon receipt of project completion notification from the Implementation Contractor or applicable NYSERDA program staff, and any actions required as a result of change orders, the Originator will pay the amount of the loan to the Contractor within two business days.

Task 6: On-Bill Recovery Loan Declarations

For those applicants that execute an OBR financing note, within one business day of receipt of executed loan documents, Originator shall instruct one of the title companies to file an On-Bill Recovery Loan Declaration (“Declaration”) in the county of the home’s location. Documentation is to include the applicant’s/co-applicant’s

name, property address and loan amount. The County Clerk shall return the filed Declaration to the title company, who shall in turn forward the recorded Declaration to the Loan Servicer. A signed and notarized unrecorded copy of the Declaration shall be placed in the borrower's loan file. NYSERDA is responsible for paying the title company for this service.

Should the Originator delay the submission of the OBR Declaration to a title company it shall be at NYSERDA's discretion if the Originator shall be liable for payment of any OBR loan funds not fully repaid as a result of the property being sold to a new owner who was not informed of the obligation against the utility meter.

Originator shall coordinate with all title companies and track submission dates by title company to the county. Originator shall follow up with title company bi-monthly for updates on submission dates by title company. Originator shall prioritize Declarations that are rejected.

Deliverable:

1. The Originator shall develop a tracking system that adequately monitors Declarations from issuance through confirmation of filing with respective county; and
2. The Originator shall follow-up with the title company if the Declaration is rejected, and work with the title company and/or the borrower and/or applicant to return a recordable Declaration to the title company.

Task 7: Credit Files and Data Transfer to Loan Servicer

The Originator shall create and maintain a physical or secure electronic credit file for each applicant, from pre-approval through loan closing. Each credit file shall contain the original executed note, along with all correspondences and documentation required while underwriting the loan and conducting its due diligence. If electronic files are used, the Originator shall conform to requirements of the New York State Office of Cyber Security Policy P03-002, found at https://www.its.ny.gov/sites/default/files/documents/enterprise_information_security_policy_v5.1_0.pdf, and any amendments thereto, to maintain the security of and to prevent unauthorized access to Information that is maintained in electronic form on your systems. NYSERDA shall provide the Originator with any such amendments.

On a weekly basis, Originator shall either mail physical files or electronically submit credit files for the loans closed the prior week to the Loan Servicer, along with a dataset provided in the Loan Server's preferred format. Loan Servicer shall randomly select a set percentage of the files received and perform a validation review of loan underwriting accuracy. On a weekly basis Loan Servicer shall provide Originator, with a copy to NYSERDA, of its findings.

Task 8: Reporting.

The Originator shall compile concise, accurate reports throughout the term of the contract to document the status of loans and incentives. The Originator must have data quality assurance protocols or procedures in place to ensure data and reporting accuracy.

Deliverables:

Weekly: A weekly report shall be submitted to NYSERDA no later than the 12:00 PM Eastern Standard Time every Monday for the prior week detailing loan and incentive activity of the prior week, and contract to-date activity.

Said report shall include, but not be limited to:

- The number of applications and or maximum loan amount received during the reporting period and contract to date, summarized by purpose (EE/PV/other) and income level (less than 80% of LMI/80% to 120% of LMI/over 120% of LMI);

- The number and total dollar amount of loan applications preapproved during the reporting period and contract to date, summarized by purpose (energy efficiency (EE)/PV/other), income level (less than 80% of LMI/80% to 120% of LMI/over 120% of LMI), and underwriting criteria (Standard Criteria/Extended Criteria);
- A summary of the percentage of loan applications approved or denied during the reporting period and contract to date, and the percentage of denied applications summarized by reason for denial;
- The number and total dollar amount of loan applications approved during the reporting period and contract to date, summarized by purpose (EE/PV/other), income level less than 80% of LMI/80% to 120% of LMI/over 120% of LMI), and underwriting criteria (Standard Criteria/Extended Criteria);
- The number and total dollar amount of loan applications withdrawn/cancelled during the reporting period and contract to date, summarized by purpose (EE/PV/other), income level less than 80% of LMI/80% to 120% of LMI/over 120% of LMI), and underwriting criteria (Standard Criteria/Extended Criteria);
- The number and total dollar amount of loans closed during the reporting period and contract to date, summarized by purpose (EE/PV/other), income level less than 80% of LMI/80% to 120% of LMI/over 120% of LMI), and underwriting criteria (Standard Criteria/Extended Criteria);
- The number and total dollar amount of loans issued during the reporting period and contract to date, summarized by purpose (EE/PV/other), income level (less than 80% of LMI/80% to 120% of LMI/over 120% of LMI), and underwriting criteria (Standard Criteria/Extended Criteria), and interest rate;
- Average time to process applications (from receipt to preapproval; and from receipt to approval) during the reporting period and life to date; and
- The number and dollar amount of incentives approved and paid during the reporting period, summarized by purpose (EE/PV/other).

Monthly: By the 10th of the following month, Originator shall provide NYSERDA with a report:

1. Copying the Loan Servicer, that details the outstanding Declarations. The report shall include the borrower's name and address, the county of dwelling's location, the date the signed Declaration was received from the applicant(s), the date the signed Declaration was submitted to the title company and the name of the title company conducting the filing; and
2. Detailing the number of applicants referred to a low-income program; the number of applicants requesting incentives; and the number and dollar amount of incentives approved, paid and denied during the reporting period and contract to date, summarized by purpose (EE/PV/other).

Miscellaneous:

1. On a quarterly basis, provide performance metrics including processing timeframes and recommendations for improving processing timeframes where needed.
2. Ad-hoc reports as requested by NYSERDA. These reports may pertain to a specific subset of data, a specific time period, or a specific type of analysis NYSERDA requires to understand the performance of the loan program; and
3. At NYSERDA's request, Originator is to provide metrics showing average days from time of submission to receipt of executed search, by title company.

VI. GENERAL CONDITIONS

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

page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>. The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

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

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

Contract Award - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA 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 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.

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.

VII. Attachments:

- Attachment A – Proposal Checklist
- Attachment B – Disclosure of Prior Findings of Non-Responsibility
- Attachment C – Electronic Proposal Submittal Instructions
- Attachment D – Underwriting Guidelines
- Attachment E – Loan Volume
- Attachment F - Pricing Sheet
- Attachment G – Sample Agreement



**ATTACHMENT A
PROPOSAL CHECKLIST (MANDATORY)**

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

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

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

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

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

Are you a Minority or Women-Owned Business Enterprise?
 ___Yes ___No

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

Are you submitting the required number of copies? (See proposal instructions.)
 ___Yes ___No

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

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

Provide list of items consistent with Proposal Requirements section of solicitation:	Indictment/Conviction of Felony _____ (if applicable) NYSERDA Contracts Awarded _____ (if applicable) Prior and/or Competing Proposals _____ (if applicable) Exceptions to Terms & Conditions _____ (if applicable) Completed and Signed Contract Pricing Proposal Form(s) _____ Disclosure of Prior Findings of Non-responsibility Form _____
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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?	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law?	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	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: _____

Attachment C

NYSERDA - INSTRUCTIONS FOR SUBMITTING ELECTRONIC PROPOSALS

Please read the following instructions before submitting a proposal.

1. Submit one proposal for each session.
2. Enter your e-mail address and click the “Validate Email” button.
3. 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.
4. Upload as many files as needed, one at a time.
5. The electronic file names should include the proposing entity’s name in the title of the document. The character limit is **100** characters.
6. You may submit Word, Excel, Zip, or PDF files. Individual files should be less than **1GB** file size.
7. PDF files must be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
8. After clicking the “Upload File” button, a list of your files will appear on the web page. You can delete files from this list if needed.
9. After all necessary files have been uploaded; review the list of documents to ensure that your proposal is complete and accurate.
10. Click the “Submit Proposal button.”
11. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
12. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
13. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address of the **Primary Contact listed on the Proposal Checklist.**

Important Reminders:

1. **The electronic proposal system closes promptly at 5pm Eastern Time on the due date of the solicitation.** Files in process or attempted for submission after 5pm will be locked out of the system. Please allow at least 15-30 minutes to submit proposals.
2. 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@nyserda.ny.gov with the subject line of “**Resubmittal**” and the PON/RFP/RFQ number.
3. NYSERDA will accept the second submission as your proposal. The first submission will be disregarded.

If you need help:

If you need help with this electronic proposal submission process, please contact Venice Forbes at venice.forbes@nyserda.ny.gov or 518-862-1090 ext. 3507 and the Program contact listed in the solicitation.

Attachment D

NYSERDA may modify these Standards and Underwriting Guidelines in writing via Email to EFS from NYSERDA’s Treasurer without requiring a formal modification of this Agreement.

LOAN UNDERWRITING STANDARDS		
	Standard Criteria Loans	Extended Criteria Loans
Minimum FICO	640 (680 if self-employed for 2yrs+) (720 if self-employed < 2yrs)	540
Mortgage payment history	None	Current on all mortgage payments, if any (as reported on the credit report), for the past 12 months. No mortgage payments more than 60 days late during the past 24 months.
Max Debt-to-Income Ratio	Up to 50%	Up to 80% for FICO 680+ Up to 75% for FICO 600-679 Up to 70% for FICO 540-599 Up to 100% ⁴ for applicants who are qualified as owner-occupants for Assisted Home Performance with ENERGY STAR Subsidy for the subject property of the loan. (\$5000/50%)
Bankruptcy	No bankruptcy, foreclosure, or repossession within last 7 years	No bankruptcy, foreclosure, or repossession within last 2 years
Judgments	No combined outstanding collections, judgments, charge-offs, or tax liens > \$2,500	

The loan underwriting standards above and the guidelines below are subject to change by NYSERDA with written notice to EFS.

GJGNY Underwriting Guidelines

1. FICO score

A credit report will be run on all applicants who are individuals. The credit report and FICO score may be obtained from any major credit bureau. EFS will notify NYSERDA of any planned changes to the type of report or scoring model that it will use. At least one of the applicants must have a credit score meeting the criteria noted above. The higher score thresholds of 680 and 720 for self-employed applicants shall only be applied if an applicant’s primary source of income (defined as self-employment being the largest income source) is self-employment. For purposes of this section, self-employment is defined as income that is reported on a Schedule C or Schedule E to the Federal 1040 form. EFS shall perform due diligence in verifying

that the credit report that is obtained and reviewed is the correct report for the applicant who submitted the corresponding credit application.

2. Calculation of Debt-to-Income (DTI) Ratio

a. Debt Calculation –

Information on an applicant's debt obligations are gathered from the applicant's credit report. Additional supporting documentation provided by creditors may also be considered.

- i. All minimum payments listed on the applicant's credit report shall be included in the calculation of the applicant's total monthly debt obligation, inclusive of mortgage payments on investment properties. The customer's monthly payment on the new loan through the Program should not be included in the calculation of the customer's monthly debt obligations.
- ii. Debts shown on the credit report that attribute to the debt load calculation may be disputed in the following manner:
 1. An applicant may provide documentation to show that an installment loan has been paid-in-full. The documentation must originate from the creditor or servicer of the debt.
 2. For applicants with a divorce settlement that removes responsibility of a mortgage obligation, documentation must originate from the Mortgage Company or servicer of the debt.
 3. When a new mortgage appears on the credit report but a prior mortgage obligation is still listed, the applicant may provide proof that the prior mortgage has been satisfied.
 4. A new credit report must be obtained to confirm reductions in balances for revolving loans.
- iii. For minimum payments on debts for which the outstanding balance is less than six times the monthly payment will not be included in the calculation, with the following exception: debts that are identified by the credit report as leases will be included in the debt calculation unless the outstanding balance is \$0.
- iv. If the credit report does not indicate a monthly payment amount for a debt, the greater of \$10 or 1% of the outstanding balance will be included in the debt calculation.
- v. Debts that have been 'charged-off' by the creditor or sent to a collections agency are not included in the calculation of the applicant's debt obligation.
- vi. Lot rent for mobile homes shall be excluded from the calculation of the borrower's debt obligation.

vii. If the application includes a co-applicant, the combined debts of both applicants who are individuals will be evaluated to determine the DTI Ratio.

b. Income Calculation

The Residential Credit Application requires the applicant to state the current annual income amount that s/he receives. The stated income for an applicant/co-applicant on a credit application may not be different than the stated income for the same individual on a subsidy application. In instances where they differ, and neither application has yet been approved or denied, EFS shall use the lower of the stated income amounts. If the applications are processed at different times and one application has already been approved, EFS shall use the stated income on the previously approved application, or may allow the applicant the ability to use the more recent stated income for consideration, but this income shall apply to both applications, even if it results in revising the decision on the prior application. In instances where the initial application was denied, but subsequent application uses a different stated income, the more recent stated income may be used to determine eligibility. EFS shall initially use the stated income to determine meeting the DTI requirement. If the applicant's stated income meets DTI requirements, EFS may communicate conditional pre-approval subject to subsequent validation or documentation of stated income; if the stated income does not meet DTI requirement, EFS may communicate denial of the loan application prior to proceeding with obtaining further documentation of income.

The documentation of income for credit applications shall be through the same means as those used to document income for subsidy applicants. When available, EFS will use an automated income estimation tool that is mutually agreed upon by NYSERDA and EFS to attempt to validate the income amount stated by the applicant. If the income estimate tool provides a combined income estimate for the loan applicant(s) which is $\geq 85\%$ of the combined stated income amount(s) on the credit application, then the stated income amount shall be used in the calculation. If the income estimate tool provides a combined income estimate $< 85\%$ for the combined stated income of the loan applicant(s), then EFS shall request the applicant(s) to provide documentation of the stated income using the documentation methods described below. Once documentation of income is received, documented income shall be used in place of the income amount stated on the application.

Income estimates will be used to validate total current income of the applicant(s). When determining whether an income estimate validates stated income for a customer, the combined stated income of the applicant and co-applicant (if applicable) shall be compared to the combined estimated income for the applicant and co-applicant (if applicable). The estimate will not be used to validate a specific income type or source.

If the income estimate tool does not validate an applicant's stated income to meet DTI requirements, or if an income estimate is not available, the applicant/co-applicant will be required to document income using one of two methods: (1) submission of a copy or transcript of the prior year's Federal Income Tax Return (Form 1040; 1040A; 1040EZ; or 1040NR) for the applicant and/or co-applicant; or (2) submitting other required supporting documentation, per income type.

If the income estimate does not validate the applicant's stated income amount, the type of income documentation provided by the applicant will serve as the primary factor in determining which of the income documentation approaches described below should be applied by EFS. EFS may advise a customer that a different documentation method may be more advantageous, but must let the customer make the final decision regarding the method of documentation to use. EFS should not ignore information that it may gain about an applicant's financial situation when calculating the DTI Ratio. If an applicant advises EFS of a significant decrease in income from that which was reported on the prior year's return, EFS should require the applicant to submit documentation of current income, as described below, rather than the previous year's tax return.

Option 1: If the applicant(s) elect to document income through a copy or transcript of the prior year's Federal Income Tax Return, the following standards shall apply:

1. EFS will use the total net reportable income stated on the applicant's tax return. Net reportable income is calculated by taking the total income stated on line 22 of Form 1040; line 15 of Form 1040A or line 4 of Form 1040EZ (listed as Adjusted Gross Income on Form 1040EZ) and adding to it any non-taxable income reported on the return. Non-taxable reportable income includes certain Social Security benefits, pension/annuity benefits, IRA distributions, and tax-exempt interest. No adjustments should be made to this calculation based on the statement, or reasonable assumption, that a line item on the tax return is a retirement account rollover or a lump-sum distribution of income, unless the tax return states that a reported amount was a rollover.
2. If line 17 of Form 1040 indicates net income or loss for rental real estate, EFS will add back to the income or loss the mortgage interest and depreciation expense (lines 12 and 18 of Schedule E, respectively). This sum will be used as net income or loss from rental real estate when calculating the DTI Ratio. If the applicant is denied a loan as a result of using this approach, EFS is to communicate to the applicant and consider whether the use of the approach found in Option 2 number 4 may be appropriate to allow for loan approval
3. If the prior year tax return has not yet been filed by an applicant who applies for a loan and submits income documentation between January 1 and April 15 of a given calendar year, EFS may accept the tax return from the preceding year. A loan applicant who submits income documentation on or after April 16 of a given calendar year and has not filed the prior year tax return must provide proof of current income as outlined in Option 2, below.
4. Applicants who filed a joint tax return, but are applying for the loan individually must provide the relevant tax schedules, W-2 statement, or 1099 statement in addition to the tax return, and EFS shall use this

information to calculate the income attributable to the applicant/co-applicant.

Option 2: If the applicant elects to document income by submitting documents other than a recent tax return to support a stated income amount, the following standards shall apply:

1. When reviewing supporting documentation by type, EFS shall use the combined amount provided through such documentation. Unless otherwise stated by the customer or contractor, the customer's first submission of current income documents will be considered to constitute documentation of all current income sources received by the household.
2. Wage income shall be calculated by reviewing the applicant's year-to-date gross earnings as reported on a pay statement dated not more than 30 days prior to the date that the credit application was submitted and converting those year-to-date earnings to a monthly amount. Where this calculation does not provide an accurate assessment of the applicant's true income level (ex. the applicant has not worked for the same employer for the whole year, the applicant's rate of pay has changed, etc.), EFS will obtain additional payment advices and use a shorter time horizon to calculate a monthly gross income level for the applicant.
3. Income from seasonal employment may be considered, however the amount that is determined as monthly income must be based upon the annual amount divided by 12 calendar months. Calculations of seasonal income should be supported by documentation of earnings from similar employment conditions in one or more past years.
4. Self-employment income (including rental income) shall be calculated by
 - a) reviewing the applicant's Federal Income Tax Return from the most recent tax year after adding back any mortgage interest expense or depreciation expense noted on the return and accompanying Schedules;
 - b) a profit and loss statement with income/loss calculated prior to mortgage and depreciation expense; or
 - c) for rental income, the applicant may submit to EFS either copies of executed leases or a summary stating the lease term and monthly rent for all leased units and EFS may calculate 75% of the annual gross lease payments and use this product when calculating the DTI Ratio. For purposes of this section, 'self-employment' includes income reported by an applicant on a Schedule C, E, or F. Where there is a sole borrower who filed a joint tax return, only self-employment income attributable to the borrower may be included in the calculation of income. If the prior year tax return has not yet been filed by an applicant who applies for a loan and submits income documentation between January 1 and April 15 of a given calendar year, EFS may accept the tax return from the preceding year to document self-employment income. A loan applicant who submits income documentation on or after April 16 of a given calendar year and has not filed the prior year tax return must provide proof of current

income. Income for self-employed applicants should be based upon federal income tax reporting standards and are based on net business income.

5. Benefit Income, such as Social Security, annuities, and pension income, will be based upon the gross monthly amount of the benefit received. Benefit income may be documented by means of a copy of a current benefit award letter or a copy of a bank statement evidencing the direct deposit of benefit income.
6. Investment Income shall be supported by copies of 1099s, brokerage statements, or the previous year's tax return. Income from these sources shall be converted into a monthly amount. Only the reportable portion of investment earnings shall be considered to be income for loan-qualification purposes. Customers may not declare a lump sum receipt to be an isolated and non-recurring event so as to exclude it from consideration for an Assisted Subsidy Application, while also claiming it as current regular income to support a Residential Credit Application.
7. Child support and alimony/maintenance will be supported through a copy of court order documents or payment history provided by the Child Support Collections unit.
8. Adoption subsidies will be supported through documentation of current receipt of subsidy funds.
9. Unemployment compensation received by the applicant at the time a credit application is submitted, and claimed by the applicant as current regular income, should be documented through the applicant's Unemployment Benefit Payment History. The Unemployment Benefit Payment History must confirm that the applicant is receiving benefits at the time of application and has a positive award balance remaining. Income from this source shall be calculated by annualizing the average weekly benefit received during the past four weeks.
10. Worker's Compensation and disability benefits may be documented using a payment advice or an award letter, identifying the amount and frequency of payments to be made.
11. Proceeds of student loans, scholarships, and student financial aid shall not be considered as income. However, stipends used to cover living expenses may be included in the calculation of the DTI Ratio.
12. Documented losses shall be treated as negative income and will serve to reduce the applicant's other income. A business loss (or other type of loss) reported on the previous year's tax return for a customer applying under Option 2 will only be counted as a loss towards the DTI Ratio if the customer provides documentation evidencing that loss.

3. Bankruptcies, Foreclosures, and Repossessions

- a. If the applicant or both co-applicants have a history of bankruptcy, foreclosure, or repossession (as reported on the credit report) during the seven years preceding the date of the submission of their credit application, they are

not eligible for a Standard Criteria loan approval. However, if one applicant meets this criteria and the other does not, they may be approved as co-borrowers on the loan provided that they meet all other underwriting criteria. If the applicant, or both applicants (if applicable) have a history of bankruptcy, foreclosure, or repossession activity not more recently than two years prior to the application submission date, they are eligible for Extended Criteria loan approval.

- i. The two or seven year exclusion period begins on the date the bankruptcy, foreclosure or repossession has been dismissed, discharged or closed.
 - ii. For actions that were initiated, but are not reported on the credit report as dismissed, discharged or closed, the applicant may provide proof of such dismissal.
- b. One applicant may have an open/active bankruptcy as long as the other applicant satisfies the requirement of not having bankruptcy, foreclosure, or repossession activity within the past seven years (Standard Criteria) or two years (Extended Criteria).
- c. A deed in lieu of foreclosure for a loan on a time share property during the past seven years (Standard Criteria) or two years (Extended Criteria) shall not disqualify an applicant from loan consideration so long as the applicant's credit score is 640 or greater. A deed in lieu of foreclosure for a mortgage on a residence (whether primary or secondary) during the past seven years (Standard Criteria) or two years (Extended Criteria) shall disqualify the applicant from loan consideration.

4. Collections, Judgments, Charge-Offs, and Tax Liens

- a. Individual applicants with collections, charge-offs, judgments, and tax liens that collectively total more than \$2,500 are not eligible for the loan.
- b. The limit of \$2,500 also applies to the combined outstanding defaulted debts of both the borrower and co-borrower.
- c. The \$2,500 limit applies only to the portions of defaulted debts that remain outstanding.
- d. Credible notices of satisfaction from creditors will be accepted as documentation that a defaulted debt is no longer outstanding.
- e. EFS will review the credit report to determine that no collections, judgments, charge-offs or tax liens are reported which would disqualify the borrower for financing under these standards.

5. Property Status

- a. For Smart Energy Loans, the applicant or co-applicant must own the installation property, or lease or manage the property and have authority to contract for energy efficiency improvements in the property (but EFS will not be responsible for verifying this information). For On-Bill Recovery Loans, the applicant or co-applicant must own the installation property.
- b. Proof of ownership is required for the On-Bill Recovery Loan, and must be verified through a last deed search performed by a title company contracted by NYSERDA.
- c. For OBR Loans, all property owners must sign the On-Bill Recovery Program Declaration. A borrower/co-borrower that is a legal entity, rather than an individual, may be party to the loan, in particular, to meet the property ownership requirement. When a legal entity is a party to the loan, the signature line on the Declaration will be prepared with the entity name, signatory's name and signatory's title as supplied by the signatory. EFS shall not obtain proof of the legal entity representative's authority as a signatory, and shall accept the information provided on the loan application. The NYSERDA standard loan documents shall include language requiring that the signatory represents that they are a duly authorized signatory of the entity. EFS may prepare the On-Bill Recovery Program Declaration for signature based on the applicant(s) submission of a copy of the property Deed, provided that prior to disbursement of the loan proceeds the ownership is confirmed through receipt of the Last Deed of Record Search by NYSERDA's Title Company. If an individual who is noted as an owner through result of the Last Deed of Record Search is deceased, EFS will obtain a copy of that individual's death certificate as proof that the surviving spouse may sign as surviving (tenant) by the entirety. EFS may rely upon guidance provided by NYSERDA and/or its contracted Title Company when reviewing Last Deed of Record Search results and preparing OBR Program Declaration documents for borrowers.
- d. Mobile homes are eligible for financing through NYSERDA. The applicant and contractor must certify that the mobile home is permanently affixed to its foundation. For the Smart Energy Loan, the applicant must own the mobile home, but is not required to own the land where the home is located. For the OBR Loan, the applicant must own the mobile home and is required to own the land where the home is located.

6. Other

- a. Either the borrower or co-borrower (if applicable) must be an individual. A borrower/co-borrower who is a legal entity rather than an individual may be a party to the loan, but will not be underwritten.

- b. For an OBR Loan, at least one borrower must be named on the electric/gas utility bill for an OBR-participating utility. EFS will obtain a copy of the electric and gas (if applicable) utility bill for the property being improved. OBR-participating utilities include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Power Authority (LIPA)/PSEG – Long Island; National Grid (Upstate NY customers only); New York State Electric & Gas Corporation (NYSEG); Orange and Rockland Utilities; and Rochester Gas & Electric Corporation.
- c. EFS shall reserve the right to conduct additional review and analysis at its sole discretion, or as may be directed by NYSERDA.
- d. Applicants who have previously accessed a New York ENERGY STAR Loan or an Assisted Loan (f/k/a the New York Energy Smart Loan) may access an additional loan through the Green Jobs-Green New York Financing Program, and a borrower may have more than one loan outstanding. The aggregate of all loans through the residential GJGNY Financing Program may not exceed the maximum loan amount stated previously. However, borrowers may access only one On-Bill Recovery Loan per utility account.
- e. The borrower may be an employee or owner of the contracting company performing the work.
- f. NYSERDA will identify a point of contact for EFS, who will provide guidance regarding underwriting situations that fall outside of the guidelines described in this document.
- g. The Automatic Payment Authorization information for Smart Energy Loans, if elected by the applicant, is not required to be verified by EFS.
- h. The mortgage payment history on a customer’s credit report may be used to document that the customer satisfies the Extended Criteria mortgage payment history requirements. EFS shall consider months for which the creditor failed to report payment status to the credit bureau as months during which the customer was current on their mortgage payments.
- i. For OBR Loans, a third borrower, when one borrower is a legal entity, may be added to the promissory note.
- j. Applicants who are on a Deferred Payment Plan (as noted on the credit application) to address a past-due balance with their electric or gas utility are not eligible for the On-Bill Recovery Loan. The term “Deferred Payment Plan” in this provision applies only to installment plans intended to repay a past-due balance. The term “Deferred Payment Plan” is not intended to apply

to a budget billing agreement. Applicants who are on a utility Deferred Payment Plan may be approved for a Smart Energy Loan.

1. In instances where there are minor discrepancies between the signature(s) on the Certificate of Completion as compared to the loan documents, or minor misspellings (such as a street address), EFS can accept such documents without requiring them to be resigned. EFS shall contact the borrower (or one of the co-borrowers) to confirm the signature(s) and approval of the Certificate of Completion to allow the loan proceeds to be disbursed. EFS shall document this communication with the consumer in writing in the loan file records.

CJIGNY Residential Financing
Loan Volume and Sector Analysis

Loan Volume History

Cumulative Total Loan Activity as of	3 Mos 12/31/11		12/31/2012		12/31/2013		12/31/2014		12/31/2015		3/31/2016	
	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
Closed Loans	926	\$7,956,351	2,504	\$23,745,757	4,507	\$43,580,293	6,940	\$70,350,890	12,312	\$142,599,275	14,068	\$164,991,655
Approved Pending Completion	298	\$2,997,014	500	\$4,990,668	567	\$5,774,168	1,444	\$19,343,868	2,048	\$28,030,753	2,068	\$29,262,780
Subtotal	1,224	\$10,953,365	3,004	\$28,736,425	5,074	\$49,354,461	8,384	\$89,694,758	14,360	\$170,630,028	16,136	\$194,254,435
Preapproved	434		803		1,095		2,349		3,605		3,610	
Withdrawn	0		750		1,446		2,548		3,499		3,563	
Total Approved Loans	1,658		4,557		7,615		13,281		21,464		22,309	

Sector Analysis

Cumulative Closed Loan Activity by Sector	3 Mos 12/31/11		12/31/2012		12/31/2013		12/31/2014		12/31/2015		3/31/2016	
	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
Home Performance	926	\$7,956,351	2,504,00	\$23,745,757	4,507	\$43,580,923	6,690	\$66,103,233	9,703	\$97,380,518	10,605	\$105,753,017
Solar Electric	0	\$0	0,00	\$0	0	\$0	250	\$4,247,657	2,603	\$45,135,236	3,452	\$59,098,755
Solar Thermal	0	\$0	0,00	\$0	0	\$0	0	\$0	2	\$9,725	4	\$17,935
Renewable Heat NY	0	\$0	0,00	\$0	0	\$0	0	\$0	4	\$73,795	7	\$121,948
Total Closed Loans	926	\$7,956,351	2,504,00	\$23,745,757	4,507	\$43,580,923	6,940	\$70,350,890	12,312	\$142,599,274	14,068	\$164,991,655

Attachment F
Pricing Sheet
RFP 3240

Proposer: _____

Instructions:

This Attachment F is to be completed and submitted with your proposal, and encompasses the following:

- Loan applications with no income verification services required;
- Loan applications with income verification services required;
- Loan and incentive applications (income verification services are required); and
- Income verification services only (required for all incentive applications)

The table below presumes the Proposer will provide volume price discounts. If there are no price discounts, complete Columns A and B only.

Instructions:

Column A: State the number of units up to which the unit price may change.

Column B: State the per Unit fee for applications associated with Column A.

Column C: State the range of units for which a price discount will be given.

Column D: State the per Unit fee for application associated with Column C.

Column E: State to per Unit fee for which a second price discount will be given.

Column F: State the Unit fee for applications associated with Column E.

Table 1

	A	B	C	D	E	F
	# of Units 0-X Units	Fee/Unit	# of Units >X-Y	Fee/Unit	# of Units >Y	Fee/Unit
Loan Origination Fee (1) without Income Verification						
Loan Origination Fee with Income Verification						
Income Verification Fee, Incentives						

Loan Origination and Incentive Fee, Includes Income Verification Fee						
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(1) Loan origination fee to include loan origination processing, underwriting, document generation, loan closing and shipment of physical credit files to the Loan Servicer

Price Increase(s)

If applicable, and using the data from the above Table 1, provide both the percentage and dollar increase for each year of the contract should you anticipate price increases.

Table 2

Contract Year	Col B	Col D	Col E
Year 1: %			
\$			
Year 2: %			
\$			
Year 3: %			
\$			
Year 4: %			
\$			
Year 5: %			
\$			

Other Fees

Below, identify other fees and their per unit cost you anticipate charging NYSERDA, including administrative fees such as mailing, file transfer, etc.

Per Unit Cost

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Attachment G

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

SAMPLE AGREEMENT

1. Agreement Number:

2. Contractor:

3. Project Director:

4. Effective Date:

5. Total Amount of Award:

6. Project Period:

7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

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

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

[CONTRACTOR]

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

Signature: _____

Signature: _____

Name _____

Jeffrey J. Pitkin
Treasurer

Title _____

STATE OF)
) SS.:
COUNTY OF)

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

SAMPLE

Notary Public

Exhibit A
Statement of Work

To be developed.

SAMPLE

Addendum A
Confidential Information

Pursuant to this Agreement, _____ (“Contractor” or “you”) provide services to the New York State Energy Research and Development Authority (NYSERDA” or “we”), as specified in Exhibit A, Statement of Work (the “Project”). In conjunction with your performance of the Project NYSERDA furnishes you with certain information concerning the Project that is either non-public, confidential or proprietary in nature (the “Information”). Exhibit B, Article VIII of the Agreement governs the handling of confidential or proprietary information. This Addendum supplements Article VIII with regards to the Contractor’s use of the Information.

1. The Information will be kept confidential and will not, without NYSERDA’s prior written consent, be disclosed by you, your agents, employees, contractors or professional advisors, in any manner whatsoever, in whole or in part, and will not be used by you, your agents, employees, contractors or professional advisors other than in connection with the Project. You agree to transmit the Information only to your agents, employees, contractors and professional advisors who need to know the Information for that purpose and who are informed in writing of the confidential nature of the Information and who will agree in writing to be bound by the terms and conditions of Exhibit B, Article VIII of this NYSERDA Agreement and this Addendum.
2. You shall conform to the requirements of the New York State Office of Cyber Security Policy P03-003 v.1.0 and any amendments thereto, to maintain the security of and to prevent unauthorized access to Information that is maintained in electronic form on your systems. Such measures shall include:
 - a. Access Control on Servers, Systems, Apps, Databases, i.e., role-based permissions, authentication, authorization, and password policy;
 - b. Network Security, i.e., isolation of Information, secure V-LANS, Firewalls;
 - c. Patch Management, i.e., formal patch cycles and maintenance process;
 - d. Malware Prevention, i.e., anti-virus, anti-spyware, vulnerability assessments, penetration testing, audits;
 - e. Encryption of Information in transit and Information in storage on laptops, backups, and removable media;
 - f. Change Control to ensure that new and modified system software are authorized, tested, and implemented accurately;
 - g. Security Event Logging/Monitoring that provides real time alerting of security events
 - h. IDS, WS, Website Monitoring of websites for compromise indicators which indicates website defacements, compromises or inappropriate content (Application/Host/Network IDS and IPS);

- i. Web Application scanning that is performed on code and application in compliance with Open Web Application Security project (OWASP) and SANS (SysAdmin, Audit, Network, and Security) Institute standards.

You will keep a record of the location of the Information. At the conclusion of the Project, you will return to NYSERDA all the Information and/or provide proof to NYSERDA that the Information was destroyed. You also agree to submit to an audit by NYSERDA, or its representative, of your data security and destruction practices pertaining to the Information during the contract term and for up to two years following the expiration of the contract.

SAMPLE

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth at Exhibit A hereto.

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

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

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

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

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

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

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

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

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

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

Article II

Performance of Work

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

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

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

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. Payments and Reimbursements. In consideration for this Agreement and as compensation for the performance of all Work in connection therewith, NYSERDA shall pay administrative fees, accrued interest and reimbursement for loan principal and incentive payments, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D, payment will be made according to the Pricing Sheet set forth in Exhibit A, Statement of Work.

Section 4.02. Payments.

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

The Contractor may submit invoices for payment once each month for the NYSERDA payments that were completed during such month and for associated administrative fees. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable". Such invoices shall make reference to the Agreement number shown on the upper left hand corner of page one of the Agreement. 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 an invoice for payment, 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. In such case, the Contractor shall be notified by NYSERDA in accordance with Section 5.04

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 liabilities that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

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

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

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

Article V

Assignments, Subcontracts and Performance

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

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

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

Article VI

Schedule; Acceptance of Work

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

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

Article VII

Force Majeure

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

Article VIII

Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information.

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

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

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

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

Article IX

Warranties and Guarantees

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

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

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

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

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

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

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

(g) to the best of Contractor's knowledge, there are no existing, undisclosed or threatened legal actions, claims, or encumbrances, or liabilities which 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, admits 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, and

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

(j) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing

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

legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Article X

Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XI

Insurance

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

(a) except as otherwise in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;

(b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and

(c) be reasonably satisfactory to NYSERDA in all other respects.

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

(a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and

\$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

(b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal actions, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or in the event necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certificate of payment on each policy.

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order

(a) NYSERDA may, in 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 incurring 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 covered 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 hereinafter entitled Payment and in reimbursement of any amounts required to be paid to the Contractor pursuant to Subcontracts; provided, however, upon receipt of any such notice of termination, the Contractor shall cease the performance of Work and shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent required by NYSERDA, through termination of subcontracts containing provisions thereof). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.

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

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

12.03 Suspension or Termination for Non-Responsibility

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the Responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume only when NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

Article XIII

Independent Contractor

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

NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

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

Article XIV

Compliance with Laws in Law

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

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

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

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

NYSERDA

Name: Cheryl M. Glanton
Title: Director of Contract Management
Address: 17 Columbia Circle, Albany, New York 12203
Facsimile Number: (518) 862-1091
E-Mail Address: Cheryl.Glanton@nysesda.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 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 NYSEERDA's Director of Communications to prepare any press release, and plan for any news conference concerning the Work. In addition the Contractor shall notify NYSEERDA'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 NYSEERDA's funding participation in the Project, and shall state that "NYSEERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSEERDA 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 NYSEERDA, as stated above, and shall be submitted to NYSEERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSEERDA, 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 NYSEERDA 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 NYSEERDA requires additional time for considering approval, NYSEERDA 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.

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, the 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 timing 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 or contractors, 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 null 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 of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.47)

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 so marked above pursuant to the trade secret exemption procedure set forth in 20 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.ny.gov/about/foil2.html>) and NYSERDA’s Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>.

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

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

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

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

10. **NO ARBITRATION.** Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent. Disputes, 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 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 NYS DEC.

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

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

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.esd.ny.gov>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

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

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

16. RECIPROCITY AND SANCTIONS PROVISIONS. Vendors 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 2004 amendments (Chapter 684 and Chapter 383, respectively) require they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2009, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact New York 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 Sections 87(2)(b)-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 the 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 SECURITY DIVISMENT. 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 thereunto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <http://www.ogs.ny.gov/about/regs/ida.asp>).

EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

504.2. Definitions. Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in 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

² This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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

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

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

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

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

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

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

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

504.4. Payment Procedures.

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

invoice shall then promptly be reviewed by NYSERDA.

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

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

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

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day 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) 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 NYSEERDA 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, NYSEERDA 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 NYSEERDA 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 NYSEERDA, 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 NYSEERDA.

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

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

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

504.9. Notice of Objection. Contractor may object to any action taken by NYSEERDA 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 NYSEERDA. 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 NYSEERDA, or his or her designee, shall review the

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

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

504.11. Court Action or Other Legal Processes.

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

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

SAMPLE