

**Private Cloud Hosting**  
Request for Proposal (RFP 3365)

Proposals Due: **11/8/2016** by 5:00 PM Eastern Time\*

The New York State Energy Research and Development Authority (NYSERDA) is soliciting proposals from qualified contractors to provide private cloud hosting services. From among the Proposals received, NYSERDA intends to select a qualified vendor to provide hosting services related to NYSERDA's Information Systems infrastructure (hardware and software systems). The term of the agreement will be 3 years with an option to renew for up to 2 additional years at NYSERDA's discretion. NYSERDA reserves the right to add or reduce time and/or funding to awarded contracts.

**Proposal Submission:** Electronic submission is preferred, but NYSERDA will also accept proposals by mail or hand-delivery. If submitting electronically, proposals must be submitted in either PDF or MS Word format with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility (PDF format only). 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. Proposals may be submitted electronically by following the link for electronic submissions found on this RFP's webpage, 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 available on the website and as Attachment F to this RFP.

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

**Jill Baxter, RFP 3365**  
**NYS Energy Research and Development Authority**  
**17 Columbia Circle**  
**Albany, NY 12203-6399**

**All proposals must be received by NYSERDA by 5 pm on (11/8/2016).**

Technical questions concerning this RFP may be submitted to [glen.kaatz@nyserda.ny.gov](mailto:glen.kaatz@nyserda.ny.gov) with the subject line "RFP 3365 Question." For contractual questions concerning this RFP, contact Elsyda Sheldon at (518) 862-1090, ext. 3232 or [Elsyda.sheldon@nyserda.ny.gov](mailto:Elsyda.sheldon@nyserda.ny.gov).

No communication intended to influence this procurement is permitted except by contacting Glen Kaatz (Designated Contact) at (518) 862-1090, ext. 3203 or [glen.kaatz@nyserda.ny.gov](mailto:glen.kaatz@nyserda.ny.gov). Contacting anyone other than this Designated Contact (either directly by a Proposer or indirectly through a lobbyist or other person acting on a Proposer's behalf) in an attempt to influence the procurement: (1) may result in the 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](http://www.nyserda.ny.gov).

## **1. BACKGROUND**

### **1.1 Corporate Background**

NYSERDA is a public benefit organization committed to identifying opportunities for reducing commercial and residential energy consumption, promoting the use of renewable energy sources, and protecting the environment. NYSERDA provides financial and technical assistance to help consumers, businesses and institutions assess and implement cost-saving energy efficiency measures.

Energy efficiency programs offered at NYSERDA also strive to provide affordable energy and a cleaner environment for all New Yorkers. This is accomplished by increasing public awareness of the multiple benefits of energy efficiency, by providing residential building performance services, and by making energy-efficient products more widely available to consumers.

### **1.2 Systems Background**

There are several types of front line systems currently supporting NYSERDA's project management, workflow and program reporting functions in production, development and quality assurance (QA) environments:

- The NYSERDA web site and custom web applications (usually Microsoft .NET) built and maintained by internal staff;
- NYSERDA's financial accounting and contract administration system (NEIS) is on a PeopleSoft/Oracle platform on top of a Microsoft SQL database;
- The data warehouse consisting of a clustered Microsoft SQL Server 2012 Enterprise, Microsoft SharePoint 2013, Informatica, Tableau and ESRI ArcGIS servers; and
- Microsoft Active Directory domain controllers, Kemp virtual load balancers and virtual firewall appliances.

These systems contain information about project details, contacts, location, energy production and savings, project and payment statuses, and incentive amounts and payments.

NYSERDA recently installed Salesforce to consolidate disparate CRM data for the organization and is currently undergoing a project to leverage Salesforce for program management efforts in an effort to reduce the number of external disparate systems. Salesforce is external to the private cloud but will be a source or target for integration with the private cloud systems.

### **1.3 Disaster Recovery Strategy**

NYSERDA's strategy with regard to disaster recovery (D/R) revolves around hosting critical systems at a private cloud facility with minimally tier 3 data centers (tier 4 preferred) that have the ability to do New York State qualified data replication.

## **2. PROJECT SCOPE AND REQUIREMENTS**

### **2.1 Objectives**

The goal of this project is to select a vendor at whose facilities NYSERDA can quickly and easily stand up all their existing systems to support NYSERDA initiatives across the entire spectrum of its technology stack.

NYSERDA expects this project to achieve the following objectives:

- Provide a cost effective hosting facility to support its technology infrastructure needs.

- Provide D/R meeting required recovery point objective (RPO) and recovery time objective (RTO) requirements.
- Provide a scalable environment to handle expected growth.
- Provide a flexible configuration to meet new and changing business requirements and programs.
- Provide 24-hour network operations center (NOC) support and monitoring for selected systems.
- Reduce the load on internal information technology (IT) staff by providing basic support and maintenance services for the hosted systems.

## 2.2 Scope of Work

The contract with NYSERDA is to provide hosting services, including, but not limited to, the following items:

1. Primary data center hosting of Windows Server 2008 R2, Windows Server 2012 R2 and Linux-based guests. All hosting (VM hosts and storage) must be at data centers in the continental United States. VMware platform is preferred but not required.
2. Provisions for migration from existing vendor/hardware to new vendor/hardware.
3. Alternate D/R datacenter hosting for the designated systems. All hosting (VM hosts and storage) must be at data centers in the continental United States. Support for an annual D/R test. VMware platform is preferred but not required.
4. Infrastructure and administrative support for current and future Linux and Windows server operating systems.
5. Ability to provide Microsoft licensing on a monthly basis or allow the use of NYS Enterprise Agreement licensing.
6. Networking – 10G to storage and between servers. Support for 4 public IP addresses. Support for multiple VLANs.
7. Security – Support for at least 2 different firewalls. NYSERDA takes a layered approach to security utilizing products from multiple vendors between the web, application and data tiers. Support for intrusion detection and prevention. Ability to block denial of service (DoS) attacks on public servers. The vendor should be able to support a 100Mb VPN over the internet to NYSERDA. The vendor should be able to provide operating system patching and anti-virus maintenance on a regular schedule as well as when needed.
8. Backups of all monitored servers up to twice daily with a retention period of 30 days. Snapshotting of virtual machine servers on request. A Veeam platform is preferred but not required.
9. 24-hour monitoring of servers, storage and network health. Vendor should be able to remediate any issues that arise. A dashboard should be available for NYSERDA staff to monitor services. Vendor must include service level agreements for availability, performance and remediation time. Monitoring should minimally consist of ping, WMI, http, network/disk/CPU utilization and application level performance/availability monitoring.
10. Support for a separate physical storage server to be used as a backup target for NYSERDA's Albany-based datacenter. This is for NYSERDA supplied server and disks.

11. Support for leaving the platform at the end of the contract if the contract isn't renewed. Where applicable, non-disclosure agreements (NDAs) will be signed between the service provider and the new provider.
12. Phone and email based support for account issues such as technical or billing problems. A dedicated account manager should be assigned to be a single point of contact for all issues.
13. Current server workloads presented below. Vendors should plan on a 100% increase in load over the course of the contract. This should be accounted for in the primary and D/R sites as well as in backups. Environment should be sized such that any 1 host or storage array can be taken offline for maintenance without requiring an outage.

**Table 1. High-Level Summary of Current Server Workloads**

<i>Application</i>	<i>Software</i>	<i>Server OS</i>	<i>D/R</i>	<i>RPO</i>	<i>RTO</i>	<i>CPU</i>	<i>RAM</i>	<i>Storage</i>
Web site	IIS	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	4	4	284G
E-commerce	IIS, .NET	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	4	4	165G
E-commerce	IIS, .NET	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	4	4	165G
Load balancers (4)	Kemp appliance	Other 2.6.x Linux (64-bit)	Yes	8hr	1hr	2	1	18G
Firewalls (3)	Confidential	Red Hat Enterprise Linux 6 (64-bit)	Yes	4hr	1hr	4	4	205G
PeopleSoft Chg		Microsoft Windows Server 2012 (64-bit)	Yes	8hr	1hr	2	16	205G
PeopleSoft Dev App		Microsoft Windows Server 2012 (64-bit)	Yes	8hr	1hr	2	12	515G
PeopleSoft Dev DB	MS SQL 2012 Ent	Microsoft Windows Server 2008 R2 (64-bit)	Yes	8hr	1hr	4	72	8TB
PeopleSoft Dev SES		Microsoft Windows Server 2008 R2 (64-bit)	Yes	8hr	1hr	2	16	415G
PeopleSoft Dev UPK		Microsoft Windows Server 2012 (64-bit)	Yes	8hr	1hr	4	4	105G
PeopleSoft Dev Web		Microsoft Windows Server 2012 (64-bit)	Yes	8hr	1hr	1	6	310G

<i>Application</i>	<i>Software</i>	<i>Server OS</i>	<i>D/R</i>	<i>RPO</i>	<i>RTO</i>	<i>CPU</i>	<i>RAM</i>	<i>Storage</i>
PeopleSoft Prod App (2)	Oracle Tuxedo	Microsoft Windows Server 2012 (64-bit)	Yes	15min	1hr	2	12	550G
PeopleSoft Prod DB	MS SQL 2012 Ent	Microsoft Windows Server 2012 (64-bit)	Yes	15min	1hr	4	72	2.4TB
PeopleSoft Prod SES		Microsoft Windows Server 2008 R2 (64-bit)	Yes	15min	1hr	2	16	456G
PeopleSoft Prod PUM		Other Linux (64-bit)	Yes	15min	1hr	2	6	215G
PeopleSoft Prod UPK		Microsoft Windows Server 2012 (64-bit)	Yes	15min	1hr	4	4	105G
PeopleSoft Prod Web (2)	Weblogic	Microsoft Windows Server 2012 (64-bit)	Yes	15min	1hr	1	6	350G
PeopleSoft XWEB (2)	Weblogic	Microsoft Windows Server 2012 (64-bit)	Yes	4hr	1hr	1	6	350G
PeopleSoft Prod Upg		Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	1	4	685G
PeopleSoft Prod Upg Wk		Microsoft Windows Server 2012 (64-bit)	Yes	4hr	1hr	1	6	305G
Prod Web App		Microsoft Windows Server 2012 (64-bit)	Yes	4hr	1hr	2	8	155G
T1PPR001	Print Server	Microsoft Windows Server 2008 R2 (64-bit)	No	-	-	1	4	65G
Prod Web Domain (ADFS)	Active Directory	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	2	2	82G
Prod GIS	ArcGIS	Microsoft Windows Server 2012 (64-bit)	Yes	4hr	1hr	2	8	88G
Prod DB Cluster (2 servers)	MS SQL 2012 Ent	Microsoft Windows Server 2008 R2 (64-bit)	Yes	15min	1hr	4	32	4.5TB
Dev DB	MS SQL 2012	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	4	32	1TB
Domain Controller	Active Directory	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	2	2	85G

<i>Application</i>	<i>Software</i>	<i>Server OS</i>	<i>D/R</i>	<i>RPO</i>	<i>RTO</i>	<i>CPU</i>	<i>RAM</i>	<i>Storage</i>
Data warehouse	Informatica	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	2	16	120G
Data warehouse	T3PNA001	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	1	2	82G
Data warehouse	SharePoint 2013	Microsoft Windows Server 2012 (64-bit)	Yes	4hr	1hr	4	16	220G
Data warehouse	Tableau (Prod)	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	8	32	155G
Data warehouse	Tableau (Dev)	Microsoft Windows Server 2008 R2 (64-bit)	Yes	4hr	1hr	8	32	155G

**Table 2. High-Level Summary of Data Center Working Storage**

<i>Description</i>	<i>Detail</i>	<i>Qty</i>
Fast Disk	10K SAS	19TB
Slow Disk	7200 SAS	7.1TB

**Table 3. Current Hosts**

<i>Description</i>	<i>Detail</i>	<i>Qty</i>	<i>RAM</i>	<i>CPU</i>
Primary Hosts	Dell R720	3	256G	2 x Intel Xeon E5-2690 @ 2.9GHz
D/R Hosts	Dell R720xd	2	128G	2 x Intel Xeon E5-2670 @ 2.6GHz

**Table 4. Current Software**

<i>Description</i>	<i>Detail</i>	<i>Quantity</i>
Antivirus	All Windows Servers	
Microsoft SQL 2012 Standard	2-core pack w/minimum 4 cores	2
Microsoft SQL 2012 Enterprise	2-core pack w/minimum 4 cores	6
Unlimited Microsoft Windows Server OS		

<i>Description</i>	<i>Detail</i>	<i>Quantity</i>
Microsoft SharePoint 2013	50 standard + 50 enterprise CALs	
Kemp load balancers		3

If a firm is selected, they may be requested to provide additional services to NYSERDA related to the scope that may not be listed above.

### **2.3 Engagement Requirements**

1. Proposers must demonstrate a proven track record of providing private cloud hosting services for government entities.
2. Proposers must be able to providing hosting and support services within the continental United States.
3. Proposers must be able to provide an environment that complies with NYS Cyber Security Policy P03-002.
4. Proposers must be able to meet a 30% minority or woman owned business entity (MWBE) and a 3% service disabled veteran owned business (SDVOB) subcontracting requirement for this contract. Any MWBE or SDVOB firms responding to this RFP that are seeking MWBE or SDVOB status must submit proof that the firm is certified as an MWBE by the Empire State Development Division of Minority and Women's Business Development or certified as an SDVOB by the Office of General Services Division of Service-Disabled Veterans' Business Development.
5. Upon issuance of a contract from NYSERDA, the selected firm will be required to show evidence of General Liability, Disability and Workers Compensation Insurances. In some instances, Professional Liability insurance may also be required.
6. The willingness to work with NYSERDA to minimize costs.
7. Per Article XII of the attached Sample Agreement, an Agreement may be terminated by NYSERDA at any time during the term of the Agreement with or without cause, upon ten (10) days prior written notice to the Contractor.
8. NYSERDA may require periodic external auditing and compliance with Statement on Standards for Attestation Engagements #16, Reporting on Controls at a Service Organization (SSAE16) or similar guidelines.
9. All hardware and software must be under support for the duration of the contract.
10. All services for a given month will be invoiced in accordance with Exhibit D of the attached Sample Agreement, "Prompt Payment Policy Statement".

### **3. PROPOSAL CONTENT AND FORMAT**

**A completed and signed Proposal Checklist (Attachment A) must be attached as the front cover of the proposal, and must contain an original signature. Proposals lacking a signed Proposal Checklist will be returned and will not be considered for award.**

**For the purposes of evaluation, 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:**

- Section I: Executive Summary
- Section II: Technical Proposal
- Section III: Cost Proposal

**Cost information must not be included in the Technical Proposal section.**

### **3.1 Section I: Executive Summary**

Provide a brief description of the firm's overall qualifications and approach. Please limit to this section to 2 pages maximum.

### **3.2 Section II: Technical Proposal**

Following is a listing of the information required to be provided by the proposer. A technical proposal that does not provide all the information requested below may be subject to rejection. Provide the information in the same order in which it is requested. Your technical proposal must contain sufficient information to assure NYSERDA of its accuracy. Please limit to this section to 30 pages maximum.

1. Provide a separate numbered section corresponding with each item listed in Section 2.2 Scope of Work documenting the firm's qualifications in the respective area. If you are not seeking consideration for a particular item, include a numbered section and indicate that no response is being provided.
2. Provide a description of the firm's organization and the resumes of partners, principals, associates and other staff proposed to provide services to NYSERDA. Note any sub-consultants that your firm may be using to fulfill the scope of services.
3. Provide a description of the firm's experience providing similar services including recent relevant project experience to the public and private sector. Include the names, titles and phone numbers of at least three (3) references excluding NYSERDA employees for whom similar services have been provided and a summary of the services provided.
4. Provide a description of the firm's approach to providing the scope of services including the monitoring and management of the environment. Indicate any areas in which you believe the firm has special expertise.
5. Provide a description of the firm's approach to migrating from the existing hosting facilities, if applicable.
6. The proposer must agree to provide NYSERDA with pre- and post-audit access to documents, personnel and other information necessary to conduct audits on request during the term of the Contract and for six years thereafter.
7. The proposal submitted must contain a representation that the proposer is willing and ready to provide any services requested or required in a timely manner.
8. Disclose any potential conflicts of interest.
9. Note any special certifications relevant to this RFP that your firm may possess, and outline opportunities that consulting staff have to keep skills current.

### **3.3 Section III - Cost Proposal**

Following is a listing of the information required to be provided by the proposer. A cost proposal that does not provide all the information requested below may be subject to rejection. Provide the information in the same order in which it is requested. Your cost proposal must contain sufficient information to assure NYSERDA of its accuracy.

1. Provide billing rates for ad-hoc/hourly services provided such as Windows server patching, antivirus/malware remediation, network support, etc.
2. List all fixed price services offered and the corresponding pricing.
3. Indicate any reductions from normal billing rates charged other issuers or public entities in New York State.
4. Indicate any startup/one-time costs.
5. Indicate any monthly recurring charges.
6. Indicate incremental charges incurred with the addition of each new server or appliance.
7. Indicate any charges associated with providing external SSAE 16 audits.
8. Indicate any reductions due to missed service level agreements (SLAs). See Attachment G for proposed SLAs.
9. Indicate charges associated with migration to the platform.
10. Indicate charges associated with leaving the platform at the end of the contract.
11. A plan for meeting the MWBE/SDVOB requirement MUST be submitted with the proposal.

## 4. EVALUATION OF PROPOSALS

### 4.1 General Selection Process

Proposals that meet 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.

The selection process will begin with the review and evaluation of each of the written proposals. The purpose of this evaluation process is twofold: (1) to examine the responses for compliance with this RFP; (2) to identify the complying firms that have the highest probability of satisfactorily performing the scope of services at a reasonable cost to NYSERDA. All written proposals will be reviewed and evaluated by a Scoring Committee selected by NYSERDA using the evaluation criteria below.

### 4.2 Interviews

NYSERDA reserves the right to determine whether interviews will be necessary and for which firms. The purpose of the interview is to further document the proposer's ability to provide the required services, and to impart to the Scoring Committee an understanding of how specific services will be furnished. The proposed lead principal, as well as all other key personnel proposed to provide the services must be present and participate in the interview. The interview will be evaluated on the basis of whether it substantiates the characteristics and attributes claimed by the proposer in its written response to this RFP and any other information requested by the Scoring Committee prior to the interview.

### 4.3 Evaluation Criteria

Criteria	Title	Scoring
1	<b>Demonstrated capacity to achieve the objectives described in Objectives (section 2.1)</b>	25
2	<b>Demonstrated capacity to perform the types of activities that have been described in the Scope of Work (section 2.2)</b>	30
3	<b>Adherence to requirements described in Engagement requirements (section 2.3)</b>	Pass/Fail
4	<b>Quality of work product. For those firms who have worked for NYSERDA previously, quality of work on those transactions will be considered.</b>	20
5	<b>Cost Proposal rates evaluated on reasonableness in comparison to other respondents.</b>	25

## 5. 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://nyserda.ny.gov/~/mediaFiles/About/ContactNYSERDARegulations.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

**New York Executive Law Article 15-A** - NYSERDA is required under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSERDA contracts. The MWBE participation goals and obligations of the selected Contractor are set forth in Attachment C.

**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](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)).

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

**Contract Award** - NYSERDA anticipates making more than 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 (4) 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.

## **6. ATTACHMENTS**

Attachment A: Proposal Checklist

Attachment B: Disclosure of Prior Findings of Non- Responsibility

Attachment C: Cost Proposal Worksheet

Attachment D: Sample Agreement

Attachment E: Electronic Proposal Submission Instructions

Attachment F: Article 15-A (MWBE) Provisions for Solicitation Documents

Attachment G: Service Level Agreements



**ATTACHMENT A  
PROPOSAL CHECKLIST (MANDATORY)**

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

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

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

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

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

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

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

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

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

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

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 _____

**AUTHORIZED SIGNATURE & CERTIFICATION**

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

Signature	Name
Title	Organization
Phone	

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

**Attachment B**

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

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



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

If you answered yes, please provide details:

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

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

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

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

EXHIBIT C

PROJECT PERSONNEL & RATES

1. DIRECT PERSONNEL COSTS:

Title Classification	Not to Exceed Hourly Rate Range	
	Year 1	
	Minimum	Maximum

2. MULTIPLIER (Including Profit/Fixed Fee):

a. Profit / Fixed Fee: \_\_\_\_\_ % Not Applicable – Included in Fully Burdened Rate in the Table Above

b. Multiplier \_\_\_\_\_

3. DIRECT NON-PERSONAL SERVICE COSTS:

Direct non-personal service costs will be allowed and reimbursed at cost for project related expenses. Items not listed but necessary to complete the work must be pre-approved by NYSERDA:

- |          |                        |                                      |
|----------|------------------------|--------------------------------------|
| Travel   | Laboratory Tests       | Overnight Mail                       |
| Supplies | Test Equipment Rentals | Report Reproduction/Outside Printing |
| Postage  | Computer Services      | Subcontracts                         |

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

Please read the following instructions before submitting a proposal.

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

### **Important Reminders:**

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

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

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

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

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

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

**Attachment D**  
**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;
- Exhibit E, NYSERDA Report Format and Style Guide

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

**[CONTRACTOR]**

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

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

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

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

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth at Exhibit A hereto.

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

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

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

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

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

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.

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

(b) Payments to NYSERDA Definitions:

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

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

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

determined using generally accepted accounting principles and shall be capable of being proven by an audit conducted in accordance with generally accepted auditing standards.

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

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

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

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

## Article II

### Performance of Work

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

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

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

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

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

- 1)
- 2)
- 3)
- 4)

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

### Article III

#### Deliverables

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

### Article IV

#### Payment

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

(a) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate as shown in the Budget or the actual wages paid to the employee and applicable at the time the Work is performed.

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

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

#### Section 4.02. Progress Payments.

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

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof,

the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

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

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

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

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

## Article V

### Assignments, Subcontracts and Purchase Orders

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities

hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

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

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the

requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

## Article VI

### Schedule; Acceptance of Work

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

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

## Article VII

### Force Majeure

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

## Article VIII

### Rights in Information; Confidentiality

#### Section 8.01. Rights in Contract and Proprietary Information.

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

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

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

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

## Article IX

### Warranties and Guarantees

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

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

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

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

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

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

intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;

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

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

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

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

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

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

(j) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

## Article X

### Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including,

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

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

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

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

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

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

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

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

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates

of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

## Article XII

### Stop Work Order; Termination; Non-Responsibility

#### Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

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

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

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

#### Section 12.02. Termination.

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

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

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

#### 12.03 Suspension or Termination for Non-Responsibility.

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

suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

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

## Article XIII

### Independent Contractor

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

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

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

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

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

NYSERDA

Name: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: [cheryl.glanton@nyserda.ny.gov](mailto:cheryl.glanton@nyserda.ny.gov)

Personal Delivery: Reception desk at the above address

**[Contractor Name]**

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

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

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

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

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

Article XVI

Publicity

Section 16.01. Publicity.

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

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

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

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS  
FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.esd.ny.gov>

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

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

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

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

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

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

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

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

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

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

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<sup>2</sup> This is only a summary; the full text of Part 504 can be accessed at:  
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

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

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

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

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

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

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

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

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

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

**504.4. Payment Procedures.**

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

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

Receipt of an Invoice of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

exceed thirty (30) working days.

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

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

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

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

**Exhibit E**  
**NYSERDA Content Guide 2015**

# ATTACHMENT F

## Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

### New York State Law

Pursuant to New York State Executive Law Article 15-A, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of NYSERDA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that NYSERDA establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

### Article 15-A EEO Policy

- (1) Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed (religion), color, national origin, sex, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
- (2) Following the award of a State contract and as a precondition to entering into that contract, a winning proposer shall submit an equal employment opportunity ("EEO") policy statement to NYSERDA within seventy-two (72) hours following such proposer's receipt of NYSERDA's award letter. A proposer's failure to timely submit the EEO policy statement could result in NYSERDA's rejection of that proposer's proposal.
- (3) The proposer's EEO policy statement shall contain, but not necessarily be limited to, and the proposer, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
  - (i) The proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

- (ii) The proposer shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - (iii) At the request of NYSERDA, the proposer shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the proposer's obligations.
  - (iv) Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (4) Within ten (10) business days following a winning proposer's receipt of NYSERDA's award letter, such proposer shall submit to NYSERDA a staffing plan of the anticipated work force to be utilized on the State contract. The form of the staffing plan shall be supplied by NYSERDA. In the case where the workforce to be utilized in the performance of this Agreement cannot be separated out from the Contractor's and/or its subcontractor workforce, the Contractor shall submit, in lieu of a staffing plan, information on the Contractor's and/or subcontractor's total workforce. The staffing plan or workforce information shall be broken down by ethnic background, gender and Federal occupational categories, or other appropriate categories specified by NYSERDA. A proposer's failure to submit the staffing plan or workforce data could result in NYSERDA's rejection of that proposer's proposal. If a proposer changes its utilization plan after submission, it shall notify NYSERDA in writing of such change and obtain approval from NYSERDA in accordance with the Regulations §§ 142.6 & 142.8.
- (5) A proposer's failure to submit an EEO policy statement and staffing plan or total work force data shall result in NYSERDA's rejection of proposer's proposal, unless the proposer provides NYSERDA with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO policy statement and a staffing plan or total work force data by a date to be specified by NYSERDA.
- (6) To demonstrate compliance with the stated participation goals as set forth herein, a contractor shall be required to periodically submit compliance reports to NYSERDA, on the forms attached to the contract, during the entire term of the contract.

#### **Contract Participation Goals by MWBE on NYSERDA procurements**

In accordance with Article 15-A of the N.Y. Executive Law ("Article 15-A") and pursuant to the regulations adopted thereto, NYSERDA has established certain contract participation goals for minority and women-owned business enterprises (MWBE). NYSERDA's participation goals for contracts awarded pursuant to this solicitation are 15% for minority-owned business enterprises and 15% for women-owned business enterprises. These participation goals are subject to the requirements of Article 15-A, and its implementing regulations as set forth in Title 5, Chapter XIV, Parts 140-144 of the New York Codes, Rules and Regulations (the "Regulations").

NYSERDA requires every winning proposer to undertake "good faith" efforts to actively solicit MWBE participation in connection with its potential award of the NYSERDA contract. Within ten (10) business days following the receipt of NYSERDA's award letter, a winning proposer must submit to NYSERDA an MWBE Utilization Plan Form, in a form provided by NYSERDA. Within twenty (20) days following its receipt of the Utilization Plan, NYSERDA will issue a written notice of acceptance or deficiency. If NYSERDA issues a notice of deficiency then proposer must provide NYSERDA with a written remedy in response to said notice of deficiency within seven (7) business days of its receipt. If the proposer's remedy to the notice of deficiency is not timely provided or if it is found by NYSERDA to be inadequate, NYSERDA shall so notify proposer and request proposer to submit a waiver form within five (5) business days. Failure to file the written remedy or a waiver form in a timely manner as set forth above may be grounds for disqualification of proposer's award for non-responsibility, after NYSERDA gives proposer notice and opportunity to be heard in accordance with Article 15-A § 313(5)(c) and the Regulations § 142.9.

A winning proposer may request a total or partial waiver of the requirements of the participation goals set forth above. In such event, NYSERDA shall provide proposer with a waiver form to be provided by proposer prior to the award of the NYSERDA contract. Prior to granting or denying a waiver, NYSERDA shall evaluate proposer's "good faith efforts" and may consider the factors set forth in the Regulations §143.7. In the event NYSERDA refuses to grant proposer a waiver, proposer may file a complaint with the NYS Empire State Development's Division of Minority and Women Business Development (the "Division") in accordance with Sections 313(8) & (9) of Article 15-A and Section 142.12 of the Regulations.

Relevant sections of the Regulations may be found at the following link, which Regulations and each party's rights and obligations set forth therein, are incorporated herein by this reference (in the event of a conflict between this solicitation and the Regulations, the Regulations shall govern):

[http://www.empire.state.ny.us/MWBE/Data/122210\\_MWBE15-ARegs.pdf](http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf).

A Directory of certified MWBEs may be found at the Division's website, here:

<http://www.empire.state.ny.us/MWBE/directorySearch.html>

### **Article 15-A Disqualification and Dispute Resolution Procedures**

NYSERDA, and applicable proposers and contractors shall be subject to and bound by the disqualification and dispute resolution procedures contained in Article 15-A (including, without limitation, Sections 312(5), 313(5)(c), 313(8), 313(9) and 316), and in relevant sections of the Regulations (including, without limitation, Sections 142.9, 142.12 and 143.6), as and where applicable.

NYSERDA may disqualify a proposer as being non-responsive under the following circumstances:

- a) If a proposer fails to submit a MWBE Utilization Plan;
- b) If a proposer fails to submit a written remedy to a notice of deficiency;
- c) If a proposer fails to submit a request for waiver; or
- d) If NYSERDA determines that the proposer has failed to document good faith efforts.

### **Penalties**

In accordance with the Regulations §142.13, NYSERDA's contract shall require contractor to agree that its willful and intentional failure to comply with the MWBE requirements of Article 15-A shall create liability to NYSERDA for damages in an amount equal to NYSERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.

## **Service Level Agreement**

### **I. NYSERDA SUPPORT**

All equipment managed by the Contractor is directly monitored from its Network Operations Center ("NOC"), which is staffed 24 hours per day, 7 days per week, 365 days per year. The Contractor will take immediate action upon recognition of a failure of a Contractor-managed device. The Contractor will attempt to notify NYSERDA's designated representative within thirty minutes (30) of a service disruption. NYSERDA is responsible for providing accurate and current contact information for NYSERDA's designated representative. If NYSERDA believes it is experiencing a service disruption, NYSERDA should immediately call Customer Support at a designated phone number for access to 24 X 7 X 365 assistance.

#### Severity Level Definitions

"Severity 1" -- Business is critically impacted; site or application hardware is inoperable "Severity 2" --

Business is affected, but can still function

"Severity 3" -- Little to no impact to the business, resolution can be scheduled

II. ISSUE ESCALATION If NYSERDA is unable to resolve a technical support issue within the parameters outlined in this Service Level Agreement, NYSERDA should contact the Contractor's Customer Support Director at a designated email address. The Customer Support Director will review NYSERDA's concerns, investigate, and respond within one business day. Because issues may be complex or require extensive investigation, this response time does not necessarily mean that NYSERDA's concerns are resolved within that time frame.

III. SERVICE AVAILABILITY Customers for the Contractor's "Managed Wide Area Network (WAN) service" only receive the Time-Based Guaranty. Similarly, customers for the Contractor's "Remote Managed service" only receive the Time-Based Guaranty. In contrast, Customers for the Contractor's "Managed Hosting service" (also known as the "Colocated & Dedicated Server Hosting service") receive the Network Availability Guaranty, the Service Disruption Guaranty, and the Time-Based Guaranty.

Network Availability Guaranty - the Contractor guarantees 99.99% Backbone Network Uptime with at least 99% sustained packet throughput based upon a 95% sampling. Uptime is defined as the ability of NYSERDA to access the Contractor Backbone Network. The Backbone Network is defined as the Contractor's core routers and core switches and does not include NYSERDA-supplied switches.

Service Disruption Guaranty - A service disruption is defined as packet loss in excess of 20% for fifteen (15) consecutive minutes or a packet loss in excess of 1.5% for two hours or more.

Time-Based Guaranty - the Contractor will respond to incidents based upon the assigned Severity Level. It is the Contractor's goal to remedy any urgent incident within the shortest possible time frame.

Response for Severity 1 – Incidents are logged into the Contractor's system with a case assignment to a technician and notification (via phone call, email or pager) within ten (10) minutes of a case being

opened. Escalation: After entry into the Contractor's system and being assigned a ticket number, the incident is immediately assigned to a Level III technician. If the Level III technician is unable to resolve the issue within a two-hour timeframe, the issue is escalated and senior management is notified.

Response for Severity 2 – Incidents are logged into the Contractor's system with a case assignment to a technician and notification (via phone call, email or pager) within thirty (30) minutes of a case being opened. Escalation: After entry into the Contractor's system and being assigned a ticket number, the incident is immediately assigned to a Level II technician. If the Level II technician is unable to resolve the issue within a two-hour timeframe, the issue is escalated to a Level III technician during the Contractor's normal business hours.

Response for Severity 3 – Incidents are logged into the Contractor's system with a case assignment to a technician and notification (via phone call, email or pager) within twenty-four (24) hours of a case being opened.

System Administrative Access the Contractor will have sole root access (privileged access with authority to perform system-level functions or security administration) for all the Contractor-managed components. NYSERDA may request in writing, through Customer Support, a grant of temporary administrative rights. While NYSERDA has administrative rights, the SLA provisions are suspended.

#### Patch Management

The Contractor's goal is to apply critical operating system patches in the month that they are released. Patch management should allow for both automated and manual patching. The Contractor will attempt to notify NYSERDA 24 hours in advance of the patch installation and will proceed with the scheduled installation (including server reboot) unless NYSERDA specifically instructs otherwise. However, the Contractor will not notify NYSERDA regarding server re-boots when NYSERDA has selected automatic updates. NYSERDA acknowledges that the Contractor does not guarantee that a vendor-supplied patch will perform as described or that application of a vendor-supplied patch will not cause other adverse technical difficulties.

#### Remedy for Failure to Meet SLA Provisions

For each cumulative hour (or fraction of an hour) during a month in which the Contractor is in breach of the Network Availability Guaranty, Service Disruption Guaranty, Time-Based Guaranty, NYSERDA can seek a credit. Such credit will be the pro-rated fees for one day of the Monthly Recurring Service Fee charged for the affected service. NYSERDA may receive no more than one day of credit per a 24-hour period and no more than ten (10) days of credit per month.

The Contractor will issue a credit only if the breach is confirmed by the Contractor's server monitoring data. Upon confirmation, the Contractor will issue a credit for application to NYSERDA's next invoice.

Exclusions the Contractor is not responsible for any breach caused in whole or in part by the following:

- Outage associated with scheduled downtime;

- Outage due to problems with NYSERDA-provided content or NYSERDA programming errors including but not limited to content installation and integration;
- Outage due to system administration, commands, or file transfers performed by NYSERDA;
- Outage due to work performed at NYSERDA request;
- Denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, acts against parties (including carriers and third-party vendors), and other force majeure events;
- NYSERDA's failure to respond or promptly respond to incidents that require its participation for problem identification and/or resolution;
- Outage due to failure of a non-the Contractor-managed component;
- Outage for any the Contractor-managed component that is using an operating system not supported by the Contractor;
- Outage due NYSERDA denial of recommended software patches, hardware and/or operating system changes; or
- Periods during which NYSERDA has system administration rights.

#### Commencement of Service Level Agreement

The terms of this SLA do not begin until one month following the Deployment Date.

#### IV. Technical Requests

Response for Ad-Hoc Technical Requests – Specific configuration, security or modification requests are driven by project needs and are logged into the Contractor's system with a case opened. This case must be assigned to a technician familiar with the specific system, software or service referenced in the request. Notification via email within twenty-four (24) hours of case open.

#### V. NYSERDA RESPONSIBILITIES This SLA is contingent upon NYSERDA providing all of the following:

- Accurate and up-to-date contact information
- Defined escalation path
- Timely responses to the Contractor requests
- An operating system license and/or subscription in effect during the applicable third-party maintenance or support contract
- Third-party maintenance or support contract in effect for all the Contractor-managed components

## Description

### 24x7x365 Customer Support and Technical Staff Availability

-Network Operations Center (NOC) is staffed 24x7x365 by Level I and Level II Support Staff. Escalation procedures assure that questions and technical requests are handled efficiently and effectively to maintain the performance of your equipment.

### Remote Hands

-Remote Hands involves basic activities such as looking at, listening to, or manually touching equipment. Services are performed by a 24x7x365 on-duty support technician.

### Basic Device Monitoring

-Basic IP monitoring (ping) is provided to all managed co-location and dedicated hosting customers. Alerts can be sent via email or text message.

### Advanced Device Monitoring

-SNMP (Simple Network Monitoring Protocol) monitoring services are available. SNMP monitoring includes CPU usage, memory usage, disk space utilization, number of processes and users. Alerts can be sent via email or text message. Advanced device monitoring can be enhanced with a server utility that detects hardware-related issues.

### Antivirus

-Antivirus software is provided on the Contractor-managed Microsoft Operating Systems.

### Operating System Patch Management

-The Contractor will install all critical Microsoft and Red Hat Enterprise Linux operating system (OS) security patches. Service Pack upgrades may/not included as part of this service. Non-critical updates can be installed on request.

### Hardware Warranty Management

-For devices under a current vendor warranty, the Contractor will escalate hardware-related issues to your provider and coordinate any needed services.

### Software License Management

-The Contractor will manage software licensing and renewal for software applications purchased through the Contractor.

### Technical Support Services

-Technical support can include the following services, provided remotely: system tuning based on server performance, advanced technical operating system support, tasks related to operating system configurations and senior staff consultation. Services are limited to server hardware and base operating system.

### Application Monitoring

-Application monitoring services can include HTTP String or applications such as Web services, FTP sites, and mail servers (POP, IMAP, SMTP). You select from a list of available application monitoring parameters, and we will monitor them 24x7x365. Alerts can be sent via email or text message.

#### Application System Patch Management

-the Contractor can install all Microsoft application (IIS, SQL, and Exchange) critical security updates upon NYSERDA approval. Service Pack upgrades are not included as part of this service. Non-critical updates can be installed on your request.

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