

Attachment D

Reviewer Non-disclosure and Confidentiality Agreement

THIS AGREEMENT, effective as of this ____ day of _____, 2____, by and between the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (NYSERDA), a New York public benefit corporation having its principal office and place of business at 17 Columbia Circle, Albany, New York 12203-6399 and _____, (the TEP Member).

WHEREAS:

- A. The TEP Member has been selected to participate in the deliberations of a Technical Evaluation Panel (TEP) to review and evaluate proposals (PROPOSALS) submitted to NYSERDA in response to NYSERDA Request for Proposals (RFP)/Program Opportunity Notice (PON) #_____. The information contained in the PROPOSALS includes information developed, compiled and created by the submitter, and may include information that is not in the public domain, and/or information that is proprietary and confidential, including, but not limited to, data, plans, costs, processes and know-how (called "INFORMATION"); and
- B. NYSERDA desires the TEP Member to receive and review the PROPOSALS, and to participate in the deliberations of the TEP, which deliberations will include oral discussions regarding the various PROPOSALS and the INFORMATION in order to evaluate said PROPOSALS; and
- C. NYSERDA, in order to facilitate and/or administer the TEP review and evaluation process, may provide to the TEP Member scoring sheets, tabulations, summary materials, and other review and evaluation materials (TEP MATERIALS).

NOW IT IS HEREBY AGREED:

- 1. The TEP Member will receive PROPOSALS and TEP MATERIALS from NYSERDA and will participate in the deliberations of the TEP solely for the purpose of assisting NYSERDA in its evaluations and determinations regarding PROPOSALS submitted in connection with NYSERDA's above-referenced RFP/PON; TEP Member shall not use the PROPOSALS, INFORMATION OR TEP MATERIALS for any other purpose.
- 2. Subject to applicable provisions of law, the TEP Member will at all times keep all PROPOSALS, all INFORMATION contained in the PROPOSALS, and all TEP MATERIALS strictly confidential; which shall include, without limitation, not disclosing the same, or knowingly permitting the same, to be disclosed to any person other than NYSERDA employees and other TEP members participating in the TEP and at all times taking reasonable steps to ensure that this obligation is fulfilled.
- 3. The TEP Member will at all times keep the content of the deliberations of the TEP, including all oral communications by or between TEP Members, and the identity of other TEP Members strictly confidential; which shall include, without limitation, not disclosing the same, or knowingly permitting the same, to be disclosed to any person other than NYSERDA employees and other TEP members participating in the TEP and at all times taking reasonable steps to ensure that this obligation is fulfilled, both during and following the deliberations.

4. The PROPOSALS, INFORMATION and TEP MATERIALS are and will remain the sole and exclusive property of NYSERDA. Nothing herein or otherwise implied shall constitute any grant or license to use same for any purpose other than that stated in paragraph "1", above.

5. Upon completion of the deliberations of the TEP, the TEP Member shall destroy, by shredding, permanent deletion or other method ensuring complete destruction, all PROPOSALS and all TEP MATERIALS then in his/her possession provided by NYSERDA, whether in paper or electronic form. TEP Member shall not retain any copies thereof.

6. Nothing contained in Paragraphs 1 through 5 hereof shall in any way restrict or impair the TEP Member's right to use or disclose to others INFORMATION related to the PROPOSALS which:
 - (a) At the time of disclosure by NYSERDA was in the public domain;
 - (b) After disclosure is published or otherwise becomes part of the public domain through no fault of NYSERDA or the TEP Member;
 - (c) The TEP Member can show was already in his/her possession at the time NYSERDA delivered the PROPOSALS without a continuing obligation of confidence;
 - (d) The TEP Member can show was received by him/her after the time of disclosure hereunder from a third party who did not acquire it directly or indirectly from the PROPOSALS' authors under a continuing obligation of confidence;
 - (e) Is required by operation of law or directed by a court of law of competent jurisdiction; in such cases TEP Member shall notify NYSERDA prior to disclosure.

7. Pursuant to the New York State Freedom of Information Law ("FOIL", Public Officers Law, Article 6), agencies, including public corporations such as NYSERDA, are required to make available to the public, upon request, records or portions thereof which they possess, unless that information is statutorily exempt from disclosure. FOIL provides that an agency may deny access to records or portions thereof which "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)).

8. This Agreement shall be governed and construed in all respects in accordance with New York State Law, without effect to the conflict of laws provisions thereof, and shall be subject to the exclusive jurisdiction of the New York State Courts.

By _____
TEP MEMBER

Name _____

Title _____