

The New York State Energy Research and Development Authority, a New York State Public Authority (hereinafter “NYSERDA”), is undertaking a business competition subject to the following terms and conditions (the “Competition”). Submission of an application in the Competition constitutes a legally binding agreement between the applicant and NYSERDA according to the terms, conditions, and covenants contained herein.

All previous versions of these terms and conditions are deemed null and void.

## Purpose

The purpose of the Competition is to be part of an overall program aimed at developing clean energy enterprises in the Southern Tier region. The Southern Tier is defined as including the following counties in New York State: Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Delaware, Schuyler, Steuben, Tompkins, and Tioga. This Competition will award a total of up to \$2.5 million in prizes, per year, with a single top award of \$1 million. Its goal is to attract entrepreneurs from around the world to compete for prizes that will turn ideas into funded enterprises with high growth potential in the Southern Tier.

The key principle is that the award money is used in support of developing clean energy businesses in the Southern Tier. Milestones will be used to assure award money is used to develop the clean energy part of winning businesses. Prizes will target scalable business models versus more localized service businesses. Emphasis will be on job creation and innovation.

## Eligibility

The Competition is limited to applicants that are or intend to become operating companies in the Clean Energy field.

***Clean Energy is defined as follows:*** hardware technologies, software technologies, services, or processes that broadly reduce energy consumption and greenhouse gas emissions and/or enable the transition to a sustainable and clean energy economy by increasing the supply of renewable energy and distributed energy resources, improving the efficiency of energy utilization at the consumer and industrial scale, improving the processes and systems that use energy, or more effectively enabling energy solutions to permeate the marketplace.

To be eligible for the competition, an applicant must be an established business entity that meets two or more of the following criteria:

- Less than seven years from date of formal organization
- Has its first product or service in testing or pilot production
- Pre-revenue or early revenue
- Has a leadership team and investors working towards commercialization and profitability

If the business is a spin-off from an existing business that does not meet the above criteria, the new entity must be pursuing a substantially new technology or business model.

***The following businesses are not eligible for the Competition:*** investment vehicles that invest in the securities of other entities, residential real property and retail businesses, sports venues, gaming and gambling businesses, places of overnight accommodation, past 76West cash-prize winners, or entertainment-related establishments. For this purpose, “retail business” means a business that is primarily

engaged in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services. In addition, generally excluded are the following: buy-outs, roll-ups, real estate syndications, tax shelters, and franchise-based outlets. Also excluded are any businesses that do not fit the definition of “clean energy” above.

## Awards, Benefits, and Conditions

**Award Amounts and Additional Benefits.** NYSERDA will make up to the following six prize awards to the winners of the 2019 Competition:

- (i) one award of \$1 million,
- (ii) one award of \$500,000, and
- (iii) four awards of \$250,000.

**Staged Payment.** Recipients will receive their prize money in staged payments, payable as defined milestones are met.

**Recoupment.** Available to NYSERDA. Recipients must pay to NYSERDA a royalty of 1.5% of total revenues, beginning at the time that the Location Requirement below is met. Total royalties shall not exceed the amount of the award made to the Recipient.

**Location Requirement.** As a condition of the award, Recipients must materially locate and maintain a presence on an on-going basis within the Southern Tier region for at least twenty-four (24) months, commencing within three (3) months of the award date.

For purposes of this condition, the obligation to materially locate and maintain a presence in the Southern Tier Region may be met in one of the following ways:

- a) the applicant shall establish its principal place of business in the Southern Tier Region, identify its primary headquarters as its address in the Southern Tier Region, and have its key officers reside in New York State within commuting distance to this location; or
- b) the applicant shall establish its primary manufacturing facility within the Southern Tier Region, with more than 80% of its manufacturing personnel based in this facility; or
- c) the applicant shall establish its primary research and development facility within the Southern Tier Region with more than 80% of its research and development personnel based in this facility; or
- d) the applicant shall make capital investments in property, plant and equipment in its Southern Tier location equal to three times the amount of its award under 76West.

If an applicant already has its primary offices in New York State, upon receiving an award it may fulfill its obligation to materially locate and maintain a presence the Southern Tier in one of the ways stated above. In the alternative, such an applicant may fulfill these obligations by committing to quantified job creation targets in its 76West application and presentations, and documenting achievement of these targets. These job creation targets may include jobs created directly by the company or include those created by the establishment of a Southern Tier based supply chain or other strategic relationships with Southern Tier entities.

If at any time the Recipient should stop meeting this Location Requirement and move out of New York State, it shall pay NYSERDA 5% of revenues until three-times award funds disbursed are repaid. If the Recipient should relocate elsewhere in New York State outside of the Southern Tier, it shall pay NYSERDA 1.5% of total revenues, until the award funds disbursed are repaid.

## Eligibility and Applications

Applications should be submitted via the NYSERDA/76West website: [nysesda.ny.gov/76West](http://nysesda.ny.gov/76West) - following all protocols described on the website. All applications must be submitted in English. Instructions for filing a paper application in lieu of an online application are described on the website.

## Non-U.S. Applicants

Both domestic and non-United States based applicants are encouraged to apply. Non-United States applicants are responsible for obtaining any necessary visas and related immigration papers to attend final events of the Competition in the Southern Tier region of New York and to satisfy the appearance requirements of the final round of judging (as described below) and the relocation requirements of an award.

## Review of Applications

**The application period will close April 15, 2019, 5:00 P.M. EDT.**

An expert panel of judges approved by NYSERDA (the “Committee”) will review and select certain applications to progress in the competition as finalists. Such selections shall be made in the discretion of the Committee, subject to review by NYSERDA for the possible application of Program Policy Factors, as further outlined below.

Such finalists will receive business training and mentoring support, including networking in the Southern Tier. Those finalists who choose to continue in the competition will be invited to present to a Finals Judging Panel, constituted by NYSERDA, which will recommend awards.

## Judging Criteria – Applicants will be judged based on:

- 1. Clean Energy Impact** - Furtherance of the reduction of greenhouse gas emissions, promotion of the use of renewable energy resources, or promotion of energy efficiency.
- 2. Customer Value** - Provision of significant value for customers for which they are willing to pay.
- 3. Business Model Viability** - Generation of revenue and maintenance of a cost structure that allows for a competitive and sustainable business.
- 4. Technical Viability** - Demonstrated readiness of the applicant’s technology or innovation to provide desired energy impacts and customer value in its target markets.
- 5. Southern Tier Job Creation** - Potential for creation of high quality jobs in the Southern Tier, directly or indirectly, with secondary consideration given to New York State jobs.
- 6. Team** - Quality and completeness of the team and their readiness to deliver .

## Confidentiality and Intellectual Property

Access to the applications is granted to NYSERDA and its designees for the purposes of review and judging (collectively, the “Reviewing Parties”). NYSERDA is required to comply with the NYS Freedom of Information Law, Public Officers law, Article 6. NYSERDA offers no guarantee of confidentiality, either explicit or implicit, in connection with any data or information presented or discussed by applicants.

The Reviewing Parties will not be required to agree to or sign non-disclosure agreements in connection with any application or applicant. Applicants requiring non-disclosure agreements should not participate.

NYSERDA urges that before submitting their applications, applicants confirm with appropriate advisors or legal counsel that any intellectual property described therein is held by the applicant and appropriately protected. Applicants should be prepared to provide reasonable back-up documentation for these statements, if requested by NYSERDA.

The authors of each applicant submission will retain all copyrights to the contents of their submission, provided that the Reviewing Parties may make photocopies, photographs, and video and/or audio recordings of any data or information divulged, presented, or discussed by any applicant throughout that applicant’s participation in the Competition. By entering the Competition, applicants agree to grant a license to NYSERDA and the Reviewing Parties to use such materials without restriction and to conduct such due diligence as the Reviewing Parties determine is necessary or desirable for purposes of evaluating the application and carrying out the Competition as described herein.

In addition, NYSERDA will have the right to publicly post certain information about awarded applicants and their applications on the public areas of the Reviewing Parties’ websites, including, but not limited to, name and category of business, logo, and an abstract. NYSERDA will also have the right to use the content of applicants’ applications for research and other not-for-profit purposes.

## Program Policy Factors

NYSERDA reserves the discretion to apply the following Program Policy Factors to the selection of finalists in its review of the selections of the judging Committee.

1. Geographic diversity of the finalist pool.
2. Diversity of clean energy technologies represented in the finalist pool.
3. Alignment of the finalist pool to identified strengths and economic development strategies in the Southern Tier.

## Other Conditions

1. Only one application per entity may be selected for evaluation and judging. An individual who submits an application on behalf of a business entity represents and warrants he or she has requisite authority to act on behalf of such entity.
2. All applications must be the original work of the applicant making the submission.
3. Partially completed applications will not be accepted. Applications for the Competition are due by 5:00 P.M. EDT on April 15, 2019.
4. Applicants risk disqualification if they or someone on their behalf communicates with the Reviewing Parties, beyond submitting applications and providing further data or information as requested, in an attempt to influence the Competition.

5. The decisions of NYSERDA are final, including interpretation of these Terms and Conditions.
6. The Applicant shall protect, indemnify, and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs, and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Applicant's participation in the competition.
7. NYSERDA takes no responsibility for agreements between applicants and third parties.
8. Entry materials become the property of NYSERDA.
9. Applicants who engage in immoral, illegal, or other activity that may adversely affect the image of NYSERDA, its affiliates, or other applicants, may be excluded from the Competition at any time.
10. All applicants and award recipients must comply with these Terms and Conditions. Any violation of these Terms and Conditions may disqualify an applicant from the Competition, and result in forfeiture of any awards the applicant received in connection with the Competition.
11. Applicants may un-submit their applications after they are submitted up until the application intake closing date.
12. Award recipients will be required to provide periodic reports, including but not limited to reports outlining financial status, for a five-year period.
13. There is no limit to the number of applications for which an individual person may be a part; except that no individual person can be part of more than one applicant team that receives an award.

## **Applicant Representations and Covenants**

By submitting an application, applicants represent and warrant that:

1. The information in the application is and will be true and accurate.
2. The ideas contained in the application will not infringe upon the rights, including privacy and intellectual property rights, of any third party.
3. The applicant has a reasonable basis for holding the intellectual property that forms the basis or is integral to the applicant's business or the proposed business submitted in the Competition.
4. The applicant has and will have the right and authority to submit the content in its application to the 76West competition.
5. The applicant will obtain permission or a license, as appropriate, for any third party materials, information or other intellectual property contained in its application.
6. The applicant will comply with all applicable laws and regulations in connection with its activities relating to the Competition.
7. The applicant will not attempt to hold NYSERDA responsible or liable for any third party violation of its intellectual property rights as a result of participation in the Competition.
8. No member, officer, director, employee, or shareholder of the applicant has a close family (parent, sibling, spouse, partner, or significant other) relationship with any officer, member, director, or senior management person of NYSERDA the Southern Tier Startup Alliance, or with any staff of NYSERDA or the Southern Tier Startup Alliance directly involved with the administration of 76West.
9. The applicant consents to NYSERDA performing a background check with respect to the applicant and its principals.

## Other Factors

NYSERDA does not discriminate against any applicant on the basis of race, color, creed, ethnicity, gender, disability, age, sexual orientation, gender expression, military status, or marital status.

NYSERDA reserves the right to modify these Terms and Conditions in its sole discretion. In the event of a modification, all applicants will be notified.

## Waiver and Severability

NYSERDA may waive any term or condition herein at its sole discretion. Such waiver will not be deemed a waiver of any other term or condition, whether similar or different. If any term or condition herein is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions will remain in full force and effect.

## Governing Law

These terms and conditions shall be governed and construed in accordance with the laws of the United States of America and the State of New York, without regard to conflicts of law provisions. Exclusive venue for any litigation arising from the Competition or these Terms and Conditions shall be the State or Federal courts located in New York.

[nyserdera.ny.gov/76west](https://nyserdera.ny.gov/76west)