



**Voluntary Conversion of Eligible New York
Renewable Portfolio Standard (RPS) or
Renewable Energy Standard (RES) Agreements
Request for Interest (RFI) No. RESVCO2021
Release Date: January 19, 2021**

**Response Due:
February 9, 2021 3:00 p.m. Eastern Standard Time**

**NYSERDA SOLICITS INTEREST IN CONVERTING EXISTING ELIGIBLE RPS AND RES STANDARD
AGREEMENTS FROM A FIXED-PRICE REC TO AN INDEXED REC PRICE STRUCTURE**

The New York State Energy Research and Development Authority (NYSERDA) is soliciting responses from existing eligible RPS and RES agreement-holders (REC Counterparties) whose projects had not yet commenced commercial operation as of August 10, 2020. These REC Counterparties may participate in a conversion process to voluntarily modify their existing Tier 1 Renewable Energy Certificate (REC) agreements from a fixed as-bid REC price (Fixed REC) to a variable-priced indexed REC (Index REC) pricing structure.

The conversion process will be implemented through a multi-step process:

1. Existing eligible REC Counterparties inform NYSERDA of their interest to participate in the conversion process (“opt in”).
2. NYSERDA provides a conversion offer consisting of an Index REC strike price (“Offer”) to each eligible REC Counterparty.
3. Each REC Counterparty provides an acceptance or rejection of the Offer. REC Counterparties who accept their Offer will be provided with detailed instructions for proceeding to modification of the existing Agreement.

Only those REC Counterparties eligible to opt into the process are permitted to participate. Only those REC Counterparties who respond to this RFI will receive an Offer. No counteroffer by any REC Counterparty will be contemplated. This voluntary conversion Offer is a one-time process and will not be re-offered in the future.

Opt-in: Eligible REC Counterparties must opt in by logging into the [NYSERDA Salesforce Portal](https://lsrportal.nyserda.ny.gov/)¹ (Portal) and navigating to the eligible project(s). Interested REC Counterparties will indicate their interest to opt in by completing the relevant “Opt-in” fields. Opting in does not commit a REC Counterparty to converting its agreement. **All Opt-ins must be received through the Portal by 3:00 p.m. EST on February 9, 2021.** Incomplete Opt-ins may be subject to disqualification. It is the REC Counterparty’s responsibility to ensure that all required information, forms and attachments have been completed/included with the Opt-in.

After Opt-in, as described further in this RFI, NYSERDA will provide via the Portal an Offer Letter for REC Counterparties to review which will include the strike price Offer for any projects that have opted in. If

¹ <https://lsrportal.nyserda.ny.gov/>

the Offer is accepted, the REC Counterparty will upload an executed copy of the Offer Letter directly into the Portal.

No communication intended to influence this procurement is permitted except by contacting Abbey DeRocker, Brian Newton, Jeremy Wyble, Liz Hanna, or Peter Keane (Designated Contacts) by e-mail at res@nyserda.ny.gov. Contacting anyone other than the Designated Contacts (either directly by the REC Counterparty or indirectly through a consultant or lobbyist or other person acting on the REC Counterparty's behalf) to influence the outcome: (1) may result in a REC Counterparty being deemed a non-responsible offeror, and (2) may result in the REC Counterparty not receiving an Offer.

Eligible REC Counterparties should rely only on information provided in this RFI and any associated written updates posted on [NYSERDA's Renewable Energy Standard website](#). Each eligible REC Counterparty shall be solely responsible for and shall bear all costs incurred in the preparation of any response and/or participation in this process.

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1 INTRODUCTION

1.1 New York State's Clean Energy Standard and Renewable Energy Standard

NYSERDA was created in 1975 by the New York State Legislature as a public authority and public benefit corporation. NYSERDA's mission is to advance innovative energy solutions in ways that improve New York's economy and environment.

New York State's 2015 State Energy Plan (SEP)² stated the goal that 50% of the State's electricity be generated from renewable resources by 2030 (50x30 goal). In December 2015, Governor Andrew Cuomo directed the Department of Public Service (DPS) to develop a Clean Energy Standard (CES)³ to help achieve the SEP goals. On July 18, 2019, the [Climate Leadership and Community Protection Act](#) (CLCPA) was adopted and increased New York State's goal to 70% renewable energy generation by 2030 (70x30 goal), among other clean energy targets.⁴ On October 15, 2020, the Public Service Commission (Commission) issued its [Order Adopting Modifications to the Clean Energy Standard](#) in Case 15-E-0302. In the Order, the Commission adopted several modifications to the CES to align it with the CLCPA mandates.

The Commission's [Order Adopting the Clean Energy Standard](#) (CES Framework Order) issued on August 1, 2016, along with additional orders and implementation plans issued under Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard (Orders), established the Renewable Energy Standard (RES) as the State's principal means of achieving the 50x30 goal. A component of the RES consists of a Tier 1 obligation on load serving entities (LSE) to procure Renewable Energy Certificates (RECs)⁵ associated with new renewable energy resources. The Orders authorize NYSERDA, as central procurement administrator, to offer long-term contracts to generators for the purchase of Tier 1-eligible RECs, in the form of Tier 1 NYGATS certificates.

The CES/RES Orders can be accessed from the [NYS Public Service Commission's website](#).⁶ Information regarding NYSERDA's implementation of the RES and prior solicitations under the RES, RESRFP17-1, RESRFP18-1, RESRFP19-1, and RESRFP20-1 can be found on [NYSERDA's RES Solicitation website](#).⁷ Information on the Renewable Portfolio Standard (RPS), the precursor to the CES, and past Main Tier solicitations can be found on [NYSERDA's RPS webpage](#).⁸

² 2015 New York State Energy Plan is available from <http://energyplan.ny.gov/>

³ Letter from Governor Andrew M. Cuomo to Audrey Zibelman, Chair, New York State Department of Public Service, December 2, 2105 (Cuomo Letter) available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Renewable_Energy_Letter.pdf

⁴ [New York State Senate Bill S6599](#), <https://www.nysenate.gov/legislation/bills/2019/s6599>

⁵ While the Commission's August 1, 2016 Order references renewable energy "credits," NYGATS creates renewable energy certificates, and therefore that term is used in this RFI. The NYGATS certificates are created in one-MWh denominations and are in all other ways consistent with the Order.

⁶ <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-e-0302>

⁷ <https://www.nyserderda.ny.gov/ces/rfp>

⁸ <https://www.nyserderda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Portfolio-Standard/Past-Main-Tier-Solicitations>

New York State, through regulations adopted by the Commission, first enacted its RPS in 2004 with the goal of increasing the amount of renewable electricity used by consumers to 25% by 2013. In January 2010, the Commission expanded the RPS target to 30% and extended the terminal year of the program

to 2015. The Commission established two tiers of resource types under the RPS. The Main Tier consisted primarily of medium- to large-scale electric generation facilities that delivered their electrical output into the power market administered by the NYISO. The Customer-Sited Tier (CST) consisted of smaller, “behind-the meter” resources, such as photovoltaic systems, fuels cells, customer-sited wind facilities, anaerobic digester gas, and similar technologies that for the most part produce electricity for use on site.

NYSERDA serves in the role of central procurement administrator, to award long-term contracts to eligible generators through periodic competitive solicitations for the purchase of the associated RECs under the Main Tier and RES procurements. A portion of the Main Tier projects are Tier 1-eligible, and therefore, NYSERDA sells the associated RECs in a manner similar to other Tier 1 RES projects.

1.2 NYSERDA’s August 10, 2020 Petition and the Commission November 20, 2020 Order

The structure of RES Tier 1 procurements was amended on January 16, 2020 by the [Order Modifying Tier 1 Renewable Procurements](#) (Index REC Order), wherein the Commission directed NYSERDA to offer bidders an Index REC price option in future RES solicitations, beginning with its 2020 solicitation. The Index REC price term nets an as-bid strike price against an index of wholesale energy and capacity prices. Because Index RECs offer renewable energy developers a hedge against market price risk, Index RECs help to reduce financing costs as compared to Fixed RECs. Lower financing costs result in lower project revenue requirements and should, therefore, also lower the REC prices that clear in NYSERDA’s competitive solicitations. Lower REC prices ultimately provide savings to New York ratepayers.

On August 10, 2020, NYSERDA [petitioned](#) the Commission requesting that it authorize a one-time process through which renewable energy project owners who hold effective Tier 1-eligible REC agreements for projects that have not yet achieved commercial operation (REC Counterparties) may apply to NYSERDA to amend their agreements to convert the Fixed-Price Renewable Energy Certificate (Fixed REC) price structure to an Index-Price Renewable Energy Certificate (Index REC) price structure. The proposal extends the logic of the Commission’s Index REC Order to realize the benefits of the Index REC structure for projects that were originally selected on the basis of Fixed REC bids but that remain in the development or construction stage.

On November 20, 2020, the Commission issued its [Order Authorizing Voluntary Modification of Certain Tier 1 Agreements](#). In this Order, the Commission granted NYSERDA’s request to allow NYSERDA to offer each eligible project (those that have not commenced commercial operation) the option to convert its Fixed REC price term to an Index REC price approach. The Commission directed NYSERDA to implement the conversion process detailed in this RFI.

The Commission authorized NYSERDA’s proposed offer-based approach, under which NYSERDA will calculate the Index REC price using the following components: (1) the Fixed REC price term in the project’s existing agreement, less a 20% discount; (2) NYSERDA’s estimate of the future energy and capacity prices in the project’s NYISO load zone that would determine the reference energy price and reference capacity price used in the Index REC formula; and (3) the selected Summer and Winter Unforced Capacity (UCAP) Production Factors for the project.

2 FIXED AND INDEX PRICING MECHANISMS

2.1 Settlement Formulas and Calculation of Index REC Payments

The following section examines how REC payments are calculated under the respective Fixed REC and Index REC contract structures, highlighting the differences between the two.

2.1.1 Fixed REC Pricing

Under a Fixed REC contract structure, the Monthly REC Price is equal to the Fixed REC Price.

$$\text{Monthly REC Price} = P^{\text{Fixed}}$$

where:

$$P^{\text{Fixed}} = \text{Fixed REC Price (\$/MWh)}$$

The same Fixed REC Price applied for all production within a Contract Year, regardless of Energy and Capacity in the project's NYISO Zone. The Fixed REC Price shall also be the same for all Contract Years.

2.1.2 Index REC Pricing

Under the Index REC contract structure, each project has an Index REC Strike Price applied for all production within a Contract Year. The Index REC Strike Price is the same each month and shall also be the same for all Contract Years.

A project's Index REC price, however, varies each month during the Contract Delivery Term and is calculated via the following formula:

$$\text{Monthly REC Price} = SP^{\text{Index}} - REP - RCP$$

where:

$$SP^{\text{Index}} = \text{Index REC Strike Price (\$/MWh)}$$

$$REP = \text{Reference Energy Price (\$/MWh)}$$

$$RCP = \text{Reference Capacity Price (\$/MWh)}$$

Each month's Reference Energy Price shall be a simple average of the hourly NYISO Day-Ahead Market (DAM) locational based marginal pricing (LBMP) for the NYISO Zone in which the Bid Facility is physically located.⁹

⁹ Historical daily NYISO DAM LBMPs can be downloaded from the NYISO website at <http://mis.nyiso.com/public/> or <https://www.nyiso.com/custom-reports>.

Each month's Reference Capacity Price will be based on the conversion of a Reference Unforced Capacity (UCAP) Price, equal to the spot auction price in \$/kW-month for the NYISO Zone in which the Bid Facility is located as published by NYISO.¹⁰

The Reference Capacity Price is converted to its \$/MWh equivalent through the following equation:

$$RCP = \frac{RUP \times UPF \times IC \times 1,000}{REC}$$

where:

RUP = Reference UCAP Price (\$/kW-month)

UPF = UCAP Production Factor (decimal fraction)

IC = Installed capacity (ICAP) of the generator (MW)

REC = Tier 1 Renewable Energy Certificates produced from the Bid Facility for such month (including any Tier 1 Renewable Energy Certificates produced in excess of the Annual REC Cap or otherwise not committed for sale to NYSERDA under this Agreement)

1,000 = kW to MW conversion factor

The UCAP Production Factor will be specified separately for a Winter Capability Period (November through April) and a Summer Capability Period (May through October). These fixed seasonal UCAP Production Factors will be utilized for the duration of the contract tenor.¹¹ REC Counterparties are encouraged to consider current guidance from the NYISO's Installed Capacity Manual.¹²

2.2 Settlement Mechanism after Conversion

NYSERDA will calculate the Reference Energy Price and Reference Capacity Price for each month according to the calculation outlined in the Agreement. The Monthly REC Price will be calculated during a settlement period following the conclusion of each month.

¹⁰ Historical monthly capacity spot auction prices can be downloaded from the NYISO website at http://icap.nyiso.com/ucap/public/auc_view_spot_detail.do or <https://www.nyiso.com/installed-capacity-market>. NYISO UCAP prices are not reported by Zone, but instead by capacity locality. Capacity localities include New York Control Area (NYCA), Southeast New York (or the G-J Locality), New York City (NYC) and Long Island (LI). Nested capacity localities, for example, New York City inside the G-J Locality, can have the same or a higher price as the capacity locality they are located within. For Zones A through F, refer to the NYCA UCAP price. For Zones G through I refer to the G-J Locality UCAP price. For Zone J, refer to the NYC UCAP price. For Zone K, refer to the LI UCAP price.

¹¹ Fixed, seasonal UCAP Production Factors allow for one fixed winter and one fixed summer UCAP production factor for the duration of the contract tenor.

¹² NYISO Installed Capacity Manual, published June 2020, provides UCAP production factors for different resource types and locations https://www.nyiso.com/documents/20142/2923301/icap_mnl.pdf/234db95c-9a91-66fe-7306-2900ef905338

To calculate the amount payable to REC Counterparty, the Monthly REC Price will be multiplied by the lesser of (i) the product of the number of RECs produced from Actual Eligible Production in the prior month and the Bid Quantity Percentage, and (ii) the number of RECs delivered into NYSERDA's NYGATS account. These payments will be calculated after the close of each calendar month during the Contract Delivery Term when NYGATS or the Qualified Independent Party (QIP) provides meter data, typically 15-20 days after month-end. During each month's settlement period, NYSERDA will only purchase RECs such that the cumulative RECs purchased in the active Contract Year do not exceed the Annual REC Cap. The Annual REC Cap may be adjusted prior to Commercial Operation, per Article V of the Agreement.

In the case of a negative Monthly REC Price, the associated payment from REC Counterparty to NYSERDA will not be cash-settled on a month-by-month basis. Instead, the amount owed from REC Counterparty to NYSERDA will accrue as a debit to be deducted from each subsequent monthly payment until fully recovered. If, due to sustained negative REC prices, any such debit goes unrecovered for twelve months, REC Counterparty shall pay the unrecovered amount to NYSERDA in cash as described in Section 4.04 of the Agreement.

3 FIXED-PRICE TO INDEX REC CONVERSION

3.1 Eligibility

Eligibility to participate in the conversion is limited to renewable energy project owners that hold effective Tier 1-eligible Fixed Price REC agreements (REC Counterparties) for projects that have not yet achieved commercial operation. Projects must:

1. have not entered or declared commercial operation as of August 10, 2020; and,
2. have an active Agreement in good standing.

For avoidance of doubt, projects awarded under RESRFP20-1 are not eligible to participate in this RFI.

3.2 Schedule

The schedule for the conversion process is as follows (all times ET):

RFI Release Date (this document)	Tuesday, January 19, 2021
Conversion opens in NYSERDA's Salesforce Portal	Tuesday, February 2, 2021
Deadline for REC Counterparty to opt-in to participate in conversion	Tuesday, February 9, 2021, 3:00 pm
Deadline for NYSERDA to respond with Offers	Friday, February 19, 2021
Deadline for REC Counterparty to accept or decline Offer	Monday, April 5, 2021, 3:00 pm

3.3 NYSERDA Offer Calculation

After the opt-in deadline, NYSERDA will calculate an Index REC strike price for each participating project. NYSERDA will calculate the Index REC strike price ("Offer") using the following formula:

$$\text{Conversion Offer} = P^{\text{Fixed}} \times (1 - 0.2) + LEP + LCP$$

where:

P^{Fixed} = the Fixed REC price term (\$/MWh) in the project's existing agreement, with a 20% discount applied.

LEP = NYSERDA's levelized estimate of the future energy prices in the project's NYISO load zone (\$/MWh).

LCP = NYSERDA's levelized estimate of the future capacity prices (\$/MWh) in the project's NYISO load zone. The selected Summer and Winter UCAP Production Factors are used in the calculation of this component of the conversion Offer.

Neither the price forecasts nor details of the modeling procedures will be disclosed to REC Counterparties.

The resulting Offer will be conveyed to the REC Counterparty through the Portal in the form of an Offer Letter no later than close of business on Friday, February 19, 2021. No counteroffer(s) by any REC Counterparty will be entertained.

The REC Counterparty must accept or decline NYISERDA's Offer by April 5, 2021; see Section 4.

3.4 Process

This Notice invites all eligible REC Counterparties to express interest in receiving an Index REC strike price offer. REC Counterparties must opt in by the deadline in order to participate in the conversion. To opt in, the REC Counterparty will log into the Portal and navigate to the eligible project(s), then complete the relevant "Opt-in" fields, including designating REC Counterparty's primary contact for the duration of the conversion process. This primary contact will receive all communications related to the conversion process. The Opt-in fields will become available in the Portal no later than February 2, 2021.

As part of REC Counterparty's opt-in, the following three items may be requested/required:

1. **UCAP Production Factors:** REC Counterparties have the option to supply project-specific UCAP Production Factors for Summer and Winter seasons; otherwise, the following default UCAP Production Factors listed below will be used by NYISERDA in calculating the Offer.

Default UCAP Production Factors by technology type

Default UCAP Production Factors		
Season	Wind	Solar
Winter	30%	1.5%
Summer	10%	41.5%

REC Counterparties wishing to submit project-specific UCAP Production Factors will do so in two fields labeled in NYISERDA's Salesforce Project record. The UCAP Production Factor will be specified separately for a Winter Capability Period (November through April) and a Summer Capability Period (May through October).

While NYISERDA will allow REC Counterparties to select project-specific Winter and Summer UCAP Production Factors, it is important that REC Counterparties understand how the choice of UCAP Production Factors impacts both the conversion Offer and Settlement processes. Upon conversion, UCAP Production Factors are fixed for the term of the Agreement and will not be adjusted over the Contract Tenor. REC Counterparties are further encouraged to consider current guidance from the NYISO's Installed Capacity Manual.¹³

¹³ NYISO Installed Capacity Manual, published June 2020, provides UCAP production factors for different resource types https://www.nyiso.com/documents/20142/2923301/icap_mnl.pdf/234db95c-9a91-66fe-7306-2900ef905338

- 2. Resource Assessment and Energy Production Estimate:** For projects selected under RESRFP17-1, RESRFP18-1, or RESRFP19-1, the Resource Assessment and Energy Production Estimate (RA/EPE) provided as part of the Bid Package will be used in calculating the project's Offer. **For projects selected under RFP 3084 or RFP 3257, REC Counterparties choosing to opt in must provide either:**
- i) an RA/EPE that responds to all required information identified to achieve the minimum threshold in Appendix 1, and is aligned with the project's Expected Average Annual Production at the time of bid (Bid Proposal) including an hourly P(50) 8760 output file, or
 - ii) a P(50) 8760 hourly schedule in MWh that is aligned with the project's Expected Average Annual Production at the time of bid (Bid Proposal). Should a REC Counterparty wish to provide a P(50) 8760 hourly schedule, NYSEDA will provide a template to the REC Counterparty to populate.

Instructions regarding the supporting documentation required for a Resource Assessment and Energy Production Estimate, by technology, are consistent with the RES solicitations and provided in Appendix 1.

- 3. Bid Quantity Percentage Adjustment:** For existing NYSEDA Agreements in which the Bid Quantity Percentage is lower than 100%, an election by REC Counterparty to (i) retain the existing Bid Quantity Percentage or (ii) to adjust that percentage to 100%.

Should REC Counterparty elect to adjust the Bid Quantity Percentage to 100%, NYSEDA will modify the Bid Quantity and any other terms necessary to accommodate the change.

3.5 Agreement Modification

Appendix 2 to this RFI provides the amended template version of the RES Standard Form Agreement that accompanied NYSEDA's 2019 Tier 1 Solicitation (RESRFP19-1) and includes the redlined changes required to implement the conversion from Fixed REC price terms to Index REC price terms. Note, the template was developed with reference to the Agreements resulting from RESRFP19-1. NYSEDA will adapt the template where necessary to accommodate standard form agreements from other RFPs (such as 3084, 3257, RESRFP17-1, and RESRFP18-1), while retaining any specific terms negotiated at the time of original execution. NYSEDA will not entertain other changes to the contractual terms, except for:

- 1) Changes needed to implement the Index REC price terms;
- 2) Changes needed to incorporate/update references to Tier 1 RECs and NYGATS (for projects selected under RFP 3084 or RFP 3257); and
- 3) Changes necessary for projects with an Energy Storage component (see Section 3.6).

3.6 Projects with Energy Storage

All projects with an Energy Storage component and for which an Energy Storage adjustment is included in Article V of their existing Agreements will receive an Offer that includes an Energy Storage Adjustment Strike Price. Should the REC Counterparty accept the Offer, the Energy Storage Adjustment Strike Price will be incorporated into the project Agreement as the strike price that will be in effect should the project's Energy Storage component not reach commercial operation.

3.7 Requests for Additional Information

NYSERDA may request clarifications and additional information from eligible participants at any time throughout the duration of the conversion process. NYSERDA recommends that REC Counterparties mark commercially sensitive materials provided to NYSERDA as Confidential. REC Counterparties that do not respond promptly to such information requests or do not provide adequate information may be disqualified from further consideration.

3.8 Confidentiality

NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL" see Public Officers' Law Article 6). Information in any tangible form including any document that REC Counterparty wishes to be protected from disclosure to third parties including any information provided as a part of a proposal must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

4 POST-OFFER PROCESS

4.1 Offer Acceptance

REC Counterparties have a maximum of 45 days (until April 5, 2021 at 3:00 pm Eastern Standard Time) to accept or decline NYSERDA's Offer. A REC Counterparty will indicate its response on the Offer Letter, which must be signed by an Officer or other authorized signer. The REC Counterparty will upload the signed Offer Letter directly to the Portal. Responses may be submitted before the deadline, but REC Counterparty rejection is considered final (for example, REC Counterparty cannot decline an Offer after 20 days, then accept it after 40 days). Should a REC Counterparty fail to respond to the Offer, NYSERDA will consider the conversion Offer declined and the REC Counterparty's Fixed REC Agreement will remain in effect.

4.2 Provision of Contract Modification for Execution

NYSERDA will prepare a conformed copy of an RPS or RES Standard Form Agreement Contract Modification which will be delivered to the REC Counterparty, in a manner to be agreed upon, for the REC Counterparty's execution and return.

NYSERDA may rescind Offers to REC Counterparties who fail to execute the Contract Modification within a reasonable amount of time. If a REC Counterparty accepts an Offer and fails to execute the Contract Modification within a reasonable time following offer acceptance, the Offer will be rescinded, and the REC Counterparty's Fixed REC Agreement will remain in effect. Should a REC Counterparty formally withdraw acceptance of the Offer before the Contract Modification is executed, the REC Counterparty's Fixed REC Agreement will remain in effect.

If a project enters Commercial Operation before the Contract Modification is executed, no payments will be made under the original Fixed REC structure unless the REC Counterparty formally withdraws its acceptance of the Offer. Any RECs transferred under a forward transfer arrangement in NYGATS will be settled after the Contract Modification is executed.

NYSERDA may publish the executed Agreements, and/or executed Contract Modifications, and/or relevant terms within the Agreements. Prior to such publication, NYSERDA will redact any critical electric infrastructure information contained in the Agreements, if any, including in the exhibits thereto, and will consider requests to redact confidential business information; provided, however that NYSERDA will not entertain any request to redact price information contained in the Agreement, specifically the Index REC Strike Price.

5 GENERAL CONDITIONS

5.1 Proprietary Information

Consideration should be given before confidential information is submitted to NYSERDA as part of any Proposal. REC Counterparties should consider and review whether information is critical for evaluation, and whether general, non-confidential information may be adequate for review and evaluation purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. The Public Officers Law includes exceptions to disclosure, including Section 87(2)(d) which 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." Additional information submitted to NYSERDA that REC Counterparty wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>.

However, NYSERDA cannot guarantee the confidentiality of any information submitted. NYSERDA reserves the right to make public, after the fifth anniversary of the award date, the Agreement executed with any awarded Proposal.

5.2 Press Releases and Media Contact

All REC Counterparties shall not distribute any press release or contact the media until after the Agreement is executed by both parties and any New York State press releases regarding the awards have been issued. If REC Counterparty wishes to contact the press regarding the award, REC Counterparty must collaborate with NYSERDA's Designated Contacts and Director of Communications to prepare any press release and/or to plan for any announcement. NYSERDA reserves the right to make public, after the fifth anniversary of the Award Notification Date, the Agreement executed with any awarded Bid Facility.

6 ATTACHMENTS

Appendix 1 - Resource Assessment and Energy Production Estimate Requirements

Appendix 2 – Sample Amended RES Standard Form Agreement (Based on RESRFP19-1 Agreement)