

**Advanced Buildings Program**  
**Program Opportunity Notice (PON) 2606**  
**Up to \$25 Million Available**  
**Over Six Rounds**

**Proposals Due Dates:**

**Round 1: January 22, 2013**      **Round 2: June 04, 2013**      **Round 3: December 03, 2013**  
**Round 4: June 04, 2014**      **Round 5: December 03, 2014**      **Round 6: June 04, 2015**

*Proposals to be submitted by 5:00 pm Eastern Time\**

*All, or none, of the available funds could be awarded in any one round*

NYSERDA seeks proposals for development and demonstration activities that advance the energy performance of both new and existing buildings in the residential, multi-family or commercial sector. Technology areas of interest include, but are not limited to: construction materials, strategies and practices; HVAC and lighting technologies, automation technologies enabling load flexibility and smarter background operations; and building integrated renewable energy systems. Energy improvements in buildings can also result from activities that do not involve development of new products or construction methods; improvements can result from new policies, regulations or assessments. NYSERDA also seeks proposals for activities to remove inadvertent barriers that hinder the wider use of promising technologies. Added consideration will be given to technologies and opportunities that in addition to improving the energy and environmental performance, increase building resiliency, recovery, and adaptability to disruptions in the electric grid. The total available funding under six rounds of this solicitation is \$25 million.

Technology Areas of Interest and Funding Level:

Technology Area	Construction Materials, Strategies and Practices	Heating and Cooling	Lighting	Demand Response, Smart Buildings and Demand-Side Resources	Other Technologies or Opportunities
Funding Level	\$5 Million	\$5 Million	\$5 Million	\$5 Million	\$5 Million

The solicitation seeks proposals for: applied research (proof of concept, studies); development activities; and pilot demonstrations. Research proposals submitted to validate/prove a concept must include a task for conducting a business analysis if the concept is found technically promising. The maximum level of funding and minimum preferred cost share required for each project category is as follows:

Project Category	Maximum Award	Total Project Cost Share (Proposer)
Research (Proof of Concept, Studies)	\$100,000	20%
Development	\$500,000	50%
Demonstrations	\$300,000	40%

For development projects in excess of \$300K, proposals are required to be structured with a minimum of two clearly defined phases of not more than \$250K per phase (separate SOW and budgets).

Proposed activities requiring more than the maximum award are required to submit proposals for these additional funds in future rounds of this solicitation. Such proposals may be submitted up to six months before the completion of currently-funded activities.

Technical questions concerning this solicitation should be directed to the following individuals, by technology area:

Technology Area	Designated Contact	Phone (518) 862-1090 Extension	E-mail
Lighting	Marsha Walton	3271	mlw@nyserda.org
Heating and Cooling	Nathan Russell	3469	nar@nyserda.org
Demand Response, Smart Buildings and Demand-Side Resources	Anthony Abate	3522	awa@nyserda.org
Construction Materials, Strategies and Practices	Greg Pedrick	3378	gap@nyserda.org
Other Technologies or Opportunities	Robert Carver	3242	rmc@nyserda.org

Contractual questions should be directed to Nancy Marucci, (518) 862-1090 ext: 3335 (nsm@nyserda.org)  
No communication intended to influence this procurement is permitted except by contacting the designated project manager. **Contacting anyone other than the Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.**

\*Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned. Faxed or e-mailed proposals will not be accepted. See Section IV. Proposal Requirements and Submission for additional information.

**\* Prior to planning and preparing a proposal for submission, proposer should check NYSERDA's website regarding changes to the solicitation. If changes are made to this solicitation, notification will be posted on NYSERDA's web site: <http://www.nyserda.ny.gov/Funding-Opportunities.aspx>**

## I. INTRODUCTION

This Advanced Building Program solicitation encompasses a broad range of activities that address the technical and economic barriers, and benefits of, new or emerging building-related technology products and or services. Preferred activities will promote integration of high-performance and renewable energy and have broad impact on specific building types or sectors. Additional information on each of the five specified technology areas is included in following sections of this solicitation document.

Proposals will be evaluated by technology area and scored on the evaluation criteria listed in this solicitation. Proposals will be reviewed by technical evaluation panels (TEPs) comprised of NYSERDA staff and external technical experts. All proposals will be evaluated against the evaluation criteria provided in Section VI.

## II. PROJECT CATEGORIES

This solicitation offers three project categories. A proposal can only be submitted to one category. Careful consideration should be given to the category selection, as an inappropriate choice could negatively affect project evaluation. Proposers are encouraged to contact the respective NYSERDA project manager with technical questions to gain a complete understanding of the project categories described below:

**Research Category** (up to \$100,000 of NYSERDA funding per project with a preferred proposer cost share of 20% or greater.)

- Applied research aimed at exploring innovative product or technology development, or new policy, business and/or regulatory models.

**Development Category** (up to \$500,000 of NYSERDA funding per project with a preferred proposer cost share of 50% or greater)

- Development and commercialization of products/services for improving the energy performance of either new or existing buildings in New York State. Technical and economic feasibility of the technology/activity should have been demonstrated prior to submitting to this category. If feasibility has not been demonstrated, the proposer may apply under the Research Category.
- Development activities may include field testing to help improve the product/service or validate expected performance.
- Development proposals in excess of \$300K must include at least two clearly defined phases (field testing, prototype refinement, full-scale production, etc.) and separate statements of work and budgets. Funding may be awarded for multiple phases with funding beyond the first phase conditional upon meeting predefined goals of prior phases.

**Demonstration Category** (up to \$300,000 of NYSERDA funding per project with a preferred proposer cost share of 40% or greater)

- Demonstrations of new or under-utilized technologies.
- Demonstration proposals should not include technology or product development activities. If technology or product development activities are appropriate, the proposer may propose under the Research or Development category.
- Demonstration proposals should clearly identify how this project will bring the product or technology closer to commercial realization and how such demonstration will lead to increased use of the technology in New York State.
- It is NYSERDA's preference that the evaluation of the demonstration be conducted by a recognized and independent third-party evaluator (i.e., evaluator has no financial interest in the outcome of the demonstration).

### **III. PROGRAM REQUIREMENTS**

Projects selected for funding must:

- 1) Address an opportunity to advance the energy performance in new and/or existing buildings in the residential, multi-family, commercial or institutional sector;
- 2) Provide direct and quantifiable energy, environmental, and economic benefits to New York State such as emissions reductions, job creation, product manufacturing and sales, higher efficiency, and reduced energy costs;
- 3) Include a project budget using the attached Contract Pricing Proposal Form (CPPF) showing total project cost and proposer cost-share. Include a cost-sharing breakdown by project task in the Statement of Work;
- 4) Agree to pay recoupment to NYSERDA for commercial sales or licensing of any new technology, service or product;
- 5) Demonstrate that the proposer and/or team is qualified to carry out the submitted project proposal;
- 6) Describe what, if any, barriers exist, how the project will overcome them and increase market penetration/practice;
- 7) Development proposals should focus on near-term commercialization activities (basic research is ineligible), discuss value propositions for end-users and distribution channels, provide a preliminary

commercialization and marketing strategy, and discuss potential plans for manufacturing in New York State;

- 8) Demonstration proposals should describe how the demonstration will bring the product closer to market acceptance in New York State or commercial readiness. Demonstration projects must take place within New York State;
- 9) Provide a letter of support and commitment from all funding sources and participating demonstration site(s) and
- 10) Demonstrate that the proposal addresses a current opportunity or gap that is not being addressed adequately by current industry practices and/or federal and/or other state research priorities and funding. Include an analysis of project costs and benefits to justify allocation of funds.

Other Considerations:

- A proposal may be considered non-responsive if it fails to comply with the requirements of this solicitation.
- Prior to an award being made, proposers may be required to demonstrate one or more of the following: access to financial resources sufficient to perform the proposed work; technical experience and capability; adequate facilities (or the ability to access them); and the ability to qualify for an award under applicable laws and regulations.
- Preference will be given to proposers that provide attractive leverage (cash co-funding, partnerships) opportunities for NYSERDA.

#### ***IV. PROPOSAL REQUIREMENTS AND SUBMISSION***

Proposers will be required to use a form fillable "Program Proposal Narrative" (Solicitation Attachment C) for the: executive summary; problem statement and proposed solution; business/commercialization plan or technology replication; New York State impacts and project benefits; statement of work and schedule; proposer qualifications and budget; and Acceptance of/Exceptions to Standard Terms and Conditions

The Program Proposal Narrative must have all questions/sections answered, if not, the proposal will be deemed unresponsive and will be returned.

Proposals should not be submitted in an elaborate format that includes expensive binders or graphics. Double-sided prints, with a staple in the upper left corner, is the preferred format. Unnecessary appendices 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 PON number and the page number.

A Complete Proposal consists of:

- Attachment A: Proposal Checklist (one of which must contain an original signature),
- Attachment A-1: Acceptance of Standard Terms and Conditions
- Attachment B: Disclosure of Prior Findings of Non-responsibility Form,
- Attachment C: Program Proposal Narrative,
- Attachment D: Contract Pricing Proposal Form, and
- Attachment E: Solicitation Marketing Questionnaire

Proposal submission:

- Proposers must submit two (2) print copies and one (1) electronic media copy of the proposal in electronic format (CD) with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature.
- Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.
- Faxed or e-mailed proposals will not be accepted.
- Proposals will not be accepted at any other NYSERDA location other than the address below.

Proposals must be clearly labeled and submitted to:  
**Roseanne Viscusi, PON 2606**  
**NYS Energy Research and Development Authority**  
**17 Columbia Circle, Albany, NY 12203-6399**

## **V. TECHNOLOGY AREAS OF INTEREST**

### **Construction Materials, Strategies and Practices**

#### Background

Construction materials and practices utilized for both new and existing building retrofits are ever-improving with knowledge gained from field work. Continuing to incorporate more robust materials and strategies that promote energy efficiency within this practice, is paramount as building markets continue to change and evolve.

Under this technology category of the solicitation, NYSERDA seeks proposals that pursue the development of new discrete construction materials and systems and/or improve upon existing whole building construction strategies and practices. Proposed activities must improve overall building energy efficiency; address robustness in installation, maintenance and reliability; and identify appropriate value propositions for the supply chain and end-user. Components that rely on the platform of other existing technologies are acceptable.

#### Opportunities

Over 80% of existing buildings in New York State were built before the first oil embargo of 1973. Enabling building energy retrofits of existing building stock represents a significant opportunity to save money, reduce climate impacts and generate or maintain jobs.

Preferred projects will have strong commercialization, market penetration and replication attributes. High priority project topics include, but are not limited to, the following:

- Improvements that reduce energy losses from building envelope (fenestration, doors, etc.)
- Strategies that greatly reduce air leakage (reduced CFM 50), increase thermal insulation (R value > 30 wall, R value > 55 roof) and increase installation productivity (i.e. use of Structural Insulated Panels (SIPs), Insulated Concrete Forms (ICFs)).
- All-in one window flanges, flashing systems
- Low leakage air duct transitions and connections
- Building strategies that achieve whole building performance improvements (on par with Passive House Institute US, or high performance other standards)

Proposers who have questions regarding eligibility are encouraged to contact the relevant NYSERDA contact prior to proposal submission

### **Heating and Cooling**

#### Background

Heating, cooling, ventilation (HVAC), and domestic hot water (DHW) typically account for roughly 50% of commercial and residential buildings' annual energy use. The average residential consumer is spending about \$1k per year when using natural gas and about \$3k per year when using heating oil or propane. Expenditures for non-residential vary based on the type and size of the building, but the energy costs are significant. The NYSERDA heating and cooling program seeks to reduce the energy use and total costs of NYS commercial and residential consumers through the advancement of heating, cooling, ventilation, and domestic hot water systems. Funding is available for R&D efforts associated with fossil-fueled and electric HVAC and DHW systems.

## Opportunities

A NYS law mandates the use of ultra low sulfur heating oil for #2 oil-fired heating systems. The substantial reduction of sulfur from heating oil eliminates a significant barrier to the adoption of oil-fired, condensing appliances. Oil-fired technology was typically limited to about 87% efficiency and there is now an opportunity to increase this to the mid 90% efficiency levels.

Efforts to develop higher performing buildings are underway, which will reduce, sometimes significantly, the space conditioning loads. This creates the opportunity to combine separate HVAC and DHW equipment into one unit. Condensing and other operating features can enable high efficiency at part load.

Recent discoveries and extraction improvements herald potentially abundant domestic supplies of natural gas. However, there are still several uncertainties regarding the extent of the impact. For example, environmental policies may limit extractable quantities; some areas still lack distribution infrastructure, while other areas are capacity constrained; power generators are expected to convert to natural gas as coal becomes less desirable; and a substantial export market could develop, among other important issues. With this in mind, it is difficult to predict how long and to what extent low natural gas prices will persist. This uncertainty is particularly important, considering the lifespan of some HVAC equipment is 10-20 years. Since a primary mission of NYSERDA is to reduce energy use, efforts toward improving the performance of natural gas systems will remain a priority despite favorable supply outlooks and low fuel prices.

With the leap to oil-fired condensing technologies, traditional fossil-fueled technologies are at the point of maximum performance, i.e. efficiencies in the mid-to-upper 90s. Coupling these systems to a heat pump provides an opportunity to push the coefficient of performance over 1, and maintaining this performance level down to NYS design day temperatures is of interest. Additionally, control and component improvements supporting optimum operation of the heating system are also of interest.

High priority project topics include, but are not limited to the following:

- Cold climate and hybrid heat pumps
- Control strategies to optimize heating system performance
- Condensing oil-fired boilers
- Component improvements
- Integrated systems to deliver heating, cooling, ventilation, and/or hot water
- Investigations of novel fuels
- Alternative thermodynamic cycles for heating, cooling, or hot water
- High performance water heating
- Performance validation of novel HVAC and DHW equipment
- Point source heating and/or cooling systems that eliminate distribution networks
- Dehumidification combined with whole house ventilation for alternative air conditioning methods
- Any other research effort that advances the performance of HVAC and DHW equipment
- Innovative approaches to deliver thermal and electric services on-site using residential and commercial scale CHP systems
- Fuel performance testing of innovative, renewable liquid fuels
- Compressor-less and other alternative air conditioning systems
- Energy and heat recovery ventilation systems

Ineligible activities include, but are not limited to:

- Off-site power generation
- Fuel processing
- Biomass systems (a separate solicitation targeting biomass is anticipated to be released in late 2012/early 2013)

Proposers who have questions regarding eligibility are encouraged to contact the relevant NYSERDA contact prior to proposal submission.



## Lighting

### Background

Solid-state lighting (SSL) is revolutionizing the lighting industry. SSL includes light-emitting diodes (LEDs) and organic light-emitting diodes (OLEDs), also known as light-emitting polymers. SSL systems emit light by using semiconductors to convert electricity into light. LEDs are rapidly evolving and have advanced from niche signage, display and indicator applications to general illumination in less than ten years. The potential for improvements in LED lighting intensity, color quality, expected life, lighting maintenance, and controls promise that new performance breakthroughs will be made by those companies that invest resources in SSL research and development.

### Opportunities

LED lighting systems require optimization and compatibility over multiple systems and components. LED product designers and manufacturers need to ensure component interactions do not negatively affect system performance. As a result, new LED product development efforts require more resources dedicated to component testing and development and iterative design than conventional lighting systems.

Poorly-designed LED lighting systems have a high probability of suboptimal performance and premature failure, thus the importance of independent testing and demonstrations to provide objective performance information for decision-makers. There are numerous SSL technical, economic and market barriers that the SSL industry faces where collaborative efforts (testing, application standards) can benefit the entire industry.

The 2025 target for the SSL industry that the U.S. DOE set of being 50% more efficient than conventional lighting, longer lasting and cost-competitive with light that resembles the visible spectrum of natural sunlight is fast becoming an achievable benchmark against which success can be measured. (See the U.S. DOE EERE Research and Development Multi-Year Program Plan March 11 (updated May 2011) [http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/ssl\\_mypp2011\\_web.pdf](http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/ssl_mypp2011_web.pdf).) As the LED's performance improves, the entire lighting industry is benefitted through new design and application opportunities.

NYSERDA has promoted SSL innovations and products, demonstrations and independent evaluations through competitive lighting solicitations over the last 10 years. The solicitations have spawned many successful projects and New York State is becoming an innovation hub for SSL activities and investments

High priority project topics include, but are not limited to, the following:

- SSL lighting concept development,
- LED and OLED new product development (luminaires, driver/advanced controls, optical efficiency, LED packaging and assembly, and components),
- Demonstrations and evaluation of high-performance SSL products at New York State locations,
- Solid state lighting technologies that accelerate integration of renewable energy (PV DC output) and daylighting systems (LED dimming, other control capabilities).

Ineligible technologies:

- Low and high pressure discharge lamp technologies – fluorescent, compact fluorescent, metal halide, sodium, incandescent and tungsten halogen.

Strong proposals will involve a SSL concept, product, or demonstration project that replaces an inefficient light source, in an application that has widespread market potential, and which could lead to significant cost savings over the life of a typical installation (energy, demand and/or maintenance cost savings).

Proposers who have questions regarding eligibility are encouraged to contact the relevant NYSERDA contact prior to proposal submission.

## Demand Response, Smart Buildings and Demand-Side Resources

### Background

Buildings that have the capability to automatically optimize and curtail electricity use through innovative smart-controls can reduce ratepayer's utility costs and increase NYS's grid flexibility and sustainability. Smart Buildings exercise more integrated control over building systems (i.e. HVAC) and may provide information on energy use, automate operations, respond to grid conditions, integrate on-site generation, renewables and storage, and even aggregate control of small loads and appliances. With opportunities to reduce peak load, respond to price signals and provide demand response (DR), NYS electric customers can lower their costs while helping New York State reduce peak demand, price volatility and emissions and increase grid reliability and integration of renewables.

### Opportunities

Medium to large commercial buildings and industrial customers in NYS have access to a variety of energy pricing alternatives, tariffs and demand response programs. This presents them with the opportunity to reduce energy costs and provide value to the grid by optimizing and controlling how their buildings consume energy over the course of a year, a summer, a day, and even an hour. Demand response and peak load reductions are especially valuable in the down-state market (i.e. New York State Independent System Operator Zone J) where delivery and capacity prices are higher and the utility offers demand response programs in addition to programs offered state-wide by the NYISO.

The objective of the Demand Response, Smart Buildings and Demand-Side Resources technology area of the Advanced Buildings Program is to encourage the development and application of technologies and techniques that create value propositions for end-users and expand availability of beneficial resources to the grid. This technology area also encourages innovative sensors, controls or advanced technologies for residential and commercial buildings that enhance energy management.

High priority project topics include, but are not limited to, the following:

- 1. Innovative technologies that allow buildings to be more load flexible**
  - a. Commercial HVAC system equipment and operation
  - b. Building pre-cooling and other temperature management techniques
  - c. Residential/multifamily building loads
  - d. Control and aggregation of small or dispersed loads, (i.e. unitary HVAC, appliances, window AC's, office lighting, etc.)
  - e. On-site thermal or electrical energy storage
  - f. Customer microgrids that cooptimize load and distributed generation
- 2. 'Fast acting' or dispatchable demand response**
  - a. Real-time, dispatchable and fast-acting demand response with telemetry for wholesale ancillary services or real-time energy
  - b. Integration of demand response for distribution utility operations and targeted reliability/contingency management
- 3. Communications and interoperability standards for price and demand response**
  - a. Standards-based machine-to-machine protocols for Smart Buildings / Smart Grid interoperability
  - b. Application of OpenADR in NYS's market structure and demand response programs
  - c. OpenADR client development and integration of compliant systems and hardware
  - d. Innovative distribution and use of price signals in building operation



- e. Innovative communication with loads and demand-side resources (i.e. wireless, Internet, etc.)
- 4. Innovative building controls and analysis methods for optimizing load shape and energy use**
    - a. Use of building energy information, data, modeling, advanced analytics, optimization techniques, machine learning algorithms, dashboards, etc. for optimization
    - b. Novel use of buildings management systems for energy optimization, load management, cost minimization, automated DR, etc.
    - c. Model based approaches to HVAC and building temperature control
    - d. Low cost controls and integration for automated load control and demand response
    - e. Building controls in conjunction with energy storage systems or distributed generation
    - f. Cloud-based controls or load management services
    - g. Low cost meter data acquisition and integration or use of utility supplied meter data
  - 5. Innovative buildings system sensors and applications**
    - a. Advanced buildings system sensors for remote measurement, monitoring, etc. that may be self-configuring, self-calibrating, self-powered, wireless, having distributed intelligence, etc.
    - b. Novel automated buildings system fault detection and diagnostics, performance monitoring and advanced commissioning
    - c. Novel sensor technologies: volumetric air flow, low-cost power metering, low-cost indoor sensors for air quality assessment, humidity, occupancy, daylight, gas, environmental hazard, etc.
  - 6. Innovative dynamic price, demand response and retail electricity bundles**
    - a. Novel retail bundling of energy management services such as retail supply, demand response curtailment services, peak load management, renewables, combined heat and power (CHP), energy performance, information dashboards, etc.
    - b. Management of load on mandatory hourly day-ahead price (MHP) tariffs or other dynamic rate (i.e. indexed rate)
    - c. Use of dynamic rates in residential and multifamily buildings

Proposers who have questions regarding eligibility are encouraged to contact the relevant NYSERDA contact prior to proposal submission.

## **OTHER TECHNOLOGIES OR OPPORTUNITY AREAS**

### Background

PON 2606 has been structured to group anticipated research activities into major technology areas. While the majority of research activities will fit into one of the four previously described technology areas, some potential proposers may find their technology does not readily fit into one of the groupings.

Energy improvements in buildings can also result from activities that do not involve development of products, services or methods. These include policy or regulatory reform, or assessments of technology, markets or barriers. These activities can be difficult to evaluate side-by-side with discrete product development efforts because they do not always share the same metrics.

### Opportunities

The “Other Technologies and Opportunities Areas” category is intended to support (1) technology development not fitting into other categories, and (2) policy research and assessments whose benefits are often broader, more diffuse than a single product. Within this category, proposers will select one of two form-fillable Program Proposal Narratives for presenting their research activities. The first option will be Program Proposal Narrative-Other Technology for technology development efforts that do not fit in the four other categories. The second option will be a form-fillable Program Proposal Narrative-Research that is oriented to policy and regulatory research, or state-wide technology assessments. All submissions received in this category will be evaluated against one another with a single ranking of activities being produced.

Examples of eligible technology development activities:

- Within building electronic informational displays
- Furnishing made with environmentally preferable performance/processes

Examples of eligible policy, regulatory, and technology assessment activities:

- Evaluation of new business models for delivering energy efficient technologies
- Engineering studies to address New York building code concerns for a class of energy efficient products
- Assessment of benefits and costs for increased use of direct current power in buildings with onsite generation

Proposals dealing with the following subject technologies or efforts are ineligible for this category: development of combined heat and power technologies, Data Center energy efficiency, market awareness for underused technologies, work force training, and engineering design studies for a technology at a specific building.

Proposers who have questions regarding eligibility are encouraged to contact the relevant NYSERDA contact prior to proposal submission.

## VI. *Proposal Evaluation*

Proposals that meet Proposal Requirements will be reviewed by a program area specific Technical Evaluation Panel (TEP) using the Evaluation Criteria identified below. After the proposals are reviewed, NYSERDA will issue a letter to each proposer indicating the proposal evaluation results. Proposers receiving favorable evaluations will be invited to enter into contract negotiations with NYSERDA. The proposer may also be asked to address specific questions or recommendations of the TEP before contract award.

EVALUATION CRITERIA:

Problem and Proposed Solution (All Categories) –

- Does the proposal address an eligible technology?
- How significant is the problem or opportunity to New York State?
- How well does the proposed solution address the problem or opportunity?
- Is the proposed work technically feasible, innovative, and superior to alternatives? How appropriate are the cost, technical, and performance goals for the proposed technology or product?
- Does the proposer exhibit an understanding of the fundamental scientific principles applicable to the technology?
- Does the proposer exhibit understanding of the state-of-the-art for the immediate and alternative technology?
- If the proposed work is a follow-on project to a previously co-funded NYSERDA project, what was the outcome of the earlier phase?
- Is the proposed project addressing a problem or opportunity that is not being addressed adequately by others (industry, government research programs)?

Additional Considerations for Demonstration Projects –

- Is the proposed demonstration of a new or emerging technology?
- What is the level of commitment of a New York State site?
- Is the performance monitoring and data analysis plan adequate?

New York State Impact and Project Benefits (All Categories)

- To what extent will there be economic benefits in New York State in the form of subsequent commercial activity and economic growth?
- Does the proposed activity increase the resiliency, recovery, and adaptation of buildings to multiple days of disruption to the electric grid?

- Does the proposal include a New York State demonstration site that pays into the System Benefits Charge?
- Does the project team include New York State organizations?
- How well are the potential benefits to New York State quantified?
- How likely is it that the projected benefits will be realized?
- Does the proposed project have favorable energy, efficiency, environmental and economic impacts in New York State? How significant are these impacts?
- To what extent will there be economic benefits in New York State in the form of subsequent commercial activity?
- How well does the project reflect NYSERDA's overall objectives (risk/reward relationships, similar ongoing or completed projects, the general distribution of NYSERDA projects among industries and other organizations, and the distribution of projects within New York State)?

#### Statement of Work and Schedule (All Categories)

- How appropriate are the technical and performance goals for the proposed project?
- Do the proposed technical and performance goals adequately allow for measurement and verification of the success of the proposed project?
- Is the work strategy in the Statement of Work sound and likely to achieve the technical and performance goals?
- Does the Statement of Work include an economic analysis of the technology based on performance measurements?
- Is the Statement of Work well organized, complete, and appropriate for the goals identified?
- How realistic is the schedule for achieving the goals of the proposed project?
- Is the proposed level of effort reasonable to complete the proposed project?
- Are the proposed milestones reasonable?

#### Additional Considerations for Demonstration Projects

- Are the data acquisition, monitoring, reporting and evaluation plans reasonable?
- If monitoring baseline performance is necessary to document system benefits, does the Statement of Work include a provision to adequately gather baseline data?

#### Proposer Qualifications (All Categories)

- Has the proposer provided evidence of being qualified to perform the proposed work based on the qualifications of the organization(s) and the involved individual(s)?
- Were resumes of key individuals included in the proposal?
- To what degree does the proposer have the necessary technical and business background and experience?
- Does the team include a New York State business, thereby providing economic benefits in the form of jobs?
- Has the proposer provided evidence of good past performance on other relevant projects?
- Is the proposing team appropriately organized?
- Are staff allocations and responsibilities reasonable?

#### Project Cost and Value (All Categories)

- Is the overall project cost justified and reasonable based on the level of effort proposed and the expected outcome and benefits?
- How significant is the potential market opportunity relative to the project cost?
- How appropriate are the proposer's co-funding contributions (sources and amounts) with respect to the degree of risk, potential to benefit from the work, and financial status of the organization?
- How firm are the commitments and support from essential participants, co-funders, and related business and other organizations?
- Are the overhead rates reasonable and supported with appropriate documentation?
- Are equipment, facility, material, and travel costs based on reasonable estimates?
- Are the labor rates reflective of the industry?

#### Technology Transfer / Repeatability (All Categories)

- Does the proposed technology have commercial applications at other New York State sites?
- Does the proposed project demonstrate an effective strategy and strong potential for the project to lead to future use of the technology in New York?
- Does the proposed technology address market needs?

**Business/Commercialization Plan (Development Category Only) -**

- Is the proposed product or concept likely to be successful?
- Are there sufficient markets or needs for the concept/technology?
- Does the proposed project address market needs?
- Are the business and commercialization or replication plans appropriate for the type of project and stage of development?
- How significant are the barriers to market entry?
- Does the proposer demonstrate a clear understanding of the steps required to overcome these barriers?
- Has the market been identified and characterized?
- Does the proposal identify competing and alternate solutions, and clearly show why this product or concept is superior to, price competitive with, or provides value compared to alternative products or solutions?
- If follow-on financial resources are necessary, are plans to raise necessary financial resources likely to be successful?

Programmatic Considerations – Proposals will be reviewed to determine if they reflect NYSERDA's overall objectives, including: risk/reward relationships, similar ongoing or completed projects, and the general distribution of projects among categories, technologies, industries and other organizations, and geographically within New York State.

## **VII. 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 accept 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/~media/Files/About/Contact/NYSERDARegulations.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, 30 South Pearl Street, Albany, NY 12245. A directory of certified minority- and women-owned business enterprises is available from: Empire State Development, Minority and Women's Business Development Division, 30 South Pearl Street, Albany, NY 12245.

**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/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_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 multiple awards 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, at its sole discretion, will decide whether to contract successful projects using time and material or milestone payment terms. 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. NYSERDA expects to notify proposers in approximately 10 weeks from the proposal due date whether your proposal has been selected to receive an award. **NYSERDA may decline to contract with awardees who are delinquent with respect to any obligation under any previous or active NYSERDA agreement.**

**Recoupment** - For any new product development effort, research and/or development receiving into total NYSERDA funding over \$100,000, NYSERDA will require a royalty based on sales of the new product developed. NYSERDA's standard royalty terms are 1.5% of sales for products produced in New York State (for a period of fifteen years or until the Contractor pays NYSERDA an amount equal to the amount of funds paid by NYSERDA to the Contractor, whichever comes first) and 5% of sales for products produced outside of New York State (for a period of fifteen years or until the Contractor pays NYSERDA an amount equal to three times the amount of funds paid by NYSERDA to the Contractor, whichever comes first).

**Annual Metrics Reports** - On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Please see Attachment F: Sample Metrics Reporting Guides for the metrics that you will be expected to provide and the reporting duration. **NYSERDA may decline to contract with awardees who are delinquent with respect to metrics reporting for 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.

**Attachments**

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- Attachment A: Proposal Checklist
- Attachment A-1: Acceptance of Standard Terms and Conditions
- Attachment B: Disclosure of Prior Findings of Non-responsibility Form
- Attachment C: Program Proposal Narrative
- Attachment D: Contract Pricing Proposal Form
- Attachment E: Solicitation Marketing Questionnaire
- Attachment F: Sample Agreement (Not included in proposal submission)
- Attachment G: Sample Metrics Reporting Guides (Not included in proposal submission)



**ATTACHMENT A - PON No. 2606 PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Federal Tax Identification #/Social Security			
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
<p>THE PRIME CONTRACTOR MUST <u>SIGN THIS FORM BELOW</u> and ANSWER THE FOLLOWING QUESTIONS:</p> <p>Do you accept all Terms &amp; Conditions in the Sample Agreement? (If no, explain on separate page) <span style="float:right">___ Yes ___ No</span>  <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b></p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) <span style="float:right">___ Yes ___ No</span></p> <p>Are you a Minority or Women-Owned Business Enterprise? <span style="float:right">___ Yes ___ No</span></p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float:right">___ Yes ___ No</span></p> <p>Are you submitting the required number of copies? (See proposal instructions.) <span style="float:right">___ Yes ___ No</span></p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? <span style="float:right">___ Yes ___ No</span>          (if yes, explain on separate page)</p> <p>Have you ever contracted with NYSERDA before? (if yes, provide contract numbers and project titles) <span style="float:right">___ Yes ___ No</span></p> <p>Do you pay into the System Benefits Charge (SBC) fund as noted on your electricity bill? <span style="float:right">___ Yes ___ No</span></p>			
<b>Technology Category</b> (please check one)		<b>Project Category</b> (please check one)	
A. Lighting <span style="float:right">___</span>		A. Research (Proof of Concept, Studies) <span style="float:right">___</span>	
B. Heating and Cooling <span style="float:right">___</span>		B. Development <span style="float:right">___</span>	
C. Construction Material, Strategies, and Practices <span style="float:right">___</span>		C. Demonstration <span style="float:right">___</span>	
D. Demand response, smart buildings and demand-side resources <span style="float:right">___</span>			
E. Policy and Other Technology Areas <span style="float:right">___</span>			
<b>COST SHARE TOTALS</b>			
Proposer \$ _____ NYSERDA \$ _____ Others \$ _____ Total \$ _____			
<b>AUTHORIZED SIGNATURE &amp; CERTIFICATION</b>			
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, 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 A-1  
Acceptance of Standard Terms and Conditions**

**(Mandatory)**

This is to verify, as the Authorized Signatory, I have read and reviewed the Standard Terms and Conditions set forth by NYSERDA under Attachment F: Sample Agreement. I accept all of the Terms and Conditions except for those listed below. Furthermore, I acknowledge that NYSERDA may or may not accept any or all of the listed exceptions, and that if they are not listed here, ANY exceptions submitted after the due date will NOT be accepted.

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

***NYSERDA will only negotiate exceptions to the Standard Terms and Conditions that are presented at the time of proposal. For awarded proposers who do not have any exceptions to the Standard Terms and Conditions, priority will be given during the contracting process.***

Exceptions: (List individually)

**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? (Please indicate with an "X")		Yes
		No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")		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? (Please indicate with an "X")		Yes
		No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		
Basis of Finding of Non-responsibility: (Add additional pages as necessary)		

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? (Please indicate with an "X")		Yes
		No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (Add additional pages as necessary)

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

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

Please refer directly to the PDF “Attachment C:  
Program Opportunity Notice (PON) 2606  
Proposal Narrative.”

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No.	Page
Contractor:			Name of Proposed Project:	
Address:				
Location (where work is to be performed):			NYSERDA funding: Total Project Cost:	
Cost Element	Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding	
1. Direct Materials				
a. Purchased Parts				
b. Other				
Total Direct Materials				
2. Materials Overhead			Rate:	
3. Direct Labor (specify names/titles)			Hours	Rate/hr
Total Direct Labor				
4. Labor Overhead			Rate %	\$ Base
Total Labor Overhead				
5. Outside Special Testing				
6. Equipment				
7. Travel				
8. Other Direct Costs				
9. Subcontractors/Consultants				
Total Subcontractors/Consultants				
10. General & Administrative Expense			Rate %	Element(s)
11. Fee or Profit (if allowable)			Rate:	
12. Total Estimated Project Cost				
This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.				
Typed Name and Title:			Signature:	Date:
Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months?    ___ Yes    ___ No If yes, identify:				





## ATTACHMENT D

### INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

Your cost proposal may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided.

#### A. GENERAL

The schedule must be submitted on NYSERDA's Contract Pricing Proposal Form.

#### B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

(Title each supporting schedule and cross-reference it to the item number on the Contract Pricing Proposal Form)

##### 1a. DIRECT MATERIALS - PURCHASED PARTS

Provide the following information for each proposed item with an estimated unit cost in excess of \$15,000.

- o Description of item
- o Proposed vendor
- o Quantity needed
- o Unit cost
- o Basis for cost (i.e., catalog, prior purchase, quote, etc.)
- o Total cost
- o Evidence of a competitive selection process in accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement.

##### 1b. OTHER DIRECT MATERIALS

In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, for all items in excess of \$5,000, provide whatever information would be necessary to understand what is being obtained, how it is being obtained, what it will cost and how the estimated cost was determined with justification for all items.

##### 2. MATERIALS OVERHEAD (also applicable to other Indirect Rate categories: 4. LABOR OVERHEAD and 10. G&A EXPENSE)

- o If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
- o If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising the proposed period of contract performance.
  - o A description (chart or other) of the organization of the indirect cost center.
  - o The budget of indirect costs, by account, for each proposed indirect expense rate.
  - o The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
  - o Actual incurred rates for the prior three years, including actual base and pool amounts.

##### 3. DIRECT LABOR

###### a. Commercial Enterprises

- (1) Attach supporting schedules showing:
  - o Each category or type of labor being estimated
  - o Applicable labor rates per hour (straight-time)
- (2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.

###### b. Educational Institutions

Provide the following for each calendar year of the contract:

- (1) For individuals not on an "actual hours worked" basis:

- o individual's name
  - o annual salary and the period for which the salary is applicable (preferably in weeks)
  - o the proportionate time to be charged to this effort.
- (2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)

4. LABOR OVERHEAD (Same as Instructions for 2. MATERIALS OVERHEAD)

5. OUTSIDE SPECIAL TESTING

- a. Describe the effort.
- b. Provide the units of time (hours, days, weeks), cost rates, and the vendor.
- c. In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.

6. EQUIPMENT

Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.

- o vendor
- o model number
- o quantity
- o competitive selection process
- o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
- o description of the use or application (NYSERDA dedicated, contract dedicated, other)

7. TRAVEL

- a. NYSERDA will accept as a direct charge only that travel required to perform the statement of work.
- b. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
- c. Identify and support any other special transportation costs required in the performance of this project.

8. OTHER DIRECT COSTS

- a. Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
- b. Provide cost details for the amounts estimated (hours or units, rates, etc.)
- c. If any internal service center rates are applied, provide details similar to that required in Instruction #B.
- d. For computer costs identify the make, model and type of computer, hours of service and appropriate rates, and whether the machine is company owned or leased.

9. SUBCONTRACTORS/CONSULTANTS

- a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
- b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

10. GENERAL & ADMINISTRATIVE (G&A) EXPENSE (Same as instructions for 2. MATERIALS OVERHEAD)

11. FEE OR PROFIT

List the rate proposed for profit. No fee or profit is allowed under product development, demonstration or other certain cost-sharing projects.

**Attachment E**  
**Solicitation Marketing Questionnaire**

**(Mandatory)**

How did you hear about this solicitation?

- NYSERDA Announcement
- NYSERDA Website
- NYSERDA Staff
- NYSERDA Toll Free Number
- Contract Reporter
- Outreach Coordinator
- Trade Magazine/Newsletter
- Conference/Technical Meeting
- Referral: \_\_\_\_\_
- Other: \_\_\_\_\_

# Attachment F: Sample Agreement

Agreement No.:

Amount:

Type: **Cost-Sharing**

**Agreement** dated 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 having its principal office and place of business at (the "Contractor").

In consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

## 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 and Exhibits A, B, C, and D hereto, all of which are made a part hereof as though herein set forth in full.

Budget: The Budget set forth in Exhibit A hereto.

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

Effective Date: The effective date of this Agreement shall be the date in the first paragraph of page one, above.

Final Report: The Final Report required by the Statement of Work hereof.

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.

Progress Reports: The Progress Reports required by the Statement of Work hereof.

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.

(b) Data Rights and Patents Definitions:

Contract Data: Technical Data first produced in the performance of the contract, Technical Data which are specified to be delivered under the contract, or Technical Data actually delivered in connection with the contract.

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, and under conditions which indicate that the benefits of the invention are available to the public on reasonable terms.

Proprietary Data: Technical Data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) are not already available to NYSERDA without obligation concerning their confidentiality.

Subject Invention: Any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this Agreement, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented, under the Patent Laws of the United States of America or any foreign country.

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification,



and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

Unlimited Rights: Rights to use, duplicate, or disclose Contract Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(c) Payments to NYSERDA Definitions:

Product: [PRODUCT OR TECHNOLOGY DEFINITION]

New York State Manufacturer: Any manufacturer which provides in excess of 50% value added to the manufacture of the Product, and/or any manufacturer which provides in excess of 50% value added to the manufacture of a Subject Invention, as developed in this Project, within the geographical boundaries of the State of New York. Such value added shall be capable of being proven by an audit conducted in accordance with generally accepted auditing standards. "Value added" means any separable component of the Product or a Subject Invention, 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**

Any manufacturer that (produces/assembles) the Product within the geographic boundaries of New York State.

Sale: A sale or lease of the Product or a Subject Invention.

Sale Price: Gross revenue, excluding returns and allowances such as sales tax, freight, and insurance, if applicable, derived from a Sale.

Seller: The Contractor, or any parent, subsidiary, affiliate, franchisee, licensee or assignee thereof.

## 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 Mr./Ms. shall serve as Project Director and as such shall have the responsibility of 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 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 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.

### Article III

#### Deliverables

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

### Article IV

#### Compensation

Section 4.01. Cost-Sharing. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as full compensation for NYSERDA's share of the costs for 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 a maximum amount of \$\_\_\_\_\_ for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

(a) Staff Charges: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.

(b) Direct Charges: 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 in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally 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.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate federal guidelines or generally accepted accounting principles.

Section 4.02. 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 4.02. 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 months following the completion of the Work or 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.

Section 4.03. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown on the upper right hand corner of page one of the Agreement. Invoices shall set forth total project costs incurred. These shall be broken down into NYSERDA's Funding share and into the Cost-Share and other Cofunding share, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

- (a) Staff charges: for each employee, the name, title, number of hours worked, hourly rate and labor extension;
- (b) Direct charges: all direct costs shall be itemized on the invoice and supported by documentation, such as vendor invoices, travel vouchers or other documentation; and
- (c) Indirect charges: indirect cost rates and method by which rates are applied.

The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with such invoice.

In accordance with and subject to the provisions of such Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA's share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other 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. An invoice for final payment shall include, in addition to the material required pursuant to Section 4.03 hereof, a statement as to whether any invention or patentable devices have resulted from the performance of the Work. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six 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 previously made to the Contractor with respect thereto and subject to the maximum commitment of \$\_\_\_\_\_ set forth in Section 4.07 hereof.

Section 4.05. 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 4.06. 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 the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance. Further, the Contractor shall keep, maintain, and preserve at its principal office until such time as the Contractor's payment obligations to NYSERDA pursuant to Section 8.03 of the Agreement have been met, full and detailed books, accounts, and records in connection with Sales, and shall require licensees to maintain records of Sales.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is \$\_\_\_\_\_. 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 4.08. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 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 an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder. Further, the Contractor shall provide to NYSERDA, on a reasonable basis, access to its books and records and those of any parent, subsidiary, affiliate, franchisee, licensee, or assignee to assure compliance with the payment provisions contained in Section 8.03 of the Agreement.

*(Or, if the Agreement is structured for Milestone based payments: )*

#### Article IV

#### Compensation

Section 4.01. Payments. The Contractor will be paid, upon submission of proper invoices, the prices stipulated herein for Work delivered or rendered and accepted, less deductions, if any as herein provided. The total price which NYSERDA will pay to the

Contractor represents the price of the Work. Subject to the limiting provisions of Article XII hereof, as NYSERDA's price of the Work, NYSERDA will pay to the Contractor the total price of \$\_\_\_\_\_, payment of which will be made according to the Schedule of Payments contained in Section 4.02 hereof.

Section 4.02. Schedule of Payments. At the completion of each Milestone Billing Event so identified, the Contractor may submit invoices requesting payment by NYSERDA of the amounts corresponding to the amounts indicated indicated below. NYSERDA shall make payment to the Contractor in accordance with and subject to its Prompt Payment Policy Statement attached hereto as Exhibit D. The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of such Exhibit D, of any information or documentation which the Contractor did not include with such invoice.

Milestone Event

Price

Section 4.03. 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 4.03. 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 months following the completion of the Work or 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.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other deliverables contained in Exhibit A, Statement of Work pursuant to Section 6.02 hereof, the Contractor shall submit a request for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. A request for final payment shall include a statement as to whether any invention or patentable devices have resulted from the performance of the Work. All requests for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six 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

request for final payment, the total amount payable pursuant to Section 4.01 hereof, less all Milestone Billing payments previously made to the Contractor with respect thereto.

Section 4.05. 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 4.06. 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 the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is \$\_\_\_\_\_. 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 4.08. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 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 an agency of the United States, State of New York or NYSERDA 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 under \$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 B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. 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.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of the 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 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.

## 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 the Final Report 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 reports 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 the Final Report and all other 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

### Technical Data; Patents; Payments to NYSERDA

#### Section 8.01. Rights in Technical Data

(a) Technical Data: Rights in Technical Data shall be allocated as follows:

(1) NYSERDA shall have:

(i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data; and

(ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) The Contractor shall have:

***[CASE I: If there are no pre-existing patents -- Sections (i), (ii) and (iii)]:***

(i) the right to withhold Proprietary Data except as otherwise provided in paragraph (ii) below;

(ii) the right to make, use and sell the Product; and

(iii) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

***[CASE II: If there are pre-existing patents -- Sections (i), (ii) and (iii)]:***

(i) the right to withhold Proprietary Data except as otherwise provided in paragraph (ii) below; and

(ii) the right to make, use and sell the Product; and

(iii) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

The Contractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the Contract Administrator.

#### Section 8.02. Patents.



(a) The Contractor may elect to retain the entire right, title and interest throughout the world to each Subject Invention of the Contractor conceived or first actually reduced to practice in the performance of the Work under the Agreement; except, that with respect to any Subject Invention in which the Contractor elects to retain title, NYSERDA shall have a non-exclusive, non-transferrable, irrevocable, paid-up license for itself, the State of New York and all political subdivisions and other instrumentalities of the State of New York, to practice or have practiced for or on their behalf the Subject Invention throughout the world, exclusively for their own use of the Subject Invention.

(b) Within six months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall submit to NYSERDA a written invention disclosure. Within twelve months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall advise NYSERDA in writing whether the Contractor elects to retain principal rights in the Subject Invention. The Contractor shall file the patent application for a Subject Invention within two years of the date of election. If the Contractor fails to disclose a Subject Invention, fails to elect to retain principal rights thereto, or to file a patent application within the time specified in this paragraph, or if the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall convey to NYSERDA title to the Subject Invention unless NYSERDA shall waive in writing its right to take title. In the event the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall retain a non-exclusive, royalty-free license throughout the world in such Subject Invention transferable only with the 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 days after receipt of request for approval, the requested transfer 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.

(c) The Contractor shall submit reports to NYSERDA in accordance with Exhibit A, Statement of Work and the Metrics Reporting Guide attached hereto. In the event the Contractor fails to demonstrate that the Contractor has taken effective steps within three years after a patent is issued to bring the Subject Invention to the point of Practical Application, then NYSERDA may require the Contractor to grant a non-exclusive or exclusive license to responsible applicants under terms that are reasonable under the circumstances. If Contractor has not executed a license with a responsible applicant within ninety (90) days after NYSERDA provides written notification to Contractor, then NYSERDA shall have the right to grant responsible applicants a non-exclusive or exclusive license under terms that are reasonable under the circumstances..

(d) The Contractor shall include the foregoing patent clauses, suitably modified to identify the parties, in all subcontracts which involve the performance of Work under this Agreement. The Subcontractor shall retain all rights provided for the Contractor, and the Contractor shall retain all rights provided for NYSERDA, as set forth above.

### Section 8.03. Payments to NYSERDA.

(a) Payments to NYSERDA: The Contractor agrees to pay to NYSERDA the following amounts:

- (1) When a Sale is made by a Seller when the Seller is a New York State Manufacturer: 1.5% of the Sale Price.
- (2) When a Sale is made by a Seller when the Seller is not a New York State Manufacturer: 5% of the Sale Price.

The Contractor's obligation to make payments to NYSERDA shall commence from the date of the first Sale and shall extend for a period of time as follows:

- (1) in the event of Sales made by a Seller when the Seller is a New York State Manufacturer, for a period of fifteen years thereafter, or until the Contractor pays NYSERDA an amount equal to one times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement, whichever comes first; or
- (2) in the event of Sales made by a Seller when the Seller is not a New York State Manufacturer, for a period of fifteen years thereafter, or until the Contractor pays NYSERDA an amount equal to three times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement, whichever comes first.

Such payments shall be payable in annual installments and shall be paid by the first day of March in the calendar year immediately following the year during which the Contractor receives revenues as described above (the "Due Date"). Any payment not received by the applicable Due Date shall be deemed delinquent. A delinquent payment shall be made with interest with such interest computed commencing with the Due Date of such payment. The interest rate payable shall be the "Prime Rate" existing as of the Due Date of such payment plus five (5) percentage points. Such interest shall be compounded monthly.

(b) Annual Reports. The Contractor shall provide NYSERDA an annual report detailing, by manufacturer, the number of items sold or leased, or the payment or other receipts received, and the resultant amount earned by, and paid to, NYSERDA in accordance with paragraph (a) hereof. Such report shall be furnished to NYSERDA not later than February 1 following the calendar year covered by the report. The Contractor's obligation to provide Annual Reports shall commence on February 1 of the calendar year following either the Contractor's receipt of Final Payment pursuant to Section 4.04 hereto, or upon the first Sale, whichever event occurs first. In the event that, for a period of five consecutive years, the annual reports indicate that no Sales are made and no payment is due to NYSERDA, the Contractor may cease submittal of annual reports. If, however, Sales are made in subsequent years, the Contractor's obligation to submit annual reports shall resume.

(c) Licensing or Franchise Agreements. The Contractor shall not enter into any agreement with any party with respect to the licensing, franchising, or assignment of rights in the Product or any Subject Invention which contains provisions inconsistent with the Contractor's obligation as set forth in this Section. The Contractor shall provide copies of any proposed licensing or franchise agreements to NYSERDA and shall not execute any such agreements without the prior written consent of NYSERDA. Such consent shall not be unreasonably withheld, and, in the event that notice of consent or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, such licensing or franchise agreement 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.

## Article IX

### Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) Contractor certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate; and
- (i) during the time the Contractor has obligations to NYSERDA pursuant to Section 8.03 the Contractor will not permit its current or future principals to engage in any competing activities for so long as such principals are employed by the Contractor and for a period of three years thereafter (excluding teaching and research.) Also, during the time the Contractor has obligations to NYSERDA pursuant to Section 8.03 the Contractor will not, and it will not permit its current or future principals to loan monies to entities competing in the development, enhancement, or revision of the Product or any Subject Invention.

## Article X

### Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the 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 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) 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) Upon commencement of marketing of the Product, product liability insurance for bodily injury liability, including death, and property damage liability, arising out of the use of the Product 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. Product liability insurance naming the NYSERDA and State of New York as additional insureds required under this Agreement shall remain in effect for as long as the payment obligation pursuant to Section 8.03 of this Agreement is in effect.

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 Section 11.02 (a) hereof and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. Upon commencement of marketing of the Product, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Section 11.02 (b) hereof and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. 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

#### 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 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 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 30 days prior written notice to the Contractor. In such event, compensation 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 Compensation 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 reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

(c) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a was intentionally false when made. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

(d) In the event of termination, the Contractor's payment obligations set forth in Section 8.03 of the Agreement shall be adjusted as of the effective date of termination, with such payment obligations being calculated as follows:

Total NYSERDA funds actually paid to <u>the Contractor</u>	x	Payments defined in Section 8.03 of the Agreement
NYSERDA total maximum commitment set forth in Section 4.07 of the Agreement		

(e) 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.

### Article XIII

#### Independent Contractor

Section 13.01. Independent Contractor. 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 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, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

### 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 B 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 B 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 L. Earley  
Title: Director of Contract Management  
Address: 17 Columbia Circle, Albany, New York 12203  
Facsimile Number: 518-862-1091  
E-Mail Address: [cle@nyserda.org](mailto:cle@nyserda.org)  
Personal Delivery: Reception desk at the above address

**CONTRACTOR**

Name:  
Title:  
Address:  
Telephone Number:  
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 in writing, at the addresses contained in Section 15.01 (a), or such other address as the parties have furnished to each other in writing.

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

### Business Reorganizations

Section 16.01. Business Reorganizations. In the event the Contractor proposes to consolidate or merge into or with another corporation or entity, or to sell or dispose of all or a majority of the assets of the Contractor, or to otherwise undertake a reorganization which alters or changes the rights of NYSERDA as provided in this Agreement, before any such action shall be taken, the Contractor shall either:

(a) buy out its obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement by paying NYSERDA an amount equal to three times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement; or

(b) assign or otherwise transfer to a new entity the Contractor's obligations under this Agreement, including, but not limited to, the obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement. Such assignment or transfer 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 days after receipt of request for approval, the assignment or transfer 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.

## Article XVII

### Publicity

Section 17.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Technical 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 Technical 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year first above written.

CONTRACTOR

NEW YORK STATE ENERGY RESEARCH  
AND DEVELOPMENT AUTHORITY

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title



REVISED 9/06

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 attached agreement, contract, license, lease, amendment, modification or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than NYSERDA, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-DISCRIMINATION REQUIREMENTS. In accordance with 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, age, disability 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.

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. 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 B, the terms of this Exhibit B shall control.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.
- d. 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.

## EXHIBIT C

### REPORT FORMAT AND STYLE GUIDE

#### PURPOSE

This document explains how to prepare a technical report for the New York State Energy Research and Development Authority (NYSERDA). It describes editorial and production procedures and gives electronic data-transfer information. NYSERDA's contractors prepare the reports describing NYSERDA research and development projects that NYSERDA publishes. Please direct questions about format and style to Diane Welch of NYSERDA's Technical Communications unit: (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail dlw@nyserdera.org

#### COPYRIGHTS

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA the copyright owner's written permission to use copyrighted illustrations, tables, or substantial amounts of text from another publication.

#### REPORT FORMAT AND SEQUENCE

The following items are required in all technical reports and should be paginated in the following sequence:

- Title page (no page number)
- Notice (no page number)
- Abstract (iii)
- Acknowledgments (optional) (iv)
- Table of Contents, including listings of figures and tables (v or vii)
- Summary (S-1)

**NOTE: the Abstract, Table of Contents, and each section begin on right-hand, odd-numbered pages.**

#### Title Page

- The following information is required (see sample on last page):
  - Report title and type of report (i.e., final, interim, or summary)
  - Name of NYSERDA project manager(s)
  - Corporate name, city, and state of contractor(s), including contact person(s) or project manager(s)
  - Project cosponsors, including contact person(s) or project manager(s)
  - Contract number (e.g., 3178-ERTER-MW-94)

#### Notices

One of these legal notices or disclaimers is required:

- When NYSERDA is the project's sole sponsor, this notice must be used:

## NOTICE

This report was prepared by \_\_\_\_\_ in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority (hereafter "NYSERDA"). The opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, NYSERDA, the State of New York, and the contractor make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

- When there are other project cosponsors, use the following notice instead:

## NOTICE

This report was prepared by \_\_\_\_\_ in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority and the \_\_\_\_\_ (hereafter the "Sponsors"). The opinions expressed in this report do not necessarily reflect those of the Sponsors or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, the Sponsors and the State of New York make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. The Sponsors, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

### **Abstract and Key Words** — right-hand, odd-numbered page [iii]

An abstract is a brief, 200-word description of project objectives; investigative methods used, and research conclusions or applications. This information will be used when NYSERDA registers the report with the National Technical Information Service (NTIS). A list of key words that describe the project and identify the major research concept should be submitted with the report. Four to six precise descriptors are generally sufficient and will be used for indexing, registering, and distributing the report through NTIS.

### **Acknowledgments** (optional) — left-hand, even-numbered page [iv]

Acknowledgments precede the contents and should be no longer than two paragraphs.



**Table of Contents and Lists of Figures and Tables** — begin on odd-numbered, right-hand pages [v. vii, ix, etc.]

The Table of Contents should list section numbers, titles, second-level headings, and their page numbers. Third-level headings also may be listed. If the report contains five or more figures or tables, they should be listed using the style of the Table of Contents. The following samples are boxed only to set them apart in this document.

**Summary** — right-hand, odd-numbered page [S-1]

The Summary, which immediately precedes the body of the text, should be written for a general audience. The Summary may be the only part of the technical report closely read by a number of people, many of whom lack a technical background. These may include industry and utility executives, government officials, legislators, the general public, and media representatives. The Summary should be 500-1000 words long.

<b>TABLE OF CONTENTS</b>	
<u>Section</u>	<u>Page</u>
SUMMARY .....	S-1
1. DESCRIPTION OF STUDY .....	1-1
Sources of Information .....	1-5
Bases of Evaluation .....	1-9
2. EXISTING CONDITIONS.....	2-1
Architecture .....	2-3
Mechanical and Electrical Systems .....	2-13
3. ANALYSIS OF PRESENT ENERGY USE .....	3-1
Analysis of Use by Systems.....	3-3
Analysis of Use by Hospital Services.....	3-17
APPENDIX A Comparison of Expenses for NYS Hospitals .....	A-1
APPENDIX B Forms for Energy Audits in Hospitals .....	B-1

<b>FIGURES</b>	
<u>Figure</u>	<u>Page</u>
1-1 Comparative Energy Use Per Cubic Foot in Hospitals Under 200 Beds .....	1-2
2-1 View of Community Hospital from South .....	2-1
2-2 Site Plan.....	2-5

## **GENERAL INFORMATION**

The first reference to NYSERDA should read “the New York State Energy Research and Development Authority (NYSERDA).” Subsequent references should read simply “NYSERDA.” When it is clear that you are referring to New York State, use State; otherwise, use New York State or the State of New York.

## **COPY**

### •Page format:

- Margins should be 1.25 inches left and right; 1 inch top and bottom.
  - Use left-hand justification only.
  - Text should be in a 10-point serif font (i.e., Times Roman, Bookman, etc.); captions, tables, and figures should be in a sans-serif font (i.e., Helvetica, Arial, etc.).
  - Spacing should be 1.5 lines, printed on one side of the paper.
  - Block-style paragraphs should be used, with no indentation (except for fifth-level headings, which should be blocked on the left; see Heading Styles, below).
  - There should be two returns between a paragraph and the next heading.
- Material borrowed or adapted from external sources must be identified (i.e., document, source, date, and page). Written permission to use copyrighted illustrations, tables, or text taken from another publication must be submitted with the report.
  - Avoid half-page and one-sentence paragraphs.
  - Do not use contractions.
  - When referring to a specific figure or table, spell out and capitalize the words "Figure" and "Table."
  - Indented lists of material should be set off with bullets:
    - If a typographical bullet is unavailable, the bullet is a lower case "o," not zero.
    - One blank line should precede and follow a list.
    - Bulleted items should be indented left and right.
  - All new sections should begin on a right-hand, odd-numbered page (e.g., 1-1, 2-1, A-1, etc.).
  - Percentages should be written as follows: 1%, 76%, etc.
  - Acronyms must be spelled out the first time used, followed by the acronym in parentheses.

## **HEADING STYLES**

The heading styles illustrated below should be used. (Only section headings should be numbered.)

### **FIRST-LEVEL HEADING**

#### **Section 1**

#### **INTRODUCTION**

The heading is upper case, centered, and boldfaced; the text is below the heading, at the left margin.

### **SECOND-LEVEL HEADING**

The heading is upper case, at the left margin, and boldfaced; the text is at the left margin.

### **Third-Level Heading**

The heading is upper and lower case, at the left margin, boldfaced, and underscored; the text is at the left margin.

**Fourth-Level Heading**. The heading is upper and lower case, at the left margin, boldfaced, and underscored, with a period at the end. The text continues on the same line as the heading. The remaining text goes back out to the left margin.

**Fifth-Level Heading**. The heading is upper and lower case, indented, boldfaced, and underscored with a period at the end. The text continues on the same line, with the remaining text indented left and right.

## **TABLES AND FIGURES**

- Tables and figures must be numbered sequentially and titled individually.
- Place tables and figures as close as possible to the text in which they are mentioned.
- Distinguish tabular material from the text.
- Cite a source if the tabular material or figure content has not been generated by the contractor.
- Figure captions should be complete sentences when appropriate.
- Use "Figure 1," not "Fig. 1," or "Table 1." in the text, as well as for captions. Examples:
  - Table 1 details demand-side management options.
  - As shown in Figure 1, the demand-side management program offers numerous options.
- Figure captions should be typed in boldface.
  - **Figure 1. Demand-Side Management Options in New York State.**
- Unless generated by the contractor, a source should always be cited. The figure source should appear after the caption (e.g., Source: Lawrence Berkeley Laboratory); the table source should be noted with an asterisk and footnoted.
- Photographs and drawings should be limited in number, with the following guidelines:
  - Black-and-white line drawings or good-quality, clear halftones (black-and-white photographs) may be used. Color artwork and photos will be printed in black-and-white.
  - Slides should be converted to black-and-white photos before being submitted.
  - Photographs should be printed on glossy stock, preferably 5"x7".

## **REFERENCES AND BIBLIOGRAPHIES**

The format in Manual of Style (University of Chicago Press, Chicago, Illinois) should be used for reference listings and bibliographies.

Bibliographic entries should be listed alphabetically by author, as follows:

Hawkins, R.R. Scientific, Medical, and Technical Books Published in the United States of America. 2d ed. New York: Bowker, 1958.

## **REPORT REQUIREMENTS**

Two hard copies of the draft final report must be submitted to NYSERDA's Director of Communications. After review by the Project Manager and Technical Communications staff, the draft will be returned to the contractor for final corrections. The contractor is responsible for satisfactorily addressing technical comments from NYSERDA and other co-funders. When making editorial corrections, the contractor must ensure that technical content is not compromised.

After editorial corrections have been made, the contractor must submit two hard copies of the final report (one a camera-ready original and the other a photocopy) and the report on a digital video disc, compact disc, Iomega 100 PC-Zip disk, or IBM personal computer-compatible diskette to NYSERDA's Director of Communications.

### **Electronic Requirements**

- Material must be submitted in any of the following formats:
  - Digital Versatile Disc or Digital Video Disc (DVD)
  - Compact disc (CD-ROM)
  - Iomega 100 PC-Zip disk
  - IBM personal computer-compatible 3.5-inch, double-sided (DS), high-density (HD) diskette
  
- Textual material should be created in a format compatible with Microsoft Office (1997-03 or 2007). While other word-processing programs may be able to be converted, results may vary. Characteristics such as underlining, bold, italics, and special characters that often appear in equations may be lost if Microsoft Word (1997-03 or 2007) is not used.
  
- Reports that are to be published on the web must be submitted as either a PDF or HTML file.

If you are unable to meet these electronic transfer requirements, before submitting your report please contact

Diane Welch of NYSERDA's Technical Communications unit at (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail [dlw@nyserda.org](mailto:dlw@nyserda.org)

**CITY OF LOCKPORT INFLUENT HYDROPOWER  
FEASIBILITY STUDY  
Final Report**

Prepared for

**THE NEW YORK STATE  
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**  
Albany, NY

Lawrence J. Pakenas, P.E.  
Senior Project Manager

Prepared by

**CITY OF LOCKPORT**  
Lockport, NY

Michael Diel  
Project Manager

and

**MALCOLM PIRNIE, INC.**  
Buffalo, NY

Vincent J. Funigiello, P.E.  
Project Manager

4311-ERTER-MW-97

NYSERDA  
Report 98-11

July 1998

\*Sample title page. Font is a serif font (Times Roman). Bold-faced text is 13 pt., small caps. The rest of the type is 11 pt., plain text.



## EXHIBIT D

### PART 504

#### PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability. (a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:

(1) under the Eminent Domain Procedure Law;

(2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;

(3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or

(5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section 504.2 Definitions. As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Authority" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.

(c) "Contractor" means any person, partnership, private corporation, or association:

(1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

(2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or

(3) rendering or providing services to the Authority pursuant to a contract.

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

(e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

(g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.

(h) "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 Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.

(i) "Proper invoice" means a written request for a contract 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 the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(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, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

(ii) if a contract 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 contract 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 the Authority for the

portion working, completed or delivered, the Authority 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.

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, 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 the Authority.

(b) The Authority shall notify the contractor within 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; and
- (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 the Authority fails to notify a contractor of a defect or impropriety within the fifteen 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 the Authority 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, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

Section 504.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:



(a) If the case of a payment which a contract provides 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 the contract or other State or Federal mandate has not been submitted to the Authority 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 the Authority and the date when the Authority 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 the contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority 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, the Authority 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 the Authority 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 the Authority, 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 the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. 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.

Section 504.7 Sources of funds to pay interest. Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may

subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. 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 address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority'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 30 working days.

Section 504.10 Judicial Review. Any determination made by the Authority pursuant to this Part which 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 Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a contractor pursuant to this Part 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 the Authority 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.

Section 504.12 Amendments. These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.

# Attachment G: Sample Metrics Reporting Guides

# Metrics Reporting Guide

## Information Dissemination

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented.

Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for **two** consecutive calendar years after the project is completed. The Contractor shall make every effort to quantify and document benefits and incorporate them into the Final Report and technology transfer activities as required in this agreement.

A form will be provided to you to submit the following metrics:

## Information Dissemination

<b>Name of Presentation or Event</b>	<i>Names of the presentation or event where information was communicated about the product, company or research</i>
<b>Organization that hosted the event</b>	<i>Name of the organization that hosted the event</i>
<b>Type of event</b>	<i>The type of event where information was communicated about your company, product or research (e.g. conference, workshop, media event, etc.)</i>

## Publications

<b>Publication Date</b>	<i>Date information is published (month &amp; year)</i>
<b>Publication Title</b>	<i>Name of publication written as a result of research performed under contract with NYSERDA</i>
<b>Publication Type</b>	<i>Examples: Citation, Final/Technical Report, Newsletter, Trade Publication etc.</i>
<b>Periodical Name</b>	<i>Name of periodical the publication appeared in (if applicable)</i>
<b>Policy Development</b>	<i>State if this publication been cited in government policy development</i>
<b>Names of Authors</b>	<i>Author First &amp; Last Names</i>

# Metrics Reporting Guide

## Product Demonstration

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented.

Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for **five** consecutive calendar years after commissioning or acceptance of equipment. The Contractor shall make every effort to quantify and document benefits and incorporate them into the Final Report and technology transfer activities as required in this agreement.

A form will be provided to you to submit the following metrics:

### Site Metrics

<b>Installation Status</b>	<i>Current status of system installation (e.g. Design, Installed &amp; Commissioning, Operational, etc.)</i>
<b>Expected Duration</b>	<i>Number of years equipment is expected to be installed</i>
<b>Replication of System</b>	<i>Additional installations of a similar system as a result of the NYSERDA project</i>
<b>Jobs</b>	<i>Jobs created/retained as a result of a NYSERDA project</i>

### Information Dissemination

<b>Name of Presentation or Event</b>	<i>Names of the presentation or event where information was communicated about the product, company or research</i>
<b>Organization that hosted the event</b>	<i>Name of the organization that hosted the event</i>
<b>Type of event</b>	<i>The type of event where information was communicated about your company, product or research (e.g. conference, workshop, media event, etc.)</i>

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<b>Policy Development</b>	<i>State if this publication been cited in government policy development</i>
<b>Names of Authors</b>	<i>Author First &amp; Last Names</i>

## Resources Saved

<input data-bbox="53 709 94 751" type="button" value="+"/>	<i>Add Metric</i>		
	General Resource Type	Specific Resource Type	Unit of Measurement
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## Resources Used

<input data-bbox="53 980 94 1022" type="button" value="+"/>	<i>Add Metric</i>		
	General Resource Type	Specific Resource Type	Unit of Measurement
<input data-bbox="53 1106 94 1148" type="button" value="X"/>	<input data-bbox="105 1096 535 1155" type="text"/>	<input data-bbox="552 1096 1015 1155" type="text"/>	<input data-bbox="1031 1096 1567 1155" type="text"/>

[hide](#)

# Metrics Reporting Guide

## Product Development

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented.

Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Sales reporting shall continue under the terms of the agreement in section 8.03 if recoupment terms apply to this contract. Reports shall continue to be submitted for **ten** consecutive calendar years after the project is completed. The Contractor shall make every effort to quantify and document benefits and incorporate them into the Final Report and technology transfer activities as required in this agreement.

A form will be provided to you to submit the following metrics:

### Product Metrics

<b>Development Stage</b>	<i>Development stage of the product (e.g. Initial Prototype, Refined Prototype, Commercial Product, etc.)</i>
<b>Outcomes of Product Development Efforts</b>	<i>Outcomes as a result of product development activities (e.g. Copyrights, License Agreements, Certifications, UL Listing, etc.)</i>
<b>Units Sold</b>	<i>Total number of units sold</i>
<b>Units Sold in NYS</b>	<i>Number of units sold in New York State</i>
<b>Product Sales</b>	<i>Total annual sales of the product associated with the contract(s)</i>
<b>Recoupment Payment</b>	<i>Payment amount owed to NYSERDA under the terms of the agreement (if applicable).</i>
<b>Investments</b>	<i>Investment dollars as a result of NYSERDA project from a source other than NYSERDA.</i>

### Patent Information

<b>Patent Number</b>	<i>Patent number or patent application number for patents as a result of work funded by NYSERDA</i>
<b>Issue Date</b>	<i>Date patent was issued or application submitted</i>
<b>Patent Description</b>	<i>Abstract or brief description of the patent</i>

## Information Dissemination

<b>Name of Presentation or Event</b>	<i>Names of the presentation or event where information was communicated about the product, company or research</i>
<b>Organization that hosted the event</b>	<i>Name of the organization that hosted the event</i>
<b>Type of event</b>	<i>The type of event where information was communicated about your company, product or research (e.g. conference, workshop, media event, etc.)</i>

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<b>Policy Development</b>	<i>State if this publication been cited in government policy development</i>
<b>Names of Authors</b>	<i>Author First &amp; Last Names</i>

## Resources Saved per Product Unit (e.g. Energy, Emissions, Fuel etc.)

<input data-bbox="56 1157 94 1199" type="button" value="+"/>	<i>Add Metric</i>		
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<input data-bbox="56 1283 94 1325" type="button" value="x"/>	<input data-bbox="110 1283 613 1335" type="text"/>	<input data-bbox="630 1283 1105 1335" type="text"/>	<input data-bbox="1122 1283 1560 1335" type="text"/>