



**Flexible Technical Assistance (FlexTech) Program  
Program Opportunity Notice (PON) 1746  
Revised April 2016**

**SUMMARY OF REVISIONS**

**The following changes have been made to PON 1746, Flexible Technical Assistance Program:**

- The Flexible Technical Assistance Program has listed the total program budget of approximately \$30 million through this solicitation.
- NYSDERDA also clarified that NYSDERDA reserves the right to extend and/or adjust funding to this solicitation should other program funding sources become available.

Flexible Technical Assistance (FlexTech) Program  
Program Opportunity Notice (PON) 1746  
Revised April 2016  
\$30 Million Available

**Applications accepted on a first-come, first-serve basis dependent on funding availability until  
December 29, 2017 by 5:00 PM Eastern Time.**

The NYSERDA Flexible Technical Assistance (FlexTech) Program seeks to deliver credible, objective information and technical assistance to help make informed clean energy investment decisions. To fulfill this goal, entities are eligible to apply for cost-shared support of site-specific technical assistance and service providers are encouraged to apply to deliver technical analysis. The three main components of the Program include:

- Cost-shared targeted clean energy technical analyses and strategic energy management assistance to existing facilities.
- Cost-shared on-site combined heat and power (CHP) feasibility studies for eligible customers.
- Opportunity for service providers to become FlexTech Consultants for NYSERDA. FlexTech Consultants will receive one-year agreements with NYSERDA to conduct technical analysis requested by eligible applicants and NYSERDA.

NYSERDA may cost-share up to \$250,000 on completion of targeted clean energy technical analyses and strategic energy management assistance for existing facilities who need additional information to:

- Investigate an advanced technology or system,
- Create a longer-term energy plan for their facility, and/or
- Achieve deep energy savings
- Address energy as a component of process efficiency improvements through Engineer-on-Demand for companies engaged in Lean, 6-Sigma, Total Quality Management (TQM) or other continuous improvement activities

How to Apply:

*Study (Clean Energy Technical Analyses or CHP)* cost-share requests **must** submit the following to [FlexTech@nyserda.ny.gov](mailto:FlexTech@nyserda.ny.gov):

- Applicant Information (Attachment A-1)
- Scope of Work; see sample template form (Section IV)
- Consolidated funding application, CFA, through <http://nyworks.ny.gov>

*FlexTech Consultant Application* requests **must** submit via the on-line application located at <https://cmsapps.nyserda.ny.gov/flextechConApp/> or send the following to [FlexTech@nyserda.ny.gov](mailto:FlexTech@nyserda.ny.gov)

- FlexTech Consultant Application (Section VI)
- Required demonstration of energy efficiency experience including:
  - Examples of energy study work
  - Organization matrix of staff
  - Personnel rates

Incomplete or unsigned applications will be returned. Customers, Service Providers, or FlexTech Consultants with FlexTech Program questions should contact [FlexTech@nyserda.ny.gov](mailto:FlexTech@nyserda.ny.gov). All contractual questions should be directed to Venice Forbes (866- NYSERDA ext. 3507, [Venice.Forbes@nyserda.ny.gov](mailto:Venice.Forbes@nyserda.ny.gov)).

NYSERDA reserves the right to extend and/or add funding to the Solicitation should other program funding sources become available. If changes are made to this solicitation, notification will be posted on NYSERDA's website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).

## **I. INTRODUCTION**

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This solicitation is divided into the following components:

- Section II: Eligibility
- Section III: Program Conditions and Limitations
- Section IV: Clean Energy Technical Analyses
- Section V: CHP Studies
- Section VI: FlexTech Consultant Application
- Section VII: General Conditions
- Section VIII: Attachments

All applications will be reviewed on a first-come, first-served basis dependent on funding availability. Separate submittals are required for clean energy technical analyses and CHP studies. Energy analyses on systems or measures that are conducive to the success of load modeling CHP, i.e. absorption chilling, are allowed within the CHP submission.

## **II. ELIGIBILITY**

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### **ELIGIBLE STUDY PARTICIPANTS**

Eligible study participants include: NYS commercial facilities which include but are not limited to: office buildings, retail, colleges and universities, health care facilities, state and local governments, not-for-profit and private institutions, and public and private K-12 schools, industrial facilities, and data centers that are a New York State electricity customer of a participating utility company who pay into the System Benefits Charge (SBC).

- Customers may select their own service provider to perform the study.
- Customers in need of a service provider may choose from NYSERDA's FlexTech Consultant list comprised of firms under NYSERDA contract. Please visit the website at: [www.nyserda.ny.gov/flextech](http://www.nyserda.ny.gov/flextech) for the current listing of FlexTech Consultants.
- All projects must include cost-sharing in the form of matching cash support from the customer. An independent third-party consultant is required for all projects. In-kind contributions of any type are not allowed as matching funds. For most studies, NYSERDA will contribute fifty percent (50%) of the eligible study costs, up to the lesser of either \$250,000 or ten percent (10%) of the participating facility's annual energy costs, per year, based on an approved Scope of Work.

Farms and on-farm producers, including but not limited to: dairies, orchards, greenhouses, vegetables, vineyards, grain dryers, and poultry/egg please visit <http://www.nyserda.ny.gov/Agriculture> for information about no-cost farm energy audits. Please see the Agriculture Energy Audit Application (Attachment A-2) to apply.

- Small businesses and not-for-profits with an average electric demand of 100kW or less and 10 employees or less may be eligible for a free energy audit through a different solicitation. For more information please email [SCEEPAdmin@nyserda.ny.gov](mailto:SCEEPAdmin@nyserda.ny.gov).

### **ELIGIBLE FLEXTech CONSULTANT APPLICANTS**

Firms interested in applying to becoming a NYSERDA FlexTech Consultant may include, but are not limited to: Energy Service Companies (ESCOs), energy consultants, and engineering companies. Applicants must demonstrate experience with providing clean energy efficiency services to commercial and industrial customers within New York State. Successful applicants will be awarded a FlexTech agreement with performance criteria. Failure to execute the agreement within 60 days of issuance or achieve the performance criteria will result in a loss of agreement.

### **III. PROGRAM CONDITIONS AND LIMITATIONS**

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#### **CONDITIONS:**

- FlexTech is seeking to provide objective, site-specific targeted technical assistance and analysis that results in implementation of clean energy technologies. FlexTech scopes of work are required to provide justification for the cost-share request with site-specific facility descriptions and potential solutions for investigation for every task in the scope of work.
  - Projects that are focused on compliance with mandates, laws, or orders (e.g. Local Law 87 and Executive Order 88) are not eligible.
  - If potential for energy savings and implementation is not evident in the scope of work, an application will not be accepted in to the Program
- Applicants and service providers are encouraged to commence work after NYSERDA issuance of a Purchase Order (PO). Commencement of studies prior to this is at their own risk.
- NYSERDA is not committed to cost-sharing an application until a PO is issued.
- A scope of work requesting cost-sharing for both Clean Energy Technical Analyses and CHP will only be reviewed through the CHP application process of the Program. CHP studies will under-go review by an independent panel to determine eligibility for acceptance into this solicitation. See Section V. CHP Studies for Evaluation Criteria for the proposals submitted to the program. In general, these minimum criteria must be met in order to have the project accepted into NYSERDA's Program.
- FlexTech Consultants may undergo additional review before being approved to perform certain FlexTech studies. Examples of such studies include but are not limited to CHP, energy advisor, and industrial and process efficiency analysis.

- Facilities may not receive cost-sharing for similar activities or measures more than once every three (3) years.
- New facilities, or those that have undergone substantial renovations, must be occupied for more than one year to be eligible for clean energy technical analysis funding under this solicitation.
- Inability to complete studies in a timely manner or according to project schedule may result in NYSERDA discretion to limit the number of new study applications accepted into the program.
- Unless otherwise negotiated, all work funded under this program must be completed within two (2) years of issuance of the Purchase Order.
- Travel costs are limited to 3% of the total project cost.
- NYSERDA cost-share may be prorated at NYSERDA discretion. Funds may be used for evaluation of facilities only and may not be used toward implementation or equipment purchase. At its sole discretion, NYSERDA may limit the cost share associated with a study.
- Completed FlexTech studies lacking quantified, recommended energy efficiency or process improvement opportunities may receive a reduced cost-share or may not be reimbursed by NYSERDA
- Scopes of Work seeking funding for single, multifamily, or Publicly Assisted Housing are not eligible for clean energy technical analysis funding under this program, but may be eligible under NYSERDA's Residential or Multi-family programs. Information is available by calling toll-free 1-866-NYSERDA or at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).
- For those customers seeking a Preliminary CHP study, NYSERDA recommends contacting EPA's CHP Partners at <http://www.epa.gov/chp> or DOE's Northeast Clean Energy Application Center at <http://www.northeastcleanenergy.org>

## LIMITATIONS:

The following items are **ineligible** for funding:

- Work completed prior to NYSERDA's receipt of the CFA, Applicant Information (Attachment A-1) and scope of work
- Scopes of work without an identified and evident energy efficiency or process improvement potential for each task or related clean energy measure or system analysis (Please refer to the template scope of work on pages 8-10 for further guidance)
- Technical assistance, studies or assessments whose need is not supported by existing site-specific conditions

as documented in the scope of work

- Studies focused solely on fuel conversion or fuel switching
- Studies focused solely on demand response/peak load management
- Studies focused solely on operations and maintenance measures and activities.
- Detailed engineering design
- Benchmarking
- Lighting only studies and analyses
- Power quality, power factor, and power conditioning studies
- Utility billing error analysis
- Retrocommissioning measures at any non-industrial facilities (Attachment B-3: NYSERDA RCx Deficiency Worksheet is required for each deficiency found at an industrial site)
- Metering equipment, software costs, and other data collection hard and soft costs at non-industrial facilities (NYSERDA cost-share for such industrial data collection needs will be capped at 25% of the total study cost.)
- Projects that are focused on compliance with mandates, laws, or orders (e.g. Local Law 87 and Executive Order 88)

## IV. CLEAN ENERGY TECHNICAL ANALYSES

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To submit to the **CLEAN ENERGY TECHNICAL ANALYSES** component of this solicitation:

- Send the Applicant Information (Attachment A-1) and a complete Scope of Work with an attached detailed budget to [FlexTech@nyserda.ny.gov](mailto:FlexTech@nyserda.ny.gov).
- Complete the CFA located at <http://nyworks.ny.gov>
- A complete application package is comprised of Applicant Information (Attachment A-1), a complete Scope of Work, and the CFA. Incomplete project application packages will be rejected

### SCOPE OF WORK REQUIREMENTS:

This Program seeks to provide customers with the objective and customized site-specific information they need to implement energy efficiency projects. Studies eligible for cost-sharing in this program shall identify and quantify estimated energy savings expected as a result of recommended actions. Failure to provide required information will result in rejection of a scope of work from the Program.

The scope of work should be a stand-alone document containing existing conditions and tasks required to study the facility and make clean energy technology and system recommendations. Scopes of Work generally range from four to eight pages. The Scope of Work should clearly outline where potential energy efficiency opportunities exist and why a study or 3<sup>rd</sup> party service provider assistance is needed. **A Scope of Work template has been provided for reference.**

### PARTICIPATION PROCESS:

1. Customer and Service Provider submit the Applicant Information (Attachment A-1) and a detailed scope of work to [flextech@nyserda.ny.gov](mailto:flextech@nyserda.ny.gov), and a CFA located at <http://nyworks.ny.gov>
2. NYSERDA notifies the customer and service provider of receipt within 1-2 business days.
3. NYSERDA assigns a Project Manager to review the Scope of Work to verify that it meets the requirements of this solicitation.
4. The NYSERDA Project Manager places an introductory phone call to the customer verifying Program interest and contact information
5. NYSERDA issues comments to the customer and service provider on the Scope of Work as necessary.
  - a. Comments will address missing and/or required information and will be issued within 1 week of project manager assignment.
6. Customer and Service Provider submit a revised scope of work, within 30 days of receiving comments, to the Project Manager and cc [flextech@nyserda.ny.gov](mailto:flextech@nyserda.ny.gov).
  - a. Failure to submit in this timeframe may result in application cancellation
7. NYSERDA issues a Purchase Order for the project. This step takes approximately 3-4 weeks.

*\*Customers and their service providers may begin study execution upon NYSERDA's receipt of the CFA, Scope of Work and Applicant Information (Attachment A-1) **at their own risk**. Cost-share amounts are not set-aside until a*

*Purchase Order is issued.*

8. Customer and Service Provider submit a Draft Report according to the schedule in the Scope of Work and as per requirements in Attachment B-1.
9. NYSERDA Reviews the draft report and will issue comments to be addressed in a revised Final Report. Comments will be issued within 2-3 weeks.
  - a. NYSERDA may assign a Technical Reviewer, under contract to NYSERDA, to assist with Draft Report review and comments.
10. Customer and Service Provider submit the revised report within 3 weeks.
11. NYSERDA issues approval of FlexTech Final Report

*\*Please note, scopes of work and draft reports may require more than one round of comments.*

## **PROJECT PAYMENTS:**

**For customers using their own independent service provider** NYSERDA will reimburse successful customers NYSERDA's share of the actual study cost provided in the issued Purchase Order at the conclusion of the project and upon receipt of the required documentation (see below for details). Reimbursement will be based on services actually provided as defined in the Scope of Work and as documented by the approved final report, invoices and other documentation deemed necessary by NYSERDA. Unless otherwise noted, payments will be sent to the authorized Applicant (customer) listed in Attachment A-1. Progress payments are available at the discretion of the assigned NYSERDA Project Manager.

### ***Required Documentation:***

Reimbursement will be processed after receipt of an invoice from the customer to NYSERDA, a copy of the service provider's invoice(s) to the customer indicating the total study cost, and a copy of the metering equipment/software invoice(s), if applicable. The service provider's invoice(s) should be broken out by non-labor costs, individuals, titles, hourly rates, dates and hours worked on each task. In addition, if applicable, NYSERDA may also require a copy of the customer's canceled check(s) paying the total study cost to the service provider. At NYSERDA's discretion, a copy of the canceled check(s) from the customer to the service provider showing the total study cost and a copy of the lump-sum invoice may be accepted in lieu of a detailed invoice. All invoices including reimbursement documentation must be sent to [invoices@nyserdera.ny.gov](mailto:invoices@nyserdera.ny.gov).

NYSERDA will reimburse the customer the percentage of the actual study cost incurred, subject to the maximum dollar amount as provided in the issued Purchase Order. Reimbursement will be based on services actually provided as defined in the Scope of Work and as documented by the approved final report, invoices and other documentation deemed necessary by NYSERDA. When appropriate, NYSERDA may issue progress payments up to the allowable percentage of the study cost, not-to-exceed 50% of NYSERDA's total financial commitment.

**For customers using a NYSERDA FlexTech Consultant,** NYSERDA will contribute up to 50% towards the allowable FlexTech Consultant fees, directly to the FlexTech Consultant per the approved scope of work. Successful applicants will pay the remaining balance of the FlexTech Consultant fees directly to the FlexTech Consultant under the terms and conditions to be negotiated by the Customer and FlexTech Consultant. Progress payments are available at the discretion of the assigned NYSERDA Project Manager.

### ***Required Documentation:***

The FlexTech Consultant's invoice(s) should be broken out by non-labor costs, individuals, titles, hourly rates, dates and hours worked on each task. Invoices should also indicate the amount that is being invoiced concurrently to the Customer. In addition, if applicable, NYSERDA may also require a copy of the customer's canceled check paying their study cost-share.

# COMMERCIAL/INDUSTRIAL FACILITY

## CLEAN ENERGY TECHNICAL ANALYSES SCOPE OF WORK –TEMPLATE

<p><b>PROJECT DESCRIPTION:</b> Describe the facility or campus including building layout (tenant space), age, square footage, number of stories, operating hours, process equipment for industrial sites, and overall mission of the organization. Justify need for Program assistance.</p>	
Facility Name	
Organization Mission	
Approx. No. of employees	
Description of building(s) square footage, and process equipment for industrial sites to be evaluated.	
Identified Need or Desired Results from FlexTech Program participation.	<i>This section should include a detailed description of current energy consuming systems relevant to the FlexTech project and justifiable reasons for why the proposed study is needed and what the report will help accomplish (reasons must be site specific, i.e. based on observation from walk through or customer feedback)</i>
Task 1:	a. b. c. d.
Deliverable 1:	
Task 2:	a. b. c. d.
Deliverable 2:	

**PROGRESS REPORTS (if applicable):** Long-term energy management plans, energy advisor services, or other expansive studies may require progress reports to ensure project direction and results are in line with NYSERDA cost-share eligibility. Please explain the nature of the intended progress updates. Examples include:

- Monthly or quarterly emails to applicant and NYSERDA for review and approval,
- Interim task additions for review and approval,
- Scheduled in person updates with applicant and NYSERDA, and
- Interim draft reports to be reviewed, approved, and finalized with applicant and NYSERDA.

*Failure to provide the specified progress report may result in project termination.*

**SITE VISITS:** List the expected number and nature of site visits, requested staff presence, staff interviews and site access required. This should include non-data collection visits as well.

**ASSUMPTIONS:** Provide list of assumptions and qualifiers relevant to project completion. Note any information the customer has promised to provide the consultant for the completion of the study. Examples include:

- Access to mechanical rooms, roof, and basement will be provided
- Access to and accompaniment by facility staff to tenant spaces will be provided
- Access to building management software systems will be provided
- Minimum of 1 year of preceding utility bill rates and usage will be required and utilized
- As built or other design schematics, if available, will be provided
- Previous energy analysis performed either in-house or by 3<sup>rd</sup> party service provider will be available for use

**DRAFT REPORT:** NYSERDA will provide written comments to the applicant and service provider. A conference call to discuss the comments may be held at the request of any party. Responses to the comments should come in the form of a revised draft report. The revised draft report will include responses to the customer comments as well.

A draft report encompassing the tasks as outlined in the approved scope of work that follows Attachment B-1 will be provided for review and comment to the applicant and NYSERDA.

**FINAL REPORT:** NYSERDA will issue a final report approval letter and request invoicing.

An electronic final report will be provided to the applicant and NYSERDA.

**SCHEDULE:** Please provide anticipated schedule for completing tasks. This schedule should be in a “weeks from purchase order” format. The schedule should correspond to the individual tasks and budget. For example: Kick-off meeting within two weeks of purchase order; Task 1.0 completed within four weeks of purchase order, etc. An expected draft report due date should be provided. If this date changes please notify the applicant and NYSERDA as soon as possible. Example below.

	Time (in weeks from notice to proceed)
1. <i>Data Collection</i>	## - ##
2. <i>Utility Bill Analysis</i>	## - ##
3. <i>Site Visits</i>	
4. <i>Preliminary Energy Use Analysis</i>	## - ##
5. <i>Energy Efficiency Measures(EEM)</i>	## - ##
<i>EEM Task 1</i>	
<i>EEM Task 2</i>	
6. <i>Progress Report(s) and Meeting</i>	## - ##
7. <i>Draft report to NYSERDA</i>	## - ##
8. <i>Final report to NYSERDA</i>	## - ##

**STUDY COST:** Complete Budget Template or equivalent. Provide total study costs and applicant and NYSERDA share within the scope of work. Budget should be broken down according to potential ECMs as identified during the onsite walk-through.

*For customer utilizing independent service providers:*  
The total cost to complete the tasks associated with this scope of work is \$\_\_\_\_\_. The Customer will contribute \$\_\_\_\_\_ and request \$\_\_\_\_\_ reimbursement from NYSERDA, as specified in the NYSERDA Purchase Order.

*For customer utilizing FlexTech Consultant:*  
The total cost to complete the tasks associated with this scope of work is \$\_\_\_\_\_. The Customer will contribute \$\_\_\_\_\_ and NYSERDA will contribute \$\_\_\_\_\_, as specified in the NYSERDA Purchase Order.

**BUDGET TEMPLATE:**

**PROJECT BUDGET**

APPLICANT/CUSTOMER:

(date)

PROJECT:

Task	Task Description (samples below)	Title Rate	Total						
									0
1	Data Collection								0
2									0
3									0
4									0
5									0
6	Draft Report Development								0
7	Final Report								0
									0
									0
									0
									0
									0
	Total Hours	0	0	0	0	0	0	0	0
	Hourly Charge-out Rate (Multiplier)								---
	Total Labor Fee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

<b><u>Project Expenses</u></b>				
Item	Amount	Unit	Unit Cost	Total
Expenses			\$0	\$0
Mileage		mile	\$0.000	\$0
			<b>Total</b>	<b>\$0</b>

Labor Effort = \$0  
 Expenses = \$0

**TOTAL PROJECT BUDGET = \$0**

**Customer Share = \$0**

**NYSERDA Share = \$0**

## V. CHP STUDIES

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To submit to the **CHP** component of this solicitation:

- Send a complete CHP specific Scope of Work and Applicant Information (Attachment A-1) to [FlexTech@nyserda.ny.gov](mailto:FlexTech@nyserda.ny.gov).
- Complete the CFA located at <http://nyworks.ny.gov>
- A complete application package is comprised of a CFA, Applicant Information (Attachment A-1) and a complete Scope of Work with an attached detailed budget for the study to be conducted, and a list of the service provider's relevant project experience. *Project applications containing scopes of work that do not expand upon the CHP Study Requirements, to include site and project specific issues, may be rejected.*

### **CHP - ELIGIBLE STUDIES:**

Combined Heat and Power (CHP) Systems are considered those that simultaneously provide thermal and electrical energy at a host site. The system should intend to meet the requirement for efficient CHP, defined as an application of technology that achieves an average, annual, fuel-conversion efficiency meeting or exceeding an efficiency of 60%.

The CHP system should intend to meet the following criteria:

- Sum of all usable thermal energy products must constitute at least 20% of the technology's total usable energy output, and
- Sum of all usable power must constitute at least 15% of the technology's total usable energy output.

The following items are **ineligible** for funding:

- Proposals for studies of generation without a heat recovery component are not eligible for funding;
- Scopes of Work proposing to evaluate systems utilizing fuel sources other than natural gas;
- Scopes of Work seeking assistance with evaluating systems using highly processed or treated materials (including materials painted, or pressure treated with chromium, chlorine and arsenic bearing compounds);
- Scopes of Work seeking assistance with evaluating systems using Municipal Solid Waste;

- Scopes of Work seeking assistance with evaluating studies for which the potential CHP system would be larger in total prime mover capacity than 50 MW; and
- Scopes of Work seeking assistance with evaluating CHP systems for which less than 75% of the electricity generated would be used on-site.

Please note that other NYSERDA programs have limited installation funds available for combined heat and power projects. Solicitations are released on a periodic basis. Please visit [www.nyserda.ny.gov](http://www.nyserda.ny.gov) for more information.

Please also note, all CHP projects may be subject to review by an independent panel of experts to determine acceptance into the FlexTech Program.

### **CHP – EVALUATION CRITERIA:**

All CHP submissions must follow the scope of work requirements as outlined in Section IV and comply with the evaluation criteria listed below. Scopes of work shall expand upon the below CHP study requirements by including site and project specific information. Applications lacking the necessary detail to justify why a site may be a viable candidate for CHP may be rejected.

### **CHP – SCOPE OF WORK must identify the current site conditions and assumptions as well as include site specific supporting detail to:**

- A description of the building including, but not limited to: location, usage, size (square footage and a size metric appropriate for the usage such as units in an apartment building).
- Methods to analyze the thermal and electric usage on an hourly profile per year. For existing buildings, modeled profiles must be based on actual hourly coincident electric and thermal measurements for a period not less than 14 continuous days during which no unusual events occur. For new construction, describe the anticipated use of building energy software for modeling purposes.
- Identify anticipated tariff impacts that would result from installation of the system and describe how such impacts will be incorporated into the energy and economic models.
- Provide a schematic of the electrical interconnection of the proposed system.
- Compare only black start capability CHP system options. Systems must be able to operate during a grid outage.
- Describe the engineering analysis that will be used to identify the match between the electric and thermal load profiles at the site. Elaborate on potential model assumptions to be used. There must be at least a potential for a 60% Fuel Conversion Efficiency.
- Also identify the generating technologies that would be used. Only reciprocating engines, turbines, microturbines and fuel cells are to be considered. Proposals evaluating fuel cells and microturbines may also need to evaluate reciprocating engines.
- Sufficient detail that will support the methodology proposed for each of the required tasks as

outlined below.

**Additional Requirements:**

- The Scope of Work and related estimates must demonstrate an economically justified project.
- The cost of the study must be reasonable and must contain a detailed budget broken out by task that shows hours and dollars allocated to each task of the scope of work
- Consultant staff allocations and schedule must be sufficient to meet the objectives of the scope of work cost effectively.
  - Involved consultant staff, contractors, sub-contractors, etc. must have had at least three completed and related projects.
  - CHP Scopes of Work must describe the current situation at the site and how the service provider intends to fulfill the CHP requirements.

## CHP – DETAILED STUDY REQUIREMENTS:

The following information must be included in detailed CHP feasibility studies, in addition to general final report requirements in Attachment B-1.

### System Information

- Energy use profiles must be reviewed in detail to accurately determine the level of temporal coincidence between thermal and electrical loads to be satisfied by the CHP system. An electronic copy of a spreadsheet-based model that describes system operation, including electricity produced and heat recovered on an hourly basis for a year must be provided in the final report. Assumptions used in the model should be clearly indicated in the final report. (i.e. planned outage, unplanned outage, part-load operation)
- Thermal usage and electricity profiles must be illustrated in a figure for variance by month for one year and by hour on a summer, winter and shoulder day.
- The type and rating of the prime mover and an energy balance around the prime mover must be shown. The energy balance must be applied to a schematic of the system showing all major components, including the uses for the recovered heat. Annual totals for each energy input/output must be shown along with maximum, minimum, and average instantaneous values. Temperatures for each waste heat transfer fluid and sink must also be indicated.
- CHP system efficiency and emissions must be described.
  - Annual thermal utilization percentage must be given (i.e., the annual amount of heat that is recovered for space and/or process heating and/or cooling divided by the annual recoverable thermal output from the prime movers).
  - Fuel conversion efficiency (FCE) for the prime movers must be provided. FCE is defined as the ratio expressed as a percentage of the total usable energy produced by a technology to the sum of all fuel or other energy inputs to the technology measured at each fuel's higher heating value (HHV).
  - The annual emissions of the proposed system must be provided.
  - Any additional emission control technology must be provided if necessary to meet emission regulations.
- The description of the proposed system must include a preliminary floor plan indicating equipment location. Construction cost estimates should include estimates for rigging, building construction (if necessary) and any anticipated structural modifications. If the proposed system is located in a flood zone, placement of the CHP system's critical components must be located above flood level.

- A description of all existing distributed generation equipment (PV, fuel cell, other CHP, etc.) and all backup generation equipment on the site which is connected to serve the same electric load as the proposed CHP system.
- A description of existing systems to be impacted by the installation of the CHP system (boilers, chillers, etc.) and whether or not this equipment will be replaced, removed, or decommissioned as part of the proposed project in the study.
- The pressure and availability of natural gas must be described in the study.
- An operational sequence must be included that specifies the control system to be used along with a discussion of its integration with other on-site control systems and who will have responsibility for system operation.
- The analysis shall review black start capability of the proposed CHP system options.
- A project schedule that includes durations for design (engineering & architectural), utility coordination and review, permitting (environmental and construction), construction, start-up, and commissioning must be provided.

### **Economic Evaluation**

- Electricity, fuel, operation, and maintenance costs before and after the proposed installation along with a summary of project economics must be included.
- Economics must be presented in a simple payback format. Additionally, a cash flow analysis or life cycle cost analysis must be presented.
- Operational costs must include any impact to the customer's energy tariffs. The stand-by tariff analysis must include the impact of scheduled maintenance, and should include a sensitivity analysis for unplanned CHP system downtime.
- Maintenance costs can be listed in \$/kWh, but must also be annualized. This should include M&V costs.
- Capital costs must include:
  - Equipment purchase and system installation

- Structural (new building, existing building modifications, etc)
- Interconnection and Utility Connection (construction & utility fees)
- Electrical distribution system changes
- Rigging
- Permitting
- Design fees
- Commissioning

### **Maintenance**

- In addition to inclusion in the economic analysis described above, maintenance items must be described in detail. The source of the maintenance costs must be included along with a list of what would be covered (i.e. annual major overhaul of prime mover, oil changes, etc.).
- An estimate of downtime that would occur due to routine maintenance must also be included.

### **Tariff Impacts and Interconnections**

- In addition to inclusion in the economic analysis described above, a detailed description of the relationship between the proposed CHP facility and the Customer's existing energy tariffs must be included. Contract dates and dates of potential tariff rule must be included. In the case where such future changes would significantly impact the economics of the Project, sensitivity analysis must be presented assuming the potential tariff or contract changes occurred.
- Site-specific grid interconnection issues and costs must be discussed. A brief, clear plan for if and how the system will be properly interconnected to the grid, natural gas pipelines and/or the Con Edison steam system must be presented.

### **Permitting**

- A brief description of the necessary environmental and building permits that the customer needs to obtain must be provided. The permit determination should be based on the annual emissions potential for the size of the unit and the emissions of any existing equipment at the facility. Anticipated time frames and durations for environmental, utility and construction permitting should be incorporated in the Project schedule.

### **System Reliability and Availability**

- The reliability and availability of the CHP System must be quantified (e.g. number of hours the system would be available at less than full capacity). This must be compared to service and discussed in the context of the Customer's core business and tolerance for risk.

## CHP STUDY PARTICIPATION PROCESS:

1. Customer and Service Provider submit a CFA, complete Scope of Work per guidelines in Section V above and Applicant Information (Attachment A-1) to [FlexTech@nyserda.ny.gov](mailto:FlexTech@nyserda.ny.gov). Incomplete project application packages will be rejected.
2. NYSERDA and/or outside technical experts will evaluate CHP study applications on a first-come first- served basis. The review will involve a comparative evaluation of the applicable criteria as outlined in Section V. This review may take 2-3 weeks.
3. NYSERDA notifies the customer/service provider of their proposal acceptance or rejection 1-2 business days after the review.
4. NYSERDA assigns a NYSERDA Project Manager within 1-2 business days after application acceptance.
5. NYSERDA issues comments to the customer and service provider on the Scope of Work as necessary.
  - a. Comments will address missing required information and be issued within 1 week of project manager assignment.
6. Customer and Service Provider submit a revised scope of work, within 30 days of receiving comments, to [flextech@nyserda.ny.gov](mailto:flextech@nyserda.ny.gov) .
  - a. Failure to submit in this timeframe may result in application cancellation
7. NYSERDA issues a Purchase Order for the project. This step takes approximately 3-4 weeks.

Cost-share amounts are not set-aside until a Purchase Order is issued.
8. Customer and Service Provider submit a Draft Report according to the schedule in the Scope of Work and as per requirements in Section V above and Attachment B-1.
9. NYSERDA reviews the draft report and will issue comments to be addressed in a revised Final Report. Comments will be issued within 2-3 weeks.
  - a. NYSERDA may assign a Technical Reviewer, under contract to NYSERDA, to assist with Draft Report review and comments.
10. Customer and Service Provider submit the revised report within 3 weeks.
11. NYSERDA issues approval of FlexTech Final Report

*\*Please note, scopes of work and draft reports may require more than one round of comments.*

## **PROJECT PAYMENTS:**

**For customers using their own independent service provider** NYSERDA will reimburse successful customers NYSERDA's share of the actual study cost provided in the issued Purchase Order at the conclusion of the project and upon receipt of the required documentation (see below for details). Reimbursement will be based on services actually provided as defined in the Scope of Work and as documented by the approved final report, invoices and other documentation deemed necessary by NYSERDA. Unless otherwise noted, payments will be sent to the authorized applicant (customer) listed in Attachment A-1. Progress payments are available at the discretion of the assigned NYSERDA Project Manager.

### **Required Documentation:**

Reimbursement will be processed after receipt of an invoice from the customer to NYSERDA, a copy of the service provider's invoice(s) to the customer indicating the total study cost, a copy of the metering equipment/software invoice(s), if applicable. The service provider's invoice(s) should be broken out by non-labor costs, individuals, titles, hourly rates, dates and hours worked on each task. In addition, if applicable, NYSERDA may also require a copy of the customer's canceled check paying the total study cost to the service provider. At NYSERDA's discretion, a copy of the canceled check(s) from the customer to the service provider showing the total study cost and a copy of the lump-sum invoice may be accepted in lieu of a detailed invoice. All invoices and other reimbursement documentation must be sent to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov).

NYSERDA will reimburse the customer the percentage of the actual study cost incurred, subject to the maximum dollar amount as provided in the issued Purchase Order. When appropriate, NYSERDA may issue progress payments up to the allowable percentage of the study cost, not-to-exceed 50% of NYSERDA's total financial commitment.

**For customers using a NYSERDA FlexTech Consultant**, NYSERDA will contribute up to 50% towards the allowable FlexTech Consultant fees, directly to the FlexTech Consultant per the approved scope of work. Successful applicants will pay the remaining balance of the FlexTech Consultant fees directly to the FlexTech Consultant under the terms and conditions to be negotiated by the Customer and FlexTech Consultant. In addition, if applicable, NYSERDA may also require a copy of the customer's canceled check paying their study cost-share. Progress payments are available at the discretion of the assigned NYSERDA Project Manager.

## VI. FLEXTECH CONSULTANT APPLICATIONS

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### FLEXTECH CONSULTANT APPLICATION PARTICIPATION OVERVIEW:

1. Applications to become a FlexTech Consultant will be reviewed by NYSERDA to verify that it meets the requirements set forth in Section VI. Applications missing required information will be rejected. Applicants will be notified of their acceptance or rejection 2 weeks after application receipt.
2. NYSERDA issues an Agreement to the awarded consultant up to a one-year period (Sample Agreement attached hereto as Attachment C). This Agreement does not guarantee work through FlexTech. The Agreement will be issued approximately four (4) weeks after application acceptance and NYSERDA's receipt and acceptance of all indirect rate documentation.
3. The awardees have 60 days to sign and return the FlexTech Agreement. Failure to execute the Agreement within 60 days of issuance will result in loss of Agreement.
4. Once signed and returned, the Agreement will be fully executed within 1-2 weeks.
5. FlexTech Consultants will be placed in "provisional" term until one project has been completed under their NYSERDA FlexTech Agreement. This status will be notated on the NYSERDA website.
6. All FlexTech Consultants will be assessed at the conclusion of each agreement term (1 year) to determine whether their Agreement will be renewed for an additional term. Consultants who do not sustain the minimum performance criteria will not be presented with an option to renew. Please see Section VII. General Conditions, FlexTech Consultant Performance Criteria for additional information.

### APPLICATION SUBMISSION PROCESS:

To submit to the **FLEXTECH CONSULTANT** component of this solicitation:

- Visit <https://cmsapps.nyseda.ny.gov/flextechConApp/>. A valid email address is required. After providing your email address, you'll receive an email message with instructions to start your application. Please click on the link within the body of the email and complete the following steps:
  - Step 1 of 4: Fill out the mandatory questions (marked with \*). If teaming with an additional firm(s), please select the "will be using a sub-consultant" checkbox and fill out the relevant sub-consultant information.
  - Step 2 of 4: Complete the Primary Contractor certification requirement questions.

- Step 3 of 4: Upload required supplemental documentation as outlined below. Please note, you must complete and upload the FlexTech Consultant application form located on page 23.
- Step 4 of 4: Complete the certification question and click submit to finalize your application. You will receive an email confirming the application submission.

## **REQUIRED SUPPLEMENTAL DOCUMENTATION:**

Documentation that identifies a current staff member that is a New York State Licensed Professional Engineer (P.E.) or Registered Architect (R.A.) and also a Certified Energy Manager (C.E.M.) or Certified Energy Auditor (C.E.A). The staff member with these certification requirements must be an employee of the main applicant and cannot be satisfied through a sub-consultant.

- Samples of Energy Related Work performed in New York State that are consistent with the objectives of the FlexTech Program:
  - Study sample: The study sample report must be consistent with the objectives of the FlexTech program and its associated scope of work and budget must be included. The purpose of the study sample is to demonstrate the quality of the applicant’s work, methodology and types of analyses, and reports that can be delivered. Applicants must demonstrate understanding of FlexTech eligibility requirements and are strongly encouraged to demonstrate experience via work completed with FlexTech-eligible customers.
    - The study sample must have been completed within the past two years, for an existing and occupied facility and must include the following:
      - Study scope of work and budget;
      - An executive summary (not to exceed 10 pages) that outlines the project background, results, and recommendations;
      - Adequate calculations and data to support the energy savings estimates; and
      - A list of qualified personnel who completed the study sample.
  - A minimum of two (2) sample energy analysis case studies that resulted in implementation:
    - Pertain to an area(s) of expertise in which the **majority** of technical assistance will be provided (i.e. chiller plant optimization analysis, industrial process efficiency).
    - Demonstrate the quality of the proposer’s work, methodology, and types of energy analyses performed.
    - Demonstrate the proposers understanding of FlexTech eligibility requirements and FlexTech-eligible customers.
    - Include the qualified personnel included in the organizational chart/matrix.
    - Provide the customer’s contact information for reference checks.
    - Sample case studies should be a minimum of one page each

- Organizational Chart/Matrix
  - A chart or matrix depicting the office(s) from which services will be provided, the geographic region the office(s) will serve and the personnel located in each office that will be working on FlexTech projects.
  
- Personnel Resumes
  - One-page resumes that highlight recent experience of the personnel who will be directly involved in providing the technical services from each office expected to provide FlexTech services. Resume(s) of the P.E. or R.A. must be included. Submission of a company-wide resume representing general services to be provided by various personnel does not meet the required documentation.
  
- Acceptance of Standard Agreement Terms and Conditions (per Attachment C)
  - A statement that the firm accepts all terms and conditions in the Sample Agreement, Attachment C. If certain terms and conditions are not accepted, the firm must define these exceptions within the application. Please note, NYSERDA will only consider exceptions specifically listed in the application during contract negotiations.
  
- Project Personnel and Billing Rates Form
  - The proposer shall use the Project Personnel and Billing Rates form to clearly indicate hourly salary rate range for each title classification proposed under the agreement with NYSERDA and other overhead multipliers you propose to use for the duration of the agreement with NYSERDA. NYSERDA FlexTech Consultants selected under this solicitation shall be awarded a one (1) year Agreement (Sample Agreement attached hereto as Attachment C).
  
- Please provide rates and multiplier for services to be provided from date of application. These rates shall be independent annual rates. The multiplier stated shall include all overhead, profit, and other costs. **Please do not provide fully burdened rates in the chart.**
  
- Attach supporting documentation to support indirect cost (overhead) rate(s) included in your proposal as follows:
  - Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projections; based on federal government or other independently-approved rates).
  - If rate(s) is/are approved by an independent organization, such as the federal government, provide a copy of such approval.
  - If rate(s) is/are based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculation should provide enough

information for NYSERDA to evaluate and confirm that the rate(s) are consistent with generally accepted accounting principles for indirect costs.

- NYSERDA reserves the right to audit any indirect rate presented in the proposal and to make adjustment for such difference. Requests for financial statements or other needed financial information may be made if deemed necessary.

**FLEXTECH CONSULTANT APPLICATION:**

Company		Date	
Primary Contact		Title	
Secondary Contact		Phone	Fax
		e-mail	
Federal Tax Identification #/Social Security			
Address	City	State or Province	Zip
Sub-Consultant Company (if applicable)		Title	
Sub-Consultant Contact		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
<p><b>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b></p> <p>Is the Primary Contact listed above certified as a Professional Engineer (P.E.) or Registered Architect (R.A.)? If no, <input type="checkbox"/> Yes <input type="checkbox"/> No  please list a secondary contact with one of the above certifications.</p> <p>Are the personnel to conduct FlexTech Studies certified by a professional organization (i.e. AEE, Dept of Ed., PMI, etc.) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>			
<b>CHECKLIST</b>			
<b>REQUIRED for Prime Consultant</b> A. Sample of Energy Related Work (1-3 Case Studies) _____ B. Organizational Chart/Matrix _____ C. Personnel Resumes _____ D. Rate Schedule _____		<b>REQUIRED for Sub-Consultant</b> A. Sample of Energy Related Work (1-3 Case Studies) _____ B. Organizational Chart/Matrix _____ C. Personnel Resumes _____ D. Rate Schedule _____	
<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		Company	
Phone			

**PROJECT PERSONNEL AND BILLING RATES FORM**

DIRECT PERSONNEL COSTS:

SAMPLE Title Classification	Not to Exceed Hourly Rate Range									
	Year 1		Year 2		Year 3		Year 4		Year 5	
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
Principal Investigator										
Technical Specialist										
Senior Project Manager										
Project Manager										
Senior Engineer/Architect										
Engineer										
Analyst										
Administrative Support										

MULTIPLIER:

Profit / Fixed Fee:

DIRECT NON-PERSONAL SERVICE COSTS:

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

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

## VII. GENERAL CONDITIONS

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### PROPRIETARY INFORMATION

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

**Omnibus Procurement Act of 1992** - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

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

Empire State Development  
Division For Small Business  
625 Broadway  
Albany, NY 12207

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

Empire State Development  
Minority and Women's Business Development Division  
625 Broadway  
Albany, NY 12207

**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 new 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 perspective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**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.

**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.

## **CONTRACT AWARDS**

**Contract Award for Flexible Technical Assistance Studies** - NYSERDA may request additional data or material to support submissions including scope of work modifications or negotiations before issuing a Purchase Order. Each application should be submitted using the most favorable cost and technical terms. NYSERDA will use Attachment A-1 to contract successful applications. A sample Purchase Order is available on request. NYSERDA expects to notify customers in approximately three (3) weeks from the receipt of a complete project package whether the submission has been selected to receive an award.

**Contract Award for FlexTech Consultants** - 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. Each application 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, Attachment C, to contract successful applications. Applicants will be notified whether their application has been selected to receive an Agreement approximately 4 weeks after application receipt.

Successful FlexTech Consultant applicants will be awarded a FlexTech agreement with performance criteria. Failure to execute the agreement within 60 days of issuance or achieve the performance criteria will result in a loss of agreement.

## **FLEXTECH CONSULTANT PERFORMANCE CRITERIA**

FlexTech Consultants will be responsible for creating and maintaining their workload. NYSERDA does not guarantee any amount of work to be provided to any Consultant. All Consultants will be assessed at the conclusion of each Agreement term and NYSERDA will determine whether to exercise its option to renew the Agreement for an additional term. Consultants who do not sustain the minimum performance criteria, as described below, will not be presented with an option to renew.

In order to be considered for contract renewal, one of the criteria below must be met:

- a) Two approved and encumbered scopes of work.
- b) One approved and encumbered scope of work to evaluate an annual load greater than or equal to 5,000,000 kWh.

Approved Task Work Order Plans, as per Section 3: (f) and (g), are encumbered after NYSERDA's Treasurer has issued a purchase order for the project and a notice to proceed has been issued to the Consultant. Approved Task Work Order Plans that are routing internally within NYSERDA during the contract renewal evaluation period shall be included in the assessment of whether the Consultant has met the minimum performance criteria.

Should the contract be renewed, new or additional criteria, such as a minimum number of NYSERDA approved final reports, may be added to this section for subsequent contract terms. All contract renewals are subject to available funding.

## **VIII. OTHER OPPORTUNITIES**

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NYSERDA has a number of programs available to New York State businesses and industries. These include implementation assistance programs, as well as many others. More information can be found on our website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov), by e-mailing [info@nyserda.ny.gov](mailto:info@nyserda.ny.gov) or by calling toll free 1-866-NYSERDA.

## **VIV. ATTACHMENTS**

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- Attachment A-1: Applicant Information
- Attachment A-2: Agriculture Energy Audit Application
- Attachment B-1: Final Report Requirements
- Attachment B-2: Project Summary Sheet
- Attachment B-3: NYSERDA RCx Deficiency Worksheet (Industrial Sites ONLY)
- Attachment C: Sample Agreement for Flex Tech Consultants



**Attachment A-1: Applicant Information (page 2 of 2)**

**APPLICANT CERTIFICATION. *Please check the appropriate box***

**Technical Assistance Terms for applicants:**

I, the Applicant, certify that the facility or lead facility named in the scope of work is interested in technical assistance and is requesting that NYSERDA set aside funds to reimburse the facility, or FlexTech Consultant if applicable, for certain eligible costs, as outlined in the scope of work, in pursuing a project. I certify that the information provided is true to the best of my knowledge

As part of this project, NYSERDA will oversee the Service Provider or FlexTech Consultant’s progress and results in completing the scope of work, provide technical review of any applicable report, and be available to address any questions or concerns which arise during the conduct of this project.

I, the Applicant, also certify that NYSERDA does not provide any endorsement of the Consultant’s capabilities to provide services outside of the Scope of Work to be conducted pursuant to this agreement. The Customer acknowledges that neither NYSERDA nor its consultant is responsible for assuring that the design; engineering or installation of any recommendation of the technical service is proper or complies with any particular laws (including patent laws), codes, or industry standards.

**Overall**

NYSERDA does not make any representations of any kind regarding the results to be achieved or the adequacy or safety of any recommendation. NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied for any product of service.

I, the Applicant, certify the number provided is my correct taxpayer identification number (or I am waiting for a number to be issued to me); I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and I am a U.S. citizen or other U.S. person (as defined in IRS Form W-9).

**AUTHORIZED APPLICANT (ENTITY PAYING FOR THE STUDY)**

SIGNATURE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

ORGANIZATION AND PHONE: \_\_\_\_\_

FEDERAL ID<sup>1</sup>: \_\_\_\_\_

Federal ID # should match company/organization paying for energy study services

Federal ID # not required for customers using a NYSERDA FlexTech Consultant.

# Agriculture Energy Audit

## APPLICANT INFORMATION

Applicant / Farm Name \_\_\_\_\_ Contact Name and Title \_\_\_\_\_

Farm Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Primary Phone Number (include area code) \_\_\_\_\_ Secondary Phone Number (include area code) \_\_\_\_\_ Fax \_\_\_\_\_

**Best time to call:**  Morning  Afternoon  Evening

Email \_\_\_\_\_

Correspondence Address (if different than Farm Address) **Check**

**appropriate box:**

- Dairy  Orchard  Poultry/eggs  Greenhouse  Vegetable
- Hog  Vineyard  Grain dryer  Other \_\_\_\_\_

Farm size (For example: number of milking cows, acres of greenhouse, etc. Please label units.) \_\_\_\_\_ Annual Production (Please label units). \_\_\_\_\_ Number of employees \_\_\_\_\_

Electric Utility Company \_\_\_\_\_ Electric Account number(s) \_\_\_\_\_

Do you pay a System Benefits Charge (SBC) on your Electric utility bill?  Yes  No

Natural Gas Utility Company \_\_\_\_\_ Gas Account number(s) \_\_\_\_\_

If you are already working with a FlexTech Consultant, list consultant's name. (if you are not already working with a Consultant, one will be assigned)

**Audit level of interest:**

- Level 1:** *(Ideal for small farms)* The FlexTech Consultant will visit farm to conduct a walk thru audit and provide a limited evaluation of energy conservation measures and energy efficiency recommendations. The deliverable is a summary letter of feasible energy efficiency measures.
- Level 2:** *(Most frequently recommended)* The FlexTech Consultant will visit the farm and provide a detailed energy audit with calculated evaluations of appropriate energy conservation measures including simple payback. The deliverable is an energy audit report that meets ANSI/ASABE S612 standards.

**Attachment A-2: Agricultural Energy Audit (page 2 of 2)**

- Level 3:**       *(Recommended for an in-depth look at a single system)* The FlexTech Consultant will conduct a site visit focused on a specific system or measure, which could include renewable energy, with a more detailed analysis. The deliverable is a system specific energy analysis report.
- I would like someone to call me to discuss what level is appropriate for my farm

For questions or assistance, please call 1-800-732-1399.

**AGREEMENT TO TERMS, CONDITIONS, AND CERTIFICATION**

I, the Applicant, certify that the farm named on this application is interested in receiving an energy audit and request that NYSERDA set aside funds to contribute up to 100%, or \$1,500 for Level 1; \$2,500 for Level 2; or up to \$6,000 for Level 3, towards the allowable NYSERDA Consultant fees. NYSERDA’s contribution will be paid directly to the Consultant, provided the work is acceptable to the Applicant and NYSERDA.

I, the Applicant, understand that NYSERDA does not provide any endorsement of the Consultant’s capabilities to provide services outside of the audit’s Scope of Work to be conducted pursuant to this application. The Applicant acknowledges that neither NYSERDA nor its Consultant is responsible for assuring that the design, engineering, or installation of any recommendation of the technical service is proper or complies with any particular laws (including patent laws), codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved or the adequacy or safety of any recommendation.

NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product and NYSERDA provides no warranties, expressed or implied for any product or service.

Applications will be processed in the order received until program funds are fully committed.

The Applicant certifies that this Facility is a customer of a New York State investor-owned utility and the System Benefits Charge (SBC) is paid.

I certify that I am an authorized signatory for the Applicant/Farm.

**X**

\_\_\_\_\_  
**Authorized Applicant Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Name and title (please print)**

**Please mail application to:  
NYSERDA  
Attn: Agriculture Energy Audit Program Administrator  
17 Columbia Circle  
Albany, NY 12203-6399**

## **Attachment B-1: Final Report Requirements**

**Executive Summary** - Concisely summarize the FlexTech project's intent, findings, recommendations, and economics of the recommendations in narrative format.

**Background** - Provide information about the applicant and the project, such as type of business or organization, average number of employees per location, annual energy costs by fuel type, electric and gas suppliers, and rate tariff.

**Project Description** - Include a description of the project intent, approach, and tasks performed as defined in the project scope. If any deviations from the scope of work occurred during the project, please provide an explanation for those changes.

**Project Results/Recommendations** - Describe the project findings here.

- Include reasons for recommendations on cost-effective energy efficiency measures and capital improvements.
  
- **Economic analysis:** Provide recommendations supported by thorough economic evaluation to include, at minimum, all parameters required for simple payback analysis. Life-cycle cost or other more detailed analyses (e.g. ROI, IRR, etc.) may also be included, if desired or if required in the scope of work. An estimate of implementation costs with the source citation or vendor quotes if applicable should be provided.
  
- **Additional benefits:** Final reports should strive to include information on additional potential project benefits, such as increased productivity, job creation or retention, greenhouse gas reduction, or environmental benefits. Include a qualitative description of other project benefits, such as increased knowledge or information base, comfort, competitiveness, product quality, or energy affordability.
  
- **For projects where computer modeling is used, reports must also include:**
  1. Brief presentation of the manipulations which the program performed (e.g. utility bill calibration and accuracy level)
  2. Input data for the building and for each EEM should be presented in a manner which allows easy identification of input parameters
  3. Output data from model with clear and precise presentation of the results in both tabular and narrative forms
  4. Verification that interaction effects were taken into account

**Appendices** - This section shall include supporting documentation for all recommendations not included in the previous section, along with:

- Historical energy costs (minimum 12 months)

- Calculations for all EEM's reviewed, assumptions
- Conversion factors
- Itemized project implementation costs (at minimum material and labor costs associated with each measure)
- Sources of cost estimates and/or vendor quotes as applicable
- Energy savings calculations must demonstrate clear assumptions based on anticipated changes to the system or equipment being evaluated
- Rule of thumb assumptions and percentage savings calculations are not acceptable
- Energy savings calculations must be presented as savings at the customer's utility meter(s), and not at the individual building or tenant space. *For example, self-generated steam or chilled water savings should be reported back to the source of generation (i.e. natural gas)*

**Project Summary Sheet** - This one-page summary outline is required for all projects (see Attachment B-2). This form provides a simple matrix of the project by summarizing the payback, costs and savings in dollars, therms, MMBtu's, and kWh and kW where appropriate.

**\*FlexTech Consultants: All FlexTech Consultant draft and final reports must be stamped by a New York State Licensed Professional Engineer or Registered Architect.**

### **Invoice Requirements**

The FlexTech Consultant's invoice(s) should be broken out by non-labor costs, individuals, titles, hourly rates, dates and hours worked on each task. Invoices should also indicate the amount that is being invoiced concurrently to the Customer. In addition, if applicable, NYSERDA may also require a copy of the customer's canceled check paying their study cost-share.

**Attachment B-3**

**NYSERDA RCx Deficiency Worksheet (Industrial sites only)**

(example)

**Deficiency Number:**

Annual Electric Supply Savings (kWh)	Annual Electric Demand savings (kW)	Annual Fuel Savings (mmBTU)	Annual Cost Savings	Implementation Cost	Fuel Type Saved	Simple Payback (Years)	Supporting Calculations Location:
8,200	0	200	\$3,384	\$250	E & G	0.1	appendix c, page 56
<b>System:</b>	HVAC						
<b>Component:</b>	AHU #12						
<b>Location:</b>	East Wing over Conference Room						
<b>Notes</b>	Damper appears to be stuck as a result of a control wire breaking off of the control motor.						

Deficiency Description	Effect on system operation	Corrective Action	Benefit <sup>(1)</sup>	Recommend Corrective action?
<i>Air damper stuck in open position</i>	<i>Over ventilation and cooling of offices 8-12</i>	<i>Repair and adjust damper</i>	<i>E, C, O</i>	<i>Yes</i>

**Instructions:**

One worksheet is to be completed for each deficiency found in the RCx study, and included in the report. For each deficiency found, the energy saving/cost associated must be included. If the deficiency does not have any associated energy savings, zeros should be used. The complexity of the energy savings calculations should be appropriate to the size of the energy savings. Each deficiency must also be included in the required NYSERDA Project Summary Sheet (Attachment B-2).

**Notes:**

<sup>1</sup> E= Improved energy efficiency; C= Improved comfort; M= Reduced maintenance; O= Improved operation efficiency



**Attachment A-1: Applicant Information (page 2 of 2)**

**APPLICANT CERTIFICATION.**

**Technical Assistance Terms for applicants:**

I, the Applicant, certify that the facility or lead facility named in the scope of work is interested in technical assistance and is requesting that NYSERDA set aside funds to reimburse the facility, or FlexTech Consultant if applicable, for certain eligible costs, as outlined in the scope of work, in pursuing a project. I certify that the information provided is true to the best of my knowledge. As part of this project, NYSERDA will oversee the Service Provider or FlexTech Consultant's progress and results in completing the scope of work, provide technical review of any applicable report, and be available to address any questions or concerns which arise during the conduct of this project.

I, the Applicant, also certify that NYSERDA does not provide any endorsement of the Consultant's capabilities to provide services outside of the Scope of Work to be conducted pursuant to this agreement. The Customer acknowledges that neither NYSERDA nor its consultant is responsible for assuring that the design, engineering or installation of any recommendation of the technical service is proper or complies with any particular laws (including patent laws), codes, or industry standards.

**Overall**

NYSERDA does not make any representations of any kind regarding the results to be achieved or the adequacy or safety of any recommendation. NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied for any product of service.

I, the Applicant, certify the number provided is my correct taxpayer identification number (or I am waiting for a number to be issued to me); I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and I am a U.S. citizen or other U.S. person (as defined in IRS Form W-9).

**AUTHORIZED APPLICANT (ENTITY PAYING FOR THE STUDY)**

SIGNATURE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

ORGANIZATION AND PHONE: \_\_\_\_\_

FEDERAL ID<sup>1</sup>: \_\_\_\_\_

Federal ID # should match company/organization paying for energy study services

Federal ID # not required for customers using a NYSERDA FlexTech Consultant.

## **Attachment B-1: Final Report Requirements**

**Executive Summary** - Concisely summarize the FlexTech project's intent, findings, recommendations, and economics of the recommendations in narrative format.

**Background** - Provide information about the applicant and the project, such as type of business or organization, average number of employees per location, annual energy costs by fuel type, electric and gas suppliers, and rate tariff.

**Project Description** - Include a description of the project intent, approach, and tasks performed as defined in the project scope. If any deviations from the scope of work occurred during the project, please provide an explanation for those changes.

**Project Results/Recommendations** - Describe the project findings here.

- Include reasons for recommendations on cost-effective energy efficiency measures and capital improvements.
- **Economic analysis:** Provide recommendations supported by thorough economic evaluation to include, at minimum, all parameters required for simple payback analysis. Life-cycle cost or other more detailed analyses (e.g. ROI, IRR, etc.) may also be included, if desired or if required in the scope of work. An estimate of implementation costs with the source citation or vendor quotes if applicable should be provided.
- **Additional benefits:** Final reports should strive to include information on additional potential project benefits, such as increased productivity, job creation or retention, greenhouse gas reduction, or environmental benefits. Include a qualitative description of other project benefits, such as increased knowledge or information base, comfort, competitiveness, product quality, or energy affordability.
- **For projects where computer modeling is used, reports must also include:**
  1. Brief presentation of the manipulations which the program performed (e.g. utility bill calibration and accuracy level)
  2. Input data for the building and for each EEM should be presented in a manner which allows easy identification of input parameters
  3. Output data from model with clear and precise presentation of the results in both tabular and narrative forms
  4. Verification that interaction effects were taken into account

**Appendices** - This section shall include supporting documentation for all recommendations not included in the previous section, along with:

- Historical energy costs (minimum 12 months)
- Calculations for all EEM's reviewed, assumptions
- Conversion factors
- Itemized project implementation costs (at minimum material and labor costs associated with each measure)
- Sources of cost estimates and/or vendor quotes as applicable
- Energy savings calculations must demonstrate clear assumptions based on anticipated changes to the system or equipment being evaluated

- Rule of thumb assumptions and percentage savings calculations are not acceptable
- Energy savings calculations must be presented as savings at the customer's utility meter(s), and not at the individual building or tenant space. *For example, self-generated steam or chilled water savings should be reported back to the source of generation (i.e. natural gas)*

**Project Summary Sheet** - This one-page summary outline is required for all projects (see Attachment B-2). This form provides a simple matrix of the project by summarizing the payback, costs and savings in dollars, therms, MMBtu's, and kWh and kW where appropriate.

**\*FlexTech Consultants: All FlexTech Consultant draft and final reports must be stamped by a New York State Licensed Professional Engineer or Registered Architect.**

### **Invoice Requirements**

The FlexTech Consultant's invoice(s) should be broken out by non-labor costs, individuals, titles, hourly rates, dates and hours worked on each task. Invoices should also indicate the amount that is being invoiced concurrently to the Customer. In addition, if applicable, NYSERDA may also require a copy of the customer's canceled check paying their study cost-share.

# APPLICATION

# Agriculture Energy Audit



**NYSERDA**

## APPLICANT INFORMATION

Applicant / Farm Name

Contact Name and Title

Farm Address

City

State

Zip

Primary Phone Number (include area code)

Secondary Phone Number (include area code)

Fax

**Best time to call:**  Morning  Afternoon  Evening

Email

Correspondence Address (if different than Farm Address)

### Check appropriate box:

- Dairy  Orchard  Poultry/eggs  Greenhouse  Vegetable  
 Hog  Vineyard  Grain dryer  Other \_\_\_\_\_

Farm size (For example: number of milking cows, acres of greenhouse, etc. Please label units.)

Annual Production (Please label units).

Number of employees

Electric Utility Company

Electric Account number(s)

Do you pay a System Benefits Charge (SBC) on your Electric utility bill?  Yes  No

Natural Gas Utility Company

Gas Account number(s)

If you are already working with a FlexTech Consultant, list consultant's name. (if you are not already working with a Consultant, one will be assigned)

### Audit level of interest:

- Level 1: (Ideal for small farms)** The FlexTech Consultant will visit farm to conduct a walk thru audit and provide a limited evaluation of energy conservation measures and energy efficiency recommendations. The deliverable is a summary letter of feasible energy efficiency measures.
- Level 2: (Most frequently recommended)** The FlexTech Consultant will visit the farm and provide a detailed energy audit with calculated evaluations of appropriate energy conservation measures including simple payback. The deliverable is an energy audit report that meets ANSI/ASABE S612 standards.
- Level 3: (Recommended for an in-depth look at a single system)** The FlexTech Consultant will conduct a site visit focused on a specific system or measure, which could include renewable energy, with a more detailed analysis. The deliverable is a system specific energy analysis report.
- I would like someone to call me to discuss what level is appropriate for my farm

For questions or assistance, please call 1-800-732-1399.

## AGREEMENT TO TERMS, CONDITIONS, AND CERTIFICATION

I, the Applicant, certify that the farm named on this application is interested in receiving an energy audit and request that NYSERDA set aside funds to contribute up to 100%, or \$1,500 for Level 1; \$2,500 for Level 2; or up to \$6,000 for Level 3, towards the allowable NYSERDA Consultant fees. NYSERDA's contribution will be paid directly to the Consultant, provided the work is acceptable to the Applicant and NYSERDA.

I, the Applicant, understand that NYSERDA does not provide any endorsement of the Consultant's capabilities to provide services outside of the audit's Scope of Work to be conducted pursuant to this application. The Applicant acknowledges that neither NYSERDA nor its Consultant is responsible for assuring that the design, engineering, or installation of any recommendation of the technical service is proper or complies with any particular laws (including patent laws), codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved or the adequacy or safety of any recommendation.

NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product and NYSERDA provides no warranties, expressed or implied for any product or service.

Applications will be processed in the order received until program funds are fully committed.

The Applicant certifies that this Facility is a customer of a New York State investor-owned utility and the System Benefits Charge (SBC) is paid.

I certify that I am an authorized signatory for the Applicant/Farm.

**X**

\_\_\_\_\_  
Authorized Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and title (please print)

**Please mail application to:**

**NYSERDA**

**Attn: Agriculture Energy Audit Program Administrator**

**17 Columbia Circle**

**Albany, NY 12203-6399**

For questions or assistance, please call 1-800-732-1399.

**Attachment B-2:**

**PROJECT SUMMARY SHEET**

Customers Name		Contact Person
Address		Title
		Telephone #
		Email

**STRATEGY OF ENERGY SAVINGS**

Measure Description	Measure Status (See notes)	Fuel Type Saved (See notes)	Electric Supply Savings (kWh)	Electric Demand Savings (kW)	Fuel Savings (non-electric) (mmBTUs)	Percent(%) of savings to total fuel consumption	Annual Cost Savings	Estimated Implementation Costs	Simple Payback (Years)
							\$	\$	
							\$	\$	
							\$	\$	
							\$	\$	
							\$	\$	
							\$	\$	
							\$	\$	
							\$	\$	
<b>TOTAL (RECOMMENDED ONLY):</b>							\$	\$	

**Notes:**

Measure Status: Implemented (I); Recommended (R); Further Study Recommended (RS); Not Recommended (NR); Recommended Mutually Exclusive (RME).

Fuel Saved Type: Elec, NGas, Oil2, Oil4, Oil6, Coal, LPG. MMBtu = 1,000,000 Btu

Please note, energy savings must be presented as savings at the customer’s utility meter(s), and not at the individual building or tenant space.

**Attachment B-3**

**NYSERDA RCx Deficiency Worksheet (Industrial sites only)**

(example)

**Deficiency Number:**

Annual Electric Supply Savings (kWh)	Annual Electric Demand savings (kW)	Annual Fuel Savings (mmBTU)	Annual Cost Savings	Implementation Cost	Fuel Type Saved	Simple Payback (Years)	Supporting Calculations Location:
8,200	0	200	\$3,384	\$250	E & G	0.1	appendix c, page 56
<b>System:</b>	HVAC						
<b>Component:</b>	AHU #12						
<b>Location:</b>	East Wing over Conference Room						
<b>Notes</b>	Damper appears to be stuck as a result of a control wire breaking off of the control motor.						

Deficiency Description	Effect on system operation	Corrective Action	Benefit <sup>(1)</sup>	Recommend Corrective action?
<i>Air damper stuck in open position</i>	<i>Over ventilation and cooling of offices 8-12</i>	<i>Repair and adjust damper</i>	<i>E, C, O</i>	<i>Yes</i>

**Instructions:**

One worksheet is to be completed for each deficiency found in the RCx study, and included in the report. For each deficiency found, the energy saving/cost associated must be included. If the deficiency does not have any associated energy savings, zeros should be used. The complexity of the energy savings calculations should be appropriate to the size of the energy savings. Each deficiency must also be included in the required NYSERDA Project Summary Sheet (Attachment B-2).

**Notes:**

<sup>1</sup> E= Improved energy efficiency; C= Improved comfort; M= Reduced maintenance; O= Improved operation efficiency

**Attachment C**

**New York State Energy Research and Development Authority  
("NYSERDA")**

**AGREEMENT**

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period:
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, Rate Schedule.

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

**[CONTRACTOR]**

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

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Cheryl M. Glanton  
Director of Contract Management

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

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

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

## **EXHIBIT A**

### STATEMENT OF WORK

#### **1. GENERAL**

Under the terms and conditions of this Agreement, the Consultant shall provide FlexTech services to eligible NYSERDA customers or NYSERDA at the request and direction of NYSERDA.

Each service conducted under this Agreement will be defined by a written Task Work Order as defined in Section 3 of this Exhibit A.

#### **2. RANGE OF SERVICES**

The services provided by the Consultant under this Agreement will fall into the following general categories:

- a. General Feasibility Studies and Technical Support
- b. Carbon Mitigation Studies (includes carbon master planning and carbon lifecycle assessments)
- c. Peak-Load Reduction Strategies
- d. Industrial Efficiency Analysis
- e. Data Center Efficiency Analysis
- f. Combined Heat and Power, Distributed Generation, and Renewable Generation
- g. Retro-Commissioning and continuous commissioning Services
- h. Agricultural Technical Assistance
- i. Alternate-Fuel Technology
- j. Energy Procurement (includes hourly pricing, rate analysis, and aggregation)
- k. Executive Order No. 111 Requirements
- l. Green Buildings
- m. Water and Wastewater Services
- n. Energy Advisor Services and Implementation Assistance
- o. Other Energy Related Assistance as needed for NYSERDA and its customers (i.e. Waste Minimization, Sustainable Materials, and training and education, etc)

Consultants may be needed on a case-by-case basis to perform services for multifamily facilities and residences. In general, multifamily facilities and residences are handled by NYSERDA's Residential Energy Services (RES). Multifamily residences are defined as properties that provide residential housing and contain five or more units.

More specifically, within these categories, FlexTech services to be provided by the Consultant may include any one or more of the following:

- Preliminary surveys or detailed on-site engineering studies of specific energy efficiency

and carbon reduction measures/techniques

- Development of energy or climate action master plans
- Analysis of load shaping and peak-reducing energy management methods
- Energy or carbon-related design assistance
- Computer-assisted building or system modeling
- Benchmarking
- Monitoring and metering energy-consuming/carbon-emitting equipment and systems
- Technical guidance in improving environmental performance by reducing energy consumption and carbon emissions
- Long term energy management support
- Providing guidance to comply with Executive Order No. 111 requirements
- Developing guidelines or tools for specification, design criteria, or to support long term energy efficiency
- Developing training materials, conducting seminars, promoting or marketing technical subjects of NYSERDA services
- Other technical support and related assistance as needed for NYSERDA and its customers

The following is a more detailed description of each of the general categories and services to be provided by the Consultant. Services provided under any individual Task Work Order may include work under multiple categories.

### **General Feasibility Studies and Technical Support**

This represents a majority of the services provided through FlexTech. Feasibility studies aim to assist customers in making informed energy-related decisions at their facilities. This service may include, but is not limited to, equipment replacement or upgrade recommendations, comprehensive energy analysis on campus-type settings, energy-related design assistance through computer-assisted building modeling, or engineering support and other analysis requested by the customer and approved by NYSERDA. A feasibility study may require some level of design concepts to determine the feasibility of potential improvements. Although FlexTech does not provide design services, a feasibility study may require some level of design concepts to determine the feasibility of potential improvements.

Consultants may be asked to provide technical analysis and technical services for other NYSERDA efforts, which may include supplementing NYSERDA's technical staff to provide technical support on programs. This support may include, but is not limited to: program design assistance and research, analysis of performance standards for equipment or appliances; technical review and implementation assistance, assessing energy code, energy code compliance, and above-code opportunities; and other non-customer-specific analysis.

Additional services may include assisting in the development of new programs, technical manuals, papers, and seminars. NYSERDA may use the data and knowledge gained

from conducting surveys and studies to develop technical material and present seminars to other energy consumers throughout the State and country.

### **Carbon Mitigation Studies**

Carbon mitigation studies assist customers in making informed carbon management decisions at their facilities. This service may include, but is not limited to: performing carbon footprint analyses and developing carbon action plans to address carbon-intensive areas, water efficiency and water conservation studies, developing procurement strategies for acquiring carbon-neutral resources, equipment replacement or upgrade recommendations resulting in carbon mitigation, comprehensive carbon master planning for campus-type settings, carbon lifecycle “cradle-to-grave” assessments for processes, supply chains, company operations, specific products/product lines, etc. and various other analyses requested by the customer and approved by NYSERDA.

### **Peak-Load Reduction Strategies**

Consultants may be asked to provide detail on peak demand impacts of study recommendations. Electric grid reliability and availability of demand response or demand reduction initiatives in the Con Edison electric service territory during summer peak periods is especially critical and particular focus should be paid to calculating this impact in addition to the customer billing impact. The historic peak load in Con Edison’s electric service territory occurs between May 1 and October 31, during the hours of 11:00 A.M. to 6:00 P.M., with the exception of some night peaking load pockets. Consultants will need to provide analysis showing how the measure coincides with or impacts the system electric summer peak. Both short term load management and long term permanent load reduction opportunities may be investigated.

This service may also provide review of real-time metering information and the benefits to facilities interested in participating in load curtailment programs, hourly pricing, or in tracking daily load profiles to monitor the effects of energy consuming systems. This service may help customers identify their ability to, and the financial benefit from, participating in such programs and the associated energy savings from installing real-time metering or web-enabled metering when it is used to curtail or shift loads at their facility. Consultants will be asked to identify and analyze opportunities for customers to participate in load curtailment activities of New York Independent Systems Operator (NYISO) such as Installed Capacity Special Case Resources (ICAP/SCR), or a Time of Use (TOU) or Real Time Pricing (RTP) program.

### **Industrial Efficiency Analysis**

Industrial facilities and manufacturing processes require customized approaches to energy efficiency. The facilities typically support mission critical workloads and energy-intensive operations (i.e. widget production, purification, refining, etc.) that have unique characteristics and functions. NYSERDA has an increased focus on industrial process improvements that increase the efficiency of energy or material use and other projects that positively impact productivity pertaining to energy use. Projects may also focus on increasing throughput, process efficiency, improving environmental performance, or minimizing waste. Site and sector specific approaches will be used to ensure that the best

energy efficiency opportunities are identified and addressed. This analysis will predominantly focus on defining and reducing energy use per unit of production.

### **Data Center Efficiency Analysis**

Similar to the industrial sector, data center facilities and operations are also mission critical and require specialized knowledge on sector-specific technologies and strategies to best meet their energy efficiency needs. IT equipment and associated facility support systems have complex interactions. Data center energy analysis assistance will assess energy efficiency and/or carbon reduction potential of data center support systems and IT equipment. Consultants may be asked to provide assistance in evaluating the following:

- Data Center Supports System Efficiency (including but not limited to cooling improvements, air flow and temperature set point management, UPS systems, etc.), and
- IT Efficiency (including but not limited to server replacement, server/desktop virtualization, storage consolidation, system “right-sizing,” redundancy optimization, etc.). Site and sector specific approaches will be used to ensure that the best energy efficiency opportunities are identified and addressed. This approach will maximize process and energy reliability, productivity and energy savings. Analysis will predominantly focus on defining and reducing energy cost per unit of productive data throughput.

### **Combined Heat and Power, Distributed Generation, Renewable Generation**

Consultants may be asked to provide assistance in evaluating the technical and economic feasibility of installing on-site power generation, either distributed generation (DG) alone or distributed generation with heat recovery otherwise referred to as combined heat and power (CHP). All generation studies will require specific information in the final reports as detailed in the FlexTech solicitation, currently Program Opportunity Notice (PON 1746). Generation studies will require detailed review of: energy profiles of thermal and electrical loads, prospective applicable technologies, overall system efficiency, pressure and availability of the fuel source, permitting, sensitivity analysis, tariff impacts, maintenance requirements, interconnection issues, and overall system reliability.

### **Energy Procurement**

Energy planning and purchasing support in response to the changing energy marketplace are included as an offering in this Program. These analyses help customers analyze their energy rates, load shapes, energy consumption, and energy service aggregation opportunities. In addition, it can help customers prepare RFPs, review proposals, assist them to better negotiate with power marketers and other service providers, obtain advice on load aggregation and energy efficiency projects from energy service companies (ESCOs) with respect to potential performance contracting opportunities; and aggregating customers to purchase energy. Experience and knowledge with hourly pricing structures within specific electric territories should be highlighted.

### **Retro- and continuous commissioning Services**

Retro-commissioning is the systematic process of verifying that all building systems perform interactively according to design intent, that they meet the operational needs of

the owners and occupants, and that staff responsible for operation and maintenance are sufficiently trained. The goal of this service is to improve system performance, operation and maintenance, energy efficiency, occupant comfort, and indoor environmental quality. Retro-commissioning services will need to focus specifically on energy efficiency. Commissioning of new equipment and new facilities may be required on a case-by-case basis. In general, Consultants perform retro-commissioning on facilities and equipment that have been in use for at least one year.

Continuous commissioning is an ongoing process, typically involving extensive monitoring via a building management system, to resolve operating problems, improve comfort, optimize energy use, and identify retrofits in real time to optimize HVAC system operation for the existing building conditions. Consultants may be requested to provide continuous commissioning services over an extended period of time to customers. This service may also contain a training component where a portion of the Consultant's time would be dedicated to educating the customer's facilities staff on how to improve overall system control and operations for the building, as it is currently utilized, and on meeting existing facility needs. For this area of expertise, in particular, proposers should not be associated with the sale or promotion of proprietary software.

Please note: Whole building or new construction commissioning is not eligible for funding under FlexTech. Commissioning of new equipment or systems within an existing building is eligible, but must focus on the energy aspects of proper operating parameters. Design and commissioning of new facilities are handled by NYSERDA's New Construction Program.

### **Agricultural Technical Assistance**

This service provides technical services throughout the agricultural community. Consultants shall provide expertise in a manner that shows they are knowledgeable about this sector, and aware of the specific opportunities for efficiency improvements that exist and which improvements have been generally accepted.

### **Alternate Fuel Technology**

Alternate fuel technology covers a broad range of expertise from vehicle fleet management and economics, to renewable fuels such as ethanol or biodiesel, to technical issues such as compressed natural gas refueling stations. NYSERDA seeks experts and firms to help with problem-solving, based on their specialized hands-on experience, with specific alternative fuel or vehicle applications. Consultants may be called upon to answer challenging problems where solutions may come from applications in multiple disciplines. Some examples include: fleet management systems and purchasing decisions; re-fueling station design and siting issues; interaction with alternate-fuel providers and fire safety code officials; fueling station performance and maintenance requirements; implementation of Intelligent Transportation Systems and transportation demand management programs; and user/operator training. Expertise is also sought to help evaluate local market and economic conditions pertinent to projects, conducting technical assessments of infrastructure and equipment needs, and determining project feasibility.

Consultants may be asked to help the end user develop an action plan with specific implementation steps and procedures identified.

### **Executive Order No. 111 Requirements**

FlexTech provides assistance to customers who are required or who desire to comply with Executive Order No. 111 requirements. Services may include general technical support for commissioning green buildings, assistance with overall implementation plans, development of design or specification guidelines, review of procurement standards, limited on-site training, utilization of ENERGY STAR® Portfolio Manager, recommendation of ENERGY STAR® products, examining current building stock and developing operation and maintenance guidelines for continuous or re-commissioning.

### **Green Buildings**

Green buildings minimize the environmental impacts of buildings throughout their life cycle. Services provided by Consultants may include computer modeling and energy analysis to optimize building energy performance, as well as materials analysis to improve indoor environmental quality and occupant health. Services may also include aiding customers interested in complying with U.S. Green Building Council LEED® certification or the New York State Green Building Tax Credit. In addition to energy modeling and materials analysis, these services may include design and specification guideline development. Firms should demonstrate their experience acquiring LEED certification for existing facilities and identify LEED® accredited professionals on staff.

### **Water and Wastewater Services**

FlexTech provides assistance to municipal water and wastewater treatment plants to identify ways for them to use energy more efficiently. These studies may include providing the municipality with the information it needs to grow or change in the most energy efficient way possible. This could apply to facilities that are nearing capacity, ones that must meet new regulations, or any facility simply considering retrofitting the current design or wanting to become more energy efficient. Services may include equipment replacement studies, energy related process improvement studies, or energy operation studies such as sub-metering and electrical peak shifting.

### **Energy Advisor Services and Implementation Assistance**

FlexTech allows commercial and industrial customers to engage a qualified Consultant for long-term energy and carbon related services. The Consultant will act as a member of the customer team to provide long-term support on energy and carbon management issues, actively identify opportunities, and perform analyses with the customer's and NYSERDA's approval.

Services may include, but are not limited to, screening level energy evaluation of buildings, providing detailed technical support for decisions regarding the purchase of energy-efficient equipment, preparing bid documents for the purchase and installation of equipment, preparation of requests for proposals (RFPs), review of energy service company (ESCO) proposals, development of scopes-of-work for comprehensive energy audits conducted by a selected ESCO, review of comprehensive energy audits, review of

proposed energy performance contracts, design assistance, independent verification that equipment and installations are as specified, review of annual savings reports from ESCOs during the guarantee period, assisting with planning and implementation of strategies to reduce energy and environmental footprints, and guidance for regulatory or environmental permitting.

These studies may also be used to develop long-term capital budget strategies for the systematic replacement or upgrade of energy consuming and capital intensive systems. These studies may include evaluation of the current condition of the existing equipment, its expected useful life, and recommendations of energy-efficient replacement alternatives as a basis for a long-term capital budget strategy.

### **3. TASK WORK ORDERS**

Each project conducted under this Agreement will be defined by a project specific written Task Work Order. The following will be followed for all Task Work Orders:

- a. NYSERDA identifies and approves the applicability of each project and service. The Consultants are expected to assist in identifying projects and in marketing FlexTech Services, but the final determination of applicability is at NYSERDA's discretion.
- b. NYSERDA's Project Manager may issue a request to the Consultant to submit a proposed Task Work Order Plan, which will consist of an application detailed in the FlexTech solicitation, currently PON 1746, a statement of work to be performed and a firm not-to-exceed budget, to accomplish a definitive effort within the scope of this Statement of Work. NYSERDA's request will include the date by which the Consultant shall submit the proposed Task Work Order Plan to NYSERDA. This request often occurs during a site visit when NYSERDA, the Consultant, and the customer are reviewing the customer facility to identify opportunities.
- c. When a proposed project or service is for a NYSERDA customer, NYSERDA and the Consultant shall confer as to the appropriateness of the customer's request and possible alternatives.
- d. In response to NYSERDA's request, the Consultant shall prepare a written proposed Task Work Order Plan, which shall describe and define, as appropriate, the following:
  1. The project's purpose and goals.
  2. The approach that will be taken which shall include: any data collection methods; the method for calculating energy savings (i.e. computer modeling, spreadsheet, or manual calculations); and the method to be used for estimating implementation costs.
  3. Names of all parties involved, including the use of any sub-consultants.
  4. Background information on the customer and the customer's energy systems.

This background information will be used to justify the need for the study.

5. Recent energy consumption data, including annual energy expense by source.
  6. Defined deliverables including all assumptions, energy calculations, model inputs and outputs, development of a case study and completion of a Project Summary Sheet.
  7. The project time frame. The time frame should include approximate timelines for each task.
  8. The names or titles of individuals to work on the project.
  9. The total not-to-exceed cost of the project or study, including a breakout by task and by title, hourly rate, hours, and non-labor costs. A cost estimate for each element of the work breakdown structure should be provided, along with an estimate of the overall cost of the task. All project Task Work Order Plans shall be negotiated and written on a time and materials basis with a not-to-exceed cost cap/budget. All rates shall be consistent with those in Exhibit E of this Agreement. All cost estimates should be reasonable cost estimates and should not include a contingency cost category.
- e. NYSERDA shall review the Consultant's proposed Task Work Order Plan and may request the Contractor to revise and resubmit the Task Work Order Plan to satisfy NYSERDA's program requirements, if necessary.
- f. Once approved, NYSERDA shall issue the Task Work Order and FlexTech terms and conditions, to the customer for review and approval.
- g. Upon written approval of the Task Work Order by the customer, (when NYSERDA receives customer-signed FlexTech terms and conditions), NYSERDA shall issue a Notice to Proceed incorporating the terms of the Task Work Order Plan, or if not acceptable, NYSERDA will request that the Consultant make the required changes and resubmit the Task Work Order Plan.
- h. If NYSERDA determines that the parties will be unable to reach agreement on the terms of the Task Work Order, NYSERDA may rescind its Task Work Order Plan request at its sole discretion.
- i. When NYSERDA finds the terms of the proposed Task Work Order Plan acceptable and has issued a Notice to Proceed on a Task Work Order, the Consultant shall carry out the work pursuant to the requirements of such Task Work Order. The work set forth in the Task Work Order shall, upon its issuance by NYSERDA, constitute Work to be performed by the Consultant under this Agreement.
- j. Task Work Orders may be issued at any time during the Project Period.
- k. The Consultant may begin study execution upon NYSERDA's receipt of the Task Work Order at their own risk. Any work conducted prior to the Task Work Order

submission will not be reimbursed. The Consultant may submit an invoice for these costs when the corresponding Notice to Proceed has been issued by NYSERDA. Should a Notice to Proceed not be issued for a certain Task Work Order, NYSERDA is under no obligation to reimburse the Consultant for any costs or expenses associated with that Task Work Order.

l. If NYSERDA finds that a Task Work Order must be modified, NYSERDA may issue a Task Work Order modification request. The Consultant shall then prepare a modification to the Task Work Order Plan. If the Consultant's modified Task Work Order Plan is acceptable to NYSERDA and the customer, then NYSERDA may issue a Task Work Order Modification incorporating the terms of the Consultant's modified Task Work Order Plan.

m. NYSERDA must be kept informed of project milestones, project delays or other occurrences in order to participate in any decision or to initiate any necessary action.

n. NYSERDA will review and approve a draft report of the project to ensure that all items included in the Task Work Order are satisfactorily completed and within the prescribed time frame. NYSERDA may request the Consultant to revise and resubmit the report to satisfy NYSERDA's program requirements. The NYSERDA customer may also request the Consultant to revise and resubmit the report to satisfy the Task Work Order requirements.

o. NYSERDA will review and approve the finalized project to ensure that all items included in the Task Work Order are satisfactorily completed and within the prescribed time frame. The Consultant shall not be accountable for delays caused by NYSERDA, a NYSERDA customer, or other potential project co-funders such as a utility.

p. The Consultant shall not be responsible for any follow-up activities unless specified in the Task Work Order. Should additional follow-up be required, a separate Task Work Order Plan may be developed to cover these activities.

q. No agreement between the Consultant, NYSERDA, and a NYSERDA customer will obligate NYSERDA to provide any services other than the services set forth in a Task Work Order. Furthermore, the provision of FlexTech services shall in no way endorse or prevent any subsequent work that may be performed by the Consultant.

#### **4. CONSULTANT RESPONSIBILITIES**

The Consultant shall:

- a. Promote services to various customer groups and organizations.
- b. Identify potential FlexTech participants, verify program eligibility, and make

referrals to NYSERDA.

- c. Conduct a site visit and, if appropriate, invite a NYSERDA FlexTech Project Manager.
- d. Assist the customer in completing the FlexTech application, as requested.
- e. Prepare each project Task Work Order Plan for review and approval by NYSERDA, according to the level of service being provided. NYSERDA must review the Task Work Order Plan prior to the customer reviewing it.
- f. Negotiate the scope and cost of the Task Work Order Plan with NYSERDA, the customer, and any other co-funding entity.
- g. Upon agreement by all parties to the Task Work Order Plan and issuance of a Notice to Proceed by NYSERDA, provide the required assistance within the required time frame.
- h. Ensure technical accuracy of all projects and use generally accepted current engineering practices.
- i. Keep NYSERDA informed of each projects' status and confer with NYSERDA on substantive issues.
- j. Provide NYSERDA with building or facility data for each project, which shall include at least one year's cost and consumption of each energy source, when applicable.
- k. Make changes requested by NYSERDA.
- l. Provide project status and final reports, if required by the Task Work Order. If a final report is required, the Consultant must submit the final report to NYSERDA for review and make revisions as necessary to fulfill NYSERDA's FlexTech program requirements.
- m. Provide, when requested, on-site follow-up assistance to discuss recommendations, answer questions, and facilitate implementation.
- n. Make timely, accurate, and well documented requests for payment. NYSERDA, at its discretion, may approve progress payments during the course of a Consultant completing a Task Work Order Plan. Progress payments may be made on a case-by-case basis at the sole discretion of the NYSERDA Project Manager.
- o. Assist NYSERDA with the collection of data for purposes of program evaluation and promotion.

- p. Negotiate an agreement with the Customer for the direct payment of the Customer's share of the fees for the work to be performed pursuant to the Task Work Order Plan, if applicable. NYSERDA shall not be responsible for any portion of the customer's share and the agreement between the Consultant and the customer shall not obligate NYSERDA for payment.
- q. Provide information to customers on NYSERDA programs that can aid in implementation.
- r. Provide a draft case study of the project.
- s. Comply with the performance criteria outlined in Section 7.
- t. Refer to the FlexTech solicitation, currently PON 1746, for FlexTech program updates.

## **5. NYSERDA RESPONSIBILITIES**

NYSERDA will:

- a. Promote services to various customer groups and organizations.
- b. Identify potential FlexTech participants and make service referrals to Consultants.
- c. Assist Consultants in developing Task Work Order Plans with customers.
- d. Provide Consultants with administrative procedures.
- e. Secure signed FlexTech terms and conditions from NYSERDA customers, as necessary. Each FlexTech project will contain a Task Work Order, FlexTech terms and conditions, identification of all parties involved in the project, and procedures for third party cost sharing, if applicable.
- f. Monitor the progress of each Consultant through ongoing telephone contact, review of status reports and field monitoring activities, etc., for the purpose of meeting customer needs, identifying problems and initiating corrective action.
- g. Provide technical review of project reports and deliverables to ensure that the deliverables conform to the Task Work Order and Notice to Proceed that governed the analysis.
- h. Ensure adherence to NYSERDA's established policies and procedures.
- i. Provide completed reports to the customer.

- j. Promote the availability of FlexTech services to customers.
- k. Maintain databases of customers, technologies, energy and dollar savings resulting from the services, reports, case studies, fact sheets, and newsletter articles.
- l. Disseminate technical and financial-related energy-efficiency information to Consultants.
- m. Process properly documented payment reimbursement requests.
- n. Conduct FlexTech program evaluations.
- o. Provide FlexTech program updates via the FlexTech solicitation, currently PON 1746.

## **6. DELIVERABLES**

The Consultant shall deliver:

- a. A specific Task Work Order Plan for each project to be conducted.
- b. Project status reports as defined in the Task Work Order. The Task Work Order may require the Consultant to provide NYSERDA with brief periodic progress reports describing the work performed during a specified reporting period. Such reports shall describe any difficulties encountered during the specified reporting period and shall include a statement of the project directives setting forth the costs of the work during the specified reporting period.
- c. Satisfactorily completed projects as defined by an approved Task Work Order Plan as incorporated into a Task Work Order issued by NYSERDA.
- d. If required by the Task Work Order, the Consultant shall prepare a detailed final report covering all the work performed (the Final Report). The Final Report shall comply with the requirements set forth in the Task Work Order. Appropriate layout drawings, graphs, tabulations of data, calculations and assumptions, and references shall be included. One copy of a draft Final Report shall be submitted to the NYSERDA project manager not later than the date specified in the Task Work Order. NYSERDA will provide its comments therein to the Consultant within 30 working days after the receipt of such draft. NYSERDA reserves the right to extend the comment time frame, and will notify the Consultant of such extension.  
The Consultant shall prepare the Final Report in the final form satisfactory to NYSERDA reflecting therein NYSERDA's comments and shall submit two compact disks (CDs) of the final report with the FlexTech Final Report Template to the NYSERDA project manager. NYSERDA may require that the Final Report be

prepared in conformance with the FlexTech Final Report Requirements, as outlined in the FlexTech solicitation, currently PON 1746. The Final Report shall also include a completed Project Summary Sheet and case study (please see PON 1746).

e. NYSERDA may, at its discretion, use a NYSERDA approved technical reviewer to assist in the technical review of a detailed final report. Specifically, studies involving combined heat and power, distributed generation, and renewable generation may be subject to review by a NYSERDA technical reviewer.

## **7. Performance Criteria**

Consultants will be responsible for creating and maintaining their workload. NYSERDA does not guarantee any amount of work to be provided to any Consultant. All Consultants will be assessed at the conclusion of each Agreement term and NYSERDA will determine whether to exercise its option to renew the Agreement for an additional term. Consultants who do not sustain the minimum performance criteria, as described below, will not be presented with an option to renew.

In order to be considered for contract renewal, one of the criteria below must be met:

- a) Two approved and encumbered Task Work Order Plans.
- b) One approved and encumbered Task Work Order Plan to evaluate an annual load greater than or equal to 5,000,000 kWh.

Approved Task Work Order Plans, as per Section 3: (f) and (g), are encumbered after NYSERDA's Treasurer has issued a purchase order for the project and a notice to proceed has been issued to the Consultant. Approved Task Work Order Plans that are routing internally within NYSERDA during the contract renewal evaluation period shall be included in the assessment of whether the Consultant has met the minimum performance criteria.

Should the contract be renewed, new or additional criteria, such as a minimum number of NYSERDA approved final reports, may be added to this section for subsequent contract terms.

## **EXHIBIT B**

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

##### Definitions

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

(a) General Definitions:

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

Budget: Collectively, the budgets set forth in individual Task Work Orders consistent with the rates set forth in Exhibit E hereto.

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

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

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

Contractor: The Contractor identified in Item 2 on the first page of this Agreement.

Customer: An individual, a business, an organization or other entity who is a customer of NYSERDA.

Effective Date: The effective date of this Agreement shall be the date appearing in Item 4 on the first page of this Agreement.

Final Report: The Final Reports as described in Section 6 of Exhibit A.

Notice to Proceed: The Notice described in Section 3(i) of Exhibit A.

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

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

Progress Reports: The Progress Reports as required by the individual Task Work Orders issued pursuant to this Agreement.

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A and the individual Task Work Orders issued pursuant to this Agreement.

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.

Task Work Order: A Task Work Order issued by NYSERDA pursuant to Exhibit A of this Agreement, specifically a Task Work Order Plan approved by NYSERDA.

Task Work Order Plan: The statement of work and budget for a project proposed by the Contractor.

Work: The Work described in the Exhibit A and in individual Task Work Orders issued pursuant to this Agreement (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

## Article II

### Performance of Work, Project Personnel

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all work (the "Work") necessary to carry out Task Work Orders issued by NYSERDA for the implementation of the Statement of Work, attached hereto as Exhibit A (including the furnishing of personnel and the procurement of equipment, supplies and other items necessary in connection therewith) and subject to the terms therein. The Work shall include on-site engineering assistance, training and materials, technical analysis and support, implementation assistance services, and other technical services as requested by NYSERDA. The Work shall be carried out with diligence and skill to the satisfaction of NYSERDA. The Contractor agrees to cooperate with NYSERDA in carrying out the Work, and to review and act upon NYSERDA recommendations, in order to assure the Work's expeditious and satisfactory conduct and completion. The Contractor also agrees to meet with NYSERDA at such times as NYSERDA may reasonably request, and at other times specified in Task Work Orders, to discuss the progress of the Work and any other matters that may arise.

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement 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 Task Work Orders shall serve in the capacities described therein for the conduct of the Work described therein. Any changes of Project Director or in persons described in Task Work Orders shall be subject to the prior written approval of NYSERDA. Annexed as Exhibit E is a list of personnel that will be available to perform Work under this Agreement along with the rates that will apply for each such person during the term of this Agreement. If the Contractor wishes to employ personnel not listed on Exhibit E to complete any Task Work Order hereunder, the Contractor must obtain the written approval of NYSERDA. The approvals set forth in this Section shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director or personnel shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in NYSERDA to all equipment purchased by the Contractor under this Agreement. 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.

### Article III

#### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A and the Task Work Orders issued pursuant to this Agreement.

## Article IV

### Payment

Section 4.01. Payment Terms. Compensation will be based on the Contractor's staff charges and indirect costs plus allowable direct charges (collectively, "Contractor fees"). Contractor fees for a project must be fully described in each Task Work Order Plan budget and must be approved by NYSERDA. The Task Work Order Plan budget must state a not-to-exceed cost cap or ceiling amount for each project. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Work Order Plan without approval in writing by NYSERDA. The Contractor shall not be compensated for time spent in the preparation of any Task Work Order Plan.

The Task Work Order issued by NYSERDA will state NYSERDA's funding obligation. For projects in which NYSERDA is not directly paying 100% of the Contractor's fees, the Contractor itself must negotiate a payment schedule and collect fees from all other parties directly. NYSERDA will be responsible for its share of the project costs only.

(a) Staff Charges. To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate set forth in each Task Work Order and within the ranges set forth in Exhibit E or the actual wages paid to the employee and applicable at the time the Work is performed. Such billing rates shall not be increased during the term hereof without the written consent of NYSERDA.

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

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

(d) Profit: The Contractor shall be paid a profit at a fixed rate, as set forth in Exhibit E. The percentage for profit shall be applied only to Staff Charges incurred in the performance of the Statement of Work.

(e) Task Work Order Cost Cap: The Task Work Order budget must state a not-to-exceed cost cap or ceiling amount for each Task Work Order assignment. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Work Order without approval in writing by NYSERDA.

Section 4.02. Progress Payments. Unless otherwise specified in the Notice to Proceed for an individual Task Work Order, the Contractor may submit invoices for progress payment no more than once each month for Work performed. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserderda.ny.gov](mailto:invoices@nyserderda.ny.gov). Such invoices shall make reference to the Agreement number shown in Item No. 1 on page one of this Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Task Work Order budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Task Work Order budget that are within the ranges set forth in Exhibit E. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

The Contractor shall be notified by NYSERDA in accordance with Section 5.04.4 (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, 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 4.03. Release by the Contractor. The acceptance by the Contractor of final payment from NYSERDA under each Task Work Order issued pursuant to this Agreement shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to the Task Work Order and this Agreement.

Section 4.04. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance under this Agreement.

Section 4.05. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.04 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.04 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States, not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Purchase Orders

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

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

and written approval any subcontract(s) specified in a Task Work Order as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

## Article VI

### Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. It is understood and agreed that the delivery of the draft and final versions of the Final Report by the Contractor shall occur in a timely manner and in accordance with the requirements of the Task Work Order 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 the Task Work Order Plan.

## Article VII

### Force Majeure

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

## Article VIII

## Rights in Information; Confidentiality

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

- (a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.
- (b) All Proprietary Information shall be the property of Contractor.
- (c) The use, public performance, reproduction, distribution, or modification of any materials used by Contractor in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.
- (d) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

## Article IX

### Warranties and Guarantees

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

- (a) all information provided and all representations made by Contractor as a part of the proposal, if any, submitted to NYSERDA in order to obtain or in application for this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;
- (b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;
- (c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

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

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

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

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

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

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

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

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

## 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

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

NYSERDA or the State of New York resulting from, arising out of or relating to the Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

## Article XI

### Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

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

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed

necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

## Article XII

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

#### Section 12.01. Stop Work Order.

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

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

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

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

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

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

#### Section 12.02. Termination.

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

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

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

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

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

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be

non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

## Article XIII

### Independent Contractor

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

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

## Article XIV

### Compliance with Certain Laws

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

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

or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

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

## Article XV

### Notices, Entire Agreement, Amendment, Counterparts

#### Section 15.01. Notices.

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

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

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

#### **NYSERDA**

Name: Cheryl M. Glanton  
Title: Director of Contract Management  
Address: 17 Columbia Circle, Albany, New York 12203  
Facsimile Number: 518-862-1091  
E-Mail Address: [Cheryl.Glanton@nysesda.ny.gov](mailto:Cheryl.Glanton@nysesda.ny.gov)  
Personal Delivery: Reception desk at the above address

#### **[Contractor]**

Name:  
Title:  
Address:  
Facsimile Number:  
E-Mail Address:

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

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

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

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

## Article XVI

### Publicity

#### Section 16.01. Publicity.

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

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

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit,

provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS  
FOR ALL NYSERDA AGREEMENTS

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

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

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

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

8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**504.4. Payment Procedures.**

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

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

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

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

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

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

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

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

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date

shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

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

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

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

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

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

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it

is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

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

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

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

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

**Exhibit E**  
**PROJECT PERSONNEL & RATES**

DIRECT PERSONNEL COSTS:

Sample Title Classifications	Not to Exceed Hourly Rate Range	
	7/2014 – 7/2015	
	Min.	Max.
Principal Investigator		
Technical Specialist		
Senior Project Manager		
Project Manager		
Senior Engineer/Architect		
Engineer		
Analyst		
Administrative Support		

MULTIPLIER:

Profit / Fixed Fee:

DIRECT NON-PERSONAL SERVICE COSTS:

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

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