



**Loan Loss Reserve to Catalyze Clean Energy  
Financing in New York State Communities**

Program Opportunity Notice (PON) 4378 – Version 2.0 (02.28.2022)

**\$ 10,000,000**

*NYSERDA reserves the right to extend and/or add funding to the Solicitation should other program funding sources become available.*

Applications Accepted Starting: June 30<sup>th</sup>, 2020 at 3:00 p.m. Eastern Time\*  
Solicitation shall remain open until \$10,000,000 is allocated

**Program Summary**

The New York State Energy Research and Development Authority (NYSERDA) requests applications from entities for Loan Loss Reserve/Credit Enhancement support for financing products which support clean energy improvements in residential (1-4 unit) dwellings, small commercial (100 employees or less), not-for-profit and multifamily (5+ unit) buildings (Eligible Properties) located in New York State Communities. The Loan Loss Reserve will provide reimbursement for defined losses on individual transactions. Initial awards to qualified Applicants will be based on the Targeted Building Sector proposed. Applicants need to apply separately for each proposed Sector. Maximum initial awards are as follows:

- Residential (1-4 unit) Sector: Five hundred thousand dollars (\$500,000)
- Small Commercial Sector: Five hundred thousand dollars (\$500,000)
- Multifamily (5+ unit) Sector: One million dollars (\$1,000,000)
- Not-for-Profit Sector: One million dollars (\$1,000,000)

NYSERDA will consider making additional funding available through additional solicitation rounds should there be a strong market response to this pilot solicitation.

**Application Submission:**

**Applicants** may apply by following the directions posted on the **NYSERDA New York Loan Loss Reserve Program** webpage <https://nyserda.seamlessdocs.com/f/LoanLossReserve>.

If you have any questions or concerns please send an email to: [NYSLLR@nyserda.ny.gov](mailto:NYSLLR@nyserda.ny.gov)

No communication intended to influence this procurement is permitted except by contacting John Joshi (Designated Contact) at (212) 971-5342, ext. 3636, Heather Clark (Designated Contact) at (518) 862-1090, ext. 3253 or by e-mail [NYLLR@nyserda.ny.gov](mailto:NYLLR@nyserda.ny.gov). If you have contractual questions concerning this solicitation, contact (Venice Forbes) (Designated Contact) at (518) 862-1090, ext. 3507 or [venicesolicitations@nyserda.ny.gov](mailto:venicesolicitations@nyserda.ny.gov). Contacting anyone other than the Designated Contacts (either directly by the applicant or indirectly through a lobbyist or other person acting on the applicant’s behalf) in an attempt to influence the procurement: (1) may result in an applicant being deemed a non-responsible offeror, and (2) may result in the applicant not receiving an award.

Incomplete applications may be subject to disqualification. It is the applicant’s responsibility to ensure that all pages have been included in the application. Please note: for online submission, there are required questions that you will have to answer in addition to uploading attachments and you should allot at least 60 minutes to enter/submit applications. The online proposal system closes promptly at 3 p.m. Eastern Time, files in process or attempted edits or submission after 3 p.m. Eastern Time on the date above, will not be accepted. If changes are made to this solicitation, notification will be posted on the “Current Opportunities” section of NYSERDA’s website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

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## II. Definitions

- (a) “Affordable Multifamily Buildings”: Buildings under regulatory agreement, rent-controlled, rent-stabilized or government subsidized
- (b) “Applicant”: A Financial Institution or other entity applying for a Loan Loss Reserve award.
- (c) “Borrower”: An entity or individual who enters into an Eligible Financing Agreement with a Finance Provider for the purpose of completing a Project. The entity or individual is not required to own the Eligible Property.
- (d) “Eligible Financing Agreement”: An agreement made between a Finance Provider and a Borrower to finance a Project. The agreement must be for improvements to an existing building and may not be for the construction or purchase of a building.

The agreement must meet the definition of either an Eligible Lease, Eligible Loan, Energy Services Agreement, Eligible Savings-Based Payment Agreement, Energy Savings Portfolio Insurance Agreement, or Predevelopment Financing Agreement. The Eligible Financing Agreement must meet the requirements specified in [Section VII](#).

- (e) “Eligible Lease”: An agreement that provides the Borrower with Energy Saving Measures in exchange for payments in amounts that are due according to a schedule established in the agreement. Such payments are made to the Finance Provider or its assignee for a specified term. Title to the equipment may transfer at the beginning or end of the term.
- (f) “Eligible Loan”: An agreement that provides the Borrower with proceeds used to finance Energy Saving Measures in exchange for payments in amounts that are due according to a schedule established in the agreement. Such payments are made to the Finance Provider or its assignee for a specified term. Eligible Loans must be closed end loans; no revolving lines of credit will qualify.
- (g) “Eligible Property”: A property located in New York State that is a Target Building Sector.
- (h) “Energy Saving Measures”: Any Qualified Energy Efficiency Improvement or Renewable Energy System.
- (i) “Eligible Savings-Based Payment Agreement”: An agreement that provides the Borrower with agreed-upon energy savings from Energy Saving Measures in exchange for regular payments to the Finance Provider or the Finance Provider’s assignee. The term may be specified by a number of months or may run until payments have reached a specified amount.

The agreement must satisfy each of the following criteria:

- (1) Savings will be measured and verified no less than annually;
- (2) Total monthly energy and efficiency charges for the Borrower must be projected to be "cash flow positive," based on industry-accepted estimates, meaning: allowing for seasonal variations, the combined monthly energy expense (gas and electric) along with all projected monthly Eligible Savings-Based Payment Agreement charges is projected to be less than the Borrower's pre-project monthly energy expense;
- (3) The Borrower will share in benefits if actual savings exceed projected savings;

- (4) The Borrower does not bear risk in the event that savings are less than projected.
- (j) “Energy Services Agreement”: An agreement that provides the Borrower with the use of Energy Saving Measures as well as ongoing service and maintenance of that equipment in exchange for regular payments to the Finance Provider or the Finance Provider’s assignee for a specified term. Title to the Energy Saving Measures does not transfer to the Borrower.
- The agreement must include either:
- (1) A guarantee of functionality for any Energy Saving Measures and non-Energy Savings Measures; or
  - (2) A guarantee of energy savings. Equipment functionality or energy savings must be measured no less than annually.
- (k) “Energy Savings Portfolio Insurance Agreement”: A portfolio insurance policy guaranteeing that if an energy efficiency shortfall occurs on savings underwritten, the policy is triggered, paying the customer. The policy provides portfolio insurance to ESCO and Contractors that covers a comprehensive set of energy efficiency, renewable energy and distributed generation measure and a guarantee that the savings produced by the project will be sufficient to cover the cost of project financing for the life of the project. NYSERDA will offer support for underwriting additional energy savings above the savings proposed in the Investment Grade Audit Report, for a Eligible Savings-Based Payment Agreement.
- (l) “Finance Provider”: The Applicant approved for participation in the Program. Also referred to as a Contractor in the terms and conditions.
- (m) “Financial Institution”: Any insured depository institution, insured credit union, Community Development Financial Institution (CDFI), or other entity licensed by the New York State Department of Financial Services to perform lending services, or chartered or regulated by the federal government to perform lending services.
- (n) Investment Grade Audit Report” scope of work to be implemented by the ESCO, establish guaranteed savings, develop an agreed-upon plan to measure and verify the guaranteed savings, and ensure that the agreed-upon project meets statute requirements.
- (o) “Loan Loss Reserve Award Amount”: The amount established by NYSERDA for financial assistance provided for the Loan Loss Reserve Account for the benefit of a Finance Provider, or successor servicer or assignee as may be requested and approved in writing by NYSERDA, for Eligible Financing Agreements, and as such amount may be amended in writing by NYSERDA.
- (p) “Loan Loss Reserve Account”: An account established and maintained by NYSERDA for the benefit of the Finance Provider or successor servicer to hold the Loan Loss Reserve Balance for each Target Building Sector.
- (q) “Loan Loss Reserve Balance”: The amount of Loan Loss Reserve that is available to the Finance Provider held in the Loan Loss Reserve Account, which shall equal the initial Loan Loss Reserve Award Amount plus any subsequent awards less any amounts paid to Finance Provider for losses, and any amortized reduction.

- (r) “Origination” and “Origination Date”: the date on which any Eligible Financing Agreement becomes the legally binding obligation of the Finance Provider and Borrower, all in accordance with the terms and conditions set forth herein or incorporated herein, and any law or regulation incorporated herein.
- (s) “Predevelopment Financing Agreement”: a loan or other financing agreement to cover pre-construction analysis and design for Energy Savings Measures, including but not limited to Green/Integrated Physical Needs Analysis (GPNA/IPNA), or Investment Grade Energy Audit which is used for the analysis of potential energy, water, and health performance upgrades to buildings in the Small Commercial, Multifamily, and Not-for-Profit Sectors.
- (t) “Qualifying Eligible Loss”:

The amount of any Eligible Financing Agreement, that is more than 120 days past due, calculated as follows:

- (1) for Eligible Loans the unpaid principal and remaining unpaid interest;
  - (2) for Eligible Leases the sum of remaining unpaid payments;
  - (3) for Energy Services Agreements: the minimum or actual, or guaranteed energy savings multiplied by
    - a) for kWh power savings the base kWh rate; or,
    - b) for thermal fuel savings the base BTU rate;
  - (4) for Eligible Savings-Based Payment Agreements, the minimum of actual or guaranteed energy production multiplied by:
    - a) for kWh power production the base kWh rate; or,
    - b) for thermal fuel production the base BTU rate;
  - (5) for Predevelopment Financing Agreement the unpaid principal and remaining unpaid interest
  - (6) for Energy Savings Portfolio Insurance Agreement, the unpaid principal and remaining interest due to a shortfall in returned savings that were unwritten above the baseline projections of energy savings in the Investment Grade Audit Report
- (u) “Principal Amount”:
- (1) for Eligible Loans the unpaid balance as of the date of the Monthly Report;
  - (2) for Eligible Leases the sum of remaining unpaid payments;
  - (3) for Eligible Savings-Based Payment Agreements: the minimum actual or guaranteed energy savings multiplied by
    - a) for kWh power savings the base kWh rate; or,
    - b) for thermal fuel savings the base BTU rate;
  - (4) for Energy Services Agreements: the minimum actual or guaranteed energy savings multiplied by
    - a) for kWh power savings the base kWh rate; or,
    - b) for thermal fuel savings the base BTU rate;
  - (5) for Energy Savings Portfolio Insurance Agreements, the minimum of actual or guaranteed energy production above those guaranteed in the Investment Grade Audit Report multiplied by:
    - a) for kWh power production the base kWh rate; or,
    - b) for thermal fuel production the base BTU rate;
  - (5) for Predevelopment Financing Agreements the unpaid balance as of the date of the

## Monthly Report

- (v) “Program”: The Loan Loss Reserve/Credit Enhancement Program described in this Program Opportunity Notice.
- (w) “Project”: One or more Qualified Energy Efficiency Improvements or Renewable Energy Systems, installed at an Eligible Property financed in whole or in part under a single Eligible Financing Agreement, or predevelopment financing for Qualified Energy Efficiency Improvements or Renewable Energy Systems at an Eligible Property, including Green/Integrated Physical Needs Analysis, financed in whole or in part under a single Eligible Financing Agreement.
- (x) “Qualified Energy Efficiency Improvements”: A modification to a structure that shall increase the energy efficiency and conservation of an existing structure, including but not limited to:
  - (1) Application of weather-stripping, caulking, sealant and other materials around doors, windows, and other areas of a building for the purpose of insulating or sealing openings in the building envelope and within the building to mitigate energy loss;
  - (2) Testing, repairing and replacing heating or cooling systems or components of such systems;
  - (3) Thermostat upgrades;
  - (4) Water heater repair and replacement;
  - (5) Roof, chimney, fireplace and roof vent repair as determined to be necessary to mitigate energy loss or resolve energy-system related health and safety issues;
  - (6) Repair and replacement of storm windows, permanent windows and exterior doors;
  - (7) Repair or replacement of major appliances;
  - (8) Installation of thermal solar heat or hot water systems;
  - (9) Addition of insulation to exterior walls or ceilings;
  - (10) Replacement of inefficient light bulbs and lighting fixtures and systems;
  - (11) Minor repairs that are necessary to ensure maximum efficiency from the provision of qualified energy efficiency services;
  - (12) Installation of carbon monoxide detectors and indoor environmental testing and mitigation deemed necessary as a result of the provision of other qualified energy efficiency services;
  - (13) Fuel switching to convert an electrically heated building to a more efficient heating source provided that significant energy cost-savings can be demonstrated.
  - (14) Beneficial electrification, including heat-pumps (geothermal, ASHP, Desiccant Heating and Cooling systems, and other high-efficiency beneficial electrification solutions)

Please refer to the NYSERDA document “*Loan Loss Reserve Illustrative Guidelines for Eligible Technologies*” for additional details in Attachment E.

- (y) “Renewable Energy Systems”: are technologies that generate energy from non-depletable or naturally replenishable resources. Renewable resources include solar energy, wind, the heat of the earth (geothermal), and plant materials (biomass). Renewable energy technologies produce power, heat or mechanical energy by converting those resources either to electricity or to motive power.

- (z) “Servicing”: conducting a customer service operation to on-board all Eligible Financing Agreements into the servicer's servicing system, handling Borrower inquiries regarding Eligible Financing Agreements already under servicing, sending out regular financing billing statements, collecting and applying payments, handling requests for modifications, collections where necessary, and distributions to investors where applicable.
- (aa) “Target Building Sectors”: are (1) residential (1-4 unit) dwellings; (2) a structure used or occupied by a small business (100 employees or less); a structure used or occupied by a not-for-profit corporation; and (4) multifamily (5+ unit) buildings.

### **III. Introduction**

NYSERDA is a public benefit corporation of the State of New York created under Article 8, Title 9 of the New York State Public Authorities Law. NYSERDA offers objective information and analysis; innovative programs, including energy efficiency, renewable energy, and energy research and development; technical expertise; and funding to help New Yorkers increase energy efficiency, save money, use renewable energy and reduce reliance on fossil fuels.

The goal of this program is to increase adoption of Qualified Energy Efficiency Improvements and Renewable Energy Systems in Eligible Properties in New York State Communities by expanding access to, and terms of, clean energy financing solutions offered by qualified Financial Providers to finance these projects. NYSERDA will enter into agreements with qualified Financial Providers to provide a partial portfolio loss coverage against their qualified financing portfolios they originate for Qualified Energy Efficiency Improvements or Renewable Energy Systems in Eligible Properties in New York State Communities, providing for defined losses on individual transactions, up to a Loan Loss Reserve Award Amount. The initial Loan Loss Reserve Award Amount will be based on which Target Building Sector that the Financial Provider Applicant will provide financing for. NYSERDA reserves the right to adjust this initial award after one year; adjustments can include reduction or increase of award based on portfolio growth, performance and availability of funds; provided, no such adjustment will affect NYSERDA’s obligation to a Finance Provider with respect to outstanding Eligible Financing Agreements.

Energy Efficiency and Renewable Energy Loans (Solar) have demonstrated stable credit performance during the period NYSERDA has provided a loan program to support the deployment of energy efficiency and solar energy. Since 2010, NYSERDA has administered the Green Jobs Green New York (GJGNY) Loan Program which provides loans to finance energy efficiency improvements and the installation of renewable energy systems in residential 1-4 family buildings. Attributes and payment performance experience on the residential GJGNY Loan Program can be found on NYSERDA’s website at <https://www.nyserda.ny.gov/Researchers-and-Policymakers/Green-Jobs-Green-New-York/Data-and-Trends>. Potential applicants offering financing for the residential sector are encouraged to review this information to assist in anticipating performance results of their financing portfolios.

### **IV. Applicant Eligibility Requirements**

By submitting an application hereunder, Applicant hereby represents to NYSERDA, as of the date of its application and on the date that it is approved as a Finance Provider: Applicant is (i) a Financial Institution as defined herein, or (ii) a non-Financial Institution that is authorized to do business in New York State and fulfills each of the requirements set forth in [Section VI](#) hereof; and (iii) is not currently receiving financing support through the NY Green Bank.

## V. **Application to Participate in the Program**

An Applicant seeking to become a Finance Provider must submit a complete application to NYSERDA signed by a person authorized to legally bind the Applicant including the signatory's name, title, and date. The Applicant must sign the acknowledgements, certifications, and representations of the Applicant.

All applications must include a certification that all the information provided is true and correct to the best of the signatory's knowledge.

A complete application includes the following information, disclosures, acknowledgements, certifications, and representations, and can be accessed from the following link at <https://nysesda.seamlessdocs.com/f/LoanLossReserve>

### 1) Information

The Applicant must provide the following:

- a) Name, address, and website URL of the Applicant.
- b) Name, title, phone number, and e-mail address of the Program contact person for the Applicant.
- c) Type of finance entity, e.g., insured depository institution, insured credit union, Community Development Financial Institution, or other type.
- d) Name(s) of any federal government regulatory agency(ies) to which the Applicant is accountable and license number(s), if applicable.
- e) Whether the Applicant is, or is required to be, licensed by the NYS Department of Financial Services for the lending activities proposed to be carried out in the Program, and documentation of such licensure.

### 2) Disclosures

The Applicant must disclose the following:

- a) The name of the entity funding the Projects that are to be enrolled in the Program;
- b) The name of the finance agreement counterparty(ies) or the service agreement counterparty(ies) who will be named on the closing documentation provided to the Borrower;
- c) The assignee(s) of repayment streams, if any; and
- d) The Applicant's intent as to what it will do with the Eligible Financing Agreements, if known, (e.g. hold, sell, transfer, participate, etc.) and the identity of a purchaser, if applicable.

### 3) Proposed Products

To participate in the Program, the Applicant must provide a description of proposed financial product(s) (Eligible Financing Agreements), including:



- a) A detailed description of the products the Applicant is proposing to offer, including, but not limited to, the type of financing product and its relationship to the categories of Eligible Financing Agreements, collateral requirements (if any), minimum and maximum financed amounts, interest rates, terms, service or maintenance charges, fees, prepayment penalties, and a description of customer eligibility and underwriting criteria.
  - b) A description of the geographic area(s) in New York where the financing program(s) will be offered.
  - c) An explanation of how the Loan Loss Reserve Account will be utilized to provide benefits to Borrowers compared to the Applicant's typical product offerings in one or more of the following ways:
    - i. Broadened approval criteria;
    - ii. Longer terms;
    - iii. Larger amounts available to finance;
    - iv. Better rates; and/or
    - v. Other advantageous terms.
    - vi. For Energy Savings Performance Insurance:
      - (a) Additional available cashflow underwritten for the same measures costs; or
      - (b) Shorter debt term, based on the baseline underwritten cashflow; or
      - (c) Net higher savings investment ratio based vs. original U/W cashflow without a policy;
- 4) In compliance with §139-j and §139-k of the State Finance Law (see [Section XVI](#), General Conditions below for additional information), Applicants will be required to answer questions during application submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility.
- 5) Acknowledgements of the Applicant  
 By submitting an application to NYSERDA to participate in the Program, the Applicant, through its authorized officer, hereby certifies to NYSERDA that the information provided in its application is true and correct as of the date hereof and on the date it is approved as a Finance Provider.
- 6) Representations of the Applicant  
 The Applicant hereby represents to NYSERDA as of the date of its application and as of the date such application is approved that:
- a) it is duly organized and validly existing under the laws of the state of its organization.
  - b) it is duly qualified to do business (if applicable) and has all the necessary licenses and approvals in New York State to carry out its activities under the Program.
  - c) it has the power and authority to execute and carry out the terms of the Program.
  - d) it is not subject to a cease and desist order or other regulatory sanction from the appropriate federal or state regulatory body, which would impair its ability to participate in the Program.
  - e) it has no proceedings or investigations pending or threatened before any court or regulatory body against the entity.
  - f) it has the experience and expertise to underwrite, originate, and service financing products in accordance with all applicable regulations and laws.
  - g) it has trained and qualified employees suitable for underwriting, originating, and servicing

- financing products, or has an agreement with a qualified firm to support this function.
- h) The person signing the application, whose name and title is printed below the signature with the date of the signature, is authorized to legally bind the Applicant.
  - i) The information submitted in the application is true and accurate to the best of the signatory's knowledge.
  - j) All Applicants that are not Financial Institutions have reviewed and will comply with the additional requirements specified in [Section VI](#).

The Applicant further represents to NYSERDA, as of the date it is approved by NYSERDA to participate in the Program as a Finance Provider:

- a) It must follow all Program rules and terms and conditions set forth herein.
- b) That all Eligible Financing Agreements when made met the requirements set forth in [Section VII](#).
- c) It must permit an audit by NYSERDA of any of its records relating to the Finance Provider's financing portfolio during normal business hours on its premises and must supply such other information concerning the financing portfolio as may be reasonably requested by NYSERDA. Additionally, the Finance Provider must permit an audit of its records relating to how it is representing the Program to the public, including, but not limited to, web and print collateral, marketing scripts, and marketing materials.
- d) It agrees to provide to NYSERDA at any time financing documentation, including Borrower contract and if applicable and available any related documents used for underwriting including utility bills, energy efficiency financing disclosures, energy modeling report, energy load analysis, including the Home Energy Rating Systems reports and certificates of completion.
- e) NYSERDA and New York State have no liability to the Finance Provider under the Program except from funds deposited in the Loss Reserve Account(s) for the Finance Provider.

#### 7) Covenants Agreed to Upon Approval by NYSERDA

The application must include the Applicant's representation, warranty, and covenant contained in this Section, signed by a person authorized to legally bind the Applicant.

Upon approval by NYSERDA to participate in the Program as a Finance Provider the Applicant:

- a) must retain all records relating to each Eligible Financing Agreement for the term of financing plus three years after the financing agreement has ended.
- b) is solely responsible for identifying and making all disclosures and providing periodic reports to its Borrower (s) as required under applicable finance laws.
- c) is solely responsible for updating NYSERDA with any changes to the company's name, contact person, loan officer/staff, type of financial institution, the counties where the Program will be available (subject to NYSERDA's approval), the names of the regulatory agency having jurisdiction over the entity, or the name of the entity's insurance company.
- d) is solely responsible for delivering to NYSERDA, no less than 15 days prior to such expiration date, certificates of insurance evidencing the renewal of such policies, and shall promptly pay all premiums thereon due.
- e) is solely responsible for updating NYSERDA (and that NYSERDA has the right to approve of) any changes to the entity financing program requirements, fees assessed against

- Borrowers, the ways in which the Program will benefit Borrowers.
- f) must comply with all applicable finance laws, possess and maintain all required state and federal licenses, and remain in good standing with all governmental authorities having jurisdiction over its business.
  - g) must maintain quality control and management systems to evaluate and monitor the overall quality of its loan or financing related activities including, where applicable, underwriting reviews, and consumer complaint resolution processes.
  - h) must maintain a written disaster recovery plan that covers the restoration of the facilities, backup and recovery of information in electronic processing systems.
  - i) must establish and maintain adequate audit and management control systems to guard against dishonest, fraudulent or negligent acts by employees and contractors involved in the Origination process.
- 8) Application Process
- a) Upon receipt of a completed application, NYSERDA will, within thirty business days, review and determine whether additional information is required, or whether the application is sufficient to permit the Applicant to be a Finance Provider.
  - b) NYSERDA's decision regarding enrollment will be final.
  - c) NYSERDA will notify the Applicant of its decision and provide an award letter if approved as a Finance Provider.
- 9) Changes to Product Terms
- a) If, after being approved to participate in the Program, a Finance Provider wishes to make changes to products offered that will adversely affect the benefits to Borrowers under the (as described in [Section V\(3\)](#)) the changes must be approved by NYSERDA.
- 10) Finance Provider Withdrawal and Termination
- a) A Finance Provider may withdraw from the Program, in whole or in part, by giving written notice to NYSERDA, signed by a person authorized to legally bind the Finance Provider in the following circumstances and subject to the following conditions:
    - a. The Finance Provider has transferred or sold all or part of the Finance Provider's Eligible Financing Agreements that are covered by the Agreement (each, a "Covered Agreement") in accordance with [Section XIV](#) hereof.
    - b. The Finance Provider releases NYSERDA from all Loss Reserve Account(s) coverage with respect to all existing Covered Agreements and shall not be eligible to submit future financings for coverage under the Program. Finance Provider will continue to report recoveries with respect to losses previously paid under the program and shall repay NYSERDA its proportionate share of any recovery.
    - c. Finance Provider will not issue any further Eligible Financing Agreements under the Program but that the Loss Reserve Account(s) will continue in existence to support all Eligible Financing Agreements that were issued prior to such notice. Finance Provider will continue to fulfill its reporting requirements to NYSERDA for the covered portfolio.

- b) For any such notice received the remaining balance in the Finance Provider's Loss Reserve Account(s) will be reverted to NYSERDA.
- c) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement upon ten (10) days prior written notice to the Finance Provider upon the occurrence of any of the following:
  - (i) Entry of a cease and desist order, regulatory sanction, or any other action against the Finance Provider by a regulatory agency or court with jurisdiction over the Finance Provider;
  - (ii) Failure of the Finance Provider to abide by applicable finance law or the program rules within this PON;
  - (iii) Failure of the Finance Provider to service or issue any Eligible Financing Agreements under the Program, as applicable, for a period of one year;
  - (iv) Failure of the Finance Provider to report to NYSERDA pursuant to [Section XII](#) within sixty calendar days; or
  - (v) Providing false or misleading information regarding the Finance Provider, or an Eligible Financing Agreement, to NYSERDA, or failure to provide NYSERDA with notice of material changes in submitted information regarding the Finance Provider.
- d) In the event of such termination, the Finance Provider must not issue any further Eligible Financing Agreements, but all previously issued Eligible Financing Agreements will continue to be covered by the Loan Loss Reserve Account until the Finance Provider is paid, claims are filed, or the Finance Provider withdraws from the Program pursuant to [Section V\(11\)\(a\)\(i\)](#).
- e) A terminated Finance Provider must continue to report on Eligible Financing Agreements pursuant to [Section XII](#).
- f) If a terminated Finance Provider fails to report to NYSERDA pursuant to [Section XII](#) for sixty calendar days, the remaining Loan Loss Reserve Balance in the Finance Provider's Loss Reserve Account(s) may be reverted to NYSERDA.

## **VI. Additional Requirements for Entities that are not Financial Institutions**

If an Applicant is not a Financial Institution as described in this Agreement, in addition to the requirements set forth in [Section V](#), to be approved as a Finance Provider, Applicants must submit the following information in a format as specified by NYSERDA. Applicant represents to NYSERDA that all information provided hereunder is true and correct, to the best of Applicant's knowledge, as of the date of the application and as of the date such application is approved.

- 1) Income statements and estimated balance sheets for each of the last three years of operations. Newly formed non-profit community-based Applicants, with a services agreement with an affiliate, are exempt from this requirement.

- 2) Net Worth: The Applicant must demonstrate to NYSERDA that it has a net worth of no less than \$1 million and assets that exceed 0.5% of assets under servicing. Newly formed non-profit community-based Applicants are exempt from this requirement.
- 3) Underwriting Qualifications: Applicant must provide the following to NYSERDA:
  - a) Demonstrated experience, in writing, with underwriting financing;
  - b) Demonstrated experience, in writing, with home improvement financing and the coordination of such financing with contractors and businesses;
  - c) Written description of its underwriting process; and
  - d) Demonstrated qualifications, in writing, of the Applicant and key positions and associated job duties with regard to underwriting.
  - e) Newly formed non-profit community-based Applicants are exempt from this requirement.
- 4) Origination Qualifications: Applicant must provide the following to NYSERDA:
  - a) Demonstrated ability, in writing, to originate financing in accordance with all applicable finance laws, including related expertise and experience, trained and qualified personnel, and suitable systems, processes, and facilities to support the business;
  - b) Demonstrated experience, in writing, with equipment financing and the coordination of such financing with contractors and businesses;
  - c) Sample transaction documentation.
  - d) Newly formed non-profit community-based Applicants are exempt from this requirement.
- 5) Servicing Qualifications: If the Applicant will perform the Servicer role under the Program, it must provide the following to NYSERDA:
  - a) Demonstrated capacity, in writing, for, and experience with, servicing the type of product(s) the Applicant will be providing and general customer service; and
  - b) A description of key positions and associated job duties, software, and systems used by the Applicant in performing servicing of Eligible Financing Agreements.
  - c) Newly formed non-profit community-based Applicants are exempt from [Section VI\(6\)\(a-b\)](#).
- 6) The person signing the application, whose name and title is printed below the signature with the date of the signature, is authorized to legally bind the Applicant.

## **VII. Eligible Financial Products**

### **1) Disclosure**

For all financial products, the Finance Provider must disclose to the Borrower either:

- a) An annual percentage rate (APR) (inclusive of any fees) as well as any advance payments which the Borrower is required to pay; or
- b) The total cost of the Project for the Borrower comprised of monthly payments multiplied by the number of months in the agreement plus any fees [(monthly payments \* number of months in the agreement) + fees]. Monthly payments

should be inclusive of, but not limited to, equipment and installation repayment, and any charges for financing, services, maintenance, or oversight of equipment.

For the purposes of this Section, Eligible Savings-Based Payment Agreements will satisfy the requirements set forth in the preceding paragraph with the Finance Provider's provision of a good-faith estimate of the total cost of the project, based on industry-accepted methods and assumptions used to estimate energy savings, due to the fact that monthly payments may be variable under these agreements.

## 2) Other Provisions

In addition to meeting any requirements for an Eligible Lease, Eligible Loan, Energy Services Agreement, Eligible Savings-Based Payment Agreement, Energy Savings Portfolio Insurance Agreement, or Predevelopment Financing Agreement, the following provisions apply:

- a) Funds to be used for renewable energy, energy efficiency, health and safety and resiliency, with a majority of funds used for renewable energy and efficiency.
- b) The financing of new construction is not allowed.
- c) Interest rates, if applicable, must be fixed.
- d) Applicants may offer loans with dealer-point buydown, provided it results in a lower net present value (NPV) cost to the borrower based on the term of the loan. Such determination will be made at NYSERDA's sole discretion
- e) Applicants cannot have prepayment penalties on residential offered financing products.
- f) Interest rates must be fixed rates.
- g) Maximum residential interest rates shall be the ten-year Treasury plus 750 basis points.
- h) Financing products can include secured or unsecured loans as well as those listed above in the Introduction. Financing products are not limited to those listed and NYSERDA encourages Applicants to present innovative financing structures.
- i) Residential financing products to consumers with FICO® scores less than or equal to 580 shall not include debt products.
- j) Residential products for consumers with FICO® scores less than or equal to 580 shall include a performance guarantee.
- k) Residential financing products shall have a minimum term of five (5) years or greater but shall allow a Borrower the option of a shorter term if Borrower requests.
- l) Applicants can submit new innovative financing products and structures for approval. NYSERDA approval will be contingent on benefit to end users and customers.
- m) Portfolio distribution for Eligible Financing Agreement for:
  - (i) Residential: A minimum of 35% by dollar amount must be to residential customers with a FICO credit score = < 680 or consumers at or below 80% of AMI, or SMI, whichever is greater
  - (ii) Multifamily: A minimum of 35% by dollar amounts must be for Projects in Affordable Multifamily Buildings
- n) The maximum amount of loan loss reserve asset coverage for any Eligible Financing Agreement are as follows:
  - (i) Residential: Fifty thousand dollars (\$50,000)
  - (ii) Small Commercial: Five hundred thousand dollars (\$500,000)

- (iii) Multifamily: One million dollars (\$1,000,000)
- (iv) Not-for-Profit: Five hundred thousand dollars (\$500,000)

### **VIII. Loan Loss Reserve/Credit Enhancement**

- 1) NYSERDA will provide ninety percent (90%) asset coverage for Qualifying Eligible Losses, as defined below, subject to sufficient funds in the Finance Provider's Loan Loss Reserve Balance.
- 2) Loan Loss Reserve Account shall be available for the full term of each financing originated by the Finance Provider during the term of the Eligible Financing Agreement.
- 3) The Loss Percentages shall be as follows:
  - a) Residential with applicant FICO® score less than or equal to 660: thirty five percent (35%) of the remaining Principal Amount of each such Eligible Financing Agreement.
  - b) Residential with applicant FICO® greater than 660: ten percent (10%) of the remaining Principal Amount of each such Eligible Financing Agreement.
  - c) Small Commercial: the sum of twenty percent (20%) for the first \$50,000 and five percent (5%) on the remaining Principal Amount of each such Eligible Financing Agreement.
  - d) Multifamily: the sum of twenty percent (20%) on first \$100,000 and five percent (5%) on the remaining Principal Amount of each such Eligible Financing Agreement.
  - e) Not-for-Profit: the sum of twenty percent (20%) on first \$100,000 and five percent (5%) on the remaining Principal Amount of each such Eligible Financing Agreement.

### **IX. Loan Loss Reserve Award**

- 1) Additions to the Finance Provider's Loan Loss Reserve Award Amount

NYSERDA shall have no obligation to make additional contributions to the Finance Provider's Loan Loss Reserve Account other than the initial Loan Loss Reserve Award Amount. NYSERDA shall conduct a review of the Finance Provider's issuance of Eligible Financing Agreements annually commencing one year from award and may, in its sole discretion and availability of funds, based on the portfolio growth, and/or performance:

  - a) Increase the Loan Loss Reserve Award Amount in an amount equal to the initial Loan Loss Reserve Award Amount;
  - b) Increase the Loan Loss Reserve Award Amount in an amount less than the initial Loan Loss Reserve Award Amount;
  - c) Increase the Loan Loss Reserve Award Amount in an amount greater than the initial Loan Loss Reserve Award Amount to the extent the Finance Provider has provided market rationale for such award; or,
  - d) Reduce the Loan Loss Reserve Award Amount if the amount of the Loan Loss Reserve Balance is below fifty percent (50%) of the initial Loan Loss Reserve Award Amount at the one-year mark.

- e) Finance Provider can request an increase to the initial Loan Loss Reserve Award Amount when eighty (80%) percent of the initial Loan Loss Reserve Award Amount has been allocated to the Loan Loss Reserve Account, subject to availability of funds.

## **X. Loan Loss Reserve**

### 1) Loan Loss Reserve Account

NYSERDA agrees to maintain available funds and establish a Loan Loss Reserve Account for each Target Building Sector on NYSERDA's balance sheet for the benefit of the Finance Provider. The Finance Provider's Loan Loss Reserve Account will be adjusted and administered as provided in this Program Opportunity Notice and shall be solely for the benefit of Finance Provider, or any assignee as may be requested and approved in writing by NYSERDA.

### 2) Loan Loss Reserve Balance

The Finance Provider shall report in the Monthly Report the amount of the Loan Loss Reserve Balance which shall be calculated based on the defined percentage, subject to the Target Building Sector allocation of the Loan Loss Reserve amount, of the original principal amount of the Eligible Financing Agreements originated less any reductions as set forth below. NYSERDA shall review the reported Loan Loss Reserve Balance and within fifteen (15) days after receiving the Monthly Report notify the Finance Provider of any comments or required updates.

### 3) Reductions to Finance Provider's Loan Loss Reserve Balance

#### a) Losses paid to the Finance Provider

The Loan Loss Reserve Balance shall be reduced by any and all amounts paid by NYSERDA to the Finance Provider for Qualifying Eligible Losses pursuant to [Section XII](#).

#### b) Repayment

Whenever an Eligible Financing Agreement is repaid in full at maturity or upon early repayment in full, the Finance Provider shall report such repayment in the Monthly Report, with a result in reduction of the Loan Loss Reserve Balance, as described above.



## **XI. Administration of the Loan Loss Reserve**

### 1) Administration

NYSERDA shall administer the Loan Loss Reserve Account in accordance with the terms of this Program Opportunity Notice. NYSERDA shall account for the Loan Loss Reserve Balance on its balance sheet and on behalf of the Finance Provider, and any successors or assignees as may be requested and approved in writing and shall maintain appropriate records. The Loan Loss Reserve Balance shall be used solely for the purposes provided in this Program Opportunity Notice. The Finance Provider shall report to NYSERDA as part of its Monthly Report the current Loan Loss Reserve Balance.

### 2) Payment upon Suspension of Operations

If NYSERDA suspends all business operations for a period of 180 days or more, then if NYSERDA so elects or if the Finance Provider so requests, NYSERDA will make a "Final Payment" in cash to the Finance Provider. That Final Payment will constitute a full and final satisfaction of all further obligations of NYSERDA to the Finance Provider under this Program Opportunity Notice. The "Final Payment" shall be equal to the Loan Loss Reserve Balance after all adjustments required by this Program Opportunity Notice have been made. Following the Final Payment, the Finance Provider shall continue to track the Eligible Financing Agreements and the use of the Final Payment with respect to such Eligible Financing Agreements. When the Finance Provider's last Eligible Financing Agreement has either been repaid or the Finance Provider has recovered its Qualifying Eligible Losses, then the Finance Provider shall refund to NYSERDA (or its successors or assigns) any remaining amount of the Final Payment that was not used to pay Qualifying Eligible Losses.

## **XII. Reporting Requirements**

### 1) Monthly Report

Within ten business days after the end of each month, the Finance Provider shall provide to NYSERDA an itemized report as specified in Attachment D (the "Monthly Report"). The Monthly Report shall include:

#### a) New Eligible Financing Agreements

An itemized report of new Eligible Financing Agreements issued during that month, including the origination date, the name of the Borrower(s), amount of financing, interest rate, amount of monthly payments, term and if the Project is a Qualified Energy Efficiency Improvement or Renewable Energy System.

#### b) Confirmation of Eligibility

A certification by Finance Provider that to the Finance Provider's knowledge that the new financing agreements are all Eligible Financing Agreements under the criteria included in [Section VII](#).

#### c) Portfolio Status

A cumulative summary report for all outstanding Eligible Financing Agreements, including original balance, current balance, payments received and information about any delinquent payments.

d) Sold, Transferred or Assigned

A cumulative summary report on all Eligible Financing Agreements that were sold, transferred, or assigned to a third party, the date of such sale, transfer, or assignment, the name of the purchaser, transferee, or assignee and whether the transaction was in whole or in part.

2) Review

NYSERDA shall have the right to review documentation for any Eligible Financing Agreement included in a Monthly Report.

3) Confidentiality

NYSERDA will use information provided in each Monthly Report and other information provided by Finance Provider for program management and evaluation purposes only, and will require all staff, affiliates, agents, and designees to treat the information as confidential unless otherwise required by law. For all other uses, NYSERDA will only release information in an anonymous and aggregated form – that is, by removing all personally identifying information.

### **XIII. Recovery from the Loan Loss Reserve Balance**

1) Loss Recovery

Finance Provider shall be entitled to payment from the Finance Provider's Loan Loss Reserve Balance for losses. The Finance Provider may claim from the Finance Provider's Loan Loss Reserve Balance as unrecovered losses ninety percent (90%) of the Qualifying Eligible Loss. As a result, the Finance Provider shall retain responsibility for ten percent (10%) of each Qualifying Eligible Loss.

2) Claim for Recovery from the Finance Provider's Loan Loss Reserve Balance

To claim a Qualifying Eligible Loss and receive reimbursement from the Loan Loss Reserve Balance, the Finance Provider shall provide to NYSERDA (a) a written schedule itemizing each Qualifying Eligible Loss claimed and certifying that it is for an Eligible Financing Agreement that is at least 120 day past due, and (b) a certification that the Finance Provider has exercised commercial reasonable efforts to obtain recovery against the Borrower in the form noted in Attachment C.

3) Loss Claim

Whenever Finance Provider makes a claim consistent with the terms of this Program Opportunity Notice for a Qualifying Eligible Loss from the Finance Provider's Loan Loss Reserve Balance as provided above, the Finance Provider shall be entitled to payment of the Qualifying Eligible Loss up to but not in excess of the amount of the Finance Provider's Loan Loss Reserve Balance at the time that such claim for an Qualifying Eligible Loss is presented to NYSERDA.

4) Timing of Payment

If the Finance Provider makes a claim consistent with the terms of this Program Opportunity Notice for a Qualifying Eligible Loss from the Finance Provider's Loan Loss Reserve Balance, NYSERDA shall make payment to the Finance Provider to the extent provided above, no later than thirty (30) days following the end of the month in which the claim is

made.

5) Payments Limited to Loan Loss Reserve Balance

The aggregate liability of NYSERDA to the Finance Provider shall not under any circumstances exceed the Finance Provider's Loan Loss Reserve Balance. The Finance Provider does not have any additional recourse against NYSERDA for Qualifying Eligible Losses in excess of the Finance Provider's Loan Loss Reserve Balance at the time. The Finance Provider acknowledges and agrees that its losses on Eligible Financing Agreements may exceed the funds available in the Finance Provider's Loan Loss Reserve Balance. This Program Opportunity Notice is not a guarantee of the full amount of Eligible Financing Agreements. Except as explicitly provided in this Program Opportunity Notice, NYSERDA is under no obligation to further contribute to or supplement the Finance Provider's Loan Loss Reserve Balance.

6) Subsequent Collection Activities

The Finance Provider agrees to use its commercially reasonable efforts to collect any delinquent Eligible Financing Agreement, even after it has collected from the Finance Provider's Loan Loss Reserve Balance with respect to such Eligible Financing Agreement. For any recovery on an Eligible Financing Agreement net of expenses, the Finance Provider shall retain 10% of such net recovery and 90% of such net recovery shall be paid to NYSERDA.

#### **XIV. Sale and Transfer of Eligible Financings**

- 1) A Finance Provider may sell, transfer, or assign an Eligible Financing Agreement or the associated repayments of an Eligible Financing Agreement, in whole or in part, or a portfolio of Eligible Financing Agreements, in whole or in part, provided that it shall remain responsible for its obligations to NYSERDA hereunder, including applicable reporting requirements with respect to Covered Agreements. Any such sale, transfer or assignment must be reported to NYSERDA in accordance with [Section XII\(1\)\(d\)](#) and requires NYSERDA written approval. The Finance Provider must notify the buyer, transferee or assignee that the Covered Agreements are partially protected by, and are subject to the terms and conditions of, a Loan Loss Reserve from NYSERDA under the Program.

#### **XV. Awards**

Applicants that apply and meet the qualification criteria set forth in this Program Opportunity Notice shall be notified by NYSERDA of the acceptance of their application and participation in the program.

#### **XVI. General Conditions**

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your application. Review should include whether it is critical for evaluating the application, 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 Applicant 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 <https://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  
Division for Small Business  
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 procurement lobbying requirements which can be found at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx>. Applicants are required to answer questions during application submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility (this includes a disclosure statement regarding whether the Applicant has been found non-responsible under section 139-j of the State Finance Law within the previous four years).

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department.

The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://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>.

**Contract Award** - NYSERDA anticipates making one or multiple award(s) under this solicitation. NYSERDA anticipates a contract duration which will extend through the awardee's term of its Financing Portfolio. If terminated, any reserve funding on financings originated by awardee through the effective date of termination will remain in effect until such financings are paid in full or reported as unrecoverable losses. NYSERDA may request additional data or material to support applications. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA expects to notify Applicants in approximately four (4) weeks from the application submission whether your firm will receive an award.

**Accessibility Requirements** - If awardees from this solicitation will be posting anything on the web, or if the awardee will produce a final report that NYSERDA will post to the web, the following language must be included. NYSERDA requires contractors producing content intended to be posted to the Web to adhere to New York State's Accessibility Policy. This includes, but is not limited to, deliverables such as: documents (PDF, Microsoft Word, Microsoft Excel, etc.), audio (.mp3, .wav, etc.), video (.mp4, .mpg, .avi, etc.), graphics (.jpg, .png, etc.), web pages (.html, .aspx, etc.), and other multimedia and streaming media content. For more information, see [NYSERDA's Accessibility Requirements](#).

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing an application, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all applications received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject applications. NYSERDA reserves the right to disqualify applicants based upon the results of a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

**Disclosure Requirement** - The applicant 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 an applicant 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, NYSERDA may exercise its stop-work right pending further investigation or terminate the agreement; the awardee may be subject to penalties for violation of any law which may apply in the particular circumstances. Applicants 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.

**Vendor Assurance of No Conflict of Interest or Detrimental Effect** - The applicant shall disclose any existing or contemplated relationship with any other person or entity, including any known relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm,

which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the applicant or former officers and employees of NYSERDA, in connection with applicant's rendering services. If a conflict does or might exist, please describe how your company would eliminate or prevent it. Indicate what procedures will be followed to detect, notify NYSERDA of, and resolve any such conflicts.

The applicant must disclose whether it, or any of its members, or, to the best of its knowledge, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

**Public Officers Law** – For any resulting awards, the awardee and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). Applicants are reminded of the following Public Officers Law provision: contractors, consultants, vendors, and subcontractors may hire former NYSERDA employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a matter before NYSERDA, for a period of two years following their separation from NYSERDA service. In addition, former NYSERDA employees are subject to a "lifetime bar" from appearing before any state agency or authority or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with NYSERDA.

Applicants will be required to certify that all of its employees, as well as employees of any subcontractor, whose subcontract is valued at \$100,000 or more who are former employees of the State and who are assigned to perform services under the resulting contract, shall be assigned in accordance with all Ethics Requirements. During the term of any agreement, no person who is employed by the applicant or its subcontractors and who is disqualified from providing services pursuant to any Ethics Requirements may share in any net revenues of the awardee or its subcontractors derived from the award. NYSERDA may request that awardees provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. NYSERDA shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed would be in conflict with any of the Ethics Requirements. NYSERDA shall have the right to terminate any award at any time if any work performed is in conflict with any of the Ethics Requirements.

## **XVII. Attachments**

Attachment A - Application <https://nyserda.seamlessdocs.com/f/LoanLossReserve>

Attachment B - Program Terms and Conditions

Attachment C – Claim Form

Attachment D – Monthly Report

Attachment E - Loan Loss Reserve Illustrative Guidelines for Eligible Technologies

