

**June 5, 2003**  
**State Technologies Advancement Collaborative (STAC)**  
**Draft Solicitation and Model Contract**  
**Public Review and Comment**

Attached is a draft version of the first solicitation to be offered by the State Technology Advancement Collaborative (STAC)—an innovative five-year pilot program. STAC is directed by an Executive Committee comprised of representatives of the National Association of State Energy Officials (NASEO), the Association of State Energy Research and Technology Transfer Institutions (ASERTTI), and the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE) and Office of Fossil Energy (FE).

The STAC solicitation process is being administered by NASEO on behalf of the STAC Executive Committee. We seek your comments on these draft documents in order to ensure the most effective and efficient solicitation and contracting process possible.

An important part of this review is consideration of the model contract that would be used to make awards to selected applicants under the actual solicitation for projects. The solicitation requires that applications be submitted by either a State Energy Office or State-Chartered Institution (described in detail in the solicitation) and that projects be multi-state. Thus a State-based organization's ability to execute the model contract with NASEO in a timely manner is important. We suggest that the appropriate persons in each State-based organization (e.g., legal counsel, procurement official) carefully review these documents. Our goal is a flexible contract document that allows selected projects to be awarded and implemented as quickly as possible.

**Issuance, Funding, and Schedule for the Final Solicitation**

It is the intention of the STAC Executive Committee to issue the final solicitation for projects in approximately 30 days, on or about July 6, 2003. The Executive Committee anticipates that there is the potential for both additional funding and expanded project areas of interest under the final solicitation. This would be in addition to the approximately \$2,600,000 and four project areas of interest indicated in the draft solicitation. Proposers will have 60 calendar days from the date of issuance of the final solicitation to submit proposals. Proposals will be evaluated for a period of approximately 60 days following the due date for responses, and contract negotiation and signing is expected to conclude approximately 30 days following the evaluation period.

**Comments**

Please provide your organization's comments on the attached draft solicitation and model contract via e-mail no later than 5:00 p.m. Eastern Daylight Savings time, June 19, 2003, to Kate Burke at kb@naseo.org. Comments must be submitted by e-mail to the above address. Comments provided in any other form (e.g., fax, U.S. mail) will not be considered.

In addition, we encourage you to forward this draft solicitation to other interested organizations. We would appreciate being copied in the forwarding message so that we may add the recipients to the final solicitation distribution list in order to ensure its wide distribution.

Thank you.

**DRAFT SOLICITATION FOR PUBLIC REVIEW AND COMMENT**  
**State Technologies Advancement Collaborative (STAC)**  
**Solicitation Number 03-STAC-1**

NASEO and the STAC Executive Committee reserve the right, at their sole discretion, to modify the solicitation, model contract, and all other associated materials prior to the publication of the final solicitation.

*“Energy Efficiency and  
Cross-Cutting Research, Development, Demonstration  
and Deployment Projects”*

Eligible Applicants:  
State and Territory Energy Offices or State-Chartered  
Institutions as Prime Participants partnered  
with at least one other eligible applicant in another  
State or Territory

Issued by:  
National Association of State Energy Officials  
1414 Prince Street, Suite 200  
Alexandria, VA 22314

In coordination with:  
The State Technologies Advancement Collaborative (STAC).  
STAC is comprised of representatives of the National Association of State Energy Officials  
(NASEO); Association of State Energy Research and Technology Transfer Institutes  
(ASERTTI); and U.S. Department of Energy’s Office of Energy Efficiency and Renewable  
Energy (EERE) and Office of Fossil Energy (FE)

Date Issued: pending  
Closing Date: pending  
Point of Contact: pending  
Email: pending

All information pertaining to this solicitation is available at [www.naseo.org/stac](http://www.naseo.org/stac)

*Program Funded By:  
United States Department of Energy*

**SOLICITATION SUMMARY:**

The State Technologies Advancement Collaborative (STAC) is a five-year pilot program directed by an Executive Committee which includes representatives of the National Association of State Energy Officials (NASEO), the Association of State Energy Research and Technology Transfer Institutions (ASERTTI), and the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE) and Office of Fossil Energy (FE). This solicitation, *Energy Efficiency and Cross-Cutting Research, Development, Demonstration and Deployment Projects*, is being administered by NASEO on behalf of the STAC Executive Committee.

Solicitation Objective: The objective of this solicitation is to support joint energy research, development, demonstration, and deployment (RDD&D) of technologies where common Federal and State objectives exist. The program and this solicitation emphasize the dissemination of results from selected projects and the transfer of technology for broad application and impact. The solicitation's Program Areas of Interest include: Building Technologies, Industrial Technologies, Transportation Technologies, and Distributed Energy Resources.

Available Funding and Cost Share: Approximately \$2,600,000 is available under this solicitation. A 55% non-federal cost share (cash and/or in-kind equivalent) is required for all projects. Projects may have performance periods of one to three years. It is anticipated that up to 8 proposals may be selected for award. Awardees will receive funding through a contract with NASEO.

Eligibility: In order for proposals to be considered eligible, applicant must be either a State Energy Office or State-Chartered Institution and include either a State Energy Office or State-Chartered Institution from at least one other State, Territory, or the District of Columbia (see solicitation *Section 1, C*, and *Attachment D: Model Contract*, for details, including an explanation of the term "Prime Participant"). Teaming arrangements with industry, DOE national laboratories, institutions of higher education, non-profit organizations, and Native American organizations, etc., are encouraged. Such team members may not be Prime Participants.

Proposal Submission and Due Date: Proposals are due at 2:00 p.m. Eastern Daylight Savings Time on \_\_\_\_\_. Proposals must be submitted electronically (one copy) to the following email address: (pending). Proposals will be considered timely upon receipt not upon transmission. Proposals submitted in hard copy form via any means will not be considered. An auto response confirmation of your received email will be provided.

Contract Award Instrument: A Model Contract will be used to award funds to winning proposals, and is included as ATTACHMENT D of this solicitation.

Award Schedule. Proposers will have 60 calendar days from the date of issuance of this solicitation to submit proposals. Proposals will be evaluated for a period of approximately 60 days following the due date for responses. Contract negotiation and signing will conclude approximately 30 days following the evaluation of proposals.

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## **SECTION 1: INTRODUCTION**

The State Technologies Advancement Collaborative (STAC) is a five-year pilot program directed by an Executive Committee which includes representatives of the National Association of State Energy Officials (NASEO), the Association of State Energy Research and Technology Transfer Institutions (ASERTTI), and the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE) and Office of Fossil Energy (FE). This solicitation, *Energy Efficiency and Cross-Cutting Research, Development, Demonstration and Deployment Projects*, is being administered by NASEO on behalf of the STAC Executive Committee. Additional information on STAC can be obtained at [www.naseo.org/stac](http://www.naseo.org/stac).

### **A. Objective**

The primary objective of this solicitation and purpose of STAC is to support joint energy research, development, demonstration, and deployment (RDD&D) of technologies where common Federal and State objectives exist. The STAC program and this solicitation emphasize the dissemination of results from selected projects and the transfer of technology for broad application and impact. Energy programs included in this solicitation are described under Section 2, Program Areas of Interest.

### **B. Scope**

Proposals are requested in four Program Areas of Interest: 1) Building Technologies; 2) Industrial Technologies; 3) Transportation Technologies; and 4) Distributed Energy Resources. Specific information on each of these program areas is provided in Section 2, Program Areas of Interest, of this solicitation. Applicants may submit proposals in one or more of the program areas. Proposals should be clearly marked to indicate the program area (e.g., Building Technologies) being addressed. If a project applies to more than one technology area, it should be submitted under the area which best fits the majority of the proposed work.

Approximately \$2,600,000 million will be available under this solicitation. The collaborative nature of the STAC program requires that proposed projects include non-federal cost share of 55% as described in subsection I , Cost Share Requirements of this Section. The proposer is responsible for obtaining the minimum cost share requirements.

Projects may be proposed with performance periods of one to three years.

All proposals must meet the eligibility criteria in Section C., Eligible Applicants. It is anticipated that up to 8 proposals will be selected for award. All proposals must remain valid for a minimum of six months after the due date. Proposal evaluation will occur immediately after the receipt of all proposals provided in accordance with this solicitation. It is expected that awards will be made upon completion of proposal evaluation and selection.

### **C. Eligible Applicants**

This solicitation requires a multi-State response from eligible applicants. In order for proposals to be considered eligible, the proposer must have either a State Energy Office or State-Chartered Institution as “Prime Participant” (see *Attachment D: Model Contract*, for a definition of Prime Participant.) under this solicitation and include either a State Energy Office or State-Chartered Institution from at least one other State, Territory, or the District of Columbia. (State Energy Offices—the agency or instrumentality of the States, Territories and the District of Columbia, exclusive of local governments, responsible for developing the state energy plan pursuant to Section 362 of the Energy Policy and Conservation Act (42 U.S.C. § 6322), exclusive of State Public Service Commissions that are not also the State Energy Offices. State-Chartered Institutions—a college or university, or an instrumentality specially authorized or created pursuant to State law or regulation, the laws of the District of Columbia or the laws of the respective Territories, exclusive of local governments, private for-profit businesses and national laboratories.) Specific evidence and certification by a responsible official must clearly show that a proposer is a State-Chartered Institution.

Teaming arrangements with industry, DOE national laboratories, institutions of higher education, non-profit organizations, and Native American organizations, etc., are encouraged. Such team members may not be Prime Participants.

Applications submitted by, or on behalf of a Department of Energy Management and Operating (M&O) contractor will not be eligible for an award under this solicitation. However, these organizations may be proposed as team members subject to the following guidelines:

- For M&O contractors, the proposed use of such entity must be authorized in writing by the DOE contracting officer or authorized designee responsible for managing the M&O contractor. The contracting officer must determine and state in the letter that the work to be performed by the M&O contractor is consistent with or complementary to DOE missions and the missions of the facility to which the work is to be assigned; will not adversely impact the execution of assigned programs of the facility; will not place the facility in direct competition with the domestic private sector; and will not create detrimental future burden on DOE resources.
- An applicant’s cost sharing requirement shall be based on the total cost of the project, including the applicant’s and the M&O’s portions of the effort.

#### **1. Teaming Arrangements**

Proposers must submit projects of a multi-State nature, which are, by definition, multi-party. NASEO recognizes that this may create difficulties associated with State law and regulations regarding a variety of matters, including venue. NASEO recognizes that certain States may have difficulty executing contracts with other States. NASEO would prefer to award one contract based upon a single proposal, wherein the various parties have coordinated the management and technical responsibilities, and have designated one party as the lead. However, NASEO recognizes that in order to accommodate

teaming arrangements and the varying State laws and regulations that NASEO may need to award a contract to each eligible applicant for a selected project.

Therefore, NASEO will equally consider the following additional options: 1) proposers may submit a single proposal, identifying the team leader and identifying that each eligible applicant would execute a separate contract with NASEO; or 2) Proposers may submit a “linked proposal,” whereby each team member submits a proposal that when combined would compose the total proposal (each eligible applicant that submitted a proposal would receive a separate contract with NASEO). In each instance it will be critical for the proposers to clearly state how coordination and management (including enforcement of key contract terms) of the project will occur, including how communications with each of the multiple parties will be effectuated in an efficient manner. All information required in the solicitation, including the additional information required of Prime Participants (see *Attachment D: Model Contract*, for a definition of Prime Participant), must be submitted in the case of independent, coordinated proposals.

Under no circumstances shall partial proposals be evaluated for award. NASEO accepts no responsibility for coordinating the submission of multiple proposals. Proposers are responsible for ensuring that a complete proposal is submitted on time to NASEO for evaluation; failure to do so will eliminate a proposal from consideration for award.

**D. Time, Date and Method of Submission of Proposals**

Proposers have 60 days from the issuance of this solicitation to submit their proposal. Proposals are due 2:00 p.m. Eastern Daylight Savings Time on \_\_\_\_\_. Proposals must be submitted electronically (one copy) to the following email address: (email address pending). Proposals will be considered timely upon receipt not upon transmission. Proposals submitted in hard copy form via any means will not be considered for funding. Proposals received after the due date and time shall not be considered for evaluation and funding. Proposals must be valid for a period of six months from the date of this solicitation’s proposal due date or they will not be considered for award. An auto response confirmation of your received email will be provided.

**E. Questions**

To be considered, all questions concerning this solicitation must be submitted electronically to “(email address pending)” within two weeks after issuance of solicitation. Questions and responses will be posted at “[www.naseo.org/stac](http://www.naseo.org/stac)” within two weeks of receipt of the question.

**F. Contract Award Instrument**

The attached Model Contract will be the type of award instrument used. The Model Contract, which incorporates by reference the cooperative agreement issued by DOE to NASEO, also incorporates either directly or by reference all the applicable flow-down provisions of Federal procurement regulations. A copy of the model Contract will be

issued to those groups who have proposals selected for award, and it is included in this solicitation for informational purposes as Attachment D: Model Contract.

All proposers must complete and submit the forms included under “Attachment A: Certifications,” which include: Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; Non-Collusion; and Drug-Free Workplace Requirements.

### **G. Rights to Data in Proposal**

Except for technical data marked as being proprietary data, it is a condition of any award that NASEO shall have the right to use, duplicate, disclose, and have others do so for any purpose whatsoever any information not identified as proprietary data and contained in the proposal upon which this award is based.

### **H. Proposal Evaluations**

Proposals will be evaluated in accordance with the criteria set forth in “Section 4”, Evaluation of Proposals. In conducting the proposal evaluations, NASEO may utilize assistance and advice from qualified personnel from DOE, other Federal agencies, DOE contractors, universities, State agencies, and industry. Further, when using external personnel in the evaluation of proposals, NASEO will obtain written assurances from all evaluators regarding confidentiality requirements in all cost and proprietary data submitted.

### **I. Cost Share Requirements**

A minimum cost share of 55% of total project costs is required in order to be considered for award under this solicitation. In-kind contributions (e.g., contributions of services or property; donated equipment, buildings, or land; donated supplies; deferred tax revenue, or unrecovered indirect costs) incurred as part of this project may be considered as all or part of the cost share. All participant cost sharing must come from non-Federal sources (i.e., private, State or local government, or any other sources that were not originally derived from Federal funds). The cost share principals under this solicitation are substantially similar to those used by the U.S. Department of Energy (10CFR part 600, Section 600.123 and 600.224). The specific principals used for this solicitation are included under Attachment C.

As part of its Cost Proposal submission, each member of a proposal team must provide a certification of commitment for the cost sharing portion of the proposal, signed by a certifying official of the cost sharing entity. No cost sharing credit will be considered for the cost of developing the proposal or preparing the application. If selected, funded projects will need to demonstrate that the project meets or exceeds 55% of the total invoices received from all participants semiannually (i.e., cost share contributions may not be held back by the applicant until the end of the project period.)

## **SECTION 2: PROGRAM AREAS OF INTEREST**

The following detailed descriptive information is provided on the four Program Areas of Interest listed in Section 1, B (Building Technologies, Industrial Technologies, Transportation Technologies, and Distributed Energy Resources). Applicants may submit more than one proposal, each covering a single Program Area of Interest. All Program Areas of Interest may include research, development, demonstration, and deployment activities. Proposals should be clearly marked to indicate the particular area (e.g., Building Technologies) being addressed.

If a project applies to more than one technology area, it should be submitted under the area which best fits the majority of the proposed work.

### **A. Building Technologies**

This area includes projects that will improve the performance of residential HVAC systems, optimize the energy efficiency and other performance characteristics of commercial building energy systems through improved commissioning technologies and strategies and improve the efficiency and environmental performance of residential foundation systems used by production builders. Specific needs include:

#### **1. Residential HVAC Systems**

The objective of this topic is to achieve significant improvements in the actual measured energy efficiency, peak electrical demand reduction and comfort performance of residential HVAC systems in typical existing and new homes in various regions of the country; proposed multi-State projects may include, but are not limited to: new prototype HVAC and diagnostic equipment and distribution system components; field test validation and market development activities that demonstrate that efficient and comfortable residential HVAC systems that meet the needs of residential customers and electricity providers can be manufactured, installed, operated, and maintained in a manner that will achieve the overall topic objective outlined above.

#### **2. Commercial Building System Optimization**

The objective of this topic is to significantly improve energy efficiency and demand reduction performance, disaster response and occupant productivity characteristics of existing and new commercial buildings; proposed multi-State projects should build on and enhance existing commissioning work and include, but are not limited to: the research, development and deployment of new equipment, communications and control systems, and strategies for commercial building optimization and operations to respond to changing occupant, building function, energy source and pricing and operator/owner needs; interactive diagnostic tools for commissioning existing and new buildings; automated building system diagnostics using intelligent systems that operate through new and retrofit building controls and remote internet-based communications; strategies and protocols for building designers, industry trades, service providers and maintenance/operations communities; and techniques to measure the benefits of these tools, including non-energy benefits of indoor air quality/health, safety and security, grid reliability and enhanced demand response.

### 3. Adoption of Energy Efficient and Environmentally Beneficial Foundation Building Technologies by Production Builders

The objective of this topic is to significantly improve the energy efficiency and demand reduction properties, reduce undesirable moisture buildup and improve the indoor air quality characteristics of residential building foundation technologies that are used by production builders; proposed multi-State projects may include but are not limited to: research, development and deployment of energy efficiency and electricity demand reduction, moisture reduction and other indoor air quality enhancement technologies, strategies and best practices associated with foundation options and techniques for new and existing homes in various climate zones; conducting multi-State field tests on foundation options; developing and using improved thermal simulation tools; installing sub-meters and documenting space conditioning energy use and peak load impacts; documenting temperature and relative humidity conditions in closed and vented crawl spaces of identical houses; analyzing moisture content and mold growth from condensation on ducts, in floor insulation and on framing; monitoring before/after retrofits of foundations in existing homes; collaboration of builders, DOE, building code officials, and market transformation entities in various States and regions in implementing energy efficient foundation systems.

### **B. Industrial Technologies**

This area includes projects that foster regional industrial revitalization by significantly reducing energy costs and, when feasible, water treatment, waste management, emission reduction, and other production costs in three industrial categories- Chemicals (SIC CODE 28); Forest Products (SIC CODE 24); and Food Processing (SIC CODE 20) and those industries that are in the supply chain for these industries through the increased used of the three promising technology strategies outlined below; proposals seeking to accomplish a specific regional industrial revitalization objective for a targeted industry should use a holistic business approach that assesses the impact of the energy technology strategy or strategies on cost savings, increased productivity, emission reduction and other major benefits.

#### 1. Energy Systems

As appropriate for achieving the regional revitalization goal highlighted above, the objective of this topic includes the following types of energy technologies that are used to power various processes in these industrial categories. Proposed multi-State projects may include, but are not limited to: improvements in motor systems, pumps, fans, compressors, and specialized production equipment; combined heat and power improvements via on-site generation of electrical power, using excess heat from power units to generate steam, facility heating and cooling, process heating, drying, etc.; steam utilization from steam distribution, steam use, and condensate recovery systems; new technology to close the gap between current state of the art industry boilers and higher efficiencies available for residential applications.

#### 2. Emerging Technologies

As appropriate for achieving the regional revitalization goal highlighted above, the objective of this topic is conduct full-scale field test of promising emerging technologies

developed through the Industries of the Future program including, but not limited to: in pulp and paper-pulsed shock wave hydroxyl radical oxidizing stickies, molten film paper dryers, steam reforming black liquor, methane re-burners with low NO<sub>x</sub>, and linear corrugating; in dimensional lumber- regenerative absorptive systems, Christian(rotary drum) veneer dryers, acoustic humidity sensors; in chemicals- catalytic hydrogenation retrofit reactor, pressure swing adsorption for product recovery, electrodeionization, membranes for producing lactate fibers, separation and recovery using froth flotation; in food processing- vacuum evaporation, membrane concentration, anaerobic pumping.

### 3. Water and Wastewater Treatment

As appropriate for achieving the regional revitalization goal highlighted above, the objective of this topic is research, development, demonstration, and deployment of the following types of water and wastewater treatment technologies in multi-State applications including, but not limited to: elimination of the use of single pass (open loop) water systems; expanded use of anaerobic digestion for odor control and energy production; more efficient use of wastewater system blowers including lower speeds, variable frequency drives, and lower horsepower blower motors.

## **C. Transportation Technologies**

This area includes projects to improve the energy efficiency and other benefits of truck stop electrification and school bus applications of hybrid electric vehicle technology. Specific needs include:

### 1. Truck Stop Electrification Infrastructure

The objective of this topic is optimize the energy savings, environmental and other benefits of an initial deployment of truck stop electrification (TSE) facilities along the Interstate Highway System through the development, demonstration and deployment of standardized TSE systems design, hardware and effective deployment and utilization of TSE facilities. Proposed multi-State projects may include, but are not limited to the following: developing a comprehensive systems approach to the design and multi-State installation of TSE infrastructure; deployment of such systems; regional outreach and expansion efforts; use of interoperability standards including systems design and services, electrical connections and wiring, safety interlocks and operating voltages; State specific planning studies; State specific deployment; corridor outreach studies.

### 2. Plug-In Hybrid Electric School Buses

The objective of this topic is to foster the development, demonstration and evaluation of the benefits of plug-in hybrid electric bus technology in typical public school transportation applications and, if the overall cost and benefit results are promising, foster the initial deployment of this technology in this and related market applications. Proposed multi-State projects may include, but are not limited to the following: development and operation of hybrid electric school buses in multiple school districts and States; documentation of bus operation and performance; informing State, local, and school officials, parents, and students of progress; evaluation of transportation, energy, environmental, and economic benefits.

## **D. Distributed Energy Resources**

This area includes projects to evaluate and expand the market applications of distributed energy resources (DER) systems and technologies in electric utility and other promising customer target market applications. DER consists of a portfolio of technologies for supplying energy services to customers at or near the point of use. It includes technologies for generating, storing, managing, and delivering electric, thermal, and mechanical energy using fossil fuels and renewable energy sources. It includes tools for data collection, communications and controls, and techniques for enabling demand response such as real-time pricing, interruptible rates, and direct load controls. Systems are sized from 5kw or less for residential applications to 25MW for commercial, institutional, and industrial applications. Specific needs include, but are not limited to:

### 1. Evaluation of DER Systems and Technologies in Electric Utility Business Applications

The objective of this topic is to demonstrate and evaluate the value of DER to electricity providers in promising electricity distribution, supply and customer end-use applications. Proposed multi-State projects may include, but are not limited to the following: development of and/or testing of simulation tools (through field tests or other validation mechanisms) that use DER systems/technologies as an option in planning and implementing electric distribution upgrades/maintenance; conducting field tests and other validation mechanisms that evaluate and demonstrate safe and economic interconnection of DER systems to the electric grid, using both radial or network systems; demonstrating the effects of rate design and rate structures on DER viability; identifying and demonstrating the differences, if any, between the effects of DER on municipal, cooperative, investor owned utilities and other electricity providers using documented business cases, validated new or existing models and tools, and case studies.

### 2. Expanding DER Applications in Targeted Markets

The objective of this topic is to conduct activities that will significantly expand DER applications in targeted market applications that hold the largest potential for significant energy use, cost savings, and other benefits for customers in targeted market applications. Proposed multi-State projects may include, but are not limited to the following: field and other demonstration and deployment activities that can provide best practices, innovative financing approaches, business case development; site related activities that can provide information on permitting, siting, and installation of DER systems; site activities that focus on interconnection of DER systems with the grid; demonstration activities that include evaluation of sites, monitoring and data reduction of field test results, and documentation and case studies resulting from such field tests.

**SECTION 3: PROPOSAL PREPARATION INSTRUCTIONS**

**A. General Instructions**

All pages of the proposal should be numbered and identified with the name of the proposing organization, date, solicitation number, and Program Area of Interest (e.g., Building Technologies). The proposal will consist of two sections – Section I consists of the cover page, table of contents, public abstract, executive summary, and the technical proposal; Section II consists of the cost proposal. The cover page, table of contents, and executive summary are not a part of the technical proposal. The technical proposal should not exceed 20 pages in length (including brief resumes) with 1” margins and a font size not smaller than 12 pt on 8.5” x 11” paper. Letters of support or other endorsements should not be included and will not be considered. To assure consistent and proper evaluation, proposals should follow the basic format and be assembled as outlined below:

<u>Section I</u>	<u>Contents</u>
Cover Page	Project title, solicitation #(03-STAC-1), program area, proposing organization (name, address, e-mail, fax), name of designated certifying official, title, signature, and date.
Table of Contents	Table of contents.
Public Abstract	A for public dissemination abstract of not more than one single spaced typewritten page clearly stating the objectives, budget, benefits, and timeframe of the proposed project; the title of the project; methodology; and sponsoring organizations. It is a stand-alone document. The applicant shall provide a point of contact for coordination, preparation, and distribution of press releases in this abstract. This abstract may be released to the public by NASEO in whole or in part at any time. It is, therefore, required that it shall not contain proprietary data or company sensitive business information.
Executive Summary	1-2 page summary of project, performers, objectives, benefits, cost estimate, cost share. The Executive Summary must demonstrate that the proposing organization meets the four initial review requirements listed in Section 4, Evaluation of Proposals, A. Initial Review Requirements (a,b,c,d).
Technical Proposal	The technical proposal is limited to a total of 20 pages. The 20-page limit includes required brief resumes (no more than 1 page each) for all proposed key personnel. Clearly describe the proposed effort and separately address each of the Technical Evaluation Criteria described under Section 3, C, Technical Proposal below, including a subsection briefly describing the applicant's

management plan. Any attachments will be counted as a part the total 20-page limit for the technical proposal.

Key Personnel–Resumes Brief resumes (1 page maximum each) for all proposed key personnel. The resumes are considered part of the Technical Proposal and are included in the 20-page limit.

Section II

Cost Proposal

Provide all information as requested in Attachment B: Cost Proposal Summary and Form, and as described Under Section 3, letter D, “Cost Proposal” below.

**B. Proprietary Application Information**

Proposals submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information that the applicant does not want used or disclosed for any purpose other than evaluation of the proposal. Proposers are required to submit Proprietary Information as a separate and clearly marked attachment to the Proposal. The use and disclosure of such data will be restricted provided the applicant clearly marks the cover sheet of the Proprietary Information Attachment specifying that Proprietary Information is included, and provided that each page containing restricted data shall be marked at the top and bottom with the words “Proprietary Data—Limit Distribution.”

**C. Section I—Technical Proposal and Technical Evaluation Criteria**

The Technical Evaluation Criteria below will serve as the basis for determining the technical value of the offer in meeting the requirements of the solicitation. Specific items that must be addressed under each criterion are provided. The evaluation weight for each criterion that will be used for proposal evaluation is indicated in parenthesis. Applicants must make a convincing argument that the proposed approach will make a significant impact on accomplishing the particular Program Area of Interest (described under Section 2 of this solicitation) addressed by the applicant’s proposal. Projects may be proposed with performance periods of one to three years.

In addition, the technical proposal must include a brief subsection labeled “Management Plan” that includes the roles and responsibilities of each partner for specific tasks and identifies the personnel responsible for coordinating major technical tasks and the overall technical effort as well as personnel responsible managing subcontracting and financial management activities.

Following are the Technical Evaluation Criteria:

**Criterion 1: Technical Excellence (35%)**

Degree to which the technology/methodology and output from this project:

- Is innovative.

- Advances the state of the art of the technology or broadens the knowledge base, and/or contributes significantly to market transformation and deployment efforts.
- Has potential advantages over other approaches or creates breakthroughs that overcome barriers to technological advancement or deployment.
- Has the ability to be cost effectively replicated.
- Leads to major improvements in technical performance, utilization of the technology, or lower cost.
- Addresses key market barriers.

**Criterion 2: Anticipated Benefits (35%)**

Extent of anticipated benefits from this project in terms of:

- Energy impacts (savings, load reduction, affordability, energy security).
- Environmental benefits (air, land, water, public health, global climate).
- Economic benefits such as job creation/retention, capital formation.
- Commercial applicability, potential market penetration, and the extent to which technical, regulatory, economic, environmental, production, or other barriers that will impact project success are addressed.
- Timing of benefits/payoff.
- Broad geographic impact.
- Leveraging of public/private funds.

**Criterion 3: Feasibility of Approach (15%)**

- Adequacy of the proposed approach, work plan, deliverables, schedule, and reporting relationships between participants.
- Clearly defined and detailed tasks or activities associated with the project, identifying the primary performer, schedule milestones, and timeline for completion of tasks.
- Reasonableness of measurement methods for validating public benefits, technical excellence, and market value.
- Plans to disseminate project status and results and to promote technology implementation, including specific information on how the project can be replicated, how technology and information will be transferred, and how results of the project will be disseminated.

**Criterion 4: Demonstrated Experience and Past Performance (15%)**

- Appropriateness of the qualifications and experience of the team in the proposed technology area(s) addressed in the proposal.
- The proposing organization and identified roles and responsibilities of each partner and subcontractor for specific tasks.
- Adequacy of specific examples of previous experience and success in similar projects, including past, present, and any pending support for similar projects.
- Key personnel and their experience in working with the relevant technologies, industries, and stakeholders.

- Adequacy of facilities (quality, availability, and appropriateness) to perform project tasks.
- Adequacy of the plan for the team’s approach to coordinating work under the proposed project and in reaching agreement on contracting and subcontracting arrangements. This plan should address either means for the lead applicant to subcontract in an efficient and timely manner, or means for the team to coordinate efforts under some combination of separate contracts and subcontracts (see Section 1,C, 1. Teaming Arrangements, and Attachment D: Model Contract).

**D. Section II—Cost Proposal**

Attachment B contains a Cost Proposal Summary and Cost Proposal Form. The Cost Proposal Summary includes basic project and applicant information, sub-recipient information, and estimated Federal and cost share information by year. The Cost Proposal Form, at Attachment B, is a 2-page Detailed Cost Proposal Information Form that has specific directions for completion on the form itself.

As part of its Cost Proposal submission, each member of a proposal team must provide a certification of commitment for the cost sharing portion of the proposal, signed by a certifying official of the cost sharing entity. No cost sharing credit will be considered for the cost of developing the proposal or preparing the application.

If selected for award, funded projects will need to demonstrate that the project meets or exceeds 55% of the total invoices received from all project participants on a semiannual basis (i.e., cost share contributions may not be held back by the applicant until the end of the project period.)

## **SECTION 4: EVALUATION OF PROPOSALS**

### **A. Initial Review Requirements**

An initial review of each proposal will be conducted to determine if it meets the following four requirements:

- (a) The applicant is either a State Energy Office or a State-Chartered Institution as defined in Section 1C, Eligible Applicants;
- (b) The application includes substantive activity by eligible entities in two or more States;
- (c) The applicant meets the minimum cost share requirement of the solicitation; and
- (d) The proposal must substantially address at least one of the four Program Areas of Interest (i.e., Building Technologies, Industrial Technologies, Transportation Technologies, and Distributed Energy Resources) under Section 2 of this solicitation.

Only those proposals meeting all four of the above requirements shall receive further consideration. Proposals that are in non-compliance will be rejected without further review. No proposals will be returned to the proposing organization.

### **B. Technical Evaluation Criteria**

Proposals that satisfy the four above-mentioned requirements will proceed to the technical evaluation phase. Proposals will be divided, scored, and ranked within the four Program Areas of Interest (Building Technologies, Industrial Technologies, Transportation Technologies, and Distributed Energy Resources), based on the degree to which they meet the requirements of the four Technical Evaluation Criteria, as described in Section 3, C, above, –Technical Excellence (35%); Anticipated Benefits (35%); Feasibility of Approach (15%); and Demonstrated Experience and Past Performance (15%).

### **C. Cost Evaluation**

Evaluation of cost will focus on:

- Reasonableness and appropriateness of cost;
- Adequacy of budget justification and supporting information; and
- Nature of cost sharing proposed.

### **D. Program and Policy Factors**

After the technical and cost evaluations are completed, the following Program Policy Factors may be considered:

- The significance of the projects in meeting RDD&D needs in specific sectors or technology areas;
- Overall balance of research, development, demonstration, and deployment activities among awardees;
- Geographic and/or size diversity of States represented by participating State-based organizations; and

- Ability of proposing team to demonstrate an ability to execute both a Prime Participant contract with NASEO and subcontracts with team members in a timely and efficient manner.

### **E. Award Process**

NASEO anticipates the award of one or more financial assistance instruments to those applicants whose applications are determined to be in the best interest of achieving the STAC program objective set forth in this solicitation, which is as follows:

*The primary objective of this solicitation is to support joint energy research, development, demonstration, and deployment (RDD&D) of technologies where common Federal and State objectives exist.*

In addition, the application must address one of the four Program Areas of Interest identified under Section 2 of this solicitation.

Proposals will be evaluated for a period of approximately 60 days following the due date for responses to this solicitation. Contract negotiation and signing will conclude approximately 30 days following the evaluation proposals.

Decisions regarding selection and funding (with execution of a contract by NASEO) of an application will be made by the STAC Executive Committee. These decisions will be made through a process of evaluating and comparing the relative merits of the applicant's complete applications, in accordance with all of the evaluation factors set forth in this solicitation. NASEO shall make a reasonable effort to notify proposers when they have not been selected for an award.

The process reflects the STAC Executive Committee's desire to accept an application based on its potential to best achieve program objectives, rather than solely on evaluated technical merit or cost. Accordingly, the STAC Executive Committee may select for an award all, none, or any part of an application, based on the Executive Committee's decision as to which meritorious applications best achieve the program objectives set forth in this solicitation.

It is important for applicants to note that selection for negotiation will be made entirely on the basis of applications submitted. Applications should, therefore, address specifically the factors mentioned in the evaluation criteria, and not depend upon reviewer's background knowledge.

All proposals become the property of NASEO. Proposal teams may be asked to participate in oral interviews to further explain their proposal. NASEO may request additional data or materials to support the proposals. NASEO may award a contract based on the submitted proposals without discussions, or following limited discussion or negotiations.

**ATTACHMENT A: Certifications**

**NONCOLLUSION AFFIDAVIT**

I, \_\_\_\_\_, being duly sworn depose and under the penalty of perjury say that the following is true:

1. I am the person responsible within my organization for the final decision as to the price(s) and amount of this Proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on the behalf of the organization.
2. The price(s) and amount of this Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition with any other eligible applicant, subcontractor, competitor, Proposer, or potential Proposer.
3. Unless otherwise required by law, neither the price(s) nor the amount of this Proposal have been disclosed to any other firm or person who is a Proposer, competitor, or potential Proposer on this Project, and will not be so disclosed either directly or indirectly prior to Proposal opening.
4. No attempt has been made or will be made to solicit, cause, or induce any organization, including state entity, firm, partnership, corporation, or person to submit or not submit a Proposal on this Project, or to submit a Proposal higher than the Proposal of this organization, or submit an intentionally high or noncompetitive Proposal or other form of complementary Proposal, or for the purpose of restricting competition.
5. The Proposal of my organization is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any other organization or person to submit a complementary Proposal that is not part of teaming agreement allowed by the Solicitation.
6. With respect to the Solicitation provisions on teaming arrangements, my organization has not offered or entered into a subcontracting agreement regarding the purchase of materials or services from another organization or person, or offered, promised, or paid cash or anything of value to any firm or person, whether in connection with this or any other Solicitation, in consideration for an agreement or promise by any organization or person to refrain from proposing or to submit a complementary Proposal on the Solicitation.
7. With respect to the Solicitation provision on teaming arrangements, my organization has not accepted nor been promised any subcontract or agreement regarding the sale of materials or services to another organization or person, and has not been promised or paid cash or anything of value to another organization or person, whether in

connection with this or any other Solicitation, in consideration for my organization's submitting a complementary Proposal or agreeing to do so, on this Solicitation.

8. I have made a diligent inquiry of all members, officers, employees, and agents of my organization with responsibilities relating to the preparation, approval, or submission of my organization's Proposal on this Solicitation and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act, or other conduct inconsistent with any of the statements and representations made in this affidavit.

Company Name \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_  
Signature and Company Position

Sworn to me this \_\_ day of \_\_\_\_, 2003

By: \_\_\_\_\_  
Type Name and Company Position

By: \_\_\_\_\_  
Type Name and Company Position

Date: \_\_\_\_\_

**LOBBYING CERTIFICATION**

I, \_\_\_\_\_, under the penalty of perjury say that the following is true:

1. I am the person responsible within my organization for the final oversight and review of the performance of the work to be performed under this Proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on the behalf of the organization.
  
2. None of the funds obligated on any subsequent award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any pending executive, legislative, or judicial proposal at the Federal, State or Local levels.
  
3. None of the funds obligated on any subsequent award shall be made available for lobbying and related activities. Although any subsequent award may be used to describe and promote the understanding of scientific and technical aspects of specific energy technologies, but not to encourage or support political activities such as the collection and dissemination of information related to potential, planned or pending legislation at the Federal, State or Local level.
  
4. The undersigned recognizes that this certification is submitted for the express purpose of assisting NASEO to make a determination regarding either to award a contract or approve a subcontract; acknowledges that intentional submission of false or misleading information may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. § 1001; and states that this information is true, accurate and complete.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature and Company Position

\_\_\_\_\_  
Type Name Company Position

Date: \_\_\_\_\_

**MISCELLANEOUS CERTIFICATION**

I, \_\_\_\_\_, under the penalty of perjury say that the following answers are true:

1. I am the person responsible within my organization for the final oversight and review of the performance of the work to be performed under this Proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on the behalf of the organization.

2. Within the past five years, has your organization, any subcontractor, or any person involved in the bidding process been the subject of any of the following, if yes please provide written explanation:

(a) a judgment or conviction for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion?

\_\_\_\_\_ YES \_\_\_\_\_ NO

(b) a local, state, or federal suspension, debarment or termination from the contract process?

\_\_\_\_\_ YES \_\_\_\_\_ NO

(c) a local, state, or federal contract suspension or termination for cause prior to the completion of the term of a contract?

\_\_\_\_\_ YES \_\_\_\_\_ NO

(d) a local, state, or federal denial of award for non-responsibility?

\_\_\_\_\_ YES \_\_\_\_\_ NO

(e) a citation, notice, violation order, pending administrative hearing or proceeding or determination for violation of:

- federal, state, or local health laws, rules or regulations
- unemployment insurance or workers' compensation coverage or claim requirements
- ERISA (Employee Retirement Income Security Act)
- federal, state or local human rights laws
- federal or state homeland security laws
- federal INS and Alienage law

\_\_\_\_\_ YES \_\_\_\_\_ NO

3. None of the funds obligated on any subsequent award shall be made available to any subcontractor, at any tier, that has been debarred, suspended or is otherwise excluded from or ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension" or is otherwise ineligible hereunder. The list of parties excluded under Federal procurement and non-procurement programs can be accessed through the Excluded Parties List System ("EPLS") at <http://epls.arnet.gov>.

4. The organization shall implement or has implemented and shall in good faith maintain a drug-free workplace by: (1) publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (2) provide all employees engaged in performance of the contract with a copy of the statement; (3) establish an ongoing drug-free awareness program; (4) notify employees in writing that as a condition of employment that the employee will abide by the statement; and (5) make a good faith effort to maintain a drug-free workplace through implementation of this paragraph.

5. The undersigned recognizes that this certification is submitted for the express purpose of assisting NASEO to make a determination regarding either to award a contract or approve a subcontract; acknowledges that intentional submission of false or misleading information may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. § 1001; and states that this information is true, accurate and complete.

Company Name

\_\_\_\_\_  
Signature and Company Position

\_\_\_\_\_  
Type Name Company Position

Date: \_\_\_\_\_

**ATTACHMENT B: Cost Proposal Summary and Form**

**COST PROPOSAL SUMMARY**

**1. Descriptive Title of the Project:**

**2. Applicant information:**

<b>Name:</b>	
<b>Address:</b>	
<b>Telephone:</b>	
<b>Fax:</b>	
<b>E-mail:</b>	
<b>Contact:</b>	

**3. Sub-recipient Information:**

(Provide name, address, telephone number, and amount of proposed funding for each sub-recipient)

**4. Estimated Funding**

**Total (dollar amount):**

	<b>Year 1</b>		<b>Year 2</b>		<b>Year 3</b>	
	Months 1-6	Months 7-12	Months 13-18	Months 19-24	Months 25-30	Months 31-36
<b>Requested funds</b>						
<b>Applicant (cost share)</b>						
<b>TOTAL</b>						

**5. Name and Title of Authorized Representative**

**6. Date**

**COST PROPOSAL FORM**

**Detailed Cost Proposal Information**

Organization Name: \_\_\_\_\_ Budget Period: \_\_\_\_\_

Solicitation Number: 03-STAC-1

**1. RECIPIENT/SUB-RECIPIENT BUDGET INFORMATION**

PLEASE PROVIDE THE FOLLOWING INFORMATION

**a. PERSONNEL**

- (1). Identify, by title and name, each position to be supported under the proposed award.
  
- (2). Direct Labor- State the breakdown of direct labor hours, hourly rates, and cost for individuals in the proposal. Indicate if the rates shown are base salary only or carry a burden of indirect costs. Provide the amounts of time by task as proposed in the Statement of Work.

Labor Category                      Time            X            Rate            =

**b. FRINGE BENEFITS**

- (1). Indicate the basis for computation of rates, the rate(s) used, and the cost base for each rate.

**c. TRAVEL**

- (1). Indicate the estimated number of trips, number of travelers, number of days per trip, point of origin, and destination.

**d. CONTRACTUAL**

- (1). Provide the following information for each proposed contractor. If the subcontractor is part of this proposal, indicate “proposal partner” under method of selection.

If a specific contractor has not been determined, indicate “pending” under contractor, and describe the method of selection to be used (i.e., sole source or competitive). In this case, if a sole source method is used and the contract is in excess of \$25,000, a justification will be required prior to executing that contract.

Contractor                      Cost                      Work Description                      Method of Selection

**e. EQUIPMENT**

(1). Identify equipment costs and briefly justify the need for each cost item proposed relative to the work scope.

**f. OTHER DIRECT COSTS**

(1). Identify other costs and briefly justify the need for each cost item proposed relative to the work scope.

**g. INDIRECT CHARGES (OVERHEAD, GENERAL & ADMINISTRATIVE)**

(1). State the amounts and percentages used for calculation of indirect costs.

**2. ADDITIONAL INFORMATION**

**a. COST SHARE**

(1). Identify the percentage and amount of cost sharing proposed by each project participant. Cost sharing from other Federal sources cannot be counted as non-Federal Recipient contributions. Non-Federal sources include private, State or local Government, or any sources that were not originally derived from Federal funds.

(2). Identify the source of the Applicant's cost share (e.g., corporate equity, loan, deferred tax revenue, State funds, etc.).

(3). Identify the type (e.g., in-kind, cash, etc.) of cost share contributions and supply funding commitment letters from each contributor.

(4). Provide a brief statement signed by a certifying official that attests to the value of the cost share.

The cost share principals under this solicitation are substantially similar to those used by the DOE (10CFR part 600, Section 600.123 and 600.224) and may found under ATTACHMENT C of this solicitation.

**ATTACHMENT C: Cost Share Principals:**

**COST SHARING OR MATCHING**

(a) All cost sharing or matching contributions, including cash and third party in-kind, shall meet all of the following criteria.

- (1) Are verifiable from the Prime Participant's and/or its Subcontractors records.
- (2) Are not included as contributions for any other federally-assisted project or program.
- (3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- (4) Are allowable under the applicable cost principles.
- (5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
- (6) Are provided for in the approved budget.
- (7) Conform to other provisions of this provision, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching.

(c) Values for Prime Participant contributions of services and property shall be established in accordance with the applicable cost principles. If NASEO authorizes Prime Participant or its Subcontractors to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of either paragraph (c)(1) or (2) of this section.

- (1) The certified value of the remaining life of the property recorded in the Prime Participant's or its Subcontractor's accounting records at the time of donation.
- (2) The current fair market value. However, when there is sufficient justification, NASEO may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work with the Prime Participant and its Subcontractors. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the Prime Participant, or as applicable its Subcontractors, compete for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the Prime Participant furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the

cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The purpose of the award is to support activities that require the use of equipment, buildings or land, and normally only depreciation or use charges for equipment and buildings can be made, however, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that NASEO has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the Prime Participant, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the Prime Participant as established by an independent appraiser (e.g., certified real property appraiser) and certified by a responsible official of the Prime Participant.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(i) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(1) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the Prime Participant for its own employees.

(2) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

**ATTACHMENT D: Model Contract**

**STATE TECHNOLOGY ADVANCEMENT  
COLLABORATIVE (“STAC”) AGREEMENT**

**BETWEEN**

THE NATIONAL ASSOCIATION OF  
STATE ENERGY OFFICIALS

**AND**

**(STATE AGENCY, INSTITUTION OR ENTITY)**

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## **STAC AGREEMENT**

This STAC Agreement (the “Agreement”), dated as of \_\_\_\_\_, is by and between The National Association of State Energy Officials, a District of Columbia non-profit corporation, with offices at 1414 Prince Street, Suite 200, Alexandria, VA 22314 (“NASEO”), and \_\_\_\_\_, doing business as \_\_\_\_\_, with offices at \_\_\_\_\_ (“Prime Participant”). NASEO and the Prime Participant are Parties to this Agreement.

### **RECITALS**

Whereas, NASEO is engaged in the development and implementation of the State Technology Advancement Collaborative (“STAC”) in conjunction with the United States Department of Energy (“DOE”) and the Association of State Energy Research and Technology Transfer Institutions (“ASERTTI”);

Whereas, in support of the conduct of such efforts, NASEO requires the implementation of multi-state projects in energy research, development, demonstration and deployment;

Whereas, the Prime Participant employs personnel, owns facilities, and provides services that are used in conjunction with implementing such a project;

Whereas, NASEO and the Prime Participant desire to enter into a contract for the implementation of such a project; and

Whereas, NASEO and the Prime Participant intend that the contractual relationship between them be one that, consistent with their respective interests and objectives, will foster the development of a multi-state energy project, based on mutual trust, and that will inure to their common benefit.

NOW THEREFORE, the Parties agree as follows:

### **ARTICLE I: DEFINITIONS**

A. “Background Intellectual Property” means the Intellectual Property rights in the items identified by the Parties in Appendix C, Background Intellectual Property, which was in existence prior to or is first produced outside of this AGREEMENT, except that in the case of inventions in those identified items, the inventions must have been conceived outside of this AGREEMENT and not first actually reduced to practice under this AGREEMENT to qualify as Background Intellectual Property. Licensing of Background Intellectual Property, if agreed to by the Parties, shall be the subject of a separate licensing agreement between the Parties. Background Intellectual Property will not be considered a Subject Invention.

B. “Contract Year” shall mean the twelve month period commencing on the Effective Date and each subsequent twelve month period commencing on the anniversary of the Effective Date.

C. “DOE” shall mean the United States Department of Energy Project Office, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, or other division of the United States Department of Energy.

D. "Effective Date" shall be the date on which this Agreement is first effective, as set forth in Article III.

E. "Event of Default" shall mean (1) fraud or any fraudulent practice with respect to the Agreement, (2) any breach of this Agreement, without regard to the materiality of such breach, provided that the non-defaulting Party shall give notice of such breach to the defaulting Party and the defaulting Party shall have failed to cure such breach within 30 days after notice of breach is given, (3) dissolution of the other Party or (4) if the other Party becomes insolvent, voluntarily files a petition for relief under bankruptcy or any similar or other insolvency laws (or has a petition filed against it and the same remains undischarged or unstayed for 60 days) or voluntarily or involuntarily enters receivership or any similar or other insolvency proceeding.

F. "Federal Government" means the United States of America and agencies thereof.

G. "Generated Information" means information produced in the performance of this Agreement.

H. "Intellectual Property" means patents, trademarks, copyrights, Proprietary Information and other foreign counterparts.

I. "Management Plan" means a written document approved by NASEO describing the actions to be taken by the Prime Participant and its Subcontractors to implement the Statement of Work, including a description of either means for the Prime Participant to subcontract in an efficient and timely manner, or means for the team to coordinate efforts under some combination of separate contracts and subcontracts.

J. "Proprietary Information" means information which embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential and is marked as Proprietary Information.

K. "RDD&D" means research, development, demonstration and deployment performed by the Prime Participant and its Subcontractors under this Agreement.

L. "State" means the state where the Prime Participant is located.

M. "Subcontractor" means a Party that the Prime Participant contracts with to accomplish some or all of the Work; such Party must be approved by NASEO.

N. "Subject Invention" means any invention of the Prime Participant or its Subcontractor conceived or first actually reduced to practice in the performance of Work under this Agreement.

O. "Term" shall mean the period during which this Agreement shall be in effect, as provided in Article III.

P. “Work” means the task to be performed by the Prime Participant or its approved Subcontractors, as more fully described in the Statement of Work, Appendix A hereto.

## **ARTICLE II: STATEMENT OF WORK**

During the Term hereof, the Prime Participant shall perform or subcontract to perform the work described in the Statement of Work, Appendix A. The Statement of Work is hereby incorporated into this Agreement by reference. This Agreement in its entirety, including but not limited to, the Statement of Work is subject to and will be implemented in accordance with the Cooperative Agreement No. DE-FC36-03G013026 (“Cooperative Agreement”) between the DOE and NASEO. The Cooperative Agreement is hereby incorporated by reference and is attached as Appendix B.

## **ARTICLE III: TERM**

This Agreement shall become effective \_\_\_\_\_ (the “Effective Date”) and, unless sooner terminated or cancelled, shall remain in effect for an initial period of \_\_\_ months thereafter, expiring \_\_\_\_\_ (the “Initial Term”). At the conclusion of the Initial Term, this Agreement shall expire unless NASEO, in its sole discretion, provides notice to the Prime Participant of its intention to continue this Agreement for an additional Contract Year (a “Renewal Term”). The Agreement shall not be subject to extension following the end of the Renewal Term except by mutual agreement of both Parties. NASEO’s notice(s) of its election to continue this Agreement for any Renewal Term must be provided to the Prime Participant not less than sixty days preceding the end of the Initial Term or a Renewal Term then in effect. (The Initial Term and any Renewal Term are hereinafter referred to collectively as the “Term”).

## **ARTICLE IV: FUNDING AND BUDGET**

The budget for the Work is \$\_\_\_\_\_. Of the budget, the Federal Government, through NASEO, will provide a maximum of \$\_\_\_\_\_. Of the budget, the Prime Participant and its Subcontractors will provide \$\_\_\_\_\_. **[The Prime Participant and its Subcontractors (team members, etc.) are required to contribute a minimum cost share of 55% of total project costs for the Work, as further defined by Attachment C of the Solicitation. In-kind contributions (e.g., contributions of services or property; donated supplies; deferred tax revenue, or unrecovered indirect costs) incurred as part of this project may be considered as all or part of the cost share.]**

## **ARTICLE V: PAYMENT AND INVOICES**

A. Payments by NASEO to the Prime Participant will be made by reimbursement by check. The Prime Participant and its Subcontractors shall use utilize a form substantially similar to Standard Form SF270, “Request for Advance or Reimbursement,” Appendix D hereto. Invoices shall be submitted in accordance with Article XXVIII – Notices.

B. Payments by NASEO shall only be provided for the NASEO share of costs incurred in the Prime Participant’s most recent accounting cycle, however invoices shall

not be submitted more frequently than monthly. In any semi-annual period, NASEO's cost share shall not exceed the maximum 45% cost share, and the Prime Participant's cost share shall not fall below the required minimum of 55%. The Milestone Payment Schedule is included as part of Statement of Work, Appendix A. Payments shall not exceed NASEO's share of actual allowable costs of performance; as NASEO's monetary liability shall not exceed the Federal Government contribution.

C. NASEO may have the invoices and statements of costs, which are recorded against this Agreement, verified at any time prior to the end of the required retention period, as described in Article X. Each payment shall be subject to reduction of amounts where an audit determines that a prior or current invoice includes costs that are not allowable. So long as payments to NASEO by the Federal Government are withheld, so shall payments to the Prime Participant be withheld. NASEO shall retain 5% of its share of the total budget amount until all tasks are completed under the Agreement.

#### **ARTICLE VI: PERSONAL PROPERTY**

All tangible personal property produced or acquired under this Agreement shall become the property of NASEO or the Prime Participant depending upon whose funds were used to obtain it. Such property is identified in Appendix A, Statement of Work. Personal property shall be disposed of as directed by the owner at the owner's expense. All jointly funded property shall be owned by NASEO.

#### **ARTICLE VII: DISCLAIMER**

Neither NASEO nor the Prime Participant makes any express or implied warranty as to the conditions of the research or any intellectual property or product made, or developed under this Agreement, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product. Neither NASEO nor the Prime Participant shall be liable for special, consequential or incidental damages attributed to such research or resulting product, intellectual property, or product made or developed under this Agreement.

#### **ARTICLE VIII: QUALITY ASSURANCE; INSPECTION**

The Prime Participant, as well as any Subcontractor, shall maintain and implement quality assurance programs to ensure that the Work is provided in accordance with the requirements of the Statement of Work. NASEO shall be given an opportunity to review and comment on such quality assurance program, as well as any proposed revisions thereto. NASEO shall have reasonable access to any sites where the Work is being performed either by the Prime Participant or its Subcontractors for the purpose of (a) auditing compliance with the Prime Participant's and its Subcontractors' quality assurance program and (b) observing the performance of the Work.

#### **ARTICLE IX: ADMINISTRATION**

NASEO and the Prime Participant, as well as any Subcontractor, shall designate representatives responsible for the administration of the Parties' respective duties hereunder. These individuals shall coordinate their efforts so as to promote the orderly

performance of the Work in accordance with terms of this Agreement and shall perform the Work in accordance with a Management Plan approved by NASEO.

**ARTICLE X: ACCOUNTING RECORDS; AUDITS**

The Prime Participant, and any Subcontractors, shall keep and maintain complete and accurate records, books of account, records and other data necessary for the proper administration of this Agreement on generally recognized accounting basis and must comply with Office of Management and Budget Circular A-122, A-76 or A-133, as applicable. The Prime Participant shall keep and maintain such documentation for three years after the expiration, cancellation or termination of this Agreement. NASEO shall have the right to have an internal or outside auditor review books and records relating to the Work performed pursuant to this Agreement. The Prime Participant shall provide NASEO's auditor sufficient information and opportunity to audit and inspect such records as will allow the auditor to verify any information submitted to NASEO by the Prime Participant as a basis for payment hereunder. Such auditor shall be entitled to share the results of its audits or inspection with NASEO. The Prime Participant, and its Subcontractors, shall provide offices and related services to support the audit or inspection.

**ARTICLE XI: WARRANTIES**

The Prime Participant warrants that the Work will be performed in a good and workmanlike manner, utilizing experienced supervision and labor as determined in NASEO's sole discretion. In the event that the Work performed hereunder fails to conform to the requirements of the preceding sentence, the Prime Participant shall reperform the Work, with respect to the nonconforming work. The Prime Participant shall require that all work conducted by Subcontractors shall be accomplished in accordance with this Article.

**ARTICLE XII: GENERAL INDEMNITIES**

A. To the maximum extent permitted by law, the Prime Participant and its Subcontractors shall indemnify and hold harmless NASEO, its officers, directors and employees (a) from and against any and all claims, losses, liabilities (including punitive damages), costs and expenses (including reasonable attorneys' fees and related costs) arising out of a claim or claims asserted by persons or entities not a Party to this Agreement, including but not limited to the Prime Participant's employees, in any manner arising out of this Agreement or the Prime Participant's performance thereof (each, a "Third Party Claim"), provided, however, the Prime Participant's indemnity obligation hereunder shall be reduced to the extent any Third Party Claim for which indemnity is sought arises out of the negligence or intentional misconduct of the person or entity seeking such indemnity. In no event shall any person or entity be entitled to indemnity hereunder with respect to any Third Party Claim that arises from the sole negligence of the person or entity otherwise entitled to such indemnity. At the request of NASEO, or any other person or entity entitled to indemnity hereunder with respect to a Third Party Claim, the Prime Participant shall defend NASEO and such person or entity in any proceeding for the purpose of establishing such liability. If the Prime Participant is providing such defense as requested, NASEO, and any person or entity

seeking indemnity hereunder, shall cooperate in the defense of such proceedings and shall not settle any claim for which indemnity is sought without the written consent of the Prime Participant.

B. For licenses granted or assignments made to any third party in Intellectual Property derived from Generated Information, such licenses shall include the requirement that the third party shall indemnify NASEO and the Prime Participant for all damages, costs and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of such third party, its assignees or licensees.

**ARTICLE XIII: OBLIGATIONS AS TO PROPRIETARY INFORMATION**

A. If Proprietary Information is orally disclosed to a Party, it shall be identified as such, orally, at the time of disclosure and confirmed in a written summary thereof appropriately marked by the disclosing Party within ten (10) days as being Proprietary Information.

B. Each Party agrees not to disclose Proprietary Information provided by another Party to anyone other than a Party under the Agreement without the prior written approval of the providing Party.

C. All Proprietary Information shall be returned to the provider thereof, upon request by the disclosing Party at the conclusion of the Term of this Agreement at the provider's expense.

D. All Proprietary Information shall be protected for the term of this Agreement and for a period of three (3) years after expiration, termination or cancellation of this Agreement, unless and until such Proprietary Information shall become publicly known without the fault of the recipient, shall come into recipient's possession without breach of any of the obligations set forth herein by the recipient, shall be independently developed by recipient's employees who did not have access to such Proprietary Information, or which was lawfully in the possession of the recipient at the time of disclosure.

E. In no case shall the Prime Participant provide Proprietary Information of NASEO to any person or entity for commercial purposes, unless otherwise agreed to in writing by NASEO.

F. Notwithstanding the foregoing, all requirements of this Article may become moot in the event that disclosure is required by the Federal Government or any law or regulation of any jurisdiction, including any state or local government.

**ARTICLE XIV: RIGHTS IN GENERATED INFORMATION**

The Parties agree that they shall have no obligations of non-disclosure or limitations on their use of, and the Federal Government shall have unlimited rights in, all Generated Information and information provided to the Federal Government or the Prime Participant under this Agreement which is not marked as being copyrighted or Proprietary Information, or which is a Subject Invention disclosure which may later be the subject of a U.S. or foreign patent application. The following is incorporated by reference DEAR 952.227-11 Patent Rights – Retention By The Contractor (short term) (MAR 1995) and shall be incorporated into any subcontracts at any tier.

**ARTICLE XV: REPORTS AND ABSTRACTS**

A. The Prime Participant, as well as the Subcontractors, shall provide NASEO with the written reports specified in the Statement of Work. In accordance with the Statement of Work, the Prime Participant shall provide quarterly reports on the progress of the work to date, which shall include financial information as described in 10 C.F.R. §600.241. Invoices will not be paid to the Prime Participant without such detailed reports.

B. The Prime Participant also agrees to provide the following deliverables:

- (1) an initial abstract suitable for public release at the time the Agreement is approved;
- (2) other abstracts (final when work is complete, and others as submitted changes in scope and dollars occur);
- (3) a final report, upon completion or termination of this Agreement, to include a list of Subject Inventions;

C. It is understood that NASEO and the Prime Participant have a need to document the long-term economic benefit of the cooperative research, development, demonstration and deployment being done under this Agreement. Therefore, the Parties acknowledge a responsibility by the Prime Participant to respond to reasonable requests, during the Term of this Agreement and for a period of two (2) years thereafter, for pertinent information. Such requirement shall be included in any subcontract between the Prime Participant and any Third Party.

**ARTICLE XVI: PRE-PUBLICATION REVIEW/PUBLICITY**

A. The Parties anticipate that their employees may wish to publish technical developments and/or research findings generated in the course of this Agreement. The Parties agree not to unreasonably withhold approval of other Parties publishing of findings. The Prime Participant agrees it will not use the name of NASEO or its employees in any promotional activity, or advertisements, with reference to any product or services resulting from this Agreement, without prior written approval of NASEO.

B. Notwithstanding the foregoing, all written reports and press releases shall include an acknowledgement of both STAC and DOE as funding the activities resulting from this Agreement. Notification in advance of any publicity, including, but not limited to press conferences, ribbon-cuttings, etc., shall be provided so that STAC representatives would have a reasonable opportunity to participate.

**ARTICLE XVII: COPYRIGHTS**

A. The Parties may assert copyright in any of their Generated Information. Assertion of copyright generally means to enforce or give any indication of an intent or right to enforce such as by marking or securing Federal registration.

B. Copyrights arising under this Agreement, which are authored solely by employees of the Prime Participant or its Subcontractors, shall be governed by the Prime Participant's copyright policies. Any such copyrights are subject to the Federal Government license and other Federal Government rights as set forth in the remainder of this clause.

C. Copyrights which are authored solely by employees of the Prime Participant and its Subcontractors and which are obtained by Prime Participant or its Subcontractors shall be owned by the obtaining Party.

D. For copyrights arising under this Agreement authored by employees of either the Prime Participant or its Subcontractors, NASEO and the Federal Government shall have undivided rights in ownership of such copyrights, provided the copyrights are generated with the intention that the Parties' contributions be merged into inseparable or independent parts of a unitary whole. Jointly owned rights in copyrights shall be without accounting.

E. For a period of up to six (6) months from the date of completion or termination of this Agreement, the Prime Participant and its Subcontractors agree to offer an option to NASEO to negotiate a nonexclusive Copyright License Agreement for any Copyright arising under this Agreement and obtained by the Prime Participant and/or its Subcontractors. The U.S. Competitiveness Clause shall apply to all such Copyright License Agreements.

F. For Generated Information, the Parties acknowledge that the Federal Government has for itself and others acting on its behalf, e.g., NASEO, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Federal Government, all copyrightable works produced in the performance of this Agreement, subject to the restrictions this Agreement places on publication of Proprietary Information.

G. For all copyrighted computer software produced in the performance of this Agreement the Party owning the copyright will provide source code, an expanded abstract and the object code and the minimum support documentation needed by a competent user to understand and use the software to NASEO on behalf of DOE's Energy Science and Technology Software Center, P.O. Box 1020, Oak Ridge, TN 37831. The expanded abstract will be treated in the same manner as Generated Information in Paragraph F of this Article.

H. The Prime Participant agrees that, with respect to any copyrighted computer software produced in the performance of this Agreement, the Federal Government, and others acting on its behalf, e.g., NASEO, have the right to request the Prime Participant and any of its Subcontractors and any assignee or exclusive licensee of the copyrighted software to grant a nonexclusive, partially exclusive, or sole commercial license to a responsible applicant upon terms that are reasonable under the circumstances, provided such grant does not cause a termination of any licensee's right to use the copyrighted computer software. If the Prime Participant or any of its Subcontractors or any assignee or exclusive licensee refuses such request, the Prime Participant agrees that NASEO has the right to grant the license if NASEO determines that the Prime Participant or any of its Subcontractors, assignees, or licensees has not made a satisfactory demonstration that it is actively pursuing commercialization of the copyrighted computer software.

I. Before requiring licensing under this Article, NASEO shall furnish the Prime Participant written notice of its intentions to require the grant of the stated license, and the Prime Participant shall be allowed 30 days after such notice to show cause why the

license should not be required to be granted. Any disputes shall be addressed in accordance with Article XXIV.

J. The Parties agree to place copyright and other notices, as appropriate for the protection of copyright, in human readable form onto all physical media, and in digitally encoded form in the header of machine readable information recorded on such media such that the notice will appear in human readable form when the digital data are off-loaded or the data are accessed for display or printout.

### **ARTICLE XVIII: REPORTING SUBJECT INVENTIONS**

A. The Prime Participant and its Subcontractors agree to disclose to NASEO, and NASEO agrees to maintain in confidence, each and every Subject Invention which may be patentable or otherwise protectable under the Patent Act sufficient to preserve U.S. and foreign filing rights as necessary. The Prime Participant acknowledges that the Prime Participant and its Subcontractors will disclose all Subject Inventions to NASEO within two months after the inventor first discloses the Subject Invention in writing to the person(s) responsible for patent matters of either the Prime Participant or its Subcontractors.

B. These disclosures should be in such detail as to be capable of enabling one skilled in the art to make and use the Subject Invention under 35 U.S.C. § 112. The disclosure shall also identify any known actual or potential statutory bars, i.e., printed publications describing the Subject Invention or the public use or sale of the Subject Invention in the United States. The Parties further agree to disclose to each other any subsequently known actual or potential statutory bar that occurs for a Subject Invention disclosed but for which a patent application has not been filed. All Subject Invention disclosures shall be marked as confidential under 35 U.S.C. § 205.

### **ARTICLE XIX: TITLE TO SUBJECT INVENTIONS**

The Prime Participant and its Subcontractors shall have the right to elect to retain title to Subject Inventions:

A. The Prime Participant and its Subcontractors shall have the first option to elect to retain title to any Subject Invention made their respective employees. If a Subcontractor elects not to retain title to any Subject Invention of its employees, then the Prime Participant shall have the second option to obtain title by assignment of such Subject Invention. NASEO shall retain title to any Subject Invention, which is not retained by the Prime Participant or its Subcontractors. The Prime Participant shall have the option to elect to retain title to its undivided rights in any Subject Invention made jointly by the Prime Participant's employees and the employees of a Subcontractor.

B. The Parties acknowledge that the Federal Government retains a nonexclusive, nontransferable, irrevocable, paid-up license to practice or to have practiced for or on behalf of the United States every Subject Invention throughout the world.

C. For a period of 1) up to six months from the date of filing of any patent application by Prime Participant and its Subcontractors or 2) up to six months from the date of completion or termination of this Agreement, whichever period expires first, NASEO has an option to choose, for reasonable compensation, to enter into an

agreement granting an exclusive patent license (“Sole Commercial Patent License Agreement”) with Prime Participant or its Subcontractors for any patents or patent applications resulting from Subject Inventions made in whole or in part by employees of Prime Participant or its Subcontractors. Such Sole Commercial Patent License Agreement shall be in the field of use of \_\_\_\_\_. **[Field of use equates to the Program Area of Interest(s), as defined by the Solicitation, upon which this Agreement is based.]**

#### **ARTICLE XX: FILING PATENT APPLICATIONS**

A. The Parties agree that the Party initially indicated as having an ownership interest in any Subject Inventions (Inventing Party) shall have the first opportunity to file U.S. and foreign patent applications. If the Prime Participant, or its Subcontractor, does not file such applications within one year after election, then NASEO, exercising its option pursuant to Article XIX, may file patent applications on such Subject Inventions. If a patent application is filed by NASEO, the Inventing Party shall reasonably cooperate and assist NASEO, at NASEO’s expense, in executing a written assignment of the Subject Invention to NASEO and in otherwise perfecting the patent application, and NASEO shall have the right to control the prosecution of the patent application. The Parties shall agree between themselves as to who will file patent applications on any joint Subject Invention. The Parties shall share equally in the costs for the prosecution, filing and maintenance of joint Subject Inventions where both Parties elect to retain title to their undivided rights.

B. Notification of Prime Participant’s or its Subcontractors’ negative intent shall be made in writing to NASEO within four months of the decision of the non-inventing party to not file a patent application for the Subject Invention pursuant to Article XIX, or not later than 75 days prior to the time when any statutory bar might foreclose filing of a U.S. patent application.

C. A Party electing title or filing a patent application in the United States or in any foreign country shall advise the other Party and the DOE if it no longer desires to continue prosecution or retain title in the United States or any foreign country. The other Party and then the DOE will be afforded the opportunity to take title and retain the patent rights in the United States or any such foreign country.

D. Every twelve months from the date of the Agreement, each Party shall deliver to the other Party interim reports listing the Subject Inventions, if any, it has produced during the preceding twelve-month period. If a Party has produced no Subject Invention for any twelve-month period, the Party’s interim report for that period will explicitly state so.

#### **ARTICLE XXI: TRADEMARKS**

A. The Parties may seek to obtain Trademark protection on products or services generated under this Agreement in the United States or foreign countries. The Parties hereby acknowledge that the Federal Government shall have the right to indicate on any similar goods or services produced by or for the Federal Government that such goods or services were derived from and are a DOE version of the goods or services protected by such Trademark/service mark with the Trademark/service mark and the

owner thereof being specifically identified. In addition, the Federal Government shall have the right to use such Trademark/service mark in print or communications media.

B. For a period of up to six (6) months from the date of completion or termination of this Agreement, the Prime Participant agrees to offer an option to NASEO to negotiate an agreement for a nonexclusive license of the Trademark for any Trademark arising under this Agreement and obtained by the Prime Participant.

#### **ARTICLE XXII: COST OF INTELLECTUAL PROPERTY PROTECTION**

Each Party shall be responsible for payment of all costs relating to copyright and Trademark filing, U.S. and foreign patent application filing and prosecution, and all costs relating to maintenance fees for U.S. and foreign patents hereunder which are owned by that Party. Funds contributed by the Federal Government as a cost share to this Agreement cannot be used by the Prime Participant for costs associated with filing and maintaining patents or filing for copyrights and Trademarks.

#### **ARTICLE XXIII: FORCE MAJEURE**

A. Definition of Force Majeure. Neither NASEO nor the Prime Participant shall be responsible or liable, or deemed in breach hereof, to the extent the performance of their respective obligations hereunder is prevented or delayed due solely to circumstances beyond the reasonable control and without the fault or negligence of the Party experiencing such impediment to performance, including but not limited to acts of God; unusually severe weather; war; acts of terrorism; riots; actions or failures to act on the part of governmental authorities preventing performance; inability despite due diligence to obtain required licenses; or fire (such causes hereinafter called "Force Majeure"). Delays or failures to perform caused by the Prime Participant's Subcontractors or suppliers are not events of Force Majeure, unless the Subcontractor's or supplier's delay or failure to perform is due solely to an event of Force Majeure as defined above. Strikes or other labor disputes involving employees of the Prime Participant or its Subcontractors shall not be deemed to be events of Force Majeure. Delays or failures to perform caused by strikes or labor disputes of employees of entities other than the Prime Participant or its Subcontractors shall be deemed to be events of Force Majeure unless such strike or labor dispute is caused by or results from the acts or omissions of the Prime Participant or its Subcontractors.

B. Force Majeure Procedure. The Party experiencing the Force Majeure shall (a) exercise due diligence in endeavoring to overcome any Force Majeure impediment to its performance and (b) promptly give written notification to the other Party. This written notification shall include a full and complete explanation of the Force Majeure and its cause, the status of the Force Majeure, and the actions such Party is taking and proposes to take to overcome any effect of the Force Majeure.

C. Effect of Force Majeure. If performance by either Party is delayed or prevented due to Force Majeure, the time for that performance shall be extended for a period reasonably necessary to overcome the effect of the Force Majeure. In the event that the Prime Participant experiences a Force Majeure, the Prime Participant shall undertake reasonable measures to make up for the time lost without additional compensation.

D. Termination for Extended Force Majeure. If either Party's ability to perform hereunder is prevented, in whole or in significant part, for a period of six consecutive months as a result of an event of Force Majeure, the other Party shall have the right, at its sole option, to terminate this Agreement and any and all remaining performance hereunder without further obligation, such option to be exercised, if at all, by such other Party giving written notice of termination to the non-performing Party. In such event, the termination of this Agreement shall be effective no earlier than 45 days after notice of termination is given and without regard to whether the event of Force Majeure ends prior to the date on which the termination becomes effective.

#### **ARTICLE XXIV: DISPUTE RESOLUTION**

A. Intent. It is the intention of the Parties to make a good faith effort to resolve, without resort to litigation, any dispute, controversy or claim arising out of or relating to this Agreement or any breach hereof (a "Dispute") according to the procedures set forth in this Article. Nothing in this Article XXIV shall be deemed to prevent either Party from exercising any right of termination or cancellation of this Agreement or to subject the exercise of such right to the procedures for dispute resolution as set forth herein.

B. Negotiation. NASEO's and the Prime Participant's designated representatives shall attempt to resolve all Disputes by negotiation. In the event a Dispute cannot be resolved promptly by NASEO's and the Prime Participant's representatives, each Party shall immediately designate a senior executive with authority to resolve the Dispute. The designated senior executives shall promptly begin discussions in an effort to agree upon a resolution of the Dispute. If the senior executives do not agree upon a resolution of the Dispute within 45 days after a dispute is first referred to them, either Party may elect to abandon negotiations.

C. Formal Dispute Resolution. In the absence of a voluntary resolution reached in accordance with Paragraphs A and B of this Article, any Party may seek to resolve a dispute either in a forum of competent jurisdiction or, with the written consent of other Party, by submitting the dispute to binding arbitration or other alternative dispute resolution method, which shall be conducted using the procedures recognized by the American Arbitration Association or required by the Prime Participant's state laws; provided that no such formal dispute resolution shall be commenced until after the 45 day period provided by Paragraph B of this Article has expired, and provided further that the preceding condition shall not prevent a Party from initiating any suit or other action if it is necessary to secure any legal right which may otherwise be forfeited due to limitations or requirements imposed by rule or statute.

D. Performance. The Prime Participant and NASEO each shall continue to perform its obligations under this Agreement during the pendency of any Dispute; provided, however, that either Party may seek preliminary and permanent injunctive relief, including specific performance or other interim or permanent relief, if the Dispute involves (a) threatened or actual breach by the other Party of the provisions of [confidentiality, trademark, or copyright] or (b) risk to the safety or security of persons or property, if in the judgment of the Party seeking injunctive relief such relief is necessary to prevent injury or damage; provided further, that despite any such request for injunctive relief, the Parties shall continue to proceed to negotiate in good faith in accordance with the procedures outlined in this Article XXIV.

**ARTICLE XXV: CANCELLATION**

Either Party may cancel this Agreement upon an occurrence of any Event of Default as to the other Party, such cancellation to be effective upon the defaulting Party's receipt of written notice of cancellation for default. Upon the occurrence of an Event of Default as to a Party, the non-defaulting Party shall have all rights and remedies available to it under this Agreement, at law and in equity. The right of cancellation created by this Article XXV shall be in addition to such other rights and remedies.

**ARTICLE XXVI: INSURANCE**

A. The Prime Participant and each of its Subcontractors performing Work shall obtain and maintain the following insurance continuously during the Term hereof:

- (1) Statutory workers' compensation coverage, or equivalent social insurance, in accordance with the law of the state where the Work is to be performed;
- (2) Employer's liability insurance with a limit of not less than \$1,000,000 per occurrence;
- (3) Comprehensive general liability or commercial general liability insurance, including coverage for property damage and contractually assumed obligations, with a combined single limit of \$5,000,000 per occurrence; and
- (4) Comprehensive automobile liability insurance covering all the Prime Participant vehicles, whether owned or non-owned, with a combined single limit of \$5,000,000 per occurrence.

B. The Prime Participant shall require each of its Subcontractors performing the Work to maintain the insurance required by this Article XXVI or such lesser amount as NASEO shall approve.

C. Not later than thirty days after the beginning of each Contract Year during the Term hereof, the Prime Participant shall cause its insurers to provide NASEO a certificate evidencing the insurance required herein, such certificate to acknowledge that the insurance will not be canceled, revoked or non-renewed unless NASEO is provided at least 30 days' prior written notice. The Prime Participant shall cause its insurance carriers and the insurance carriers of its subsidiary and affiliate Subcontractors to waive all rights of subrogation against NASEO. The Prime Participant shall require its comprehensive general liability or commercial general liability carrier and its comprehensive automobile liability carrier to name NASEO as an additional insured on those policies, with the endorsement that the coverage thus provided shall be deemed primary to any other coverage NASEO may maintain.

D. In the event that the Prime Participant is a state entity or institution authorized by the state legislature to self-insure, a state entity or institution may provide evidence of self-insurance that meets the requirements of this Article XXVI.

E. The insurance required by this Article XXVI shall not be deemed to create any limitation on the Prime Participant's obligations hereunder or on any of the Prime Participant's liabilities arising out of this Agreement or its performance.

**ARTICLE XXVII: COMPLIANCE WITH LAWS; NONDISCRIMINATION; FINES**

A. General. The Prime Participant shall comply in all material respects with all foreign and United States (federal, state and local) laws, rules, regulations and ordinances applicable to the Prime Participant's performance of its obligations under this Agreement, including but not limited to the applicable requirements of the United States Department of Energy.

B. The Prime Participant shall obtain and maintain all governmental licenses, permits and approvals necessary to perform the Work. Not later than thirty days after the beginning of each Contract Year during the Term hereof, the Prime Participant shall provide NASEO written certification (a) that the Work is being performed in accordance with all applicable environmental laws, rules, regulations, orders and permits, where the failure to maintain or operate such facilities would have a material adverse effect on the Prime Participant's ability to satisfy its obligations hereunder or (b) that specifies the steps that are being taken to correct any non-compliance with applicable environmental laws, rules, regulations, orders and permits. The Prime Participant acknowledges that the National Environmental Policy Act ("NEPA") applies to this Agreement and the Prime Participant and its Subcontractors shall comply in all respects with NEPA and shall utilize best efforts to coordinate with NASEO to satisfy NEPA requirements.

C. No Discrimination. Without limiting the generality of the paragraphs above, this Agreement may be subject to the equal employment opportunity and affirmative action provisions of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212. To the extent required by law, this Agreement incorporates by reference the provisions contained in the regulations of the Office of Federal Contract Compliance Programs in the "Equal Employment Opportunity" clause, 41 CFR § 60-1.4(a)(1)-(7), the "Affirmative Action for Disabled Workers" clause, 41 CFR § 60-741.4(a)-(f), and the "Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era" clause, 41 CFR § 250.4(a)-(m). These clauses, if applicable, are to be applied in conformity with the Prime Participant's obligations under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. **[All state non-discrimination statutes applicable to the Prime Participant, its Subcontractors and this Agreement shall be supplied and incorporated as Appendix E herein.]**

D. No Collusion. Without limiting the generality of paragraphs A and B above, neither the Prime Participant nor any person or entity acting on the Prime Participant's behalf shall enter into any combination, conspiracy, agreement or other form of collusive arrangement with any person, corporation, partnership or other entity that directly or indirectly lessens competition between potential Subcontractors, vendors or suppliers from whom goods or services may be obtained that will be used by the Prime Participant in performing its obligations hereunder. Furthermore, in performing its obligations hereunder, the Prime Participant shall use its best efforts to prevent the occurrence of such collusion among or between potential Subcontractors, vendors, suppliers or any other person.

E. Fines. Any fines or other penalties incurred by the Prime Participant or its agents, employees or Subcontractors for their noncompliance with any laws, rules, regulations or ordinances with which compliance is required herein shall not be

reimbursed by NASEO, but shall be the sole responsibility of the Prime Participant. If fines, penalties or legal costs are assessed against NASEO by any government authority or court due to noncompliance by the Prime Participant or its agents, employees or Subcontractors with any of the laws, rules, regulations or ordinances with which compliance is required herein, or if NASEO's operations or any part thereof are delayed or stopped by order of any government authority or court due to the Prime Participant's noncompliance or noncompliance by the Prime Participant's agents, employees or Subcontractors, Prime Participant shall indemnify and hold harmless NASEO against any and all losses, liabilities, damages, claims and costs (including reasonable attorneys' fees) suffered or incurred because of the failure of the Prime Participant or its agents, employees or Subcontractors to comply therewith.

**ARTICLE XXVIII: NOTICES**

All certificates or notices required hereunder shall be given in writing and addressed or delivered to the representative(s) specified in this Agreement. Copies of all general correspondence regarding this Agreement shall also be sent to these representatives. Notices shall be deemed received (a) upon delivery, when personally delivered; (b) upon receipt, when sent via registered or certified mail; (c) the next business day, when sent via overnight courier and (d) upon transmittal, when sent via facsimile. Address changes shall be given in accordance with this Article and shall be effective thereafter.

Notices required hereunder shall be directed to the following individuals:

Notices to the Prime Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices to NASEO:

Frank Bishop, Executive Director  
National Association of State Energy Officials  
1414 Prince Street, Suite 200  
Alexandria, VA 22314

**ARTICLE XXIX: GOVERNING LAW/VENUE**

The statutes and judicial interpretations of the District of Columbia shall govern this Agreement without regard to conflicts of law rules. In the event of any dispute, venue and governing law shall be in the District of Columbia unless the Prime Participant is a state entity, and that respective state requires that venue or governing law be in that state, subject to the constitution of the state, state law, regulation or settled practice. **[Parties seeking to use the exemption shall be required to submit a letter signed by the appropriate authorized state official explaining the nature of the exemption that precludes having venue and governing law in the District of Columbia, pursuant to the Solicitation, Attachment A - Certifications.]**

**ARTICLE XXX: NONWAIVER**

The failure of either Party to demand strict performance of the terms hereof or to exercise any right conferred hereby shall not be construed as a waiver or relinquishment of its right to assert or rely on any such term or right in the future.

**ARTICLE XXXI: SEVERABILITY**

In the event that any provision of this Agreement is deemed as a matter of law to be unenforceable or null and void, such unenforceable or void portion of such provision shall be deemed severable from the Agreement and the Agreement shall continue in full force and effect as if such provision was not contained herein.

**ARTICLE XXXII: ASSIGNMENT AND SUBCONTRACTING**

Except as approved by NASEO in writing, the Prime Participant shall not be permitted to assign any of its rights or obligations hereunder. Except as approved by NASEO in writing or as expressly acknowledged herein, the Prime Participant shall not subcontract or otherwise delegate its obligations hereunder to any Subcontractor.

**ARTICLE XXXIII: SURVIVAL**

All warranties, remedial obligations, indemnities and confidentiality rights and obligations provided herein shall survive the cancellation, expiration or termination hereof.

**ARTICLE XXXIV: RETENTION AND LIENS**

If the Prime Participant breaches any provision of this Agreement and the Prime Participant has not, within ten working days of receipt of NASEO's notice of such breach, cured such breach or given NASEO reasonable assurances acceptable to NASEO of due performance, or if any person or entity asserts a claim or lien against NASEO's property or facilities that is chargeable to the Prime Participant's performance hereunder, NASEO shall have the right to retain out of any payments due or to become due to the Prime Participant hereunder an amount sufficient to protect NASEO completely from all losses, damages and expenses associated with the breach; or the full amount of any such claim or lien, until the breach has been cured, the lien has been removed or the claim has been terminated or released to NASEO's satisfaction. In addition, in the event that NASEO disputes any portion of an invoice, NASEO shall pay the undisputed portion of the invoice, in accordance with Article V, pending resolution of the dispute, so long as NASEO has received funds from DOE to cover such payments. NASEO's right to withhold monies pursuant to this Article shall be in addition to other rights and remedies available to it under this Agreement, at law or in equity.

**ARTICLE XXXV: AMENDMENTS**

No amendment, modification or waiver of any term hereof shall be effective unless set forth in a writing signed by NASEO and the Prime Participant.

**ARTICLE XXXVI: INDEPENDENT CONTRACTOR**

The Prime Participant is an independent contractor for all purposes hereof. This Agreement is a contract for the implementation of a project and related provision of

services and is not intended to be one of hiring under the provisions of any workers' compensation or other laws and shall not be so construed. All employees that the Prime Participant hires or Subcontractor's utilized by the Prime Participant to perform the Work are the Prime Participant's employees and shall not be deemed to be NASEO's employees for any purpose. Nothing herein shall be deemed to constitute a partnership or joint venture between the Parties hereto.

#### **ARTICLE XXXVII: HEADINGS**

Headings contained herein are inserted for convenience and shall have no effect on the interpretation or construction hereof.

#### **ARTICLE XXXVIII: WAIVER OF LIENS**

A. The Prime Participant waives, and shall require its approved Subcontractors and suppliers of any tier to waive, all liens and the right to file and enforce or otherwise assert any liens against NASEO's property or facilities for materials furnished or services, including without limitation the Work performed hereunder.

B. The Prime Participant shall defend, indemnify and hold harmless NASEO from all liens and claims filed or asserted against NASEO's property or facilities with respect to materials furnished or services performed by the Prime Participant, and by the Prime Participant's approved Subcontractors and suppliers, in connection with the Work and from any and all losses, expenses, costs, causes of action or suits arising out of any lien or claim. The Prime Participant shall promptly discharge or remove any such lien or claim by bonding, payment or otherwise and shall notify NASEO promptly when it has done so. If the Prime Participant does not cause any such lien or claim to be released or discharged by payment or bonding, NASEO shall have the right (but shall not be obligated) to pay all sums necessary to obtain releases and discharges and to deduct all amounts so paid (plus reasonable attorneys' fees) from the amounts due the Prime Participant hereunder.

#### **ARTICLE XXXIX: THIRD PARTY BENEFICIARIES**

Except as expressly provided herein, this Agreement does not create any benefit or right in favor of any person or entity not a party hereto.

#### **ARTICLE XL: NON-EXCLUSIVE REMEDIES**

Where remedies for breach of contract are provided herein, those remedies are in addition to all other available remedies in the Agreement, at law or in equity, unless otherwise expressly provided herein. Where no specific remedy for a breach of contract is specified, the non-breaching Party shall be entitled to pursue all available remedies in this Agreement, at law or in equity.

#### **ARTICLE XLI: ORDER OF PRECEDENCE**

If there is a discrepancy or conflict between or among the terms and conditions of this cover Agreement and the Appendices hereto, the terms and conditions of this cover Agreement shall be given precedence over the Appendices.

**ARTICLE XLII: CHANGE IN LAWS**

In the event that (a) after the Effective Date hereof, any new federal, state or local law, rule, regulation or ordinance applicable to the Prime Participant's performance hereunder becomes effective and (b) the Prime Participant believes that the Prime Participant's compliance with such new law, rule, regulation or ordinance would render the Prime Participant's performance commercially impracticable, then on written request by the Prime Participant the Parties shall meet and discuss steps that might be taken to reduce the burden on the Prime Participant; provided, however, that nothing herein shall be deemed to reduce or limit the Prime Participant's obligations to perform the Work as required herein.

**ARTICLE XLIII: ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any prior or contemporaneous agreement or understanding between the Parties regarding such subject matter. Except as expressly provided in this Agreement, no course of dealing, no usage of trade and no course of performance shall be used to supplement or explain any term, condition or instruction herein, nor be deemed to amend any term, condition or instruction hereof.

Signature and Titles:

NASEO

[Prime Participant]

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