

**FIRST AMENDMENT TO TIER 4 RENEWABLE ENERGY CERTIFICATE
PURCHASE AND SALE AGREEMENT**

This FIRST AMENDMENT TO TIER 4 RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT, dated as of May 13, 2022 (this “Amendment”), is entered into among the undersigned in connection with that certain Tier 4 Renewable Energy Certificate Purchase and Sale Agreement, dated as of November 29, 2021 (as amended from time to time, the “REC Purchase Agreement”), between THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, a New York public benefit corporation (“NYSERDA”), and H.Q. ENERGY SERVICES (U.S.) INC. (“Seller”), a Delaware corporation. Capitalized terms which are used but not otherwise defined herein shall have the meanings ascribed to such terms in the REC Purchase Agreement.

RECITALS

WHEREAS, NYSERDA and Seller entered into the REC Purchase Agreement;

WHEREAS, on April 14, 2022, pursuant to its Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates (the “Approval Order”)¹, the PSC approved the REC Purchase Agreement, subject to certain conditions set forth in the Approval Order;

WHEREAS, the Parties desire to amend the REC Purchase Agreement in accordance with Section 19.02 thereof in order to comply with the conditions of approval set forth in the Approval Order;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the Parties hereto agree to enter into this Amendment as follows:

1. Amendments.

- a. Paragraph 7 of Exhibit H of the REC Purchase Agreement is hereby amended by adding the following provision to the end thereof:

“The Parties agree that low water levels associated with any hydroelectric generation facility included in calculation of the Supplier GHG Baseline or otherwise subject to this Agreement shall not, alone, constitute a Force Majeure event.”

- b. Paragraph 12.a. of Exhibit H of the REC Purchase Agreement is hereby amended by adding the following provision to the end thereof:

“On or prior to the Commercial Operation Milestone Date (as such date may be extended in accordance with the terms of this Agreement), Seller shall

¹ See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates (issued April 14, 2022).

reach agreement with NYSERDA with respect to, and file with the PSC, a plan setting forth in reasonable detail the manner in which demand side management and other programs and actions which are intended to reduce electricity and energy consumption in Québec contributing to Accrued Net Supplier Production will be accounted for under this Agreement.”

- c. Exhibit I-1 of the REC Purchase Agreement is hereby amended by adding the following new Paragraph 7 to the end thereof:

“7. The Parties will work in good faith expeditiously to develop the details and parameters of a framework for identifying, measuring, and tracking benefits to Disadvantaged Communities as contemplated in this Exhibit I-1 and, in any event, will mutually agree and file such details and parameters with the PSC in Case 15-E-0302 prior to commencement of construction of the Associated New Transmission Facility. Seller agrees to file the data collected pursuant to the framework with the PSC on a mutually agreed schedule to be reflected in the framework or as otherwise directed by the PSC.”

2. Representations and Warranties. Each of the Parties represents and warrants to the other Party that following statements are true, correct and complete in all respects as of the signing of this Amendment:

- a. Power and Authority; Authorization. It has all requisite power and authority to execute, deliver and perform its obligations under this Amendment and all requisite power and authority to perform its obligations under the REC Purchase Agreement, as amended by this Amendment. It has duly authorized, executed and delivered this Amendment and its agreements and obligations contained in this Amendment constitute its legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors’ rights or by the application of general principles of equity.
- b. REC Purchase Agreement Representations and Warranties. Each of its representations and warranties set forth in the REC Purchase Agreement is true and correct in all material respects (except for any representations and warranties qualified by materiality or material adverse effect in which case such representations and warranties are true and correct in all respects) both before and after giving effect to this Amendment, except to the extent that any such representation and warranty relates solely to a different date, in which case such representation and warranty is true and correct in all material respects (except for any representations and warranties qualified by materiality or material adverse effect in which case such representations and warranties are true and correct in all respects) as of such date.

- c. No Violations. Its execution, delivery and performance of this Amendment will not (i) violate any Applicable Law; (ii) with respect to Seller, violate any provision of its certificate of incorporation, bylaws or other governing documents; (iii) violate, conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default or an event of default under any indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which it is a party or by which it or any of its property is bound; or (iv) result in the creation or imposition of any lien upon any of its property or assets, except, in the case of clauses (i), (iii) and (iv), where the violation, conflict, breach or lien, as applicable, would not result in a material adverse effect on its ability to perform its obligations.
3. Effect of Amendment. Except as expressly provided herein, (a) the REC Purchase Agreement shall remain unmodified and in full force and effect, and (b) this Amendment shall not be deemed to (i) be a waiver of, consent to, a modification of or amendment to any other term or condition of the REC Purchase Agreement, or any other agreement by and between the Parties, or (ii) prejudice any other right or rights which a Party may now have or may have in the future under or in connection with the REC Purchase Agreement or any agreements referred to therein, as the same may be amended, restated, supplemented or otherwise modified from time to time. On and after the effectiveness of this Amendment, each reference in the REC Purchase Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the REC Purchase Agreement, shall mean and be a reference to the REC Purchase Agreement, as amended by this Amendment.
4. Reaffirmations. The REC Purchase Agreement, as specifically amended by this Amendment, is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.
5. Miscellaneous.
 - a. Counterparts. This Amendment may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and electronic signatures shall have the same force and effect as original signatures for all purposes of this Amendment.
 - b. Severability. If any provision of this Amendment shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Amendment shall not be affected and shall remain in full force and effect. If any provision of this Amendment is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.
 - c. Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York, and Section 17.01 of the REC Purchase Agreement is incorporated as if fully set forth herein.

- d. No Third Party Beneficiaries. Nothing in this Amendment is intended to or should be construed to create any rights of any kind whatsoever in any person not party to this Amendment.
- e. Headings. Paragraph headings have been inserted in this Amendment as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Amendment and shall not be used in the interpretation of any provision of this Amendment.

[Signatures pages follow]

The Parties hereto have caused this Amendment to be executed and delivered by their duly authorized representatives.

H.Q. ENERGY SERVICES (U.S.) INC.

By: 

Name: Pierre Despars

Title: Chairman and President

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

By: _____

Name: Doreen M. Harris

Title: President & CEO