

**NIAGARA MOHAWK POWER CORPORATION
INTERIM ENERGY SALES AGREEMENT NO. 1958**

This Interim Energy Sale Agreement No. 1958 (“Interim ESA”) dated October 10, 2022 by and between Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), a New York corporation having a place of business at 100 East Old Country Road, Hicksville, NY 11801 and Ampersand Tannery Island Hydro, LLC C/O Dichotomy Power, LLC (“Producer”), a Delaware limited liability company having a place of business at 10 Roberts Lane, Suite 201, Ridgefield, CT 06877, shall be effective as of November 1, 2022 (“Effective Date”). National Grid and Producer are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, National Grid is, among other things, a regulated utility engaged in the business of transmitting and distributing electric power to customers in its service territory in New York State;

WHEREAS, Producer owns and operates a hydroelectric generating facility located on the Black River in the Town of Wilna, Village of Carthage, Jefferson County, State of New York, having a total installed nameplate capacity of [REDACTED] (the “Production Facility”);

WHEREAS, pursuant to an Agreement (380) dated September 17, 1985, as amended from time to time (Producer sold and delivered, and National Grid purchased and accepted, all of the Excess Electric Output (as defined below) produced by the Production Facility that was not used by Producer;

WHEREAS, Paragraph SEVENTH of the Original Power Purchase Agreement defines the termination date to be October 31, 2022;

WHEREAS, the Parties desire to negotiate the terms of both a new Power Purchase Agreement (“PPA”) and Interconnection Agreement (“IA”) (collectively, the “New Agreements”) whereby Producer will continue to sell and deliver, and National Grid will continue to purchase and accept, all of the Excess Electric Output, excluding Green Attributes, generated at the Production Facility; and

WHEREAS, in order to allow the Parties sufficient time to negotiate the terms of the New Agreements, the Parties hereby agree to enter into this Interim ESA.

NOW THEREFORE, in consideration of the mutual representations, covenants and agreements set forth herein, and intending to be legally bound hereby, the Parties agree as follows:

**ARTICLE 1.
DEFINITIONS**

The following definitions and any terms defined in this Interim ESA shall apply to this Interim ESA:

- 1.1 “Ancillary Services” means those energy services required by the NYISO to support the transmission of Electricity (as defined below) from generators to loads, while maintaining reliable operation of the power system in the New York Control Area and shall include scheduling, system control and dispatch service, reactive supply and voltage support service, regulation and frequency response service, energy imbalance service, operating reserve service (including spinning reserve, 10-minute non-synchronized reserves and 30-minute reserves), black start capability, and any other services designated as “Ancillary Services” in the NYISO Tariff (defined below).
- 1.2 “Bankruptcy Proceeding” shall have the meaning set forth in Section 7.1 (iv) of this Interim ESA.
- 1.3 “Business Day” means a day on which Federal Reserve member banks in New York City are open for business.
- 1.4 “Business Hours” means between 8:00 a.m. and 5:00 p.m. Eastern Standard (or Daylight, when in effect) time on a Business Day.
- 1.5 “Credit Meter” means the meter installed by National Grid [REDACTED] to measure the Excess Electric Output of the Production Facility.
- 1.6 “Delivery Point” shall be at National Grid’s high-side terminations at Producer’s [REDACTED] switchgear.
- 1.7 “Distribution System” shall mean National Grid’s facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among geographic areas.
- 1.8 “Electricity” means electric capacity as measured in MW or kW, energy as measured in MWh or kWh, Green Attributes (as defined below), and Ancillary Services.
- 1.9 “Excess Electric Output” means all of the Electricity produced by the Production Facility in excess of the Electricity provided by the Production Facility to Producer.
- 1.10 “FERC” means the Federal Energy Regulatory Commission, or any successor thereto.
- 1.11 “Force Majeure Event” means any event: (a) that is beyond the reasonable control of the affected Party; and (b) that the affected Party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrections,

or rebellion; floods, hurricanes, earthquakes, lighting, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage.

- 1.12 “Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Production Facility is located. Good Utility Practice shall include, but not be limited to, NERC (as defined below) criteria, rules, guidelines and standards, NPCC (as defined below) criteria, rules, guidelines and standards, NYSRC (as defined below) criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time including the rules, guidelines and criteria of any successor organization to the foregoing entities. When applied to Producer, the term “Good Utility Practice” shall also include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.
- 1.13 “Green Attributes” means renewable energy credits, renewable energy conversion credits, renewable portfolio credits or attributes, as such terms and similar terms are commonly used by the NYISO (as defined below), FERC, and the PSC (as defined below), and in the proceedings of such entities and as may be revised from time to time.
- 1.14 “Interconnection Agreement” as used herein shall mean the standard form contract found in the *New York State Standardized Interconnection Requirements and Application Process For New Distributed Generators and Energy Storage Systems 5 MW or Less Connected in Parallel with Utility Distribution Systems*, also sometimes referred to as Form K within National Grid, for eligible technologies up to [REDACTED] in capacity. For facilities not eligible to use the standard form contract, Interconnection Agreement as used herein shall mean a custom agreement prepared by National Grid. Whether a standard form contract or a custom agreement, the Interconnection Agreement must be executed by both Producer and National Grid by the effective date of the PPA.
- 1.15 “Interest Rate” means the rate provided in S.C. No. 6 of the Tariff.
- 1.16 “NERC” means the North American Electric Reliability Corporation or any successor organization.
- 1.17 “NPCC” means the Northeast Power Coordinating Council, Inc. or any successor organization.
- 1.18 “NYGATS” means the New York Generation Attribute Tracking System administered by NYSERDA whereby NYSERDA obtains generation, delivery and consumption information from independent system operators, generators, public utility companies, and retail load serving entities.

- 1.19 “NYISO” means the New York Independent System Operator, Inc., an organization formed in accordance with FERC orders to administer the operation of and, provide equal and open access to, the transmission system of New York State, and to maintain system reliability.
- 1.20 “NYSERDA” means the New York State Energy Research and Development Authority.
- 1.21 “NYSRC” means the New York State Reliability Council, L.L.C. or any successor organization.
- 1.22 “PSC” means the New York State Public Service Commission.
- 1.23 “PURPA” means the Public Utility Regulatory Policies Act of 1978, as amended, and the regulations of the PSC and FERC promulgated thereunder.
- 1.24 “QF” means a qualifying facility as defined under PURPA and the regulations implementing PURPA.
- 1.25 “Tariff” means Niagara Mohawk Power Corporation d/b/a National Grid P.S.C. No. 220 – ELECTRICITY, Schedule for Electric Service, as it exists at the time of execution of this Interim ESA and as it may be amended from time to time thereafter.
- 1.26 “UCAP” has the meaning as set forth in Section 5.4 (ii) of this Interim ESA. The UCAP of the Production Facility shall be the quantity that National Grid certifies and is able to claim credit for with the NYISO.

ARTICLE 2. DELIVERY AND ACCEPTANCE OF ELECTRICITY

2.1 During the term of this Interim ESA and except as expressly provided herein, Producer agrees to sell and deliver, and National Grid agrees to purchase and accept all of the Excess Electric Output of the Production Facility, subject to the terms and conditions of this Interim ESA. Producer shall have no obligation to provide any minimum quantities of Electricity, nor shall it have an obligation to schedule such Electricity, provided however that nothing in this Interim ESA shall be construed as affecting in any way Producer’s obligation to provide National Grid with prior notice of any scheduled outages of the Production Facility for maintenance and/or making any necessary inspection or repairs. Producer may disconnect the Production Facility upon eighteen (18) hours advance notice to National Grid if the planned shutdown will last eight (8) hours or more. For non-emergency forced outages lasting eight (8) hours or more, Producer shall notify National Grid within twenty-four (24) hours of the commencement of the shutdown. The quantity of Electricity delivered shall be determined by utilizing data obtained by National Grid from channel 3 of the Credit Meter. Notwithstanding anything to the contrary herein, right, title, and interest in any Green Attributes related to or associated with the energy produced by the Production Facility shall be vested in a Party in accordance with the provisions of Section 5.4(iv) herein.

2.2 Producer shall deliver Electricity from the Production Facility to National Grid at the Delivery Point at approximately [REDACTED]. The Production Facility and electrical interconnection at all times shall meet or exceed the requirements of National Grid's Electric Service Bulletin No. 756 ("ESB 756"), dated December 2021, Version 7.0, as it may be amended from time to time.

ARTICLE 3. TERM AND TERMINATION

3.1 The term of this Interim ESA shall commence at 12:00 am on the Effective Date and shall terminate on the earlier to occur of: [REDACTED]; or ii) thirty (30) calendar days following receipt by National Grid of Producer's written notice of its intent to terminate this Interim ESA; or (iii) the effective date of the New Agreements. Written Notice of intent to terminate must be received under any and all circumstances in which Producer intends to sell energy under a different contract arrangement with National Grid or another outside entity.

ARTICLE 4. LIMITATIONS ON THE OBLIGATION TO PURCHASE

4.1 National Grid's obligation to accept and pay for Electricity produced at the Production Facility shall be suspended for any period(s) of time during which, for reason of repair, service, system emergency, safety, or any other reasons set forth in Sections 4.1, 4.2, 4.3, 4.4 and 4.5 of this Article that National Grid's electric system is unable to accept such Electricity. If necessary, and solely for the reasons set forth above or as authorized elsewhere in this Interim ESA or, if applicable, by the provisions of the Tariff, National Grid may order that the Production Facility be disconnected from National Grid's electric system. National Grid agrees to minimize the frequency and duration of such disconnections, consistent with Good Utility Practice.

4.2 National Grid may disconnect the Production Facility, without prior notice to Producer (a) to eliminate conditions that constitute a potential hazard to National Grid personnel or the general public; (b) if pre-emergency or emergency conditions exist on the National Grid system, (c) if a hazardous condition relating to the Production Facility is observed by a National Grid inspection; or (d) if Producer has tampered with any protective device. National Grid shall notify Producer of the emergency if circumstances permit. Producer shall notify National Grid promptly when it becomes aware of an emergency condition that affects the Production Facility that may reasonably be expected to affect National Grid's electric system.

4.3 National Grid may disconnect the Production Facility, after notice to the responsible party has been provided and a reasonable time to correct, consistent with the conditions, has elapsed, if (a) Producer has failed to make available records of verification tests and maintenance of the Production Facility's protective devices; (b) the Production Facility interferes with National Grid equipment or equipment belonging to other customers of National Grid; or (c) the Production Facility adversely affects the quality of service of adjoining customers.

4.4 National Grid may disconnect the Production Facility after notice to Producer when necessary for routine maintenance, construction, and repairs on National Grid's electric system.

Producer may request to reconnect its service prior to the completion of National Grid's work. National Grid will accommodate such requests, provided that Producer shall be responsible for the costs of National Grid's review and any system modifications required to reconnect the Production Facility ahead of schedule.

4.5 Producer shall have the right to shut down, curtail, reduce or interrupt the operation of the Production Facility or to temporarily disconnect the Production Facility from National Grid's Distribution System whenever and for such periods of time as may be necessary, in the sole discretion of Producer, for any repair, maintenance, energy conservation, emergency or safety reasons. Producer agrees to reimburse National Grid for all costs incurred for any disconnection or reconnection of the Production Facility arising under this Section 4.5.

4.6 Producer agrees, to the extent reasonably practicable, to coordinate the maintenance activities of the Production Facility with National Grid.

4.7 During any period of disconnection, the Parties shall use their best efforts to restore the connection as promptly as is reasonably possible consistent with Good Utility Practice.

ARTICLE 5. PAYMENT

5.1 The Credit Meter will be read monthly in conjunction with National Grid's normal meter reading schedule. National Grid will calculate the amount due Producer on a monthly basis.

5.2 National Grid shall pay Producer by electronic Automated Clearing House ("ACH") payment check on or before the twenty-fifth (25th) day of each month for Electricity delivered to National Grid by Producer during the preceding calendar month. Payment shall include a statement that details the metered amount of Electricity delivered during the preceding billing period and the applicable rates paid. Payment shall be to:

Bank Name: [REDACTED]
Bank Address: [REDACTED]

ABA Routing No.: [REDACTED]
Account No.: [REDACTED]
Account Name: [REDACTED]

Producer may change these payment instructions by providing notice of such to National Grid pursuant to Article 18.

5.3 Overdue payment shall accrue interest at the Interest Rate from, and including, the due date to, but excluding the date of payment.

5.4 Subject to Article 3, during the term of this Interim ESA, National Grid shall purchase Electricity from Producer pursuant to Service Classification No. 6 (exclusive of any statutorily required minimum payment) of the Tariff which provides for the purchase of Electricity from customers with qualifying on-site generating facilities, as the same may be from time to time

changed, amended or supplemented, or any successor tariff thereto duly approved by the PSC, as follows:

- i. Energy - [REDACTED]
- ii. Capacity – [REDACTED]
- iii. Ancillary Services - [REDACTED]
- iv. Green Attributes - [REDACTED]

5.5 Upon providing five (5) days advance written notification, each Party will have the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charges or computation made pursuant to this Interim ESA. Upon the written request of a Party, the other Party shall provide meter data and other statements evidencing the quantities of Electricity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such data or statement and the payments thereof will be made on the next month's payment date and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of one (1) year from the rendition thereof.

**ARTICLE 6.
METERING**

6.1 Electricity delivered to the Delivery Point by Producer hereunder shall be measured by electric watt hour meters of a type approved by the PSC. Such meter readings shall be adjusted to account for losses (if any) between the generator and the Delivery Point. These metering facilities shall be installed, owned, and maintained by National Grid and shall be sealed by National Grid, with the seal broken only upon occasions when the meters are to be inspected, tested or adjusted and representatives of both National Grid and Producer are present. The metering and installation costs shall be borne by Producer. National Grid shall maintain the

meters in accordance with the rules set forth in 16 NYCRR Part 92, as amended from time to time, and with Good Utility Practice. Maintenance costs shall be borne by Producer.

6.2 Each Party shall have the right to inspect and test the meters, upon not less than ten (10) days' notice. If said meters are found to be defective, National Grid shall adjust, repair or replace the same at the expense of Producer. Any test or inspection requested by a Party shall be at the expense of that Party.

6.3 Producer grants to the employees and agents of National Grid the right of access to Producer's premises at all reasonable times for such purposes of the reading of meters; inspection of meters, their wiring and related equipment; and installing, operating, maintaining, disconnecting and removing of any or all of the property belonging to National Grid. If Producer refuses such access to the meters or other National Grid equipment, or if access is obstructed or hazardous, National Grid shall provide notice that Producer shall have five (5) days in which to permit access or remove any obstruction or hazard. If, after five (5) days from the receipt of the notice, Producer does not permit access or remove any obstruction or hazard, it will constitute an event of breach, and National Grid may take any action in accordance with this Interim ESA or the Tariff, including disconnecting the Production Facility from the Distribution System in accordance with Good Utility Practice, after providing reasonable notice.

6.4 Producer may elect to install its own metering equipment in addition to National Grid metering equipment. Such metering equipment shall meet the requirements of 16 NYCRR Part 92, as may be amended from time to time. Should any metering equipment installed by National Grid fail to register during the term of this Interim ESA, the Parties shall use Producer's metering equipment, if installed. On any day or days on which neither Party's metering equipment is in service, the quantity of energy delivered shall be determined in such manner as the Parties agree. National Grid's meter(s) shall be read on a schedule compatible with National Grid's normal meter reading schedule.

6.5 In the event Producer desires access to meter information, Producer, at its own expense, shall be responsible for purchasing and installing software, hardware and/or other technology that may be required to access such meter information. The software, hardware and/or other technology installed for this purpose shall be in compliance with any applicable PSC and National Grid rules, requirements, or standards.

ARTICLE 7. DEFAULTS AND REMEDIES

7.1 An "Event of Default" shall mean, with respect to a Party, the occurrence of any of the following:

- (i) The failure to make, when due, any payment required pursuant to this Interim ESA if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the non-defaulting Party and provided the payment is not the subject of a good faith dispute as described in Article 10.

- (ii) Any representation or warranty made by a Party herein which, when made or when deemed to be repeated, proves to be false or misleading in any material respect.
- (iii) The failure of a Party to perform any covenant set forth in this Interim ESA (other than the events that are otherwise specifically covered in this Article 7 as a separate Event of Default and except due to causes excused by a Force Majeure Event) and, unless otherwise provided, such failure is not cured within seven (7) Business Days after receipt of written notice thereof, specifying the nature of the failure, provided that if such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such seven (7) Business Day period, no Event of Default shall be deemed to exist as long as the Party shall have commenced curing the same within the seven (7) Business Day period and shall diligently and continuously prosecute the same to completion.
- (iv) A Party is subject to a bankruptcy proceeding (“Bankruptcy Proceeding”) wherein a Party either (a) files a petition or otherwise commences a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or proceeding commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise is adjudicated bankrupt, or (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

7.2 Remedies Upon Default. The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

- (i) Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to (i) continue performance under this Interim ESA and exercise such rights and remedies as it may have at law, in equity or under this Interim ESA, so long as such rights and remedies are not duplicative of any other rights and remedies in respect hereof, nor otherwise enable the non-defaulting Party to obtain performance or payments in excess of the performance and payments to which it is otherwise entitled pursuant to this Interim ESA and (ii) at its option, give such defaulting Party a written notice in accordance with this Interim ESA terminating this Interim ESA. Such termination shall be immediately effective.
- (ii) Notwithstanding any other provision of this Interim ESA to the contrary, the cure of any default within the period provided therefore in this Article shall not release such defaulting Party from its obligation to indemnify, save harmless and defend the non-defaulting Party from any claims, demands, suits, losses, liabilities, damages, obligations, payments, costs and expenses (including the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) relating to, arising out of or resulting from such default or any failure to observe or perform any covenant or obligation under this Interim ESA.

7.3 Force Majeure. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Interim ESA:

- i. Upon the occurrence of a Force Majeure Event, such Party shall promptly notify the other Party in writing and will keep the other Party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party shall specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance.
- ii. The affected Party shall be entitled to suspend or modify its performance obligations under this Interim ESA, other than the obligation to make payments then due or becoming due under this Interim ESA, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts.
- iii. The affected Party shall use reasonable efforts to resume its performance as soon as possible.

7.4 Neither Party shall set off amounts from any other transaction outside the terms of this Interim ESA.

ARTICLE 8. TITLE TRANSFER, INDEMNIFICATION & LIABILITY

8.1 Title to and risk of loss related to Electricity shall transfer from Producer to National Grid at the Delivery Point. Producer warrants that it will deliver to National Grid Electricity at the Delivery Point free and clear of all liens, claims and encumbrances.

8.2 To the fullest extent permitted by law, each Party (“Indemnifying Party”) shall indemnify, defend, and save harmless the other Party, its officers, directors, agents and employees, (collectively the “Indemnified Parties”) from and against any and all loss, damage, liability, cost, suit, charge, expense, or cause of action, whether unconditionally certain or otherwise, as they exist on the Effective Date of this Interim ESA or arise at any time thereafter, (including reasonable attorneys’ fees and disbursements) arising out of any damage or injury to the Indemnified Parties’ equipment, property of facilities, or the equipment, property, or facilities of third parties (including real property, personal property and environmental damages), persons, (including injuries resulting in death), caused by or arising out of or in any way connected with the Indemnifying Party’s performance or non-performance of its obligations under this Interim ESA; provided however, each Party shall be liable for all claims of the Party’s own employees arising out of any provision of the Workers’ Compensation Law.

8.3 In the event that the claims, damages, losses, judgments, or settlements are the result of the negligence of both Parties, each Party shall be liable to the extent or degree of their respective negligence, as determined by mutual agreement of both Parties, or in the absence thereof, as determined by adjudication of comparative negligence by the courts referenced in Article 10.

8.4 Each Party hereto shall furnish the other Party with prompt written notification after such Party becomes aware of any event or circumstances, or the threat thereof, which might give rise to such indemnification. The Indemnifying Party shall take prompt action to defend and indemnify the other Party against claims, actual or threatened, but in no event later than notice by the Indemnified Parties to the Indemnifying Party of the service of a notice, summons, complaint, petition or other service of a process against the Indemnified Party alleging damage, injury, liability, or expenses attributed in any way to this Interim ESA, the work, or the acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of the Indemnifying Party, its agents, employees, contractors or suppliers.

8.5 The Indemnifying Party shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim. However, the Indemnified Parties may, at their own expense, retain separate counsel and participate in the defense of any such suit or action. Furthermore, the Indemnifying Party understands and agrees it is responsible for any and all costs and expenses incurred by the Indemnified Parties to enforce this indemnification provision.

8.6 The duty to indemnify under this Article 8 will continue in full force and effect notwithstanding the expiration or termination of this Interim ESA, with respect to any loss, liability, damage or other expense based on events, which occurred prior to such termination.

ARTICLE 9. LIMITATION OF LIABILITY

With the exception of third party bodily injury and/or property damage, neither National Grid nor Producer, nor their directors, trustees, agents, officers or employees will be liable to the other Party, its directors, trustees, agents, officers or employees, for incidental, punitive, exemplary, special, indirect or consequential damages of any nature connected with or resulting from such Party's performance of this Interim ESA.

ARTICLE 10. CHOICE OF LAW AND DISPUTE RESOLUTION

10.1 This Interim ESA and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without regard to principles of conflicts of law. Any lawsuits arising under this Interim ESA shall be instituted in the Federal or State courts of New York and each Party hereby irrevocably submits to the *in personam* jurisdiction of such courts. Each Party herein waives its respective right to a jury trial with respect to any litigation arising under or in connection with this Interim ESA.

10.2 Any dispute or need of interpretation arising out of this Interim ESA pertaining to the calculation of a payment required pursuant to Article 5 may, by mutual agreement, be submitted to and settled by an independent nationally recognized public accounting firm mutually selected by the Parties, whose determination shall be final and binding on the Parties hereto and whose fees and expenses shall be borne by the Party found to be at substantial fault by such independent

public accounting firm. If the independent public accounting firm finds that there is no substantial fault on the part of either Party, each Party shall be responsible for its own fees and expenses.

**ARTICLE 11.
REPRESENTATIONS, WARRANTIES AND COVENANTS**

11.1 Each Party represents and warrants to the other Party that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Interim ESA and any other documentation relating to this Interim ESA;
- (iii) the execution, delivery and performance of this Interim ESA and any other documentation relating to this Interim ESA are within its powers, will have by the Effective Date been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Interim ESA and each other document executed and delivered in accordance with this Interim ESA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
- (v) there are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Interim ESA or any other document relating to this Interim ESA to which it is a party;
- (vii) no Event of Default or event which, absent a cure, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Interim ESA or any other document relating to this Interim ESA; and
- (viii) it is acting for its own account, has made its own independent decision to enter into this Interim ESA and as to whether such Interim ESA is appropriate or proper for it based on its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understands and accepts, the terms, conditions and risks of the Interim ESA. It is the express intention and understanding of the Parties that all of the representations and warranties hereunder shall survive any termination of this Interim ESA.

11.2 Producer represents and warrants to National Grid that:

- (i) No additional generating capacity will be installed at the Production Facility without reasonable prior notice to National Grid. Producer shall coordinate in advance any such installations with National Grid and shall provide National Grid all reasonable assurance, including rights of inspection of the Production Facility, that electricity generated by such additional capacity will not be delivered for sale to National Grid under this Interim ESA, unless an amendment to this Interim ESA permitting such sales has been executed by the Parties; and
- (ii) at all times during the term of this Interim ESA all Electricity that Producer delivers and National Grid purchases under the terms of this Interim ESA shall be produced solely and exclusively by the Production Facility.

**ARTICLE 12.
RELATION TO THE TARIFF**

Charges for electric service (as defined in the Tariff) furnished by National Grid to Producer will be governed by the provisions of the Tariff and not by this Interim ESA. The Electricity delivered by Producer to National Grid under this Interim ESA will be metered separately from the Electricity delivered by National Grid to Producer.

**ARTICLE 13.
MAINTENANCE OF FACILITIES**

13.1 During the term of this Interim ESA, Producer agrees to employ Good Utility Practice to maintain, repair, refurbish and preserve the Production Facility in good working order, capable of producing Electricity as designed.

13.2 The duly authorized agent or agents of National Grid shall, at all reasonable hours and upon notice to Producer, have access to the Production Facility for the purposes of inspecting the Production Facility and the records of Electricity generated and delivered to the Distribution System of National Grid and to inspect the interconnection between the Production Facility and National Grid's Distribution System. At any time that National Grid personnel are on the site or in the Production Facility, such personnel shall observe all safety rules and regulations adopted by Producer. Each Party shall be liable for all claims of its employees arising out of any provision of the Worker's Compensation Law.

**ARTICLE 14.
MAINTENANCE OF STATUS AS QUALIFYING FACILITY**

14.1 Producer represents and warrants that the Production Facility is a QF and meets all the requirements for such status as that term and those requirements are defined, used, and established in PURPA and the regulations of the PSC and FERC promulgated there under (hereinafter "QF Status"). Producer agrees that it shall provide to National Grid a copy of any and all filings and correspondence with the PSC and FERC which relate to the Production

Facility's QF Status within ten (10) Business Days of such filing or correspondence, in the manner specified for notices in this Interim ESA if requested by National Grid.

14.2 If at any time Producer does not maintain its QF Status, Producer shall notify National Grid within ten (10) Business Days of such event. If at any time Producer does not maintain QF status under PURPA (whether or not Producer has provided notice to National Grid thereof) National Grid's purchase obligations under this Interim ESA shall immediately and automatically terminate, without the need for National Grid to provide Producer with any notice of such termination and National Grid shall thereafter have no obligation to account or pay for Electricity received from Producer until such time as: (i) an agreement concerning the interconnection of the Production Facility to National Grid's Distribution System has been accepted for filing by FERC, provided however that if both Producer and National Grid execute and accept the pro forma small generator interconnection agreement in the NYISO OATT with no changes, this requirement shall be regarded as completed upon filing of that executed interconnection agreement; and (ii) Producer shall have been accepted as a customer under the NYISO's OATT and Market Administration and Control Area Services Tariff.

14.3 If the legal or regulatory obligation under PURPA for utilities to purchase the output of QFs is rescinded or otherwise amended or removed, National Grid, in its sole discretion, shall have the right, but not the obligation, to terminate this Interim ESA upon thirty (30) days written notice of such termination to Producer, provided however that in the event that such changes require that any interconnection agreement with the Production Facility be filed with FERC rather than the PSC, National Grid's purchase obligations under this Interim ESA shall immediately and automatically terminate, without the need for National Grid to provide Producer of any notice of such termination and National Grid shall thereafter have no obligation to account or pay for Electricity received from Producer until such time as: (i) an agreement concerning the interconnection of the Production Facility to National Grid's Distribution System has been filed with FERC by National Grid pursuant to the Interconnection Agreement; and (ii) Producer and National Grid reach a separate agreement for the sale of electricity or Producer has been accepted as a customer under the NYISO's OATT and Market Administration and Control Area Services Tariff. Nothing contained herein shall be read as a waiver of any rights that Producer may have under applicable provisions of state or federal law or regulation to sell electricity to National Grid, and each Party reserves its rights with respect to any such request for the sale of electricity and interpretation of then-current law or regulation.

14.4 In the event that this Interim ESA is terminated and Producer wishes to qualify or perform as an Exempt Wholesale Generator under Section 32 of the Public Utility Holding Company Act of 1935 and FERC's regulations promulgated hereunder, as the same may be amended, modified or restated from time to time, National Grid shall not take any action to oppose, impede or subvert Producer's efforts to obtain appropriate regulatory exemptions and approvals that Producer deems necessary or desirable, including, without limitation, market-based rate approval or approval of this Interim ESA as part of a rate schedule pursuant to the Federal Power Act and a certificate of public convenience and necessity, if required, pursuant to the New York Public Service Law ("NYPSL").

14.5 After the expiration or termination of this Interim ESA, nothing contained herein shall be construed to constitute a waiver by Producer of any rights it may have under PURPA, NYPSL or

applicable law, including rights with respect to back-up services, interconnection, reactive power or other similar rights, whether or not a contract is required or desirable.

**ARTICLE 15.
PERMITS AND APPROVALS**

Producer has obtained all environmental and other permits lawfully required to operate the Production Facility during the term of this Interim ESA, and Producer shall notify National Grid upon National Grid's request, in writing, that it has obtained all such required permits. Producer shall, upon request, provide National Grid all reasonable assurances and evidence in addition to Producer's notification as herein above described that such required permits have been obtained and remain in force.

**ARTICLE 16.
ASSIGNMENT**

This Interim ESA and all of its terms and conditions shall bind and inure to the benefit of the heirs, executors, administrators, successors, grantees and assigns of Producer and National Grid, provided, however, neither Party shall assign this Interim ESA or its rights hereunder without the prior written consent of the other Party, which shall not be unreasonably withheld; *further provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder incurred prior to and including the date of any such assignment); (i) transfer, sell, pledge, encumber or assign this Interim ESA or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Interim ESA to an affiliate of such Party, when in the sole reasonable judgment of the non-assigning Party, the affiliate's creditworthiness is not materially different than that of such Party, or (iii) transfer or assign this Interim ESA to any person or entity succeeding to all or substantially all of the assets of such Party; *further provided, however* Producer will not object to National Grid assigning the Interim ESA to a third party who, in the sole reasonable judgment of Producer is credit-worthy and National Grid will not object to Producer assigning the Interim ESA to a third party who, in the sole reasonable judgment of National Grid is creditworthy, and who owns the Production Facility, *further provided, however*, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

**ARTICLE 17.
NON-WAIVER**

No waiver or modification of any rights or provisions of this Interim ESA shall be effective unless made in writing and executed by both Parties. No express waiver or modification in any specific instance as provided herein shall be construed as a waiver or modification of future instances, unless specifically so provided in writing. The failure of either

Party to insist on any one or more occasions on strict performance of any of the provisions of this Interim ESA, or to exercise any right herein, shall not be construed as a waiver or relinquishment for the future of the strict performance of any such provision or the exercise of any such right.

ARTICLE 18. NOTICES

All notices, requests or statements shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received one Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

To National Grid:

Christopher Meyer
Director – Wholesale Electric Supply
National Grid
100 East Old Country Road
Hicksville, New York 11801
Phone: 516-545-4110
E-Mail: Christopher.Meyer@nationalgrid.com

and

Jason Eno
Manager – Energy Supply
National Grid
300 Erie Boulevard West
Syracuse, NY 13202
E-Mail: Jason.Eno@nationalgrid.com

To Producer:

Ian Clark
Managing Member
Ampersand Tannery Island Hydro, LLC
c/o Dichotomy Power, LLC
10 Roberts Lane, Suite 201
Ridgefield, CT 06877
Phone: 914-297-7645
E-Mail: ianc@dichotomycapital.com

ARTICLE 19.

OTHER DOCUMENTS

Pursuant to the New York State Clean Energy Standard requirements to report generation into the NYGATS, Producer and National Grid agree to work together to register, and/or maintain registration for the Production Facility in NYGATS and report generation data for the Production Facility to NYGATS.

Each Party hereto agrees to execute and deliver such documents and certificates and take such other actions as the other Party may reasonably request from time to time in order to carry out more effectively the intent and purpose of this Interim ESA. Each Party shall bear its own costs to execute and deliver such documents and certificates.

ARTICLE 20. MISCELLANEOUS PROVISIONS

20.1 This Interim ESA is intended solely for the benefits of the Parties herein. Nothing in this Interim ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any other person.

20.2 This Interim ESA constitutes the entire Interim ESA between the Parties and supersedes all prior agreements or understandings, whether verbal or written.

20.3 This Interim ESA shall not be amended unless the amendment is in a signed writing and signed by National Grid and Producer.

20.4 The term “including” when used in this Interim ESA shall be by way of example only and shall not be considered in any way to be limiting.

20.5 The headings used herein are for convenience and reference purposes only and shall not constitute a part of this Interim ESA for any other purpose.

20.6 In the event that any of the provisions of this Interim ESA, or any portions or applications thereof, shall be determined to be unenforceable, invalid, or otherwise contrary to law, by any court of competent jurisdiction, Producer and National Grid shall negotiate in good faith to attempt to agree upon an equitable adjustment in the provisions of this Interim ESA with a view toward effecting the purpose of this Interim ESA. In the event that the Parties are unable to agree upon such an adjustment, such unenforceability or invalidity shall in no manner operate to render any other provision of this Interim ESA unenforceable, void or contrary to law, and this Interim ESA shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Interim ESA.

20.7 This Interim ESA may be executed in more than one counterpart, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument effective as of the Effective Date.

IN WITNESS WHEREOF, the Parties hereto have caused this Interim ESA to be executed as of the date first above written.

NIAGARA MOHAWK POWER CORPORATION

By: *Christopher Meyer* RD

Name: Christopher Meyer
Authorized Signatory for Niagara Mohawk Power Corporation d/b/a National Grid
Title: Director – Wholesale Electric Supply

AMPERSAND TANNERY ISLAND HYDRO, LLC

By: *Ian Clark*

Name: Ian Clark

Title: Manager