

**Appendix B. Tier 4 Renewable Energy Certificate Purchase and Sale Agreement between the New York State Energy Research and Development Authority and H.Q. Energy Services (U.S.) Inc.**

**Agreement No. 177015**

**TIER 4 RENEWABLE ENERGY CERTIFICATE  
PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN**

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

**AND**

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

**Dated: November 29, 2021**

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This Tier 4 Renewable Energy Certificate Purchase and Sale Agreement (“Agreement”) is entered into as of November 29, 2021 (the “Effective Date”) by and between the New York State Energy Research and Development Authority (“NYSERDA”), a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and H.Q. Energy Services (U.S.) Inc. (“Seller”), a Delaware corporation, having a principal business address of 225 Asylum Street, 27th Floor, Hartford, CT 06103. NYSEDA and Seller are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

WHEREAS, the New York State Public Service Commission (“PSC”) through its “Order Adopting Modifications to the Clean Energy Standard”<sup>1</sup> (“2020 CES Order”) established Tier 4 of its Clean Energy Standard,<sup>2</sup> which has the goal of increasing the consumption of renewable energy within New York City in furtherance of the Climate Leadership and Community Protection Act requirements that 70% of electric generation consumed in the State in 2030 be renewable and that the State achieve a zero emission electric system by 2040;

WHEREAS, NYSEDA has conducted a competitive solicitation in the form of T4RFP21-1 to procure Tier 4 RECs; and

WHEREAS, Seller has participated in T4RFP21-1 and has been selected by NYSEDA for an award with respect to the Champlain Hudson Power Express project (hereinafter defined in Article I as the “Selected Project”); and

WHEREAS, Seller agrees to sell to NYSEDA, and NYSEDA agrees to purchase from Seller, the Tier 4 RECs associated with the energy production of the Selected Project that is delivered to Zone J during the Contract Delivery Term, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, for and in consideration of the premises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, this Agreement has been entered into by the Parties to define, among other things, their rights and obligations concerning the Tier 4 RECs associated with the generation of electric energy by the Selected Project, the delivery by Seller of Tier 4 RECs to NYSEDA, and payments by NYSEDA to Seller during the term of this Agreement.

## Article I

### Definitions

The terms defined in the recitals, the preamble, this Article I or any other Articles of this Agreement, whenever used in this Agreement (including in any Exhibit hereto), shall have the respective meanings indicated in such provision for all purposes of this Agreement (each such

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<sup>1</sup> See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020).

<sup>2</sup> See Cases 15-E-0302, et al., *supra*, Order Adopting a Clean Energy Standard (issued August 1, 2016).

meaning to be equally applicable to the singular and the plural forms of the respective terms so defined). All references herein to a Section, Article or Exhibit are to a Section, Article or Exhibit of or to this Agreement, unless otherwise indicated. The words “hereby,” “herein,” “hereof,” “hereunder” and words of similar import refer to this Agreement as a whole (including any Exhibit) and not merely to the specific section, paragraph or clause in which such word appears unless so specified. The words “include,” “includes,” and “including” shall be deemed, in every instance, to be followed by the phrase “without limitation.” Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to “dollars” and “\$” shall be deemed references to the lawful money of the United States of America.

Acceptable Guaranty: An unconditional, irrevocable, direct-pay guaranty (a) in the form of Exhibit D duly executed by an Acceptable Guarantor; and (b) as to which NYSERDA has received (i) such financial statements in respect of such Acceptable Guarantor as it has reasonably requested, (ii) customary legal opinions with respect to capacity, authority and enforceability of such guaranty and as to such other matters as reasonably requested by NYSERDA, and (iii) corporate documents, resolutions, copies of any necessary consents and approvals and customary certificates by and in respect of such Acceptable Guarantor as may be reasonably requested by NYSERDA.

Acceptable Guarantor: A corporation, business trust, partnership, limited liability company or other legal entity that has outstanding senior unguaranteed and unsecured long-term debt that is rated at least “BBB” by S&P or “Baa2” by Moody’s.

Additional QRE COD Deadline: Shall have the meaning set forth in Section 2.07(a) of this Agreement.

Additional QRE Resource: A generation facility that has first achieved QRE Commercial Operation (including after refurbishment or other repowering) after October 15, 2020 and that produces electricity from solar energy, onshore wind energy or any other energy source from technology that would qualify for Tier 1 of the New York State Clean Energy Standard.

Annual Tier 4 REC Cap: An amount of Tier 4 RECs equal to the product of 8,760 hours/year and the planned maximum rated transfer capacity (MW) of the Associated New Transmission Facility as of the Effective Date less any portion of the Associated New Transmission Facility that is unavailable to Seller for performance under this Agreement. The Annual Tier 4 REC Cap under this Agreement shall be 10,950,000 MWh, and may be adjusted from time to time by mutual written consent of the Parties.

Applicable Law: All applicable provisions of all constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, and codes and any order, writ, injunction, decree, judgment, award, decision or determination of any court of jurisdiction or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality, including the NYISO rules and tariff.

Associated New Transmission Facility: A new high-voltage transmission line that will first electrically interconnect to Zone J after October 15, 2020, and that thereafter delivers Qualified

Renewable Energy from the Selected Project to the Delivery Point. The Associated New Transmission Facility is comprised of the Québec Transmission Line and the U.S. Transmission Line.

Average Delivered RECs: With respect to each Capability Measurement Period, an amount of Tier 4 RECs equal to quotient obtained by dividing the amount of Tier 4 RECs delivered during such Capability Measurement Period by three (3).

Bid Quantity: The amount, in MWh, of Tier 4 RECs the Selected Project expects to proffer as performance under this Agreement during each Contract Year during the Contract Delivery Term. The Bid Quantity for all purposes under this Agreement shall be 10,402,500 MWh.

Business Day: Any day except a Saturday, Sunday or a New York State or NERC recognized holiday or other day on which commercial banks in New York City are authorized or required by law to close.

Capability Measurement Period: With respect to each Capability Period, such Capability Period together with the immediately preceding two Capability Periods of the same season, with the first such period commencing with the third full Capability Period after Commercial Operation.

Capability Period: A Summer Capability Period or Winter Capability Period.

CLCPA: The New York Climate Leadership and Community Protection Act.

Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy, (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Delivery Point have been obtained, and (iii) the Associated New Transmission Facility is energized and available to transmit Qualified Renewable Energy into Zone J.

Commercial Operation Milestone Date: The as-bid date on which the Seller has stated in its Proposal that it expect the Selected Project and the Associated New Transmission Facility to achieve Commercial Operation. The Commercial Operation Milestone Date shall be December 15, 2025, unless and until the Commercial Operation Milestone Date is extended in accordance with the terms of Section 2.06 and Section 15.02 of this Agreement.

Compliant Energy: Shall have the meaning set forth in Section 2.07 of this Agreement.

Contingent Award Notification Date: The date on which NYSERDA notified Seller that it had been selected for an award contingent on the negotiation of this Agreement. For purposes of this Agreement, the Contingent Award Notification Date was September 19, 2021.

Contract Delivery Term: A period that shall commence on the first day of the month after achievement of Commercial Operation and ends on the date upon which the Contract Tenor has elapsed.

Contract Security: All amounts provided to NYSERDA, in the form of cash, Letters of Credit, or an Acceptable Guaranty, as determined in Article XV of this Agreement.

Contract Tenor: The maximum duration of the Contract Delivery Term. The Contract Tenor under this Agreement shall be 25 years.

Contract Year: A twelve (12)-month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof within the Contract Delivery Term. As used in this Agreement, the phrase “Contract Year” followed by a number shall refer to a discrete Contract Year such that “Contract Year 1” refers to the first twelve (12)-month period commencing with the beginning of the Contract Delivery Term, “Contract Year 2” refers to the second such twelve (12)-month period, and so on.

Cover Damages: With respect to any Delivery Shortfall, an amount equal to the positive net amount, if any, of (a) the sum, without duplication, of (i) the Replacement Price applicable to that Delivery Shortfall multiplied by the amount of the Delivery Shortfall (in RECs) plus (ii) any other costs reasonably incurred by NYSERDA to purchase replacement Tier 4 RECs with respect to that Delivery Shortfall, minus (b) the simple average of Monthly Tier 4 REC Prices for the Capability Measurement Period in which the Delivery Shortfall occurred, multiplied by the amount of the Delivery Shortfall (in RECs).

Delivery Point: The location within Zone J where the NYISO measures deliveries from the U.S. Transmission Line into Zone J.

Delivery Shortfall: Shall have the meaning described in Section 4.08 of this Agreement.

Disadvantaged Communities: The term “Disadvantaged Communities” shall have the meaning set forth in Section 75-0101(5) of the New York Environmental Conservation Law, enacted as part of the CLCPA as amended or modified from time to time.

Economic Benefits: Financial expenditures benefitting New York State, as specified in Exhibit F, that Seller can demonstrate to NYSERDA will accrue after January 1, 2021.

Economic Benefits Report: A confidential report by Seller to NYSERDA prepared in accordance with Exhibit F of this Agreement.

Economic Benefits Shortfall: The amount by which the Verified Total Dollars of Economic Benefits is less than the product of 0.85 and the Expected Total Dollars.

Environmental Attributes: All environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, and allocations, however characterized, denominated, measured or entitled, attributable to the generation of Qualified Renewable Energy by the Selected Project, including but not limited to: (i) any of the foregoing attributable to (A) any direct emissions or any avoided emissions of pollutants to the air, soil or water, including, but not limited to, sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), particulate matter and other pollutants; or (B) any direct or avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to altering the Earth’s climate by trapping heat in the atmosphere; (ii) all set-aside allowances and/or allocations from emissions trading programs made unnecessary for compliance in such program as a result of performance under this Agreement, including, but not limited to, allocations available under 6 NYCRR

§§ 204, 237 and 238; and (iii) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above; *provided, however*, that Environmental Attributes shall not include: (a) any electric energy, capacity, reliability, ancillary services or other power attributes of the electricity associated with the Selected Project; (b) any federal production tax credits; (c) any state or federal investment tax credits or other tax credits or incentives associated with the construction or ownership of the Selected Project; (d) any depreciation deductions under Applicable Laws (including any bonus or accelerated depreciation); or (e) any state, federal or private grants, financing, guarantees or other credit support or incentives relating to the construction or ownership, operation or maintenance of the Selected Project or the output thereof, in each case whether arising before or after the Effective Date.

Excess RECs: Shall have the meaning described in Section 2.01 of this Agreement.

Expected Total Dollars: The total amount, in nominal dollars, of Economic Benefits (as described in Exhibit F) expected to accrue to New York State as a result of the development, construction, modification, interconnection, and operation of the Selected Project and the Associated New Transmission Facility from January 1, 2021 through the end of the third (3rd) anniversary of the first day of the month after achievement of Commercial Operation. The amount of Expected Total Dollars under this Agreement is \$1,342,764,000.

Force Majeure: Shall have the meaning described in Section 16.01 of this Agreement.

Forward Certificate Transfer: An automated monthly transfer of Tier 4 RECs to NYSERDA as described in Section 9.3 of the NYGATS Operating Rules or any other monthly transfer of Tier 4 RECs to NYSERDA as may be agreed in writing by the Parties.

General Terms of Use: The terms of use for the NYGATS, operated and administered by APX, Inc. (or its successor) for NYSERDA.

Good Utility Practice: 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Selected Project and/or the applicable portion of the Associated New Transmission Facility, as applicable, is located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines, and standards, NPCC criteria, rules, guidelines, and standards, NYSRC criteria, rules, guidelines, and standards, and NYISO criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities. Good Utility Practice shall include standards applicable to a renewable energy generator and/or a transmission system operator, as applicable.

Index Tier 4 REC Price: An adjustable price in dollars per Tier 4 REC that nets a fixed, as-offered strike price monthly against a reference price expressed in a market index as determined pursuant to Section 4.02 of this Agreement, and as may be reduced pursuant to Section 4.09 of this Agreement.

Index Tier 4 REC Strike Price: Shall have the meaning set forth in Section 4.02 of this Agreement.

Initial Commercial Operation Milestone Date: Shall have the meaning set forth in Section 15.01 of this Agreement.

Initial Pre-COD Milestone Date: The Pre-COD Milestone Date as determined on the PSC Approval Date and without regard to any extensions thereto as contemplated by Section 15.03.

Injection Point: The Injection Point with respect to any Resource shall be the generator bus or location where the administrator of the local control area measures energy delivery from such Resource.

Letter of Credit: Shall have the meaning described in Section 15.04.

Loss Factor: The as-bid parameter capturing the reduction in Zone J capacity resulting from line losses. The Loss Factor under this Agreement shall be 2.80%.

Minimum Delivery Requirement: Shall have the meaning described in Section 4.08 of this Agreement.

Mitigation Factor: Shall be determined pursuant to Section 4.02(a)(iii)(D) of this Agreement.

Monthly Tier 4 REC Price: A price in dollars per Tier 4 REC for each month of the Contract Delivery Term. The Monthly Tier 4 REC Price shall be calculated pursuant to Section 4.02 of this Agreement. Such price may be reduced pursuant to Section 4.09 of this Agreement.

NERC: North American Electric Reliability Corporation.

New Carbon Price Mechanism: A New York State, NYISO, or federal statute, regulation, rule, order, or policy enacted or promulgated after the submission of the Proposal that applies to electric generation consumed in New York State and that imposes a discernible economic cost on electric generators that is based upon and is quantified in direct proportion to their emissions of carbon dioxide and/or other greenhouse gas emissions (“GHGs”). The term “New Carbon Price Mechanism” may include, but is not limited to (A) the imposition of any fee, adder, or tax applied to emissions of GHGs, and (B) a policy that caps emissions of GHGs and facilitates the exchange of emissions allowances, the price of which may be discerned from publicly available data (“Cap and Trade Program”). For the avoidance of doubt, the Regional Greenhouse Gas Initiative (“RGGI”) predates the Proposal and, therefore, neither New York’s continued participation in RGGI, nor any programmatic changes to RGGI that occur after the submission of the Proposal shall be considered a New Carbon Price Mechanism.

New Impoundment: A hydroelectric impoundment not already in operation or under construction as of October 15, 2020.

New York Control Area (NYCA): The geographic bounds of the electricity system that is under the control of the NYISO, which is reflected in Appendices A-1 and A-2 of the Independent System Operator/Transmission Owner Agreement and may be amended from time to time.

New York Generation Attribute Tracking System (NYGATS): The tracking system, administered under the auspices of NYSERDA, that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating generation attribute certificates, including Tier 4 RECs. NYGATS will create exactly one Tier 4 REC per MWh of generation attributable to the Selected Project and delivered to the Delivery Point in accordance with the applicable electricity delivery requirement set forth in Article III of this Agreement.

New York State Environmental Disclosure Rules: The program rules adopted by the PSC in Case 94-E-0952, Opinion No. 98-19, Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism, (issued December 15, 1998) Appendix pp. 2-3, as amended from time to time.

NPCC: Northeast Power Coordinating Council.

NYGATS Operating Rules: The operating rules, the General Terms of Use, and other guidelines published by NYGATS and as amended from time to time (or any successor rules).

NYISO: New York Independent System Operator, Inc., which is the administrator of the wholesale power markets in New York and manager of the bulk power system in the New York Control Area.

NYISO Capacity Market: Collectively, the wholesale markets for capacity administered by NYISO.

NYISO Energy Market: Collectively, the wholesale markets for electric energy administered by NYISO.

NYSERDA Share: Shall have the meaning set forth in Section 4.09 of this Agreement.

NYSERDA NYGATS Account: The NYGATS account established by NYSERDA into which Seller shall transfer Tier 4 RECs as performance under this Agreement.

NYSRC: New York State Reliability Council.

Pre-COD Milestone: Issuance by U.S. Transmission Provider or an affiliate of a notice to proceed, in accordance with the terms of the applicable construction contract pertaining to the U.S. Transmission Line, for the start of construction of the Associated New Transmission Facility. In the event that construction is to occur on a phased basis, the Pre-COD Milestone shall be measured as of the date that a notice to proceed is issued for the first phase of construction.

Pre-COD Milestone Date: The nine (9)-month anniversary of the PSC Approval Date, unless and until the Pre-COD Milestone Date is extended in accordance with the terms of Section 15.03 of this Agreement.

Prevailing Wage: Shall have the meaning set forth in Section 18.10 of this Agreement.

Project Labor Agreement or PLA: As described in Section 18.11 of this Agreement, a collective bargaining agreement (including a pre-hire agreement) covering Seller, contractors in the construction industry working on the Selected Project, and a bona fide building and construction trade labor organization representing craft workers on the Selected Project.

Prompt Payment Policy: Shall have the meaning set forth in Section 4.06 of this Agreement.

Proposal: Documents submitted by Seller in response to T4RFP21-1 with respect to the Selected Project described as Champlain Hudson Power Express With Seasonal UDRs With Hydraulic Adjustment Without Converter Station Without Energy Supplier Baseline (Offer Data Form ID H.Q-02, option without Energy Supplier Baseline).

PSC: New York State Public Service Commission.

PSC Approval: Shall mean approval by the PSC of this Agreement in its entirety and without material condition or limitation.

PSC Approval Date: Shall have the meaning set forth in Section 2.06 of this Agreement.

OFS Amount Determination Date: Shall have the meaning set forth in Section 4.09 of this Agreement.

QRE Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the point of transmission system interconnection have been obtained.

Qualified Renewable Energy: Electric energy from (i) a generation facility that has first achieved QRE Commercial Operation (including after refurbishment or other repowering) after October 15, 2020 and that produces electricity from solar energy, onshore wind energy, geothermal energy, tidal energy, wave energy, ocean thermal energy, and/or fuel cells that do not utilize a fossil fuel resource in the process of generating electricity; and (ii) hydroelectric energy that does not utilize a New Impoundment.

Qualifying Curtailment. A Reliability Curtailment or any NYISO directive or action that (i) Transmission Providers are unable to avoid or mitigate in whole or in part through Good Utility Practice or commercially reasonable efforts and (ii) partially or completely prevents the Associated New Transmission Facility from dispatching Qualifying Renewable Energy to the Delivery Point.

Qualifying Federal Support: Any direct federal financial support in the form of tax credits or grants, or direct financial benefits expressly intended to incentivize the development of projects

such as newly constructed transmission facilities (i) for which the U.S. Transmission Line qualifies, and (ii) which arises from an act of the U.S. Congress after May 12, 2021. Qualifying Federal Support shall not include ordinary course tax deductions, federal loans, federal loan guarantees, or federal research and development grants that are awarded competitively based on the use of advanced technology.

Qualifying Federal Support Amount (QFS Amount): The amount equal to the total economic value realized by Seller or any of its affiliates (including, for purposes of this definition and Section 4.09, the developer of the U.S. Transmission Line) from any Qualifying Federal Support or the monetization thereof. Subject to the foregoing, the QFS Amount shall include, without limitation or duplication: (i) any reduction in tax liability realized by Seller or its affiliates in connection with the Qualifying Federal Support; (ii) any amounts received directly from the U.S. government in connection with the Qualifying Federal Support, and (iii) any excess economic value realized by the Seller or its affiliates in any tax equity financing or other transaction the primary purpose of which is to realize the value of Qualifying Federal Support and in which the Qualifying Federal Support is exchanged for economic value (relative to a scenario with no Qualifying Federal Support). The QFS Amount shall exclude any benefits which were available to electric transmission facilities that meet specified criteria (which the U.S. Transmission Line meets) similar to the U.S. Transmission Line as of May 12, 2021 (including depreciation, to the extent that such depreciation was available to such electric transmission facilities as of such date, or the monetization of such depreciation benefits).

Qualifying Federal Support Price Reduction (QFS Price Reduction): The reduction in dollars per Tier 4 REC to the Index Tier 4 REC Strike Price (as applicable) as calculated pursuant to Section 4.09 of this Agreement.

Québec Transmission Line: The high-voltage direct current transmission line and related facilities to be constructed by TransÉnergie and to which the U.S. Transmission Line will connect.

Recovery Factor: Shall have the meaning described in Section 4.09 of this Agreement.

Reference Capacity Price: An index of NYISO Capacity Market prices for Zone J calculated as set forth in Section 4.02 of this Agreement.

Reference Energy Price: An index of NYISO Energy Market prices for Zone J calculated as set forth in Section 4.02 of this Agreement.

Reliability Curtailment: Any curtailment of delivery of Qualified Renewable Energy into Zone J over the Associated New Transmission Facility that is required in response to (a) an emergency condition as defined in the NYISO tariff or (b) any other order or directive of the interconnecting utility within Zone J or the provider of the Associated New Transmission Facility pursuant to an interconnection agreement or tariff.

Replacement Price: Shall mean either (a) the price at which NYSERDA, acting in a commercially reasonable manner, purchases replacement Tier 4 RECs to make up the Delivery Shortfall if NYSERDA elects in its sole discretion to purchase replacement Tier 4 RECs, or (b) if NYSERDA elects in its sole discretion not to purchase replacement Tier 4 RECs or there are no

replacement Tier 4 RECs available, a commercially reasonable market reference value of Tier 4 RECs as determined by NYSERDA; *provided* that, if no such reference value exists, the Replacement Price shall be one hundred fifty percent (150%) of the simple average of Monthly Tier 4 REC Prices for the months in the Capability Measurement Period in which the Delivery Shortfall occurred.

Resource: A generation or storage facility that generates or discharges Qualified Renewable Energy.

Resource Addition Date: Shall have the meaning set forth in Section 2.07 of this Agreement.

Selected Project: The Resource or portfolio of Resources that delivers Qualified Renewable Energy into Zone J that was selected for award by NYSERDA in T4RFP21-1, as described in Exhibit E to this Agreement. Seller may, from time to time, remove Resources from such portfolio in its sole discretion and may add Resources from such portfolio with NYSERDA's prior consent, such consent not to be unreasonably withheld.

Summer Capability Period: The period commencing May 1 through October 31 of each year; *provided* that, if the NYISO rules and tariff specify a different period as a Summer Capability Period (or its equivalent), such different period shall be the Summer Capability Period for purposes of this Agreement.

Supplier GHG Baseline: The historical baseline of Seller's production of hydroelectricity. The Supplier GHG Baseline for purposes of this Agreement is 198.9 TWh, as may be adjusted pursuant to Exhibit H of this Agreement.

Supplier GHG Baseline Limit: Shall have the meaning set forth in Exhibit H of this Agreement.

Tier 4 Renewable Energy Certificate (Tier 4 REC): The electronic record of generation data created by NYGATS and representing all of the attributes including the Environmental Attributes of one MWh of energy generated from the Selected Project and delivered into Zone J other than Excess RECs.

TransÉnergie: Hydro-Québec TransÉnergie.

Transmission Providers: U.S. Transmission Provider and TransÉnergie.

U.S. Transmission Line: The Champlain Hudson Power Express project, a merchant transmission facility, which consists of an approximately three hundred and thirty-six (336) mile, 400 kilovolt, 1,250 MW high-voltage direct current transmission line, a converter station; high-voltage alternating current lines to transmit electricity from the converter station to NYPA's Astoria Annex Substation and appurtenant equipment, including metering devices, that interconnect the point of interconnection with the Québec Transmission Line at or near the Québec-New York border for the delivery of capacity and energy to the Delivery Point.

U.S. Transmission Provider: CHPE LLC.

UDRs: “Unforced Capacity Deliverability Rights,” as such term is defined in the NYISO rules and tariff.

Unavailability Factor: The as-bid parameter capturing the reduction in Zone J capacity resulting from the potential unavailability of the Associated New Transmission Facility. The Unavailability Factor for the Selected Project shall be 2.81%.

Verified Total Dollars: The total dollar amount of Economic Benefits as calculated pursuant to Exhibit F and verified to have accrued to New York as a result of the development, construction, modification, interconnection, and operation of the Selected Project and the Associated New Transmission Facility from January 1, 2021 through the end of the third (3rd) anniversary of the first day of the month after achievement of Commercial Operation.

Winter Capability Period: The period commencing November 1 of each year through April 30 of the following year; *provided* that, if the NYISO rules and tariff specify a different period as a Winter Capability Period (or its equivalent), such different period shall be the Winter Capability Period for purposes of this Agreement.

Zone J: The NYISO electric regional load zone corresponding to New York City as defined in the NYISO services tariff as of the Effective Date.

## Article II

### Purchase and Sale of Tier 4 RECs

#### Section 2.01. Purchase and Sale Obligations.

(a) On the terms and subject to the conditions of this Agreement, Seller agrees to sell, assign, convey, deliver and transfer to NYSERDA, and NYSERDA agrees to purchase from Seller, during each month of the Contract Delivery Term, all right, title and interest in the Tier 4 RECs associated with all Qualified Renewable Energy produced by the Selected Project and delivered to the Delivery Point.

(b) For the avoidance of doubt, the only products Seller is selling and NYSERDA is buying under this Agreement are Tier 4 RECs and all rights, title, and interest associated with those Tier 4 RECs. Seller is not selling to NYSERDA and NYSERDA is not purchasing any other product or rights, including electric energy, capacity, reliability, ancillary services or other power attributes of the electricity associated with the Selected Project or any rights related to the Associated New Transmission Facility.

(c) Notwithstanding Subsection 2.01(a), NYSERDA shall not be obligated under this Agreement to purchase from Seller more Tier 4 RECs generated in a given Contract Year than the Annual Tier 4 REC Cap. If the Borrowing Limit applies (pursuant to Exhibit H) to a Contract Year, energy generated from the Selected Project and delivered into Zone J in excess of the Supplier GHG Baseline Limit (“Excess RECs”) shall not generate Tier 4 RECs and NYSERDA shall not be obligated hereunder to purchase renewable attributes relating to such energy.

(d) Seller shall sell all Tier 4 RECs exclusively to NYSERDA in accordance with the terms of this Agreement. Seller shall have no right to sell Tier 4 RECs other than to NYSERDA.

Section 2.02. NYSERDA's Rights, Title and Interest in Tier 4 RECs. NYSERDA shall have the exclusive right to sell all Tier 4 RECs NYSERDA is acquiring under this Agreement. The right, title, and interest to the Tier 4 RECs NYSERDA is acquiring under this Agreement shall include perpetual and exclusive rights to such Tier 4 RECs and the underlying Environmental Attributes represented by such Tier 4 RECs, including, but not limited to, the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure Rules: (a) that the energy associated with Tier 4 RECs was generated by the Selected Project; and (b) that New York State and/or the Clean Energy Standard is responsible for the Environmental Attributes, including such reductions in emissions and/or other pollution or any other Environmental Attributes, resulting from the generation of the energy associated with the Tier 4 RECs.

Section 2.03. Transfer. Seller shall transfer Tier 4 RECs in an amount not to exceed the limit set out in Section 2.01(c) to the NYSERDA NYGATS Account on a monthly basis via a Forward Certificate Transfer. At the time of transfer by Seller to NYSERDA, the Tier 4 RECs shall be free and clear of all liens, judgments, encumbrances and restrictions arising by and through Seller and its affiliates.

Section 2.04. Other Attributes. In the event that, because of the Environmental Attributes represented by the Tier 4 RECs conveyed through this Agreement, Seller becomes eligible, at no incremental cost to Seller other than de minimis administrative cost, for credits, allowances or other benefits under any emission-trading, emission-recording, renewable energy, or other greenhouse gas emissions reduction regime other than the Clean Energy Standard ("Credits"), NYSERDA may request that Seller take all commercially reasonable actions necessary to apply for and secure such title to such Credits, to the maximum extent to which the Selected Project is entitled. Seller shall provide NYSERDA with evidence of taking such actions. NYSERDA and Seller shall reasonably cooperate to cause title to such Credits to the extent constituting Environmental Attributes to be conveyed to NYSERDA after such title is secured by Seller.

Section 2.05. Assignment of Tier 4 RECs. NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the Tier 4 RECs NYSERDA acquires under this Agreement, at any time and from time to time to any entity and on such terms and conditions as NYSERDA may desire. Any financial or other consideration received by NYSERDA from any such action shall inure to NYSERDA's benefit and shall not affect Seller's rights or obligations under the terms of this Agreement.

Section 2.06. Receipt of PSC Approval; Conditional Approval.

(a) The obligations of the Parties to perform this Agreement, other than the Parties' obligations under this Section 2.06 and Section 14.01(g) and Articles VI, VII, VIII, IX, X, XV, XIX, XX and XXI, are contingent upon and shall not become effective or binding until the receipt of PSC Approval (the date of such receipt, the "PSC Approval Date"). NYSERDA

shall file for PSC Approval within forty-five (45) days after the Effective Date. In the event that (i) the filing is not made within forty-five (45) days of the Effective Date, or (ii) PSC Approval is not received within one hundred fifty (150) days after filing, the Commercial Operation Milestone Date shall be extended by an equal number of days as the period of the delay; *provided* that if NYSERDA's filing is delayed but PSC Approval occurs within one hundred ninety-five (195) days of the Effective Date, the Commercial Operation Milestone Date shall not be so extended.

(b) In the event that the PSC issues an order imposing conditions or limitations on its approval of the Agreement and such conditions or limitations would (i) cause this Agreement or any material term hereof unless amended to be in violation of Applicable Law; (ii) materially and adversely affect Seller's pricing or the revenues to be received by Seller; or (iii) materially change any of the requirements or obligations imposed on Seller hereunder, Seller shall notify NYSERDA within thirty (30) days of such order and the Parties agree to negotiate in good faith to amend this Agreement so as to (x) implement any such approval condition or limitation imposed by the PSC such that the Agreement will comply with Applicable Law and/or (y) negate or mitigate such material and adverse effect or such material change of such approval condition or limitation imposed by the PSC. If the Parties fail to agree upon such amendments, then Seller may elect to terminate this Agreement by notice to NYSERDA within sixty (60) days of such order.

(c) In the event that the PSC does not issue an order on NYSERDA's filing within one hundred ninety-five (195) days of the Effective Date, each of Seller and NYSERDA shall have the right to terminate this Agreement without liability as a result of such termination. If Seller or NYSERDA elects to terminate this Agreement under this paragraph, Seller shall be entitled to the return of the entirety of its Contract Security as provided in Article XV of this Agreement.

Section 2.07. Additional Solar and Onshore Wind Resources. On or before the Initial Commercial Operation Milestone Date (the "Resource Addition Date"), Seller or its affiliates will own, or have entered into long-term contracts with third parties to purchase generation from, Additional QRE Resources that are reasonably expected to deliver Qualified Renewable Energy for purposes of the calculations pursuant to Exhibit H ("Compliant Energy") in an amount, in the aggregate, that is not less than 4.0 TWh annually following the QRE Commercial Operation of all such Additional QRE Resources. Each such long-term contract shall (i) contemplate a target date for the QRE Commercial Operation of the applicable Additional QRE Resource on or before the date that is three (3) years following the Resource Addition Date of such Additional QRE Resource (the "Additional QRE COD Deadline") and (ii) include reasonable terms for the extension of QRE Commercial Operation consistent with local market practices.

(b) Seller shall cause each Additional QRE Resource to achieve QRE Commercial Operation on or prior to the Additional QRE COD Deadline for such Additional QRE Resource; *provided* that the Additional QRE COD Deadline shall be extended as follows:

(i) For any Additional QRE Resource owned by Seller or its affiliates, the Additional QRE COD Deadline for such Additional QRE Resource shall be extended on an equitable basis to account for delays in the development, permitting, construction

and installation of such Additional QRE Resource as a result of events or circumstances outside of the reasonable control of Seller or its affiliates so long as (A) Seller and its affiliates are diligently pursuing QRE Commercial Operation; and (B) Seller provides quarterly written progress reports to NYSERDA commencing with the end of the calendar quarter following the initial Additional QRE COD Deadline regarding such efforts to pursue QRE Commercial Operation. If such Additional QRE Resource has not achieved QRE Commercial Operation within two (2) years after the initial Additional QRE COD Deadline, then Seller or its affiliates shall, as soon as reasonably practicable, develop one or more Additional QRE Resources or acquire Compliant Energy through one or more long-term contracts in the manner described above in order to replace such Additional QRE Resource.

(ii) For any Additional QRE Resource owned by a third party with which Seller or its affiliates have entered into a long-term contract to purchase generation therefrom, the Additional QRE COD Deadline for such Additional QRE Resource shall be extended by an equal number of days as the extension period afforded to the owner of such Additional QRE Resource under such contract to achieve QRE Commercial Operation. With respect to each such long-term contract, upon the earlier to occur of (A) abandonment of the applicable Additional QRE Resource by the owner thereof, (B) the termination of such long-term contract and (C) if such Additional QRE Resource has not achieved QRE Commercial Operation, the second anniversary of the initial Additional QRE COD Deadline, Seller or its affiliates shall, as soon as reasonably practicable, develop one or more Additional QRE Resources or acquire Compliant Energy through one or more long-term contracts in the manner described above in order to replace such Additional QRE Resource.

(c) To the extent any such Additional QRE Resources are owned by Seller or its affiliates, Seller or its affiliates shall use commercially reasonable efforts to operate such Additional QRE Resources during the Contract Delivery Term. In the event Seller or its affiliates fails to operate any such Additional QRE Resources for the full Contract Delivery Term, Seller or its affiliates shall, as soon as reasonably practicable, develop one or more Additional QRE Resources or acquire Compliant Energy through one or more long-term contracts in the manner described above in order to make up any shortfall in the delivery of an annual amount of 4.0 TWh of Compliant Energy for the remaining portion of the Contract Delivery Term.

(d) Seller shall, on or before the Resource Addition Date, deliver to NYSERDA either a copy of one or more long-term contracts demonstrating a commitment to purchase Compliant Energy or a P90 study (or other evidence) reasonably satisfactory to NYSERDA demonstrating compliance with this Section 2.07.

### Article III

#### Electricity Delivery Requirements

Section 3.01. Delivery to Zone J. The methodology for crediting and verifying deliveries of Qualified Renewable Energy from the Selected Project into Zone J using the

Associated New Transmission Facility shall be as set forth in the Delivery Verification Plan attached hereto in Schedule 3.01. As shown in Schedule 3.01, the Delivery Verification Plan provides for hourly matching of (a) each such generation resource's actual production measured at the Injection Point with (b) the deliveries over the Associated New Transmission Facility into Zone J attributed to such generator.

Section 3.02. Bilateral Sales. Nothing in this Agreement shall be read to prohibit bilateral sales by Seller for any products or rights other than the Tier 4 RECs (including any electric energy, capacity, reliability, ancillary services or other power attributes of the electricity produced by the Selected Project or any rights related to the Associated New Transmission Facility). Qualified Renewable Energy from the Selected Project sold on a bilateral basis will produce Tier 4 RECs and NYSERDA will purchase such Tier 4 RECs in accordance with Article II of this Agreement; *provided that*, in both cases, the energy is delivered into Zone J in accordance with this Article; and *provided further* that nothing in this Agreement shall be read to require all bilateral sales of energy by Seller or from the Selected Project be delivered into Zone J (other than those associated with Tier 4 RECs).

Section 3.03. NYISO Tariff. NYSERDA will cooperate in good faith with Seller using commercially reasonable efforts to work with NYISO to amend the NYISO rules and tariff as may be reasonably required by Seller to incorporate transmission service over the Associated New Transmission Facility consistent with the commercial intent of this Agreement.

#### Article IV

##### Pricing and Payment

Section 4.01. Determination of Monthly Tier 4 REC Price. The Monthly Tier 4 REC Price shall be the Index Tier 4 REC Price for such month, as set forth in Section 4.02 of this Agreement and as may be reduced pursuant to Section 4.09 of this Agreement.

Section 4.02. Index Tier 4 REC Price.

(a) For each month, the Index Tier 4 REC Price shall equal the Index Tier 4 REC Strike Price *minus* the Reference Energy Price *minus* the Reference Capacity Price (multiplied by a Mitigation Factor, if applicable); *provided that* in no case shall the Monthly Tier 4 REC Price exceed the Index Tier 4 REC Strike Price.

(i) Except as may be reduced pursuant to Section 4.09 of this Agreement, the "Index Tier 4 REC Strike Price," for each month in the respective Contract Years shall be:

Contract Year 1:	\$97.50
Contract Year 2:	\$99.94
Contract Year 3:	\$102.44
Contract Year 4:	\$105.00
Contract Year 5:	\$107.63
Contract Year 6:	\$110.32
Contract Year 7:	\$113.08

Contract Year 8: \$115.91  
Contract Year 9: \$118.81  
Contract Year 10: \$121.78  
Contract Year 11: \$124.82  
Contract Year 12: \$127.94  
Contract Year 13: \$131.14  
Contract Year 14: \$134.42  
Contract Year 15: \$137.78  
Contract Year 16: \$141.22  
Contract Year 17: \$144.75  
Contract Year 18: \$148.37  
Contract Year 19: \$152.08  
Contract Year 20: \$155.88  
Contract Year 21: \$159.78  
Contract Year 22: \$163.77  
Contract Year 23: \$167.86  
Contract Year 24: \$172.06  
Contract Year 25: \$176.36

(ii) Using data published by NYISO for its day-ahead energy market, NYSERDA shall calculate the Reference Energy Price for each month by:

(A) identifying the location-based marginal price (“LBMP”) for each hour of the month in Zone J; and

(B) taking the simple (not load-weighted) average of each such hourly LBMP to determine the Reference Energy Price.

(iii) The Reference Capacity Price for each month shall be calculated by NYSERDA using data published by NYISO for its monthly spot market unforced capacity (“UCAP”) prices. NYSERDA shall:

(A) identify the UCAP price (in dollars per kW-month) for such month in Zone J (“Reference UCAP Price”);

(B) Take the product of (1) the Reference UCAP Price (\$/kW-month), (2) Seller’s as-bid estimate of UDRs available to the Selected Project (which shall be 1,250 MW for the Summer Capability Period and 0 MW for the Winter Capability Period), (3) one *minus* the Loss Factor, (4) one *minus* the Unavailability Factor, and (5) a conversion factor of 1,000 kW/MW; and

(C) divide the total amount of dollars calculated in (B) by one twelfth (1/12) of the Bid Quantity; and

(D) in any month in which the Associated New Transmission Facility is subjected to buyer-side mitigation, the Reference Capacity Price shall be *multiplied by* a Mitigation Factor. The Mitigation Factor will be determined

based on, and in proportion to whether the Associated New Transmission Facility is, subject to full mitigation or partial mitigation or exemption from mitigation.

(b) The following formulae depict the calculation of the Monthly Tier 4 REC Price based on the Index Tier 4 REC Strike Price in accordance with Section 4.02(a).

$$\text{Monthly Tier 4 REC Price} = T4SP_{Index} - REP - (RCP \times MF)$$

where:

$T4SP_{Index}$  = Index Tier 4 REC Strike Price (\$/MWh)

$REP$  = Reference Energy Price (\$/MWh)

$RCP$  = Reference Capacity Price (\$/MWh)

$MF$  = Mitigation Factor (%) (if applicable)

The calculation of each month's Reference Capacity Price will be based on a Reference UCAP Price. The Reference UCAP Price is converted to its \$/MWh equivalent, the Reference Capacity Price ("RCP"), through the following equation.

$$RCP = \frac{RUP \times \text{Zone J Capacity} \times 1,000}{1/12 \times \text{Bid Quantity}}$$

where:

$RUP$  = Reference UCAP Price (\$/kW-month)

$LF$  = Loss Factor

$UAF$  = Unavailability Factor

$\text{Zone J Capacity}$  = The product of (i) the Seller's as-bid estimate of UDRs available to the Selected Project (which shall be 1,250 MW for the Summer Capability Period and 0 MW for the Winter Capability Period), (ii) one minus  $LF$ , and (iii) one minus  $UAF$ .

1,000 = kW to MW conversion factor

**Section 4.03. Tier 4 RECs Generated During Negative LBMP Hours.** Notwithstanding Section 4.02 of this Agreement, Tier 4 RECs produced during hours in which the real-time zonal LBMP in Zone J is zero or negative shall be acquired by and transferred to NYSERDA without compensation. Provided, however, that this Section 4.03 shall cease to apply (and the pricing provisions in Section 4.02 shall govern) during the period in any Contract Year after 200 or more hours have occurred in which the real-time zonal LBMP in Zone J is zero or negative.

**Section 4.04. Invoices.**

(a) Within fifteen (15) days after the conclusion of each month, NYSERDA shall inform Seller of the Monthly Tier 4 REC Price for that month.

(b) Seller shall submit monthly invoices for the Tier 4 RECs that are transferred by Seller into the NYSERDA NYGATS Account (and that meet all other requirements of Article II of this Agreement) in the prior month during the Contract Delivery Term. Invoices for the prior month shall not be submitted before the fifteenth (15) day of the following month; invoices submitted before the fifteenth (15) day of the following month shall

not be considered proper invoices for purposes of NYSERDA's Prompt Payment Policy. Invoices shall be submitted electronically to NYSERDA's online invoice system at: <https://services.nyserda.ny.gov/Invoices/> or, if this Selected Project is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce portal with Seller's log-in credentials. Invoices must reflect the quantity of Tier 4 RECs transferred to the NYSERDA NYGATS Account for the prior month, and must be accompanied by such information and data requested by NYSERDA and sufficient for NYSERDA to verify compliance with the electricity delivery requirements in Article III and other requirements in this Agreement. NYSERDA shall have no obligation to pay any invoice submitted more than six (6) months after NYSERDA notifies Seller of the Monthly Tier 4 REC Price for the Tier 4 RECs transferred in the month for which payment is requested. Invoices submitted by Seller shall be deemed to have been submitted on its initial date of receipt by NYSERDA even if Seller subsequently adjusts such initial invoice (including pursuant to Section 5.01, or to comply with this Section 4.04).

Section 4.05. Payment. The amount payable to Seller with respect to each monthly invoice shall be the product of: (a) the lesser of (i) the number of Tier 4 RECs generated in the prior month that have been transferred to the NYSERDA NYGATS Account (less those Tier 4 RECs obtained without compensation pursuant to Section 4.03 of this Agreement), and (ii) the amount of Qualified Renewable Energy delivered at the Delivery Point in the prior month (excluding that associated with those Tier 4 RECs obtained without compensation pursuant to Section 4.03 of this Agreement), and (b) the Monthly Tier 4 REC Price for the prior month, subject to the limitations of Section 2.01(c) of this Agreement during each Contract Year. If, for any month, the amount payable to Seller is a negative amount because the Monthly Tier 4 REC Price for that month was negative, NYSERDA shall make no payment to Seller for that month and instead shall record a debit in such amount ("Monthly Debit"). Any Monthly Debit shall be deducted from each subsequent month's payment by NYSERDA until the Monthly Debit is fully recovered. Any Monthly Debit that goes unrecovered for twelve months shall be settled by Seller in cash within thirty (30) days after the conclusion of such twelve-month period, except that all Monthly Debts outstanding at the conclusion of the Contract Delivery Term shall be settled by Seller in cash within thirty (30) days after the conclusion of the Contract Delivery Term.

Section 4.06. Prompt Payment Policy. NYSERDA shall make payments to Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit C ("Prompt Payment Policy"). Such payments shall be made by wire transfer to an account designated by Seller. NYSERDA shall have no obligation to pay any invoice not accompanied by all information requested by NYSERDA in accordance with Section 6.01.

Section 4.07. Changes in Law.

(a) In the event that a change in Applicable Law after the Effective Date changes, or on the date such change takes effect ("Change in Law Date") will change, the price structure or methodology, settlement, zonal structure, or terminology used in either the NYISO Energy Market or NYISO Capacity Market, such that the calculation of Reference Energy Price or Reference Capacity Price becomes impossible or no longer reasonably reflects the objective of providing a representative market-based index of energy and/or capacity prices in Zone J, in each case as they existed on the Effective Date, the Parties shall negotiate in good faith to amend this

Agreement, prospective from the Change in Law Date, to make such conforming changes as are necessary to achieve that objective.

(b) In the event that a change in Applicable Law after the Effective Date eliminates the NYISO Capacity Market entirely and without replacement, the Parties agree the Reference Capacity Price shall be zero. In the event that a change in Applicable Law after the Effective Date replaces the NYISO Capacity Market with a new resource adequacy construct, the Parties agree to negotiate in good faith to amend this Agreement, prospective from the Change in Law Date, to make such conforming changes as are necessary to replace the current Reference Capacity Price formula with a formula that reasonably comprises an index of prices available to generators in the applicable zone under the new resource adequacy construct.

(c) In the event that a New Carbon Price Mechanism is imposed under which Seller, because it is an external resource, is unable to claim the full benefit of the zero-carbon energy it delivers into Zone J, the Parties agree to negotiate in good faith to amend the definition of Reference Energy Price as used in this Article IV so that the Zone J energy prices used to comprise the Reference Energy Price will be those that serve as an index of prices paid to external resources that supply zero carbon energy into Zone J.

#### Section 4.08. Minimum Delivery Requirements.

(a) For each Capability Measurement Period, the Average Delivered RECs shall be no less than an amount of Tier 4 RECs equal to (x) the product of 40% and (y) the positive difference between the Qualified Renewable Energy (as calculated pursuant to Exhibit H of this Agreement) for the completed Contract Year immediately preceding the start of such Capability Measurement Period *minus* the Supplier GHG Baseline (such product being the “Minimum Delivery Requirement”); *provided, however*, that the Minimum Delivery Requirement (1) shall not exceed the product of 40% and the Bid Quantity; and (2) shall be subject to further reductions for: (i) any Reliability Curtailment or Qualifying Curtailment (adjusting for the duration and extent of such curtailment during the applicable Capability Measurement Period) that is not caused in whole or in part by Seller, Transmission Providers or any of their affiliates, (ii) Seller’s inability to generate or deliver Tier 4 RECs during the applicable Capability Measurement Period due to a Force Majeure event as described in Section 16.01 of this Agreement (adjusting for the duration and extent of Seller’s inability to perform caused by such Force Majeure event), (iii) a pro rata reduction for each hour during the applicable Capability Measurement Period during which Tier 4 RECs are transferred to NYSERDA without compensation pursuant to Section 4.03 of this Agreement, and (iv) unavailability of the Associated New Transmission Facility (adjusting for the duration and extent of such unavailability during the applicable Capability Measurement Period) that is not caused in whole or in part by either a failure of Seller, Transmission Providers or any of their affiliates to employ Good Utility Practices or any defect or shortcoming in the as-built Associated New Transmission Facility’s ability to deliver the Bid Quantity to the Delivery Point.

(b) No more than thirty (30) days after the conclusion of any Capability Measurement Period in which Seller’s Average Delivered RECs is less than the Minimum Delivery Requirement, Seller shall so notify NYSERDA. To the extent that the Minimum Delivery Requirement for such Capability Measurement Period must be reduced for the reasons

identified in subsections 4.08(a)(i), (ii) (iii) or (iv) above, Seller shall provide any documentation necessary to substantiate such reduction.

(c) Commencing with the first Capability Measurement Period, and for each Capability Measurement Period thereafter, any deficit between Seller's Average Delivered RECs and the Minimum Delivery Requirement for such Capability Measurement Period ("Delivery Shortfall") shall be remedied by the assessment of Cover Damages corresponding to the quantity of the Delivery Shortfall. Cover Damages will be offset from amounts due to Seller from NYSERDA under Section 4.05 of this Agreement; *provided, however*, that if Cover Damages owed under this Section 4.08 are not recovered through twelve (12) months of such offsets, Seller will settle the outstanding balance of such offsets in cash. Each Party agrees and acknowledges that (i) the damages that NYSERDA would incur due to Seller's failure to meet a Minimum Delivery Requirement would be difficult or impossible to predict with certainty, (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages and (iii) the Cover Damages as agreed to by the Parties and set forth herein are the sole and exclusive remedy of NYSERDA for Seller's failure to meet a Minimum Delivery Requirement.

#### Section 4.09. Reduction in Price for Qualifying Federal Support.

(a) In the event that Seller or any of its affiliates receives Qualifying Federal Support, Seller shall determine the QFS Amount and provide notice of the same to NYSERDA, including supporting calculations thereto. Seller shall also make available or cause to be made available to NYSERDA all books and records in its control that are reasonably necessary to determine the QFS Amount and shall use commercially reasonable efforts to provide NYSERDA with any other books and records reasonably requested by NYSERDA. Seller shall retain all such books and records as required by Section 6.05 of this Agreement.

(b) Except with respect to transaction costs and expenses incurred by Seller or its affiliates in connection with obtaining Qualifying Federal Support, which shall be for Seller's account, the QFS Amount shall be calculated on a net basis, taking into account any reduction in current or future economic value or costs incurred as a result of Seller's or its affiliates' realization of the applicable Qualifying Federal Support. For example, the Parties acknowledge and agree that, in order to qualify for a higher level of Qualifying Federal Support, Seller or its affiliates may be required to incur increased costs related to development, construction or operation of the Selected Project and the Associated New Transmission Facility, including costs related to new U.S. content or similar sourcing requirements, prevailing wage requirements or apprenticeship requirements. For the avoidance of doubt, if Seller or its affiliates incur such increased costs for the purpose of qualifying for such higher level of support, the Qualifying Federal Support Amount shall be reasonably adjusted by Seller to reflect the total economic value of the Qualifying Federal Support after accounting for such increased costs.

(c) If applicable, the QFS Price Reduction shall be applied prospectively from the beginning of the Contract Year immediately following the date the Qualifying Federal Support benefit is confirmed and quantified by NYSERDA ("QFS Amount Determination Date").

(d) The QFS Price Reduction shall equal the product of the QFS Amount and 0.75 (the “NYSERDA Share”) and the Recovery Factor divided by the Bid Quantity.

(e)  $\text{QFS Price Reduction (\$/REC)} = \text{QFS Amount (\$)} \times 0.75 \times \text{Recovery Factor} / \text{Bid Quantity (RECs)}$

(f) The “Recovery Factor” shall be determined by reference to the following table, in which the Annuitization Term shall equal the number of full Contract Years remaining in the Contract Delivery Term after the QFS Amount Determination Date:

Annuitization Term (Years)	Recovery Factor
25	0.0764
24	0.0778
23	0.0795
22	0.0812
21	0.0832
20	0.0854
19	0.0879
18	0.0906
17	0.0937
16	0.0973
15	0.1013
14	0.1059
13	0.1113
12	0.1176
11	0.1252
10	0.1343
9	0.1454
8	0.1594
7	0.1775
6	0.2018
5	0.2358
4	0.2869
3	0.3724
2	0.5435
1	1.0575

## Article V

### Adjustments

Section 5.01. True-Up Adjustments. NYSERDA may (and, at the request of Seller, shall) review past invoices, including, but not limited to, the calculation of the Reference Energy Price and Reference Capacity Price, to determine if a true-up adjustment is necessary. If necessary, NYSERDA shall adjust, including by means of set-off, payments to subsequent invoices consistent with adjustments by NYGATS based on NYISO or other local control area billing settlement true-up procedures, based on actual metered production data measured at the

Injection Point or the Delivery Point, actual and verified data reflecting compliance with the electricity delivery requirements set forth in Article III, and/or based on the number of Tier 4 RECs transferred.

Section 5.02. Time Period for Disputes and Adjustment of Invoices. A Party may seek a correction of any invoice, or any adjustment to an invoice, rendered under this Agreement within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. Unless a party has submitted a written request for review of an invoice or an adjustment to an invoice within twelve (12) months of the date of the invoice or adjustment to the invoice, the invoice or adjustment shall be considered final and not subject to further adjustment.

## Article VI

### Records and Reports

Section 6.01. Monthly Reports. Seller shall, at NYSERDA's request, provide NYSERDA reasonable access to hourly generation and delivery data, including detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Selected Project was delivered, to the extent available to Seller from the entity or party in control of any meter through which the energy from the Selected Project was delivered, and from the administrator of any attribute accounting system operating in such control area; *provided* in each case that Seller has the right and ability to obtain such data and provide it to NYSERDA.

Section 6.02. Progress Reports. Beginning on the first such date following the Effective Date, and continuing through the commencement of the Contract Delivery Term, Seller shall provide quarterly written progress reports to NYSERDA, on March 1, June 1, September 1, and December 1. Progress reports shall be made based on facts actually known to Seller on the date of submittal to NYSERDA, and NYSERDA acknowledges that the facts actually underlying the subject matter of such reports are constantly changing and may not be known to Seller. Each report shall describe at a minimum (a) Seller's progress in obtaining all required environmental or other permits and/or local approvals; (b) the status of development and/or construction planning or activities with regard to the Selected Project; (c) the status of the interconnection process between the Selected Project and the administrator of the control area; (d) purchases, delivery, and/or installation of any major equipment associated with the Selected Project, and for purposes of this Section, major equipment for the Associated New Transmission Facility shall mean cables, transformers, circuit breakers, and converter station components; (e) activities undertaken pursuant to Seller's community outreach plan, including timely notice of upcoming meetings and known outreach events and activities for the next quarter that representatives of NYSERDA may attend; (f) updates regarding development and construction of the Associated New Transmission Facility, to the extent known to Seller; (g) on a form to be provided by NYSERDA, information relating to the employment on the U.S. Transmission Line, as both contractors and sub-contractors, of Minority and Women-Owned Business Enterprises ("MWBES") and Service-Disabled Veteran-Owned Businesses ("SDVOBs") registered with the Department of State, including identifying information for of such firms, the expenditure on such firms, and the time period in which such firms were engaged; (h) an estimated date of Commercial Operation; and (i) activities undertaken in accordance with Section 12.03 associated

with Disadvantaged Communities. Such reports shall also include copies of any material permits or approvals granted with regard to the Selected Project or the Associated New Transmission Facility and/or copies of any correspondence of any type denying or refusing any material permit or approval with regard to the Selected Project or the Associated New Transmission Facility. Seller shall notify NYSERDA within twenty (20) days of discovering any event that could reasonably cause a material delay in Commercial Operation beyond the Commercial Operation Milestone Date. Starting with the first progress report that indicates that construction activities falling within the scope of Section 18.10 have commenced and with each subsequent progress report submitted on June 1 and December 1 thereafter, Seller shall include a written attestation prepared by a New York State independent certified public accountant or other qualified party, in a form to be agreed upon, confirming that the Prevailing Wage requirement of Section 18.10 is being met.

Section 6.03. [Reserved].

Section 6.04. Additional Documents. Within thirty (30) days after the Effective Date, Seller shall provide to NYSERDA:

(a) a certificate, dated as of a recent date prior to the Effective Date, issued by the Delaware Secretary of State confirming the corporate good standing of Seller; and

(b) a certificate of an appropriate officer or authorized representative of Seller, in form and substance reasonably satisfactory to NYSERDA and certifying: (i) the names and signatures of the officers or authorized representatives of Seller authorized to sign any documents to be delivered hereunder, and (ii) the accuracy and completeness of resolutions of Seller, dated as of a date prior to the Effective Date, authorizing and approving all matters in connection with the transactions contemplated thereby.

Seller shall, within a reasonable period of time, provide NYSERDA with updated and corrected versions of the above-referenced authorized signatories upon any material change in the information provided therein.

Section 6.05. Maintenance of Records. Except as excused by NYSERDA in writing, Seller shall keep, maintain, and preserve throughout the term of this Agreement and for a period of seven (7) years following the expiration of this Agreement, full and detailed books, accounts, and records pertaining to Seller's performance under the Agreement, including, without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Seller in the course of such performance. The foregoing records may be kept, maintained, or preserved on any information storage device, or one or more electronic networks or databases; *provided* that such records can be converted into clearly legible form within a reasonable time. Seller may destroy or otherwise dispose of a record falling within the scope of this Section 6.05 seven (7) years following the creation thereof with the written consent of NYSERDA, such consent not to be unreasonably withheld.

## Article VII

### Audits

Section 7.01. Audits. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and for a period of seven (7) years thereafter to inspect and audit any and all books, accounts and records substantially pertaining to Seller's performance under this Agreement, at the office or offices of Seller where they are then being kept, maintained and preserved in accordance with Section 6.05. If such books, accounts and records are not kept at an office within the State of New York, within a reasonable time of a request by NYSERDA, Seller shall make such books, accounts and records available to NYSERDA at NYSERDA's offices or at an agreed upon location within the State of New York. Except to the extent any invoice or adjustment to an invoice is final under Section 5.02, any invoice rendered under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein that are found by NYSERDA on the basis of any audit of Seller by an agency of the United States, the State of New York or NYSERDA not to constitute a properly invoiced amount.

## Article VIII

### Assignment

Section 8.01. General Restrictions. Except as specifically permitted by this Article VIII, the assignment, transfer, conveyance, or other disposal of this Agreement or any of Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the prior express written consent of NYSERDA is prohibited and shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld, conditioned, or delayed. Seller agrees to reimburse NYSERDA for NYSERDA's reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Seller's requests made pursuant to this Section 8.01, without regard to whether such consent is provided. NYSERDA shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) days. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties; *provided, however*, that no assignment, pledge or other transfer of this Agreement by Seller shall operate to release Seller from any of its obligations under this Agreement (and shall not impair any Contract Security provided by Seller hereunder) unless such assignee, pledgee or transferee (a) agrees in writing to assume all of Seller's obligations under this Agreement, and (b) provides Contract Security to replace that previously provided by Seller, in which case, at Seller's request, NYSERDA (or its successors or assigns) will execute a release of Seller from its obligations thereunder.

Section 8.02. Permitted Assignments by Seller. NYSERDA's consent shall not be required for Seller to either (a) pledge or assign the Selected Project, this Agreement, or the accounts, revenues, or proceeds from this Agreement in connection with financing arrangements, or (b) assign the Selected Project and this Agreement to an affiliate if the then-current Contract Security remains in place. Upon Seller's reasonable request, NYSERDA shall execute a consent to assignment, or other documents (including estoppel certificates related to any financing),

associated with a financing in a commercially reasonable form acceptable to NYSERDA and Seller. For purposes of this Section 8.02, the term “affiliate” shall include any company, corporation, or other entity that controls, is controlled by, or is under common control with Seller, but only for so long as such control, directly or indirectly, meets the following definition. For purposes of this definition, “control” shall mean ownership or control, directly or indirectly, of at least fifty percent (50%) of the shares having voting rights, or other equivalent rights of the subject entity entitled to vote.

Section 8.03. Assignment with Change of Control. Seller may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity (a) with which or into which such Seller merges or consolidates; (b) which acquires greater than fifty percent (50%) of Seller’s equity interests or actual control of Seller; or (c) to which Seller transfers all or substantially all of its assets; in each case provided that such other entity agrees to be bound by the terms hereof.

## Article IX

### Seller’s Representations and Warranties

Section 9.01. Seller Representations and Warranties. As a material inducement to NYSERDA to enter into this Agreement, Seller makes the following representations and warranties, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

(a) that Seller (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (ii) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to own its assets or lease and operate its properties and carry on its business as now being or as proposed to be conducted, to execute and deliver this Agreement, and to consummate the transactions contemplated herein; and (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except, in the case of clause (iii), where the failure to be so qualified would not result in a material adverse effect on Seller’s ability to perform its obligations;

(b) Seller or its affiliates have or will have all requisite corporate power, and have or will have all material governmental permits necessary to construct, finance, own, maintain and operate the Selected Project;

(c) that the execution, delivery and performance by Seller, the entry into this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement will not: (i) violate any Applicable Law; (ii) violate any provision of the certificate of incorporation, bylaws or other governing documents of Seller; (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 Seller 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 property or assets of Seller, 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 Seller's ability to perform its obligations;

(d) that Seller or its affiliates have, or reasonably expects to have prior to the time needed, all real property rights to construct, interconnect, and operate the Selected Project;

(e) that the Tier 4 RECs transferred to NYSERDA under this Agreement, will be free and clear of any liens, encumbrances and/or defects of title as of the date of transfer;

(f) that the Environmental Attributes included in the Tier 4 RECs transferred to NYSERDA under this Agreement shall not have otherwise been, nor will be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;

(g) that this Agreement will be duly executed and delivered by Seller and will constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof;

(h) as of the Effective Date, to the best of Seller's knowledge after due inquiry, that there are no existing undisclosed or threatened material legal actions, claims, or encumbrances, or liabilities that may adversely affect Seller's performance of this Agreement or NYSERDA's rights hereunder;

(i) as of the Effective Date, that Seller has no knowledge that any written information or document or written statement furnished by Seller under this Agreement, when taken as a whole, contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement contained therein not misleading as of the date furnished; and

(j) Seller certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

**Section 9.02. Continuing Nature of Representations and Warranties.** The representations and warranties set forth in this Article are made as of the Effective Date and deemed made continually throughout the Contract Delivery Term, except to the extent that such representation or warranty states that it is permitted or required to be made only as of a specific date. If at any time during the Contract Delivery Term, Seller has actual knowledge of any event or information that causes any of the representations and warranties of an ongoing nature in this Article IX to be untrue or misleading, Seller shall provide NYSERDA with prompt written notice of the event or information, the representations and warranties affected, and the corrective action Seller shall take. The notice required pursuant to this Section shall be given as soon as practicable after Seller has actual knowledge of the occurrence of each such event.

**Section 9.03. Limitation on Representations and Warranties.** Except as expressly set forth herein, Seller expressly disclaims any other representations or warranties, whether written or oral, and whether express or implied, including any representation or warranty with respect to merchantability or fitness for a particular purpose with respect to the Tier 4 RECs transferred hereunder, and any and all implied warranties are disclaimed.

## Article X

### NYSERDA's Representations, Warranties, and Guarantees

Section 10.01. NYSERDA Representations, Warranties, and Guarantees. As a material inducement to Seller to enter into this Agreement, NYSERDA makes the following representations, warranties, and guarantees, as of the Effective Date, all of which shall survive the execution and delivery of this Agreement:

(a) that NYSERDA is an instrumentality of the State of New York and a public authority and public benefit corporation, created under the New York State Public Authorities Law, validly existing and in good standing under the laws of the State of New York;

(b) that NYSERDA has all necessary power and authority to execute and deliver this Agreement and all other agreements contemplated herein and hereby and, subject to the receipt of approval from the PSC, to consummate the transactions contemplated hereby and thereby. The execution and delivery by NYSERDA of this Agreement and all other agreements contemplated herein and hereby and the consummation of the transactions contemplated hereby and thereby have been or, if not yet executed and delivered, will be when executed and delivered, duly authorized by all necessary actions on the part of NYSERDA, and no other actions or proceedings on the part of NYSERDA are necessary to authorize this Agreement or any other agreement contemplated herein and hereby or the consummation of the transactions contemplated hereby and thereby;

(c) that the execution, delivery and performance by NYSERDA of this Agreement does not (i) violate any Applicable Law; (ii) violate, conflict with, result in a material breach of or constitute (alone or with notice or lapse of time or both) a material default or event of default under any indenture, agreement, mortgage, deed of trust, note, lease, contract or other instrument to which NYSERDA is a party or by which NYSERDA or any of its property is bound; or (iii) result in the creation or imposition of any lien upon any property or assets of NYSERDA. This Agreement will not conflict with any other agreement or contract to which NYSERDA is a party;

(d) that this Agreement has been duly executed and delivered by NYSERDA and constitutes the legal, valid and binding obligation of NYSERDA enforceable against NYSERDA in accordance with the terms thereof;

(e) that NYSERDA is familiar with and in compliance with all Applicable Law, except where the failure to so comply would not result in a material adverse effect on NYSERDA's ability to perform its obligations; and

(f) that there is no action, suit or claim at law or in equity, or before or by a governmental authority pending or, to the best knowledge of NYSERDA after due inquiry, threatened against NYSERDA or affecting any of its properties or assets that could reasonably be expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

Section 10.02. Continuing Nature of Representations, Warranties, and Guarantees. The representations, warranties, and guarantees set forth in this Article are made as of the Effective

Date and deemed made continually throughout the Contract Delivery Term, except to the extent that such representation, warranty, or guarantee states that it is permitted or required to be made only as of a specific date. If at any time during the Contract Delivery Term, NYSERDA has knowledge of any event or information that causes any of the representations, warranties, and guarantees in this Article X to be untrue or misleading, NYSERDA shall provide Seller with prompt written notice of the event or information, the representations, warranties, and guarantees affected, and the corrective action NYSERDA shall take. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

## Article XI

### Indemnification and Insurance

Section 11.01. Indemnification. Seller shall protect, indemnify, and hold harmless NYSERDA and the State of New York from and against all third-party liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and/or experts' fees and expenses) ("Loss") imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, or arising out of or relating to Seller's breach of this Agreement or to the extent caused by the alleged negligence, unlawful act or omission, or intentional misconduct of Seller in the course of the development of the Selected Project, or the production or delivery of Tier 4 RECs under this Agreement, provided, however, that Seller's indemnification obligation shall not apply cases of gross negligence or willful misconduct by NYSERDA or the State of New York or their respective agents or representatives. Seller shall have no obligation to protect, indemnify, or hold harmless NYSERDA or the State of New York with respect to any claims asserted against NYSERDA or the State of New York challenging (a) the legal validity of (i) this Agreement, (ii) the purchase or sale of Tier 4 RECs, or (iii) the competitive solicitation process held by NYSERDA to procure Tier 4 RECs; or (b) the administration of NYGATS and/or the Tier 4 REC program under the 2020 CES Order and related regulatory proceedings (including any dispute arising out of the resale of Tier 4 RECs by NYSERDA). The obligations of Seller under this Article shall survive any expiration or termination of this Agreement and shall not be limited by the amount of Seller's insurance coverage.

Section 11.02. Indemnification Procedures. NYSERDA shall give reasonable notice to Seller of any claim or notice of the commencement of any action, administrative or legal proceeding or investigation as to which indemnification under this Article may apply or promptly after NYSERDA has actual knowledge of any other Loss that would result in a claim for indemnification. NYSERDA shall reasonably cooperate with Seller in the defense of any such claim. Seller shall use counsel reasonably satisfactory to NYSERDA to defend any such claim (with consent to counsel not to be unreasonably withheld, conditioned, or delayed). Seller shall control the defense of any such claim. NYSERDA may participate in the defense of any such claim at its own expense. Seller may not agree to any settlement or compromise of any claim without NYSERDA's prior written consent (which consent may not be unreasonably withheld, conditioned, or delayed) that is not an unconditional release of NYSERDA from any and all liabilities upon the payment of money that will be paid by Seller.

Section 11.03. Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, NYSERDA may at the expense of Seller contest, settle or pay such claim, and Seller shall promptly reimburse NYSERDA for all costs reasonably incurred and documented by NYSERDA associated therewith.

Section 11.04. Insurance.

(a) Seller, at no cost to NYSERDA, shall cause to be maintained by Hydro-Québec, throughout the term of this Agreement, self-insurance with respect to commercial general liability for the Selected Project and the Québec Transmission Line in an amount legally required and otherwise reasonable for projects of this type and size.

(b) Seller, at no cost to NYSERDA, shall cause to be maintained by U.S. Transmission Provider, on or before the date upon which construction begins and continuing throughout the duration of the Contract Delivery Term, commercial general liability insurance for the U.S. Transmission Line in an amount customary for projects of this type and size. All such insurance shall be evidenced by certificates of insurance, each of which shall: (i) name or be endorsed to cover NYSERDA and the State of New York as additional insureds; and (ii) provide that such insurance may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof.

Article XII

Economic Benefits and Disadvantaged Communities Obligations

Section 12.01. Economic Benefits Report and Verification.

(a) Within one hundred twenty (120) days after the third anniversary of the commencement of the Contract Delivery Term, Seller shall submit an Economic Benefits Report funded at its expense and prepared in accordance with Exhibit F. The Economic Benefits Report shall calculate and verify the actual Economic Benefits, in dollars, that have resulted from Seller's and U.S. Transmission Provider's activities.

(b) Within sixty (60) Business Days of receipt, NYSERDA shall either: (i) accept the Economic Benefits Report in its entirety, in writing, indicating that the total Verified Total Dollars meets or exceeds the product of 0.85 and the Expected Total Dollars, or (ii) return the Economic Benefits Report to Seller with a written response to Seller explaining NYSERDA's preliminary conclusion that there is an Economic Benefits Shortfall. Such response will include a description of any Economic Benefits claimed in the Economic Benefits Report that have been preliminarily determined to be invalid or improperly documented, if any. If NYSERDA's preliminary determination is inconsistent with the Agreed-Upon Procedures Report, such response also will explain NYSERDA's basis for such variance. Seller will be given a reasonable opportunity to dispute NYSERDA's preliminary conclusion and/or to revise and resubmit the Economic Benefits Report.

Section 12.02. Economic Benefits Shortfall. If there is an Economic Benefits Shortfall, Seller shall: (a) provide to NYSERDA for NYSERDA's approval a plan to make additional economic investments in New York State in an amount reasonably comparable to the amount of

the Economic Benefits Shortfall; or (b) upon the mutual agreement of the Parties, pay the amount of the Economic Benefits Shortfall or cause such amount to be paid into an account for the receipt of such funds created by NYSERDA, within six (6) months of NYSERDA's final notification of the amount owed under Subsection 12.01(b) of this Agreement; such amounts may, at Seller's direction, be deducted by NYSERDA from payments owed to Seller under Article IV of this Agreement.

Section 12.03. Disadvantaged Community Benefits. The Parties acknowledge the importance of designing the relevant investments made as a result of the Tier 4 program to provide benefits to and reduce burdens on Disadvantaged Communities in accordance with the 2020 CES Order. Consistent with this goal:

(a) Seller shall design project investments and track outcomes to help ensure that members of Disadvantaged Communities share in the economic and other benefits that will result from this Agreement ("Disadvantaged Community Benefits"). Exhibit I-1 provides the framework for Seller to do so.

(b) Seller commits to undertake the actions as described in Exhibit I-2 of this Agreement to provide Disadvantaged Community Benefits and mitigate or reduce burdens on Disadvantaged Communities.

Section 12.04. Environmental and Community Benefit Programs. Seller agrees to take the actions set forth in Exhibit I-2 hereto with respect to environmental and community benefit programs, including those described in Section 12.03(b) above.

Section 12.05. Hudson River Construction and Operational Protections. Seller agrees to cause U.S. Transmission Provider to take the actions set forth in Exhibit J with respect to the Hudson River.

## Article XIII

### Events of Default

Section 13.01. Event of Default. For the purposes of this Agreement, "Event of Default" shall mean any of the following:

(a) Representations and Warranties. Any representation or warranty made in this Agreement that shall prove to have been false or misleading in any material respect as of the time made or deemed to be made, and such false or misleading representation or warranty is not fully cured within ten (10) days after the responsible Party discovers its error; *provided, however*, that such period shall be extended for an additional period not to exceed sixty (60) days if the responsible Party is unable to cure within the initial ten (10) day period so long as such cure is diligently pursued by the responsible Party until such breach has been corrected; or

(b) Other Obligations. A Party shall default in the performance of any of its obligations under Sections 2.01, 2.03, 2.07, 4.05, 4.09, 6.05, 7.01 and 12.02 of this Agreement and such default shall continue un-remedied for a period of thirty (30) days after the defaulting Party receives notice thereof from the non-defaulting Party; *provided, however*, that such period

shall be extended for an additional period not to exceed thirty (30) days if, despite using commercially reasonable efforts, the defaulting Party is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the defaulting Party until such breach has been corrected; or

(c) Voluntary Proceedings. A Party shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) make a general assignment for the benefit of its creditors; (iii) commence a voluntary case under the Bankruptcy Code; (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (v) fail to convert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (vi) take any corporate action for the purpose of effecting any of the foregoing; or

(d) Involuntary Proceedings. A proceeding or case shall be commenced against a Party, without its application or consent, in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets; (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue un-dismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue un-stayed and in effect, for a period of sixty (60) or more days; or (iv) an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or

(e) Abandonment. On or after the Selected Project (or any phase thereof) enters Commercial Operation, the permanent relinquishment by Seller of all of its possession and control of the Selected Project, other than a transfer permitted under this Agreement or to the extent caused by Force Majeure or an Event of Default by NYSERDA; or

(f) Failure to Provide Contract Security. Failure by Seller to provide to NYSERDA Contract Security by the dates and in the amounts set out in Section 15.01, and such failure is not remedied within ten (10) Business Days of the respective due dates of such Contract Security; or

(g) Commercial Operation. Failure of the Associated New Transmission Facility to achieve Commercial Operation on or before the Commercial Operation Milestone Date (as such date may be extended pursuant to Section 2.06 and Section 15.02 of this Agreement).

(h) Pre-COD Milestone. Failure of the U.S. Transmission Line to achieve the Pre-COD Milestone on or before the Pre-COD Milestone Date (as such date may be extended pursuant to Section 15.03 of this Agreement).

(i) Prevailing Wage Default. Failure by Seller to ensure that any failure to pay the Prevailing Wage in accordance with Section 18.10 is cured within 12 months from the

date of written notification by NYSERDA. For purposes of this provision, an acceptable cure related to the failure by a third party owner of a Resource to pay Prevailing Wages shall be to remove such Resource from the Selected Project (after appropriate notice has been given and an opportunity to cure has expired).

Section 13.02. Effect of an Event of Default. In addition to any other remedy available to it under this Agreement or under Applicable Law, upon any occurrence of an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement until the earlier of such time as (a) such Event of Default has been cured, or (b) the non-defaulting Party has elected to terminate this Agreement pursuant to Article XIV below. Notwithstanding the foregoing, (i) for any Event of Default by Seller prior to commencement of Commercial Operation, NYSERDA shall be entitled only to stipulated damages pursuant to Article XV; and (ii) for any Event of Default after commencement of Commercial Operation, if NYSERDA elects not to suspend performance of its obligations and Seller transfers Tier 4 RECs to NYSERDA, NYSERDA shall be obligated to accept such Tier 4 RECs and pay for such Tier 4 RECs in accordance with this Agreement.

## Article XIV

### Termination

Section 14.01. Termination. This Agreement may be terminated:

(a) at any time by either NYSERDA or Seller if: (i) an Event of Default has occurred (following the expiration of any applicable cure period) and is continuing, (ii) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (iii) the non-defaulting Party has not waived such Event of Default in writing;

(b) at any time by the mutual written consent of Seller and NYSERDA;

(c) at any time prior to Commercial Operation by Seller upon an attestation from an appropriate representative of Seller that Seller has not completed the Selected Project and has relinquished any and all effort to further develop or construct the Selected Project;

(d) at any time prior to Commercial Operation by Seller upon an attestation from an appropriate representative of Seller that the developer of the Associated New Transmission Facility has not completed the Associated New Transmission Facility and has relinquished any and all effort to further develop or construct the Associated New Transmission Facility;

(e) by NYSERDA in the event it is found that the certification filed by Seller in accordance with New York State Finance Law Sections 139 -j and 139-k was intentionally false or intentionally incomplete;

(f) by NYSERDA in the event it is found that Seller made material misrepresentations in the certification filed by Seller in accordance with New York State Tax Law Section 5-a that were intentionally false when made;

(g) by (i) Seller in the event that the PSC issues an order satisfying clause (i), (ii) or (iii) of Section 2.06(b), the Parties fail to agree on amendments to this Agreement pursuant to Section 2.06(b) and Seller notifies NYSERDA within sixty (60) days of such order that it elects to terminate the Agreement pursuant to Section 2.06(b) or (ii) by either NYSERDA or Seller in the event that the PSC does not issue an order on NYSERDA's filing within one hundred ninety-five (195) days of the Effective Date; in each case such termination would be without liability among the Parties, subject to the return of Contract Security as provided in Article XV; and

(h) by Seller, upon delivery of written notice to NYSERDA no later than sixty (60) days after the nine (9)-month anniversary of the Initial Pre-COD Milestone Date, in the event that U.S. Transmission Provider is unable to achieve the Pre-COD Milestone on or before such nine (9)-month anniversary as a result of events or circumstances outside of the reasonable control of Seller, either Transmission Provider or any of their affiliates; *provided, however*, that the inability of U.S. Transmission Provider to achieve the Pre-COD Milestone Date as a result of (i) the inability to secure permits or governmental authorizations necessary for the development, construction or operation of the U.S. Transmission Line or (ii) any change, event or development in or affecting the economy or the financial or securities markets in the United States or elsewhere in the world, or generally affecting the industry or industries in which U.S. Transmission Provider operates shall not give rise to a right of termination pursuant to this Section 14.01(h).

Section 14.02. Effect of Termination. Except as otherwise set forth in Section 18.03 below, in the event of a termination of this Agreement as provided in Section 14.01 above, neither Party shall have any further right or obligation hereunder. Notwithstanding the foregoing, in the case of termination for any breach of this Agreement by Seller prior to commencement of Commercial Operation, NYSERDA shall be entitled only to stipulated damages pursuant to Article XV. In addition, the Parties agree that, in the case of a termination for any breach of this Agreement by Seller on or after the commencement of Commercial Operation, irreparable damage would occur in the event that NYSERDA could not obtain Tier 4 RECs generated by the Selected Project pursuant to this Agreement after such breach, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect to compel the transfer of all Tier 4 RECs generated by the Selected Project following the date of any such termination, together with any other remedy at law or equity available to NYSERDA in connection therewith, without the necessity of demonstrating the inadequacy of money damages, it being understood and agreed that any such transfer shall be made subject to and in accordance with the pricing and other terms and conditions of this Agreement, notwithstanding any such termination.

Section 14.03. Good Faith Negotiation. Both Parties agree that, should any dispute arise during the term of this Agreement, the Parties will make a good faith, though non-binding effort to reconcile any difference or dispute before the filing of an action in any court.

Section 14.04. Damages. Neither Party shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages, lost profits or other business interruption damages arising from the breach of this Agreement; *provided, however*, that nothing in this

Section 14.04 shall limit (a) Seller's obligations under Section 11.01 of this Agreement, or (b) either Party's liability for fraud.

## Article XV

### Contract Security

#### Section 15.01. Initial Contract Security.

(a) No more than ten (10) Business Days after the Effective Date, unless otherwise agreed to by NYSERDA, Seller shall provide, or cause to be provided, Contract Security, in the form of cash, certified funds, a Letter of Credit conforming to the requirements of Section 15.04, or an Acceptable Guaranty conforming to the requirements of Section 15.06, in an amount equal to the product of (i) the Bid Quantity and (ii) four dollars (\$4.00). Seller may provide the Contract Security through any combination of the forms set forth in the preceding sentence.

(b) No later than one (1) year prior to the initial Commercial Operation Milestone Date ("Initial Commercial Operation Milestone Date"), Seller shall provide, or cause to be provided, additional Contract Security, in the form of cash, certified funds, a Letter of Credit conforming to the requirements of Section 15.04, or an Acceptable Guaranty conforming to the requirements of Section 15.06, in an amount equal to the product of (i) the Bid Quantity and (ii) six dollars (\$6.00).

Section 15.02. Extension of Commercial Operation Milestone Date. No later than thirty (30) days prior to the then-applicable Commercial Operation Milestone Date, Seller may elect to extend the Commercial Operation Milestone Date by six (6) months by providing, or causing to be provided, to NYSERDA, in addition to the cumulative amounts provided under Section 15.01(a) and (b), Contract Security, in the form of cash, certified funds, a Letter of Credit conforming to the requirements of Section 15.04, or an Acceptable Guaranty conforming to the requirements of Section 15.06, in an amount equal to the product of (i) the Bid Quantity and (ii) two dollars (\$2.00). Extensions of the Commercial Operation Milestone Date as extended in accordance with the foregoing sentence of this Section 15.02 shall not exceed thirty-six (36) months beyond the Initial Commercial Operation Milestone Date.

Section 15.03. Extension of Pre-COD Milestone Date. No later than thirty (30) days prior to the then-applicable Pre-COD Milestone Date, Seller may elect to extend the Pre-COD Milestone Date by six (6) months by providing, or causing to be provided, to NYSERDA, in addition to the cumulative amounts provided under Section 15.01(a) and (b), Contract Security, in the form of cash, certified funds, a Letter of Credit conforming to the requirements of Section 15.04, or an Acceptable Guaranty conforming to the requirements of Section 15.06, in an amount equal to the product of (i) the Bid Quantity and (ii) two dollars (\$2.00). Extensions of the Pre-COD Milestone Date as extended in accordance with the foregoing sentence of this Section 15.03 shall not exceed thirty-six (36) months beyond the Initial Pre-COD Milestone Date.

Section 15.04. Letter of Credit. Any letter of credit shall be a clean, unconditional and irrevocable standby letter of credit in favor of NYSERDA as beneficiary, issued for direct payment by a bank that is either (a) a member of the New York Clearinghouse Association or (b) holds a credit rating of A or better by Standard and Poor's, A or better by Fitch, or A2 or better by Moody's, and is a United States bank, or a United States branch of a foreign bank, with a New York branch preferred. Such letter of credit shall be substantially in the form of the letter of credit attached hereto as Exhibit B ("Letter of Credit"), in a face amount that, either individually or in combination with another form of Contract Security under Section 15.01, is equal to the Contract Security amount, and which Letter of Credit shall provide that the issuing bank will pay to NYSERDA amounts in aggregate up to that same face amount upon presentation of only the Sight Draft (as defined in Exhibit B) in the amount to be drawn and the Payment Certificate, in the form of Annex A and Annex B, respectively, to such Letter of Credit, and have an expiration date not shorter than one (1) year together with an automatic renewal provision. At any time prior to NYSERDA drawing on the Letter of Credit, Seller shall be permitted to substitute the Letter of Credit with a Letter of Credit from another bank that is either (i) a member of the New York Clearinghouse Association or (ii) holds a credit rating of A or better by Standard and Poor's, A or better by Fitch, or A2 or better by Moody's, and is a United States bank, or a United States branch of a foreign bank, with a New York branch preferred; *provided* that the substitute Letter of Credit is substantially in the form of Exhibit B and for the same face amount as the Letter of Credit it is replacing. In the event Seller fails to achieve Commercial Operation on or prior to the Commercial Operation Milestone Date, as such date may be extended in accordance with Section 2.06 and Section 15.02 of this Agreement, by a date thirty (30) days prior to the expiration date of the Letter of Credit, if Seller has not provided NYSERDA or arranged with NYSERDA to provide a substitute Letter of Credit prior to such expiration date, NYSERDA shall be entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA until a substitute Letter of Credit has been provided, or for application against subsequent obligations of Seller.

Section 15.05. Replacement Letter of Credit. Any assignee within Article VIII of this Agreement shall, simultaneously with its assignment becoming effective, deliver to NYSERDA a replacement Letter of Credit meeting the requirements of this Article, and NYSERDA shall, within twenty (20) Business Days after receipt of a compliant replacement Letter of Credit, return the original Letter of Credit to Seller. Upon the failure of an assignee to deliver a compliant replacement Letter of Credit to NYSERDA simultaneously with its assignment becoming effective, NYSERDA shall be thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA for application against subsequent obligations of Seller and/or the assignee under this Agreement.

Section 15.06. Acceptable Guaranty. Seller may fulfill the requirements of Sections 15.01 and Section 15.02 through an Acceptable Guaranty. Nothing in any such guaranty nor any payment thereunder shall be construed to limit or waive any claims, rights, privileges, defenses, excuses, liability exclusions or limitations available to Seller under this Agreement or otherwise. If at any time a guaranty provided under this Section 15.06 ceases to be an Acceptable Guaranty, Seller shall provide to NYSERDA replacement Contract Security in the form of cash, certified funds, a substitute Acceptable Guaranty, or Letters of Credit conforming to the requirements of Section 15.01 and Section 15.04 within five (5) Business Days.

Section 15.07. Refund of Security. Amounts required by Seller as Contract Security will be reduced and refunded by NYSERDA to Seller as follows:

(a) Within thirty (30) Business Days of NYSERDA's Receipt of an Invoice (as defined in Exhibit C) submitted pursuant to Article IV of this Agreement establishing that Seller has commenced Commercial Operation on or prior to the Commercial Operation Milestone Date, as extended pursuant to Section 2.06 and Section 15.02 of this Agreement, NYSERDA shall return to Seller and cancel all outstanding Contract Security.

(b) Within thirty (30) Business Days of NYSERDA's receipt of reasonable evidence submitted pursuant to Article IV of this Agreement that Seller has satisfied the Pre-COD Milestone, NYSERDA shall return to Seller and cancel all Contract Security described in Section 15.03.

(c) Within thirty (30) Business Days of a termination pursuant to Section 14.01(g) or Section 14.01(h), NYSERDA shall return to Seller and cancel all Contract Security.

Amounts provided by Seller as Contract Security and not refunded pursuant to this Section 15.07 above will be retained by NYSERDA; *provided* that NYSERDA will consider waiving the requirements of this Section 15.07 and refunding the Contract Security in whole or in part based on specific circumstances that may arise. NYSERDA and Seller agree to engage in good faith discussions regarding such waiver as appropriate based on such circumstances.

Section 15.08. Stipulated Damages. NYSERDA and Seller hereby agree, acknowledge and stipulate that NYSERDA's retention of amounts provided by Seller as Contract Security pursuant to this Article XV, in the proportions stated within this Article, for any Event of Default by Seller prior to commencement of Commercial Operation is fair and reasonable under the circumstances and in light of the uncertainty and inability to quantify adequately the harm that would result to NYSERDA as a result of any Event of Default by Seller prior to commencement of Commercial Operation.

## Article XVI

### Force Majeure

Section 16.01. Force Majeure Defined. "Force Majeure" means an event or circumstance: (a) that was not within the reasonable control of the Party claiming its occurrence; (b) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (c) that directly prohibits or prevents such Party from performing its obligations under this Agreement. For avoidance of doubt, to the extent meeting the foregoing requirements, examples of events that may constitute Force Majeure include:

acts of God, an act or threatened act of the public enemy, war (imminent, declared or otherwise), blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, cyber-attack, ionizing

radiation, release of hazardous waste or materials, sabotage, terrorist acts, invasion, insurrection, riot, non-site specific industrial disturbance by a union or organized labor (including any non-site specific strike or boycott), pandemics (other than as addressed in Section 16.03 below), fire, flood, lightning, earthquake, hurricane, tornado, waves or winds of extreme force, access to the Selected Project or the Associated New Transmission Facility being limited due to weather or sea state conditions, extreme accumulation of snow or ice, epidemic, explosion or any similar cataclysmic occurrence, acts, inaction or restraints of a governmental authority or NYISO (including NYSERDA, but only with respect to a Force Majeure claimed by Seller; *provided* that in all cases such acts, inaction or restraints do not constitute a change in Applicable Law falling within the scope of Section 4.07 of this Agreement) which temporarily or permanently prevent required performance under this Agreement, including limitations on the scheduling of the Selected Project or the Associated New Transmission Facility installation and maintenance directly arising out of or resulting from such Force Majeure or unavailability of NYGATS.

Under no circumstances shall Force Majeure include (x) any full or partial curtailment in the electric output of the Selected Project that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mechanical or equipment breakdown or other mishap or events or conditions would otherwise qualify as a Force Majeure or (y) any occurrence or event that merely increases the costs or causes economic hardship to a Party. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary permits or qualifications, a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure or be the basis for a claim of Force Majeure, except in each case if any such failure is caused by an underlying Force Majeure.

Section 16.02. Effect of Force Majeure. If either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist or would exist if the Party claiming the Force Majeure used commercially reasonable efforts to cure such circumstances, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of commercially reasonable due diligence. Without limiting any entitlement of NYSERDA to stipulated damages pursuant to Article XV for any termination by Seller or NYSERDA prior to Commercial Operation, neither Party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

Section 16.03. COVID Pandemic Related Impacts. If work on the Selected Project or the Associated New Transmission Facility is delayed, disrupted, suspended, or otherwise materially

impacted as a direct or indirect result of a COVID pandemic-related impact on or after the Effective Date, including, but not limited to, by (i) disruptions to material and/or equipment supply; (ii) illness of personnel and/or unavailability of labor; (iii) acts of government, including quarantines, delays, closures, shutdowns, or other measures, orders, mandates, restrictions, and/or directives; (iv) restrictions and/or directives that specifically are put in place to provide for the health, safety and protection of personnel relating to protection from the COVID pandemic; and/or (v) fulfillment of contractual or legal health and safety obligations associated with the COVID pandemic, then Seller's performance shall be excused and suspended until the later of (x) the termination, expiration, or lapse of the circumstances that give rise to the inability to perform; and (y) in the case of COVID-related supply chain disruptions, the resumption of the ability to obtain the materials and equipment needed to construct the Selected Project and/or the Associated New Transmission Facility. Upon the occurrence of any COVID pandemic-related impact, Seller shall use commercially reasonable efforts to mitigate the effects of such COVID pandemic-related impact, resume normal performance under this Agreement as soon as reasonably practicable, and continue to perform its obligations under this Agreement insofar as they are not affected by such COVID pandemic-related impact.

The relief provided for in this Section 16.03 shall not apply to the extent Seller had knowledge of such a COVID pandemic-related impact prior to the Effective Date. Seller affirms that the Commercial Operation Milestone Date includes all COVID pandemic-related impacts known to Seller as of the Effective Date.

## Article XVII

### Compliance with Certain Laws

#### Section 17.01. Governing Law; Venue; Waiver of Trial by Jury.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles that would require the application of the laws of another jurisdiction. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereby constitute a commercial transaction. The Parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

**(b) EACH OF THE PARTIES HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE PARTIES HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY**

**WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 17.01(b).**

Section 17.02. Laws of the State of New York. Seller shall comply with all of the requirements set forth in Exhibit A hereto. In the event of an irreconcilable conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of Exhibit A hereto, the terms of Exhibit A hereto shall control.

Section 17.03. All Legal Provisions Deemed Included. It is the intent and understanding of Seller and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or Seller, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions. In such event, the Parties shall negotiate such amendment in good faith with the intent that such amendment reflects, as closely as possible, the terms and conditions of this Agreement in effect prior to such amendment; *provided* that such amendment shall not in any event alter (a) the purchase and sale obligations of the Parties pursuant to this Agreement, or (b) the pricing and payment provisions of this Agreement or, in the case of any such laws that are part of a regulatory regime applicable to NYSERDA, materially increase the cost to Seller of performance under this Agreement.

Section 17.04. Permits and Approvals. Seller shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Selected Project and Associated New Transmission Facility over the duration of the Contract Delivery Term, and NYSERDA's obligations to purchase Tier 4 RECs is conditional on Seller's acquisition of such permits and approvals. Nothing in this Agreement in any way replaces or modifies the necessity or applicability of any permit or approval process. Seller shall provide prompt notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process ("Process") by any Federal or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the Selected Project, as well as of any modification, penalty and/or fine that may be imposed or occur as a result of such a Process or violation, in either case which actual or alleged violation, modification, penalty and or fine, if true or imposed, would materially impair Seller's performance of obligations under this Agreement.

Section 17.05. Other Legal Requirements. Nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of each Party to comply with all legal requirements and the references to particular laws of the State of New York in this Article and elsewhere in this Agreement are not intended to be to the exclusion of such obligations of each Party to comply with all legal requirements.

## Article XVIII

### Additional Provisions

Section 18.01. Forward Contract. Each Party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.

Section 18.02. Taxes/Costs. Seller shall be responsible for and obligated to pay all present and future taxes, fees, levies and costs that may be assessed by any entity, including, but not limited to, NYGATS with respect to Seller’s provision of Tier 4 RECs to NYSERDA during the Services Term, or with respect to the measurement, tracking, and verification and participation in NYGATS necessary for the creation and transfer of the Tier 4 RECs and/or the energy with which they are associated, into the NYSERDA NYGATS account pursuant to this Agreement.

Section 18.03. Term. Unless terminated earlier under Article XIV, this Agreement shall expire upon the expiration of the Contract Delivery Term. Upon such date or upon earlier termination of this Agreement under Article XIV, neither Party shall have any further rights or obligation to the other, except that Article I, Section 2.02, the second sentence of Section 2.03, Sections 2.05, 5.01, 5.02, 6.05, 7.01, 11.01, 11.02, 11.03, 14.02, 14.04, 15.07, 15.08, 17.01, 17.03, 17.05, 18.01, 18.02, 18.03, 18.04, 18.05, 18.06, 18.07, 18.09, 19.01, 19.02, 19.03, 20.02, 21.01, 21.02, 21.03, 21.04, and all payment and invoicing provisions under Article IV and Exhibit C shall survive.

Section 18.04. Waiver. Either Party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered by the other Party pursuant hereto, or (c) waive compliance with any of the agreements or conditions of the other Party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No provision of this Agreement will be deemed to have been waived unless the waiver is in writing; no delay by either Party in exercising its rights hereunder, including the right to terminate this Agreement, shall be deemed to constitute or evidence any waiver by such Party of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

Section 18.05. Independent Contractor. The status of Seller under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Seller and its respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA

nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. Nothing in this Agreement shall be construed as creating a partnership, joint venture or other relationship between NYSERDA and Seller for any reason.

Section 18.06. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.

Section 18.07. Seller Expense. Seller shall, at its own expense, make all arrangements necessary to: (a) register the Selected Project and transfer Tier 4 RECs to the NYSERDA NYGATS Account pursuant to this Agreement, and (b) interconnect the Selected Project and comply with the electricity delivery requirements set out in Section 3.01. This requirement encompasses Seller's purchasing or arranging for all services, including, without limitation, transmission, ancillary services, any control area services, line losses and transaction fees necessary to deliver energy to Zone J, in accordance with all rules and protocols of the NYISO, throughout the Contract Delivery Term. NYSERDA shall, at its own expense, make all arrangements necessary to accept the transfer of Tier 4 RECs pursuant to this Agreement, and shall be responsible for any applicable fees or charges incident to the purchase or subsequent sale of Tier 4 RECs to third parties.

Section 18.08. Environmental Disclosure. The Parties agree that, at the time of the execution of this Agreement, New York employs NYGATS for the tracking, registration, and trading of generation attributes, including renewable or environmental attributes or credits, and that NYGATS will be used by the New York State Department of Public Service to accomplish verification of the transactions consummated hereunder as part of the Environmental Disclosure Rules.

Section 18.09. No Third-Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in any persons not party to this Agreement.

Section 18.10. Prevailing Wage. Although this is not a public work covered by NYS Article 8, all laborers, workmen and mechanics (within the meaning of those terms under NYS Labor Law Article 8) performing construction activities within the United States with respect to the Selected Project or the Associated New Transmission Facility, whether through long-term or short-term employment, must be paid wages and benefits in an amount not less than the prevailing rate of wages and benefits that would be applicable in the area where the Selected Project or the Associated New Transmission Facility construction activities occur with respect to such construction activities in New York State under such Article 8 and, with respect to any such United States construction activities outside of New York State, under any prevailing wage law applicable to such construction activities, as though such construction activities constituted public works ("Prevailing Wages"). For construction activities occurring in New York, the Prevailing Wages shall be determined under NYS Labor Law Section 220. For construction activities that occur outside of New York, the Prevailing Wages shall be determined under the

prevailing wage law of the state in which the Selected Project construction activities occur that would be applicable to a public work. This requirement applies: (1) to all laborers, workmen and mechanics performing construction activities, whether direct employees of the Seller or of Seller's subcontractor(s), and (2) regardless of whether or not such employment was claimed as an Economic Benefit in its Proposal. Nothing in this Agreement requires Seller to take any independent action with respect to the failure of any Resource not owned by Seller or its affiliates to comply with this Section 18.10 other than to remove such Resource from the Selected Project; *provided* that Seller will cooperate reasonably with NYSERDA in any action NYSERDA or New York State takes to enforce the obligations set forth in this Section 18.10 against any such Resource.

#### Section 18.11. Project Labor Agreement.

(a) Prior to the date hereof, U.S. Transmission Provider has presented to NYSERDA for its review a plan outlining its intentions with respect to the negotiation of a PLA to cover construction activities within the United States on the U.S. Transmission Line. NYSERDA should be kept reasonably apprised of negotiations as they proceed, and NYSERDA shall have the right to have one or more representatives attend negotiation sessions as it determines is in its best interests. A final form of PLA, agreed to by U.S. Transmission Provider and the trades, consistent with the description in Exhibit G to this Agreement shall be presented to NYSERDA for review and approval no later than three (3) months prior to the commencement of construction on the U.S. Transmission Line (unless extended by NYSERDA, which request for extension shall not be unreasonably withheld, conditioned, or delayed).

(b) In the event U.S. Transmission Provider or its contractor(s) and the trades have not agreed to a final form of PLA three (3) months prior to the start of construction of the U.S. Transmission Line, NYSERDA may appoint a mediator of its own choosing who shall endeavor to assist the parties in their negotiations: (i) upon mutual agreement of U.S. Transmission Provider or its contractor(s) and the trades; or (ii) at the request of either U.S. Transmission Provider or its contractor(s) or the trades. In the event that mediation does not result in a final form of PLA agreed to by U.S. Transmission Provider or the contractor(s) who will perform construction activities on behalf of U.S. Transmission Provider and the trades within three (3) months of the date that the mediator is appointed, NYSERDA shall determine whether the time for negotiations should be extended. In the event that NYSERDA decides not to extend the time for negotiation, NYSERDA may determine that, notwithstanding good faith efforts by U.S. Transmission Provider and its contractor(s), satisfactory completion of PLA negotiations is no longer practicable.

(c) NYSERDA's review of any agreed-upon final form of PLA will be based on the specific terms of the negotiated PLA and will take into account the best interests of NYSERDA with respect to the Selected Project and the Associated New Transmission Facility, and the public it serves, and will include consideration of project viability, the cost-effectiveness of the PLA, and the need for timely completion of the Selected Project. NYSERDA will complete and provide the results of such review to U.S. Transmission Provider within thirty (30) days or the final form of PLA as presented shall be deemed approved. If NYSERDA disapproves the final form of PLA, NYSERDA will identify changes to the final form of PLA that would render it approvable, and Seller will cause U.S. Transmission Provider to promptly resume

negotiations with the trades. No more than sixty (60) days after such disapproval, so long as U.S. Transmission Provider and the trades have negotiated in good faith during that period, NYSERDA will render a determination under Section 18.11(b) of this Agreement regarding whether satisfactory completion of PLA negotiations is no longer practicable.

## Article XIX

### Notices, Entire Agreement, Amendment, Counterparts

#### Section 19.01. Notices.

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

- (1) via certified or registered United States mail, return receipt requested;
- (2) by personal delivery;
- (3) by expedited delivery service; or
- (4) by email, return receipt requested.

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

To Seller: H.Q. Energy Services (U.S.) Inc.  
225 Asylum Street, 27th Floor  
Hartford, CT 06103  
Attention: President  
Email: [despars.pierre@hydroquebec.com](mailto:despars.pierre@hydroquebec.com)

With a copy to: H.Q. Energy Services (U.S.) Inc.  
75 René-Lévesque Boulevard West  
18th floor  
Montréal (Québec), Canada  
H2Z 1A4  
Attention: Legal Affairs and Compliance and Secretary  
Email: [gagnon.pierre5@hydroquebec.com](mailto:gagnon.pierre5@hydroquebec.com)

To NYSERDA: NYSERDA  
Attn: Office of the General Counsel  
17 Columbia Circle  
Albany, New York 12203-6399  
email address: [ceslegal@nyserda.ny.gov](mailto:ceslegal@nyserda.ny.gov)

With a copy to: NYSERDA  
Attn: Large-Scale Renewables - Tier 4  
17 Columbia Circle  
Albany, New York 12203-6399  
email address: [res@nyserda.ny.gov](mailto:res@nyserda.ny.gov)

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

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

Section 19.02. Entire Agreement; Amendment. This Agreement, including the Exhibits and Schedules hereto, embodies the entire agreement and understanding between NYSERDA and Seller and supersedes all prior agreements and understandings, including T4RFP21-1 and the Proposal, relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the Party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.

Section 19.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and electronic signatures shall have the same force and effect as original signatures for all purposes of this Agreement.

## Article XX

### Publicity

Section 20.01. Publicity. Seller will, and will cause the Selected Project owner and Transmission Providers to, collaborate with NYSERDA with regard to the preparation of any press release, public announcement, publication or media interview with respect to the Parties' entry into this Agreement or the subject matter thereof or which concerns NYSERDA or the Tier 4 program. To the extent applicable, in any such press release, public announcement publication, or media interview Seller shall, and shall cause Transmission Providers and its or their respective employees to, credit NYSERDA and the funding participation of the Tier 4 program in the activities of the Associated New Transmission Facility and the Selected Project that concern NYSERDA or the Tier 4 program. Seller may not, and shall not allow Transmission Providers to, represent that positions taken or advanced by Seller or Transmission Providers, as applicable, represent the opinion or position of NYSERDA, the PSC, or the State of New York.

Section 20.02. Publication of Agreement. Seller acknowledges that NYSERDA may file this Agreement publicly with the PSC or otherwise publish the Agreement. Prior to such publication, NYSERDA will redact any critical electric infrastructure information contained in the Agreement, including in the exhibits hereto, and will consider Seller's requests for the redaction of confidential business information; *provided, however*, that NYSERDA shall not accept any such request to redact price information contained in this Agreement.

## Article XXI

### Confidentiality

Section 21.01. Seller Authorization. Seller may be required to authorize the direct transfer to NYSERDA by an energy market administrator or the operator of the transmission and/or distribution system into which the energy from the Selected Project is delivered of such transactional and/or delivery information and data as is reasonably required for the verification of attribute creation and electricity delivery, and thereby to waive confidentiality solely with respect to the authorized disclosure of such information and data to NYSERDA. To the maximum extent allowed by law, NYSERDA shall treat any such information so received in accordance with the applicable confidentiality requirements of the energy market administrator or transmission operator.

Section 21.02. Freedom of Information Law. Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL"). See Public Officers' Law Article 6.

Section 21.03. Trade Secrets/Commercial Information. The FOIL (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” If NYSERDA receives a request from a third party for information or a document received from Seller and that has been marked “Confidential” or “Proprietary,” NYSERDA will process such request under the procedures provided by NYSERDA’s FOIL regulations (codified as of the Effective Date in 21 NYCRR Part 501).

Section 21.04. Claim of Confidentiality. Information of any tangible form, including any document that Seller wishes to be protected from disclosure to third parties, including any information provided as a part of a Proposal submitted in response to T4RFP21-1, must be marked “Confidential” or “Proprietary” at the time such information is provided to NYSERDA. Seller shall not be required to submit information to NYSERDA in a non-confidential, non-proprietary format. NYSERDA reserves the right to make public, after the fifth anniversary of the Contingent Award Notification Date, this Agreement, in its entirety or in part.

[Signature Page Follows]

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

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

NEW YORK STATE ENERGY RESEARCH  
AND DEVELOPMENT AUTHORITY

By:



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Name: Pierre Despars

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Title: Chairman and President

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Date: November 29, 2021

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By:

**Doreen M. Harris** Digitally signed by Doreen M. Harris  
Date: 2021.11.29 17:34:42 -05'00'

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Name: Doreen Harris

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Title: President and CEO

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Date: November 29, 2021

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**EXHIBITS AND SCHEDULES TO TIER 4 RENEWABLE ENERGY CERTIFICATE  
STANDARD FORM PURCHASE AND SALE AGREEMENT**

Exhibit A	Standard Terms and Conditions for all NYSERDA Agreements
Exhibit B	Form of Irrevocable Standby Letter of Credit
Exhibit C	NYSERDA Prompt Payment Policy
Exhibit D	Form of Guaranty
Exhibit E	Description of Selected Project
Exhibit F	Economic Benefits Claims and Verification
Exhibit G	Project Labor Agreement Requirements
Exhibit H	Calculation of Supplier GHG Baseline Limit and Adjustments to Supplier GHG Baseline
Exhibit I-1	Framework for Provision of Disadvantaged Community Benefits
Exhibit I-2	Environmental and Community Benefit Programs
Exhibit J	Hudson River Construction and Operational Protections
Schedule 3.01	Delivery Verification Plan

EXHIBIT A

REVISED 12/19

STANDARD TERMS AND CONDITIONS  
FOR ALL NYSERDA AGREEMENTS

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

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

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if Contractor submits information that Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation

concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.ny.gov/about/foil2.html>) and NYSERDA's Regulations, Part 501 <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>.

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

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

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

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

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

made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business 625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884  
<http://www.esd.ny.gov>

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

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

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

(b) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).

(c) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).

(d) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law (See <https://ogs.ny.gov/iran-divestment-act-2012>).

21. COMPLIANCE WITH NEW YORK STATE DIESEL EMISSION REDUCTION ACT (DERA) OF 2006. Contractor shall comply with and, if applicable to this Agreement, provide proof of compliance with the New York State Diesel Emission Reduction Act of 2006 (“DERA”), Environmental Conservation Law (ECL) Section 19-0323, and the NYS Department of Environmental Conservation (DEC) Law implementing regulations under 6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel (ULSD) and Best Available Retrofit Technology (“BART”). Compliance includes, but is not limited to, the development of a heavy-duty diesel vehicle (HDDV), maintaining documentation associated with BART evaluations, submitting to and receiving DEC approval of a technology or useful-life waiver, and maintaining records where BART-applicable vehicles are primarily located or garaged. DEC regulation under 6

NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Technology for Heavy Duty Vehicles can be found at: <https://www.dec.ny.gov/regs/2492.html>.

22. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

EXHIBIT B

LETTER OF CREDIT

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_

BENEFICIARY:

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY  
17 COLUMBIA CIRCLE, ALBANY, NEW YORK 12203-6399

LADIES AND GENTLEMEN:

BY THE ORDER OF:

[SELLER]

[SELLER'S ADDRESS]

WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: \_\_\_\_\_ IN YOUR FAVOR FOR THE ACCOUNT OF \_\_\_\_\_ (THE "SELLER") FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE [STATE IN WORDS] U.S. DOLLARS AVAILABLE BY YOUR DRAFTS AT SIGHT ON [INSERT NAME AND ADDRESS OF ISSUING BANK], NEW YORK, NEW YORK, USA, WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX A HERETO (THE "SIGHT DRAFT"); AND
2. A DATED PAYMENT CERTIFICATE PURPORTEDLY SIGNED BY A DULY AUTHORIZED OFFICER OF NYSEDA IN THE FORM OF ANNEX B HERETO (THE "PAYMENT CERTIFICATE").

MULTIPLE DRAWINGS ARE PERMITTED IN AMOUNTS NOT TO EXCEED, IN COMBINATION, THE AGGREGATE AMOUNT.

DRAWINGS PRESENTED BY FACSIMILE TO FACSIMILE NUMBER \_\_\_\_\_ ARE ACCEPTABLE; PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT BE PRESENTED.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR PAYMENT CERTIFICATE AND SIGHT DRAFT PRESENTED IN FULL COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT ON OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE EXPIRATION DATE HEREOF. THIS LETTER OF CREDIT WILL EXPIRE ON [INSERT DATE] SUBJECT TO THE FOLLOWING SENTENCE. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED FOR SUCCESSIVE ADDITIONAL PERIODS OF ONE YEAR FROM ANY FUTURE EXPIRATION DATE HEREOF, WITHOUT AMENDMENT, UNLESS AT LEAST 90 DAYS PRIOR TO ANY SUCH EXPIRATION DATE WE NOTIFY YOU BY COURIER OR REGISTERED

MAIL THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD.

PAYMENT AGAINST CONFORMING DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT SHALL BE MADE BY US AT OR BEFORE 5:00 P.M., NEW YORK TIME, ON THE SECOND (OR, IN THE CASE OF A PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE THIRD) BANKING DAY AFTER PRESENTATION.

ALL PAYMENTS MADE BY US UNDER THIS LETTER OF CREDIT WILL BE MADE IN IMMEDIATELY AVAILABLE FUNDS AND WILL BE DISBURSED FROM OUR OWN FUNDS. IF REQUESTED BY YOU, PAYMENT UNDER THIS

LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK FUNDS TO YOUR ACCOUNT IN A BANK ON THE FEDERAL RESERVE WIRE SYSTEM. BENEFICIARY'S BANK [INSERT NAME AND ACCOUNT NUMBER].

THIS LETTER OF CREDIT IS NOT TRANSFERABLE. ONLY YOU MAY MAKE ANY PAYMENT CERTIFICATE AND SIGHT DRAFT UNDER THIS LETTER OF CREDIT.

ANY SIGHT DRAFT DRAWN HEREUNDER MUST BE MARKED "DRAWN UNDER [INSERT NAME AND ADDRESS OF ISSUING BANK], STANDBY LETTER OF CREDIT NUMBER [INSERT] DATE [INSERT]."

ALL BANK CHARGES INCLUDING BUT NOT LIMITED TO, FEES OR COMMISSIONS, SHALL BE FOR APPLICANT'S ACCOUNT.

#### MISCELLANEOUS

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED OR TO WHICH IT RELATES (INCLUDING, WITHOUT LIMITATION, THE AGREEMENT) AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR INSTRUMENT.

WE HEREBY AGREE WITH YOU THAT EACH DULY COMPLETED PAYMENT CERTIFICATE AND SIGHT DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO US ON OR BEFORE THE EXPIRY DATE. THE OBLIGATION OF [ISSUING BANK] UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF [ISSUING BANK] AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 600 (PROVIDED, HOWEVER, THAT DRAWINGS PERMITTED HEREUNDER SHALL NOT BE DEEMED TO BE DRAWINGS BY INSTALLMENTS WITHIN ARTICLE 32 OF THE UCP) AND AS TO MATTERS NOT GOVERNED BY THE UCP, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. FEDERAL LAW.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF OUR STANDBY LETTER OF CREDIT UNIT, INCLUDING THE LETTER OF CREDIT REFERENCE NUMBER AS IT APPEARS ABOVE.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, INDIVIDUALS, ENTITIES, AND

VESSELS. OUR ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

[NAME AND ADDRESS OF ISSUING BANK]

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AUTHORIZED SIGNATURE  
OF OFFICER OF ISSUING BANK

Annex A to Exhibit B - Irrevocable Standby Letter of Credit

SIGHT DRAFT

Letter of Credit No. \_\_\_\_\_

Date of Letter of Credit: \_\_\_\_\_

Date of Draft: \_\_\_\_\_

FOR VALUE RECEIVED

Pay on Demand to: THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, U.S. \_\_\_\_\_ Dollars (U.S. \$\_\_\_\_\_). The amount of this draft does not exceed the amount available to be drawn by the Beneficiary under the Letter of Credit.

Charge to account of [Name of Seller].

Drawn under [Name of Bank] Letter of Credit No. \_\_\_\_\_.

Payment by the bank pursuant to this drawing shall be made to \_\_\_\_\_, ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention: \_\_\_\_\_, Re: \_\_\_\_\_.

To: [Issuing Bank]  
[Address]  
Attention: \_\_\_\_\_

\_\_\_\_\_  
As Beneficiary

By: \_\_\_\_\_  
[Name and Title]

Annex B to Exhibit B - Irrevocable Standby Letter of Credit

PAYMENT CERTIFICATE

To:  
[Issuing Bank]  
[Address]

Re: Irrevocable Standby Letter of Credit No: \_\_\_\_\_ [Insert]

The undersigned, a duly authorized officer of the undersigned Beneficiary, hereby certifies to [Issuing Bank], with reference to the Irrevocable Standby Letter of Credit No: [Insert] (“Letter of Credit”), that Seller, having provided the Letter of Credit to the New York State Energy Research and Development Authority (“NYSERDA”) as Security for performance under NYSERDA Agreement No. \_\_\_\_\_ (“Agreement”) in the aggregate amount of \$ \_\_\_\_\_, (“Letter of Credit Amount”) either [check the appropriate space]:

\_\_\_\_\_ Seller failed to provide and maintain contract security in the manner required by Article XV of Agreement, under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

\_\_\_\_\_ The Agreement has been terminated prior to Commercial Operation; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

\_\_\_\_\_ Seller has assigned its rights under the Agreement and the assignee has not delivered to the undersigned Beneficiary a replacement letter of credit satisfying the requirements of the Agreement; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

\_\_\_\_\_ the Letter of Credit is currently set to expire within thirty (30) days and the Seller has not made arrangements acceptable to the undersigned Beneficiary to provide a substitute letter of credit prior to such expiration; under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

The terms used herein which are not specifically defined herein are defined in the Letter of Credit or the Agreement, referenced above.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this payment Certificate as of the \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
As Beneficiary

By: \_\_\_\_\_  
[Name and Title]

## EXHIBIT C

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

#### **504.1. Purpose and Applicability.**

(a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>3</sup>

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

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

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

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

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

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

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

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including, but not limited to, any requirements set forth in this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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<sup>3</sup> This is only a summary; the full text of Part 504 can be accessed at: <https://www.nyserda.ny.gov/About/New-York-State-Regulations>

(g)(1) “Receipt of an Invoice” means:

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

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

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

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

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

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

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

**504.4. Payment Procedures.**

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

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

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

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

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

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

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

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the

inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

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

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 109 6(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

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

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

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Article XIX of this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; *provided, however*, in no event shall the extended review period exceed thirty (30) working days.

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

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

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

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

## EXHIBIT D

### FORM OF GUARANTY

THIS GUARANTY is dated and effective as of \_\_\_\_\_ (as amended, restated or modified from time to time, the “Guaranty”), and is made by \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the \_\_\_\_\_, having a principal business address of \_\_\_\_\_ (the “Guarantor”), in favor of the New York State Energy Research and Development Authority (“NYSERDA”), a New York public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203. NYSEDA and Guarantor are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.” All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement (defined below).

WHEREAS, pursuant to that certain Tier 4 Renewable Energy Certificate Purchase and Sale Agreement dated as of \_\_\_\_\_ (the “Agreement”) by and between \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the \_\_\_\_\_ (the “Seller”), and NYSEDA, the Seller has agreed sell to NYSEDA and NYSEDA has agreed to purchase from Seller certain renewable energy certificates (“Tier 4 RECs”), as more specifically set forth in the Agreement; and

WHEREAS, in order to induce NYSEDA to purchase the Tier 4 RECs, and as required under the Agreement, Guarantor has agreed to execute and deliver this Guaranty to NYSEDA, for the benefit of NYSEDA, as security for Seller’s performance of certain of its obligations under the Agreement;

WHEREAS, Guarantor is a \_\_\_\_\_ of Seller and will significantly benefit, directly or indirectly, from NYSEDA’s purchase of the Tier 4 RECs from the Seller pursuant to the Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties each intending to be legally bound, hereby do agree as follows:

#### 1. GUARANTY.

(a) Guarantor irrevocably, absolutely and unconditionally guarantees as a primary obligor and not merely as surety, to NYSEDA, the full and prompt payment by Seller in accordance with the Agreement, no later than five (5) business days following written demand to Guarantor by NYSEDA, of an amount in U.S. dollars equal to the Contract Security that (i) is calculated in accordance with Sections 15.01 and 15.02 of the Agreement, and (ii) NYSEDA is entitled to retain under the Agreement (the “Guaranteed Obligations”); *provided* that Guarantor’s aggregate liability under this Guaranty, including, without limitation, on account of the Guaranteed Obligations, shall not exceed [ ] Dollars (\$ ) under any circumstances (“Guaranty Capped Value”).

(b) Guarantor understands, agrees and confirms that NYSERDA may enforce this Guaranty up to the lesser of (i) the full amount of the Guaranteed Obligations and (ii) the Guaranty Capped Value, against Guarantor without proceeding against Seller or under any other guaranty covering all or a portion of the Guaranteed Obligations. This Guaranty is a guaranty of prompt payment and performance and not of collection, and is limited to payment and performance of the Guaranteed Obligations up to the Guaranty Capped Value.

2. LIABILITY OF GUARANTOR ABSOLUTE. The liability of Guarantor hereunder is primary, absolute and unconditional and is exclusive and independent of any security for or other guaranty of the obligations of Seller whether executed by Guarantor, any other guarantor or by any other party, and the liability of Guarantor hereunder shall not be affected or impaired by any circumstance or occurrence whatsoever (other than payment), including, without limitation: (a) any other continuing or other guaranty, undertaking or maximum liability of Guarantor or of any other party as to the Guaranteed Obligations, (b) any payment on or in reduction of any such other guaranty or undertaking, (c) any dissolution, termination or increase, decrease or change in personnel by Seller, (d) the failure of either Guarantor to receive any benefit from or as a result of its execution, delivery and performance of this Guaranty, (e) any payment made to NYSERDA pursuant to the Agreement that NYSERDA repays Seller pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, (f) any action or inaction by NYSERDA as contemplated in Section 5 hereof, (g) any invalidity, rescission, irregularity or unenforceability of all or any part of the Guaranteed Obligations, (h) any statute of limitations affecting its liability hereunder or the enforcement thereof, which Guarantor hereby waives to the fullest extent permitted by applicable law, (i) any law that provides that the obligation of a guarantor must neither be larger in amount or in other respects more burdensome than that of the principal or that reduces a guarantor's obligation in proportion to the principal obligation, (j) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any person, including, without limitation, any discharge of, or bar or stay against collecting, all or any of the Guaranteed Obligations in or as a result of any such proceeding, (i) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code, or (j) the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF GUARANTOR. In order to induce NYSERDA to enter into the purchase of Tier 4 RECs pursuant to the Agreement, Guarantor represents, warrants and covenants that:

(a) Guarantor (i) is a duly organized and validly existing corporation, partnership, or limited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization and (ii) has the corporate, trust, partnership or limited liability company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage;

(b) Guarantor has the corporate, trust, partnership or limited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of this Guaranty and has taken all necessary corporate, trust, partnership or limited liability

company action, as the case may be, to authorize the execution, delivery and performance by it of this Guaranty;

(c) Guarantor has duly executed and delivered this Guaranty, and this Guaranty constitutes the legal, valid and binding obligation of such Guarantor enforceable in accordance with its terms (except as may be limited by bankruptcy, insolvency, reorganization or other similar Laws relating to or affecting creditors' rights generally and by general equitable principles);

(d) neither the execution, delivery or performance by Guarantor of this Guaranty, nor compliance by it with the terms and provisions hereof, will (i) contravene any provision of any applicable law, statute, rule or regulation or any applicable order, writ, injunction or decree of any court or governmental instrumentality or (ii) conflict with, violate or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which Guarantor is a party, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty; and

(e) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any subdivision thereof (except as have been obtained or made prior to the date when required and which remain in full force and effect), is required to authorize, or is required in connection with, (i) the execution, delivery and performance of this Guaranty by such Guarantor or (ii) the legality, validity, binding effect or enforceability of this Guaranty, in each case, except where non-compliance would not reasonably be expected to have a material adverse effect upon the legality, validity, binding effect or enforceability against Guarantor of this Guaranty.

#### 4. WAIVERS BY GUARANTOR.

(a) Except as set forth in Section 1, Guarantor hereby waives to the fullest extent permitted by applicable law notice of acceptance of this Guaranty and notice of the existence, creation or incurrence of any new or additional liability to which it may apply, and waives promptness, diligence, presentment, demand of payment, demand for performance, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking of other action by NYSERDA against, and any other notice to, any party liable thereon (including Guarantor, any other guarantor or Seller) and Guarantor further hereby waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice or proof of reliance by NYSERDA upon this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended, modified, supplemented or waived, in reliance upon this Guaranty.

(b) Guarantor waives any right to require NYSERDA to: (i) proceed against Seller, any other guarantor of the Guaranteed Obligations or any other party; (ii) file or enforce a claim in any bankruptcy or other proceeding with respect to any person; and (iii) pursue any remedy in NYSERDA's power whatsoever. Guarantor waives any and all defenses based on or arising out of any defense of Seller, any other guarantor of the Guaranteed Obligations or any other party, including, without limitation, (1) defenses arising from the bankruptcy, insolvency, dissolution

or liquidation of the Seller, or any injunction, stay or similar action in any bankruptcy, insolvency or other proceeding barring or limiting payment of any Guaranteed Obligation by the Seller; (2) defenses relating to the power or authority of the Seller to enter into the Agreement, and to perform the Guaranteed Obligations thereunder, including, without limitation, any lack or limitation of status or of power, or any incapacity or disability, of the Seller, or of any other guarantor or obligor in respect of any Guaranteed Obligation, or any change whatsoever in the

(c) capital structure, constitution or business of the Seller; (3) defenses arising from any release or amendment or waiver of, or consent to departure from, any other guarantee or support document, or any exchange, release or non-perfection of any collateral, for any Guaranteed Obligation; and (4) defenses arising from any event or circumstance constituting fraud in the inducement or any other similar event or circumstance; except that such waiver shall not include a defense of the Seller arising from (i) payment in cash of the Guaranteed Obligations, or (ii) Seller's entitlement to a refund of all or a portion of the Contract Security pursuant to the terms of Section 15.07 of the Agreement. NYSERDA may, at its election, exercise any right or remedy it may have against Seller or any other party, or any security, without affecting or impairing in any way the liability of Guarantor hereunder except to the extent the Guaranteed Obligations have been paid in cash (by Guarantor, Seller and/or another party) or the Guaranty Capped Value has been paid in full in cash by Guarantor or Seller. Guarantor waives any defense arising out of any such election by NYSERDA, even though such election operates to impair or extinguish any right of reimbursement, contribution, indemnification or subrogation or other right or remedy of Guarantor against Seller, any other guarantor of the Guaranteed Obligations or any other party or any security.

(d) Guarantor has knowledge and assumes all responsibility for being and keeping itself informed of Seller's affairs and assets and of all other circumstances bearing upon the likelihood of events giving rise to NYSERDA's right to retain the amounts of the Contract Security in accordance with the terms of the Agreement, and has adequate means to obtain from Seller on an ongoing basis information relating thereto and Seller's ability to perform its obligations under the Agreement, and agrees to assume the responsibility for keeping, and to keep, so informed for so long as this Guaranty is in effect.

(e) Guarantor warrants and agrees that each of the waivers set forth in Section 2 and in this Section 4 is made with full knowledge of its significance and consequences and that if any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by applicable law.

5. RIGHTS OF NYSERDA. NYSERDA may at any time and from time to time without the consent of, or notice to, Guarantor, without incurring responsibility to Guarantor, without impairing or releasing the obligations or liabilities of Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment of the Contract Security pursuant to the terms of the Agreement, which may have the effect of changing the amount of the Guaranteed Obligations, and the guaranty herein made shall apply to the Guaranteed Obligations as so changed; *provided* that in no event shall the amount exceed the Guaranty Capped Value;

(b) exercise or refrain from exercising any rights against Seller, any other guarantor of Seller or others or otherwise act or refrain from acting;

(c) consent to or waive any breach of, or any act, omission or default under, the Agreement or any of the instruments or agreements referred to therein, or otherwise amend, modify or supplement the Agreement or any of such other instruments or agreements;

(d) act or fail to act in any manner which may deprive Guarantor of its right to subrogation against Seller to recover full indemnity for any payments made pursuant to this Guaranty; and/or

(e) take any other action or omit to take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of Guarantor from its liabilities under this Guaranty (including, without limitation, any action or omission whatsoever that might otherwise vary the risk of such Guarantor or constitute a legal or equitable defense to or discharge of the liabilities of a guarantor or surety or that might otherwise limit recourse against such Guarantor).

6. CONTINUING GUARANTY. This Guaranty is a continuing one, effective during the term of the Agreement and until payment in full of the lesser of (a) all Guaranteed Obligations and (b) the Guaranty Capped Value; *provided, however*, that, notwithstanding anything herein to the contrary, this Guaranty and all of the Guarantor's obligations hereunder shall immediately and automatically terminate and be of no further force or effect on the date on which NYSERDA is required under Section 15.07 to return to Seller and cancel all Contract Security [described in Section 15.03 of the Agreement]<sup>4</sup>. All liabilities to which this Guaranty applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of NYSERDA in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies that NYSERDA would otherwise have. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of NYSERDA to any other or further action in any circumstances without notice or demand, in each case, except to the extent required by Section 1.

7. EXPENSES. Guarantor hereby agrees to pay all reasonable out-of-pocket costs and expenses of NYSERDA in connection with the enforcement of this Guaranty and the protection of NYSERDA's rights hereunder and any amendment, waiver or consent relating hereto (including, in each case, without limitation, the reasonable out-of-pocket fees and disbursements of counsel employed or retained by NYSERDA).

8. BENEFIT AND BINDING EFFECT. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of NYSERDA and its

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<sup>4</sup> Applicable only for an Acceptable Guaranty issued solely to provide Contract Security pursuant to Section 15.03 of the Agreement.

successors and assigns. NYSERDA may not assign its rights or interest hereunder to any other person without the prior written consent of Guarantor.

9. AMENDMENTS; WAIVERS. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except with the written consent of Guarantor directly affected thereby and with the written consent of NYSERDA.

10. NOTICE. All notices and other communications shall be in writing and addressed to the applicable party at (a) in the case of NYSERDA, as provided in the Agreement, and (b) in the case of Guarantor, at its address set forth opposite its signature page below; or in any case at such other address as any of the persons listed above may hereafter notify the others in writing.

11. CONSENT TO JURISDICTION; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

This Guaranty shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles that would require the applicable of the laws of another jurisdiction. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Guaranty shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action. Guarantor further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at its address set forth opposite its signature below, such service to become effective 30 days after such mailing. Guarantor hereby irrevocably waives any objection to such service of process and further

(a) Guarantor irrevocably waives and agrees not to plead or claim in any action or proceeding commenced hereunder that such service of process was in any way invalid or ineffective. Nothing herein shall affect the right of NYSERDA to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Guarantor in any other jurisdiction.

(b) Guarantor and NYSERDA (by its acceptance of the benefits of this Guaranty) hereby irrevocably waives (to the fullest extent permitted by applicable law) any objection that it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Guaranty brought in the courts referred to in Section 11 above and hereby further irrevocably waives and agrees not to plead or claim in any such court that such action or proceeding brought in any such court has been brought in an inconvenient forum.

**(c) GUARANTOR AND NYSERDA (BY ITS ACCEPTANCE OF THE BENEFITS OF THIS GUARANTY) HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM**

**ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS  
CONTEMPLATED HEREBY.**

12. COUNTERPARTS. This Guaranty may be executed in any number of counterparts and by the Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered as of the date first above written.

Address: \_\_\_\_\_

as Guarantor

By: \_\_\_\_\_

Name:

Title:

Accepted and Agreed to:

NYSERDA

By: \_\_\_\_\_

Name:

Title:

EXHIBIT E

DESCRIPTION OF SELECTED PROJECT

**Selected Project:**

<b>Resource Name</b>	<b>Location</b>	<b>Capacity (MW)</b>	<b>Technology Type</b>	<b>Expected Date Online<sup>5</sup></b>
Beauharnois	St-Laurent	1,911.96	Hydroelectric	09/09/2017
Beaumont	St-Maurice	270.00	Hydroelectric	09/09/2017
Bersimis-1	Betsiamites	1,178.00	Hydroelectric	09/09/2017
Bersimis-2	Betsiamites	844.55	Hydroelectric	09/09/2017
Brisay	La Grande Rivière	469.30	Hydroelectric	09/09/2017
Bryson	Outaouais / Gatineau	56.00	Hydroelectric	09/09/2017
Carillon	Outaouais / Gatineau	752.68	Hydroelectric	09/09/2017
Cèdres	Saint-Laurent	113.12	Hydroelectric	09/09/2017
Chelsea	Outaouais / Gatineau	152.00	Hydroelectric	09/09/2017
Chute-Allard	Saint-Maurice	62.00	Hydroelectric	09/09/2017
Chute-Bell	Outaouais / Gatineau	9.99	Hydroelectric	09/09/2017
Chute-des-Chats	Outaouais / Gatineau	91.80	Hydroelectric	09/09/2017
Chute-Hemmings	Saint-François	28.80	Hydroelectric	09/09/2017
Drummondville	Saint-François	16.21	Hydroelectric	09/09/2017
Eastmain-1	La Grande Rivière	480.00	Hydroelectric	09/09/2017
Bernard Landry (f/k/a Eastmain-1-A)	La Grande Rivière	768.00	Hydroelectric	09/09/2017
Hart-Jaune	Manicouagan	51.00	Hydroelectric	09/09/2017
La Gabelle	Saint-Maurice	131.25	Hydroelectric	09/09/2017
La Grande-1	La Grande Rivière	1,436.40	Hydroelectric	09/09/2017
La Grande-2-A	La Grande Rivière	2,106.00	Hydroelectric	09/09/2017
La Grande-3	La Grande Rivière	2,416.80	Hydroelectric	09/09/2017
La Grande-4	La Grande Rivière	2,778.75	Hydroelectric	09/09/2017
La Tuque	Saint-Maurice	294.30	Hydroelectric	09/09/2017
Laforge-1	La Grande Rivière	877.80	Hydroelectric	09/09/2017
Laforge-2	La Grande Rivière	319.20	Hydroelectric	09/09/2017
Manic 1	Manicouagan	184.41	Hydroelectric	09/09/2017
Jean-Lesage (f/k/a Manic-2)	Manicouagan	1,229.40	Hydroelectric	09/09/2017
René Lévesque (f/k/a Manic-3)	Manicouagan	1,326.00	Hydroelectric	09/09/2017
Manic-5	Manicouagan	1,596.00	Hydroelectric	09/09/2017
Manic-5-PA	Manicouagan	1,064.00	Hydroelectric	09/09/2017
Mercier	Outaouais / Gatineau	55.10	Hydroelectric	09/09/2017

<sup>5</sup> For operating Resources the listed date is the date of the last hydropower Resource from HQ Hydropower Resources that has been commissioned.

<b>Resource Name</b>	<b>Location</b>	<b>Capacity (MW)</b>	<b>Technology Type</b>	<b>Expected Date Online<sup>5</sup></b>
Mitis-1	Mitis	6.40	Hydroelectric	09/09/2017
Mitis-2	Mitis	4.25	Hydroelectric	09/09/2017
Outardes-2	Aux Outardes	522.75	Hydroelectric	09/09/2017
Outardes-3	Aux Outardes	1,026.00	Hydroelectric	09/09/2017
Outardes-4	Aux Outardes	784.80	Hydroelectric	09/09/2017
Paugan	Outaouais / Gatineau	215.68	Hydroelectric	09/09/2017
Péribonka	Péribonka	385.00	Hydroelectric	09/09/2017
Première-Chute	Outaouais / Gatineau	130.50	Hydroelectric	09/09/2017
Rapide-2	Outaouais / Gatineau	67.20	Hydroelectric	09/09/2017
Rapide-7	Outaouais / Gatineau	67.20	Hydroelectric	09/09/2017
Rapide-Blanc	Saint-Maurice	204.00	Hydroelectric	09/09/2017
Rapides-des-Coeurs	Saint-Maurice	76.00	Hydroelectric	09/09/2017
Rapides-des-Îles	Outaouais / Gatineau	175.82	Hydroelectric	09/09/2017
Rapides-des-Quinze	Outaouais / Gatineau	108.96	Hydroelectric	09/09/2017
Rapides-Farmers	Outaouais / Gatineau	104.40	Hydroelectric	09/09/2017
Rivière-des-Prairies	Outaouais / Gatineau	54.00	Hydroelectric	09/09/2017
Robert-Bourassa	La Grande Rivière	5,616.00	Hydroelectric	09/09/2017
Rocher-de-Grand-Mère	Saint-Maurice	230.00	Hydroelectric	09/09/2017
Romaine-1	Romaine	270.00	Hydroelectric	09/09/2017
Romaine-2	Romaine	640.00	Hydroelectric	09/09/2017
Romaine-3	Romaine	395.00	Hydroelectric	09/09/2017
Romaine-4	Romaine	245.00	Hydroelectric	11/01/2022
Sainte-Marguerite-3	Saint-Marguerite	882.00	Hydroelectric	09/09/2017
Sarcelle	La Grande Rivière	150.00	Hydroelectric	09/09/2017
Sept-Chutes	Sainte-Anne-du-Nord	21.60	Hydroelectric	09/09/2017
Shawinigan-2	Saint-Maurice	200.25	Hydroelectric	09/09/2017
Shawinigan-3	Saint-Maurice	193.80	Hydroelectric	09/09/2017
Toulnustouc	Manicouagan	525.60	Hydroelectric	09/09/2017
Trenche	Saint-Maurice	302.40	Hydroelectric	09/09/2017
McCormick	Manicouagan	392.4	Hydroelectric	09/09/2017



**Associated New Transmission Facility:** The Associated New Transmission Facility consists of the Québec Transmission Line and the U.S. Transmission Line. Collectively, these two projects are effectively a single physical HVDC system with separate ownership on each side of the border. The Associated New Transmission Facility will include (i) an expansion of the transmission grid in Québec, consisting of a new HVDC converter to be located within to the existing Hertel Substation in Québec, Canada and approximately 37 miles of +/- 400 kV underground DC cables extending from the new converter station in Québec to the international border (the Québec Transmission Line) and (ii) a new transmission facility in New York, consisting of approximately 339 miles of +/- 400 kV underground DC cables extending from the international border to a new HVDC converter station to be located near the Astoria Annex Substation in Queens, New York (the U.S. Transmission Line). The Québec Transmission Line

will be developed to interconnect with the U.S. Transmission Line at the international border. The U.S. Transmission Line will interconnect with the NYISO transmission system at the Astoria Annex Substation in Queens, New York (Zone J). Both portions of the Associated New Transmission Facility will be constructed in parallel.

The Associated New Transmission Facility will be constructed between a single withdrawal point at the Hertel Substation in Québec, Canada and a single Delivery Point at the Astoria Annex Substation in Queens, New York (Zone J). It will be a 1,250 MW, two terminal, HVDC transmission system.

The Associated New Transmission Facility will utilize a 1,250 MW HVDC cable circuit operating at  $\pm 400$  kV, comprised of two XLPE cables for both the land and aquatic portions of the cable route. The Associated New Transmission Facility will use HVDC voltage-sourced converter(s), which allows for fully independent control of both the active and the reactive power flow over its operating range.

The Parties acknowledge that (i) the U.S. Transmission Line has been sited in accordance with Article VII of the New York State Public Service Law and (ii) the Quebec Transmission Line is being sited in accordance with the equivalent applicable local and provincial processes (the “Quebec Siting Process”). Accordingly, the siting of the Associated New Transmission Facility is not determined by this Agreement. If any modifications to the route of the Associated New Transmission Facility are required, Article VII of the New York State Public Service Law or the Quebec Siting Process, as applicable, will govern the process for making such modifications, and any such modifications arising out of such processes shall not constitute a breach of the Agreement nor shall it give rise to a modification of the Tier 4 REC Price.

The table below provides an overview of the U.S. Transmission Line

MW Capability	1,250 MW
Withdrawal Point	Hertel Substation, Québec, Canada
Delivery Point	Astoria Annex Substation, Queens, New York (Zone J)
Proposed Route	Approximately 339 miles in the U.S.

Converter station for U.S. Transmission Line:

The U.S. Transmission Line will include a new  $\pm 400$  kV DC / 345 kV AC converter station to be located in Astoria, Queens, New York. This facility will use HVDC Voltage Source Converter technology and will connect to the Astoria Annex Substation via a 345 kV AC transmission facility of approximately 1600 feet in length.

Cable system for U.S. Transmission Line:

The U.S. Transmission Line will include a  $\pm 400$  kV symmetric monopole HVDC underground cable system that will include two XLPE cables and that will be installed from the international border to the new HVDC converter station in Astoria.

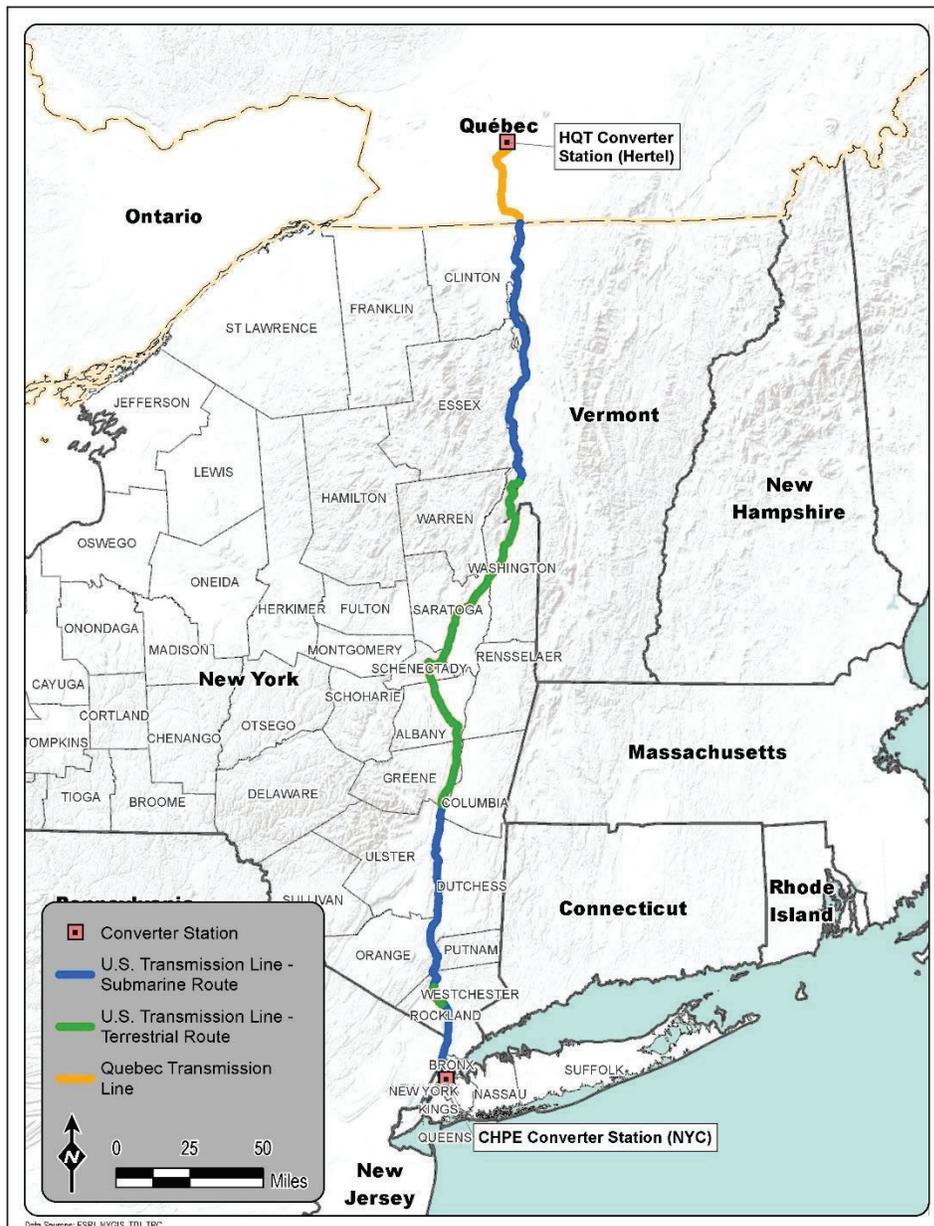
The Québec Transmission Line consists of the following transmission facilities:

(1) Core Project Elements:

(a) Transmission Line Equipment: New 37 mile +/- 400 kV underground DC cables extending from the Hertel Substation in Québec, Canada to the international border

(b) Substation Equipment: New HVDC converter connected to the 735 kV AC bus of the Hertel Substation in Québec, Canada and associated 735 kV bus work

(2) Network Upgrades: Substation Equipment: Addition of one 100 Mvar shunt capacitor to the 120 kV AC bus of the Montérégie Substation in Québec, Canada



**Delivery Point:** Astoria Annex Substation, Queens, New York (Zone J).

**Bid Quantity:** 10,402,500 MWh.

## EXHIBIT F

### ECONOMIC BENEFITS CLAIMS AND VERIFICATION

#### I. Definitions

For purposes of this Exhibit F, the following definitions apply:

Agreed-Upon Procedures Report (AUPR) – a confidential report of findings based on specific procedures performed on a subject matter; defined by the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements, Number 18, Attestation Standards: Clarification and Recodification. Independent CPAs performing an AUPR do not provide an opinion or negative assurance. Instead, the AUPR is in the form of procedures and the Independent CPA's findings resulting from the performance of those procedures. It is produced by the Independent CPA pursuant to this Exhibit F to support Seller's economic benefits claims.

Claimed Expense – an expenditure included as an Eligible Economic Benefit in the Economic Benefits Report prepared by the Seller.

Eligible Economic Benefit – an expenditure described in Section II of this Exhibit F.

General Contractor – an individual or company that has a direct contractual relationship with Seller and/or U.S. Transmission Provider (directly or through their respective affiliates) or third-party generators whose Resources are included within the Selected Project (including any affiliate acting on behalf of Seller) for work performed related to the construction, installation, modification and/or operation of the Selected Project or the Associated New Transmission Facility, as applicable.

Host Community Agreement – a contract between Seller and/or U.S. Transmission Provider (directly or through their respective affiliates) or a third-party generator whose Resources are included within the Selected Project and a state or municipal government entity within New York State, or with a New York State non-governmental organization, detailing the rights and obligations of each party during the construction, operation, and decommissioning of the Selected Project or the Associated New Transmission Facility, as applicable, including financial, health, economic development and/or environmental benefits that will be provided to the community by Seller and/or U.S. Transmission Provider (directly or through their respective affiliates) or a third-party generator.

Independent CPA – the independent New York State certified public accountant, funded at the expense of Seller and/or U.S. Transmission Provider, that performs the steps to complete the agreed upon procedures and prepare an AUPR. The Independent CPA must not be an employee of Seller, U.S. Transmission Provider or their respective affiliates, and must not prepare the Economic Benefits Report and accompanying documents.

New York State Firm – a company, business, or entity with a principal place of business in New York State. A branch, office or worksite location of a non-New York State firm that operates within New York will be treated as a New York State Firm for the purposes of Economic

Benefits verification so long as the supporting documentation from such firm makes evident that the Claimed Expense was for work performed in New York State, services provided in New York State, or for materials, goods, or equipment sourced from New York State.

Payment Application – a construction document (for example, AIA Form G702 or similar) that details payments made to a General Contractor or subcontractor.

Payments in Lieu of Taxes (PILOT) – payments made to local government(s) to compensate for some or all of the tax revenue lost as a result of tax-exempt ownership or use of land or property.

## **II. Types of Eligible Economic Benefits**

Eligible Economic Benefits shall include expenditures made from January 1, 2021 through the end of the first three (3) Contract Years of the Contract Delivery Term within the following categories:

- a. Payments for labor-related expenditures for work that is performed in New York State or subject to a Project Labor Agreement approved by NYSERDA pursuant to Section 18.11 of this Agreement. Examples include gross wages (including employer-side payroll tax payments), and benefit costs incurred in association with the employment of construction, boat crews, rail and port workers, contractors and laborers, operations and maintenance personnel, engineering or environmental service providers, consultants, other employees and financial and legal service providers associated with the Selected Project or the Associated New Transmission Facility.
- b. Payments for in-state purchases of goods and services. Includes expenditures as a result of:
  - i. The purchase and consumption of local goods and services (including sales tax), such as, but not limited to, food, lodging, vehicles, equipment, fuel; and/or
  - ii. The purchase of materials sourced from within New York State such as, but not limited to, gravel, steel, concrete and similar materials and/or the purchase and use of equipment and products manufactured or assembled within New York State and/or the use of rental equipment or similar supplies sourced within New York State (components not manufactured within New York State are excluded).
- c. Payments, rents and taxes paid to local New York State entities. Includes:
  - i. New or increased revenues for jurisdictions in New York State from January 1, 2021 through the end of first three (3) Contract Years of the Contract Delivery Term, including tax payments, PILOT payments, and/or payments under Host Community Agreements; and/or

- ii. Payments intended to mitigate the visual, environmental, historical, cultural or other impacts associated with development, construction, operation or decommissioning of the Selected Project or the Associated New Transmission Facility (including those set forth in Exhibit I-2 hereto) .
- d. Financing expenditures (fees to in-state banks related to financing transactions but not the cost of borrowing).
- e. Interconnection fees and expenditures, including those paid to NYISO or a New York utility relating to services provided, and/or transmission system upgrades made, within New York State.
- f. Expenditures on the development, construction, modification and operation of the Associated New Transmission Facility may be included as Eligible Economic Benefits.
- g. Investments by Seller and/or U.S. Transmission Provider (directly or through their respective affiliates) in electric transmission, electric distribution, other infrastructure, industry supply chain, workforce development, community development, and research and development initiatives in New York State that are intended to have an enduring impact on the renewable energy industry and New York State economy. These Eligible Economic Benefits may include:
  - i. Investments in workforce development applicable to future renewable energy system and/or energy storage development in New York State, such as establishing a training facility (including the funding of its operations), donating key components for training purposes to technical schools in New York State, building of training labs or materials testing facilities.
  - ii. Investment in research and development in New York State applicable to improvements in renewable energy system and/or energy storage equipment and technology.
  - iii. Investments in the development of broadly-applicable wind and solar data (not specific to the Selected Project) or fisheries and wildlife data that will be made publicly available and that have beneficial impact to future renewable energy system development that would benefit New York State.
- h. Other expenditures, accompanied by supporting explanation that establishes that such expenditures are specific to the Selected Project or the Associated New Transmission Facility and support spending and job creation in New York; provided, however, that in no case shall Seller's costs of preparing the Proposal be considered an Eligible Economic Benefit.

### III. Verification

Economic Benefits Report. Within one hundred twenty (120) days of the third anniversary of the beginning of the Contract Delivery Term, Seller must submit the Economic Benefits Report through the Independent CPA.

Verification Process. The verification process for the Seller is as follows:

- a. No later than thirty (30) months after the beginning of the Contract Delivery Term, Seller will provide the name of its selected Independent CPA to NYSERDA. Upon engagement, Seller will provide this Agreement, highlighting the Expected Total Dollars and this Exhibit F, to the Independent CPA, with appropriate redactions of any non-public information unrelated to Economic Benefits or the Economic Benefits Report.
- b. Seller and/or U.S. Transmission Provider (directly or through their respective affiliates) will prepare an Economic Benefits Report that both summarizes in narrative form and documents the total dollar amount of actual Economic Benefits accrued to New York as a result of the development, construction, modification, and operation of the Selected Project and Associated New Transmission Facility from January 1, 2021 through the end of the first three (3) years of the Contract Delivery Term. The Economic Benefits Report shall also describe the activities of Seller and/or U.S. Transmission Provider (directly or through their respective affiliates) and third-party generators whose Resources are included within the Selected Project in fulfillment of Sections 12.03 and 12.04 of this Agreement with respect to Workforce and Community Development Opportunity Activities, described in Exhibits I-1 and I-2, over the same period. The Independent CPA will not verify those Workforce and Community Development Opportunity Activities in the AUPR quantitatively, except to the extent such activities result in expenditures claimed as Eligible Economic Benefits.
- c. Acceptable documentation for expenditures incurred by Seller and/or U.S. Transmission Provider (directly or through their respective affiliates) and third-party generators whose Resources are included within the Selected Project shall include the following (for an individual expense within each category of expense, any one of the listed documents or any combination thereof will be acceptable):
  - i. For labor-related expenses: either W-2s, 1099s or other tax documentation; copies of subcontracts or other labor-related arrangements detailing labor provided under such contracts and that provide confirmation that labor is for work performed within New York or is covered by the Project Labor Agreement described in Section 18.11 of this Agreement.
  - ii. For local goods and services: either receipts for hotels, meals, fuel, rental cars, and equipment purchased in New York (per diem payments without specific, itemized expenses are not an acceptable form of documentation);

- a check register report per vendor for goods or services sourced from a New York State Firm (which includes the check numbers, dollar amounts, invoice numbers paid and totals); each corresponding individual invoice for services, equipment, materials and goods sourced from a New York State Firm that was submitted for payment accompanied by proof of payment; or a bank statement with applicable checks or wire transfers.
- iii. For operations and maintenance expenses: either itemized receipts; a check register report per vendor (which includes the check numbers, dollar amounts, invoice numbers paid and totals); each corresponding individual invoice that was submitted for payment accompanied by proof of payment; or a bank statement with applicable checks or wire transfers.
  - iv. For other expenditures: such evidence of payment as the context requires; provided that such documentation must show the date and purpose of the expenditure.
  - v. Seller may redact personal, sensitive, legally protected and other non-public information (e.g., social security numbers, tax identification numbers, street addresses, apartment numbers, etc.) from documentation to comply with Applicable Law, enhance privacy protection, and otherwise inhibit the potential improper use of such information.
  - vi. Seller and/or U.S. Transmission Provider (or their respective affiliates) and third-party generators whose Resources are included within the Selected Project may use other forms of documentation for a category of expense, subject to NYSERDA's approval, which shall not be unreasonably denied, conditioned, or delayed.
- d. Expenditures incurred by a General Contractor (and/or its subcontractor(s)) require the same documentation process as outlined above. Seller or the third-party generators whose Resources are included within the Selected Project are responsible for obtaining all necessary documentation from General Contractors. In addition:
- i. If the General Contractor(s) is located in New York State: Acceptable documentation of in-house labor billed to the Selected Project or the Associated New Transmission Facility by the contractor includes payroll records with confirmation from the General Contractor that such payments are for work on the Selected Project or the Associated New Transmission Facility, as applicable. General Contractor may also self-certify costs of in-house equipment use. Acceptable documentation includes records of equipment used in construction of the Selected Project or the Associated New Transmission Facility, as applicable. Documentation should be accompanied by a letter signed by a principal of the company attesting to the expenses.

- ii. New York subcontractors utilized by the General Contractor: Acceptable documentation includes the General Contractor's check register reports by vendor (which includes the check numbers, dollar amounts, invoices paid and totals); the last Payment Application and final release waiver for each subcontractor to corroborate the payments in the check register report; or a bank statement with applicable checks or wire transfers.
- iii. New York State Firms utilized by the General Contractor (lower tier subcontractors or not part of a subcontract agreement): Acceptable documentation includes the General Contractor's (and/or its direct or lower tier subcontractor's) check register reports by vendor (which includes the check numbers, dollar amounts, invoices paid and totals); corresponding individual invoices that were submitted to the General Contractor and/or its subcontractor at any tier for payment; or a bank statement with applicable checks or wire transfers.
- iv. Labor costs that are undertaken by an out of state firm, but which nonetheless are attributable to work performed in New York and/or by workers covered by the Project Labor Agreement, may be documented in the manner described above, along with such additional documentation necessary to identify and support any apportionment of such costs among projects.
- e. Seller may not include indirect benefits or those created by any "multiplier effect" or other attribution method under which the creation of peripheral spending and jobs might be credited to direct capital infused into the economy.
- f. In furtherance of Section II(g) of this Exhibit F regarding investments, Seller shall provide evidence of funding of investments by Seller and/or Transmission Providers (directly or through their respective affiliates) in transmission, distribution, other infrastructure, industry supply chain, workforce development, community development/benefit (including investments in Disadvantaged Communities and environmental justice), and research and development, in each case, for an above-described purpose for the benefit of New York (which may include the establishment of a fund accessible by New York residents or entities, or for a purpose to benefit New York).
- g. Seller should provide its Economic Benefits Report to the Independent CPA, collect all supporting documentation to support the Claimed Expenses in the Economic Benefits Report, and submit all documentation requested by the Independent CPA as needed.
- h. The Independent CPA will submit the Agreed-Upon Procedure Report to NYSERDA within one hundred twenty (120) days of the third anniversary of the commencement of the Contract Delivery Term. Neither Seller nor the Independent CPA shall provide the documentation underlying the claims in the Economic Benefits Report to NYSERDA. Seller, however, must retain such

documentation in accordance with Section 6.05 of this Agreement so that it can be made available to NYSERDA upon NYSERDA's request pursuant to Section 7.01 of this Agreement.

- i. NYSERDA will examine the verified Economic Benefits Report and the Agreed-Upon Procedure Report, and confirm the calculation of the Verified Total Dollars by the Independent CPA. NYSERDA will compare the Verified Total Dollars, in total, to the Expected Total Dollars for New York State expenditures and for the subtotal of Disadvantaged Communities Benefits, as established pursuant to Exhibit I-1 hereto, and proceed in accordance with Section 12.01(b) of this Agreement.

#### **IV. Guidance for Independent CPA; Agreed Upon Procedures**

This section sets forth the agreed upon procedures that the Independent CPA must follow in order to issue the AUPR related to the Seller's Economic Benefits Report.

Deadline for Submission. The Independent CPA is responsible for submitting the AUPR within one hundred twenty (120) days of the third anniversary of the commencement of the Contract Delivery Term. The AUPR must be received by NYSERDA on or before this date.

Organization of Report. The Independent CPA should organize its submission to NYSERDA as follows:

- AUPR
- Procedures and Findings
- Seller's original Economic Benefits Report

Use of Sampling Techniques. The Independent CPA will review each expenditure valued at more than \$50,000 over the period covered by, and as reported in, the Economic Benefits Report. At its discretion, the Independent CPA may rely on sampling of representative expenditures under \$50,000. If sampling is used, however, the Independent CPA must review a sample of transactions to be determined by the value and number of items included in the overall population, but no fewer than 150 such transactions or the number of such transactions that the Independent CPA determines would be statistically significant, whichever is greater. If sampling is used, the Independent CPA must also disclose the population and sample size in the AUPR.

Applying General Procedures to Specific Circumstances. This document provides guidance and specific examples of the procedures to be performed in providing NYSERDA with assurances as to the accuracy and completeness of Seller's Economic Benefits Report. Because accounting systems and data structures vary among companies, the requirements described in this Exhibit F are not intended to be all-inclusive, but rather represent the guidance and principles to be applied in performing tests of the documentation associated with the information submitted to NYSERDA by Seller and/or Transmission Providers (or their respective affiliates) and the third-party generators whose Resources are included within the Selected Project.

General Notes on Performing the AUPR.

- a. The AUPR must be produced by responding to each step in the Economic Benefits Agreed Upon Procedures that follow this section. When submitting the AUPR to NYSERDA, a scan of a printout is acceptable, as is a PDF with electronic signatures.
- b. While performing the Agreed Upon Procedures, the Independent CPA may develop a list of questioned costs, including, but not limited to, unsubstantiated or inaccurate dollar value claims, etc. The Seller may choose to remove any unsubstantiated claims from its report prior to submission of a final Economic Benefits Report to NYSERDA.
- c. If the Independent CPA confronts an issue that the Independent CPA believes is not reasonably resolved by the guidance and principles contained in this Exhibit F, the Independent CPA may email designated points of contact at Seller and NYSERDA, who will make good faith efforts resolve the question by mutual agreement as quickly as possible. Any such resolution shall be memorialized in the AUPR.

Agreed Upon Procedures.

The purpose of performing the agreed upon procedures is to ensure and confirm the information submitted by the Seller on the Economic Benefits Report is accurate and falls within the categories of Eligible Economic Benefits described above.

- a. Inquire of the Seller or the third-party generators whose Resources are included within the Selected Project whether each Claimed Expense is related to the development, construction, operation and/or maintenance of the Selected Project or the Associated New Transmission Facility.
- b. From the Seller's Economic Benefits Report, if sampling is used, select an appropriate sample for detailed testing of underlying transactions in accordance with the sampling methodology noted above. Disclose the population as well as the sample size for each category in the AUPR.
- c. For Seller's and/or U.S. Transmission Provider's (directly or through their respective affiliates) or the third party generators' labor-related expenditures:
  - i. Compare the expenditures claimed for each transaction selected to Seller' and/or U.S. Transmission Provider's (or their respective affiliates') or third party generators' payroll records (e.g., payroll journals, W-2 forms, or benefits invoices) and determine:
    - 1. The name of the employer/purchaser is Seller and/or U.S. Transmission Provider (or their respective affiliates);
    - 2. The work was performed in New York State or the employer has certified that the employee is covered by the Project Labor

Agreement approved by NYSERDA pursuant to Section 18.11 of this Agreement;

3. Expenditure amounts agree to the payroll records and/or other supporting acceptable documentation;
  4. The payment was for services rendered during the time period described in this Exhibit F;
  5. Expenditure agrees to the relevant provided financial records of Seller and/or U.S. Transmission Provider (or their respective affiliates) (which may include payroll journal, general ledger, cancelled checks, etc.); and
  6. Expenditure is listed under the proper category.
- d. For Seller's and/or U.S. Transmission Provider's (or their respective affiliates') or the third party generators' in-state purchases of goods and services:
- i. Compare the expenditures claimed for each transaction selected to Seller's and/or U.S. Transmission Provider's (or their respective affiliates') or the third party generators' supporting documentation accompanying the Economic Benefits Reports and determine:
    1. Seller and/or U.S. Transmission Provider (or their respective affiliates) or General Contractor or a third party generator is named as the employer, payor on the invoice, and/or as party to the applicable agreement;
    2. Expenditure amounts agree to the supporting acceptable documentation;
    3. The payment was for services rendered or goods received, or an expenditure and/or investment made, during the time period specified in this Exhibit F;
    4. Payment is associated with goods, services, equipment, materials, operations and/or maintenance expenses;
    5. The vendor is a New York State Firm; and
    6. Expenditure agrees to the relevant provided financial records of Seller and/or U.S. Transmission Provider (or their respective affiliates) (which may include cash disbursements journal, payroll journal, general ledger, cancelled checks, etc.).
  - ii. Inspect records supporting in-house equipment expenditures and obtain copy of letter provided by Seller and/or U.S. Transmission Provider (for

themselves or on behalf of their respective affiliates) or General Contractor or the third party generators attesting to the accuracy of the expenditures reported for in-house equipment use.

- e. For other expenditures:
  - i. Compare the expenditures claimed for each transaction selected to Seller's and/or U.S. Transmission Provider's (or their respective affiliates') supporting documentation accompanying the Economic Benefits Reports and determine:
    - 1. Seller and/or U.S. Transmission Provider (or their respective affiliates) or General Contractor or a third party generator is named as the employer, payor on the invoice, and/or as party to the applicable agreement or other documentation;
    - 2. Expenditure amounts agree to the supporting acceptable documentation;
    - 3. The payment was for services rendered or goods received, or an expenditure and/or investment made, during the time period specified in this Exhibit F;
    - 4. The expenditure is an Eligible Economic Benefit as described above; and
    - 5. The payee is a New York State Firm, a New York State municipality, or other counterparty as described above; and Expenditure agrees to the relevant provided financial records (which may include cash disbursements journal, payroll journal, general ledger, cancelled checks, etc.).

## EXHIBIT G

### PROJECT LABOR AGREEMENT REQUIREMENTS

The final form of PLA presented to NYSERDA for review and approval pursuant to Section 18.11 of this Agreement should address:

1. Provisions that appropriately limit applicability of the PLA to United States-based covered work on the Selected Project and the Associated New Transmission Facility (and not extending to any other work performed by contractors and subcontractors, or to the work of their affiliated entities performed outside of the United States), ensuring that Selected Project and Associated New Transmission Facility contractors or subcontractors performing work outside the United States are not required to become a signatory to any other labor agreement, and appropriately providing for the supremacy of the PLA over any potentially conflicting labor agreements that might otherwise apply to contractors and subcontractors. The PLA must apply to all covered construction and all contractors and subcontractors, of whatever tier, performing construction work on the Selected Project and the Associated New Transmission Facility (subject to appropriate exceptions), and the PLA should be available to all contractors and subcontractors, of whatever tier, regardless of their union affiliation;
2. Provisions for appropriate union recognition and security (limited to Selected Project and Associated New Transmission Facility work) and the referral of skilled craft workers, including provisions for staffing in the event qualified referrals are not reasonably available and for the reasonable use of a number of core employees by contractors and subcontractors (regardless of union affiliation and referral practices that might otherwise exist);
3. Comprehensive labor harmony provisions to ensure against schedule disruption as a result of worksite disputes or other labor disputes of any kind;
4. Comprehensive provisions for the resolution of workplace disputes through third-party resolution, including provisions for the resolution of jurisdictional disputes (without disruption to the schedule of the Selected Project or the Associated New Transmission Facility), and appropriate provisions for labor management cooperation;
5. Appropriate provisions to allow the cost-effective and efficient coordination of multiple trades and contractors and subcontractors (notwithstanding any local labor agreements that might otherwise be applicable to contractors and subcontractors), as well as other appropriate management rights (such as appropriate provisions respecting specialty work and/or workers; adequately ensuring the contractors' or subcontractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location; use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices; the installation or use of materials, supplies or

equipment regardless of their source (including as may be required by a vendor and/or to ensure warranty coverage); and to perform off-site work, subject to any restrictions imposed by law);

6. Appropriate provisions promoting MWBEs employment and SDVOBs employment, as well as the employment of low-income workers in New York;
7. Appropriate provisions for the use of apprentices; and
8. Appropriate provisions for rules governing worksite access and conduct.

EXHIBIT H  
CALCULATION OF  
SUPPLIER GHG BASELINE LIMIT  
AND ADJUSTMENTS TO SUPPLIER GHG BASELINE

1. For purposes of calculations pursuant to this Exhibit H, Qualified Renewable Energy (in MWh) shall include energy from generation facilities owned or controlled by, or under contract (including through the contract right to purchase generation from such generation facilities) with, Seller or its affiliates that are (i) located in the control area in which the Selected Project is located or in a control area adjacent to such control area, (ii) contractually committed to serve load in the control area in which the Selected Project is located, or (iii) located in the NYCA.
2. Qualified Renewable Energy for which Seller or any of its affiliates receives payments for renewable attributes under any other tier of the Clean Energy Standard shall be excluded from the calculations pursuant to this Exhibit H.
3. If Seller or any of its affiliates acquires an operational hydroelectric generation facility after the Effective Date that would otherwise be included in calculation of the Qualified Renewable Energy under this Exhibit H, the generation from such facility will not be included in calculation of the Qualified Renewable Energy under this Exhibit H, except to the extent that Seller can demonstrate to NYSERDA's reasonable satisfaction that incremental generation from such facility has occurred after such acquisition.
4. If, after the Effective Date, Seller or any of its affiliates sells, decommissions (in whole or in part), refurbishes or otherwise repowers, or no longer possesses rights to a hydroelectric generation facility included in calculation of the Supplier GHG Baseline, the Supplier GHG Baseline will be reduced from and after the date of such sale, decommissioning, refurbishing (or other repowering) or change in rights by the number of annual megawatt-hours that NYSERDA attributed to such facility in the Supplier GHG Baseline calculation performed during T4RFP21-1.
5. A facility will be considered decommissioned when the facility has undergone a permanent physical change that prevents it from operating, when the facility is no longer licensed to operate, or when the facility has ceased generating for forty-eight (48) consecutive months, whichever occurs first.
6. A hydroelectric facility will be considered refurbished or repowered if Seller or its affiliate establishes to NYSERDA's reasonable satisfaction that such facility's output is eligible as Qualified Renewable Energy.
7. If a Force Majeure event affects a facility included in calculation of the Supplier GHG Baseline, then the Supplier GHG Baseline shall be equitably adjusted to reflect the effects of such Force Majeure on the number of annual megawatt-hours that NYSERDA

attributed to such facility in the Supplier GHG Baseline calculation performed during T4RFP21-1.

8. As indicated in Section 2.6.3 of T4RFP21-1, if the PSC determines after the Effective Date that the Supplier GHG Baseline Limit in this Agreement is no longer permitted or required because the law of the jurisdictions into which Seller sells energy would prohibit the backfilling of Tier 4 energy with fossil fuel-fired energy, NYSERDA will consent to amend this Agreement in a manner consistent with such order of the PSC.
9. Net Annual Supplier Production (NASP): For each of the following periods after the Effective Date until the termination or expiration of this Agreement, the “Net Annual Supplier Production” shall equal (i) for Contract Year 1 (*cy1*), the difference (whether positive or negative) between (a) the simple annual average of Qualified Renewable Energy (*QRE*) for the sixty (60)-month period immediately preceding the Contract Delivery Term (*avg*), *minus* (b) the Supplier GHG Baseline, represented by the following formula:

$$NASP_{cy1} = QRE_{avg} - GHG_{Baseline}$$

and (ii) during the Contract Delivery Term starting for and after Contract Year 2, for each such Contract Year (*cy*), (a) the immediately preceding Contract Year’s (*cy-1*) Qualified Renewable Energy, *minus* (b) the sum of the Supplier GHG Baseline *plus* the energy delivered to the Delivery Point through the Associated New Transmission Facility that resulted in Tier 4 RECs sold under this Agreement (T4ED) during the immediately preceding Contract Year (*cy-1*), represented by the following formula:

$$NASP_{cy} = QRE_{cy-1} - (GHG_{Baseline} + T4ED_{cy-1})$$

*NASP<sub>cy</sub>* shall not be lower than T4ED during the immediately preceding Contract Year, *multiplied by -1*. After the last Contract Year, an additional calculation shall be performed using the methodology set forth in clause (ii) above based on the Qualified Renewable Energy and T4ED from such last Contract Year and the GHG Baseline (prorated if such last Contract Year is less than 12 months), and the resulting amount shall be included in the calculation of Accrued Net Supplier Production for the determination of any Borrowing Shortfall pursuant to Paragraph 13.a below.

10. Accrued Net Supplier Production: During the applicable period, the total of (i) the aggregate sum of Net Annual Supplier Production, (ii) the aggregate savings (measured in TWh) resulting from demand side management programs in Québec in accordance with Paragraph 12.a below, and (iii) the aggregate TWh equivalent of renewable attributes transferred to NYSERDA pursuant to Paragraph 12.b below, in each case through the date of determination. To the extent that the Accrued Net Supplier Production is a positive number, such amount shall be a “Positive Balance”. To the extent that the Accrued Net Supplier Production is a negative number, such amount shall be a “Negative Balance”. In no event shall the Accrued Net Supplier Production (a) have a Positive Balance of greater than +80 TWh, or (b) have a Negative Balance of less than -

80 TWh (the “Maximum Negative Balance”).

11. Seller shall be relieved from the application of the Supplier GHG Baseline Limit unless and until the Accrued Net Supplier Production equals the Maximum Negative Balance as of the start of any Contract Year (such condition, the “Borrowing Limit”), such that, until such condition occurs, the Annual Tier 4 REC Cap shall be the only limitation on NYSERDA’s purchase obligation under Section 2.01(c) of this Agreement. The determination of whether the Borrowing Limit applies to any Contract Year shall be made as of the start of such Contract Year. In each Contract Year in which the Borrowing Limit applies, NYSERDA shall not be obligated under this Agreement to purchase from Seller Tier 4 RECs in an amount that exceeds the lesser of (i) Annual Tier 4 REC Cap and (ii) the Supplier GHG Baseline Limit. The “Supplier GHG Baseline Limit” shall equal the sum of (i) the immediately preceding Contract Year’s Qualified Renewable Energy, *plus* (ii) the positive difference, if any, between (A) the Accrued Net Supplier Production as of the start of the immediately preceding Contract Year ( $ANSP_{cy-1}$ ) and (B) the Maximum Negative Balance (MxNB), *minus* (iii) the Supplier GHG Baseline. The Supplier GHG Baseline Limit ( $GHG_{BaselineLimit}$ ) is represented by the following formula:

$$GHG_{BaselineLimit} = QRE_{cy-1} + (ANSP_{cy-1} - MxNB) - GHG_{Baseline}$$

In the event that, during a Contract Year in which the Borrowing Limit applies, energy is delivered by Seller to the Delivery Point through the Associated New Transmission Facility in excess of the Supplier GHG Baseline Limit, Seller shall retain all right, title and interest in and to such Excess RECs (including the ability to sell, assign, transfer or otherwise dispose of such Excess RECs for Seller’s account), and such energy shall not qualify for renewable energy certificates under any program adopted under the New York State Clean Energy Standard. The Supplier GHG Baseline Limit shall no longer apply as a limitation on NYSERDA’s obligation to purchase Tier 4 RECs hereunder when the Accrued Net Supplier Production has a Negative Balance greater than the Maximum Negative Balance.

- 12.
- a. The aggregate savings (measured in TWh) resulting from demand side management and other programs and actions which are intended to reduce electricity and energy consumption in Québec shall be a component of the Accrued Net Supplier Production; provided that applicable regulators in Québec have authorized such management, programs and/or other actions after the Effective Date. Only savings that have been filed or otherwise published in accordance with such regulatory authorization shall be a component of the Accrued Net Supplier Production.
  - b. During the Contract Delivery Term, Seller, in its sole discretion, may transfer to NYSERDA (or cause the transfer to NYSERDA of), without cost to NYSERDA, renewable attributes from the production during the Contract Delivery Term of eligible Tier 1 generation technology, in which case, for

each Tier 1 or other renewable attribute so transferred to NYSERDA, 100% of the associated underlying generation shall be a component of the Accrued Net Supplier Production.

c. Seller shall maintain appropriate records of the Accrued Net Supplier Production and associated supporting documentation and provide to NYSERDA (i) an annual report of the Accrued Net Supplier Production (and, if the Borrowing Limit applied during such period, the Supplier GHG Baseline Limit) as of the start of each Contract Year no later than June 1 of such Contract Year, and (ii) a final report of the Accrued Net Supplier Production as of the end of the Contract Delivery Term within one hundred eighty (180) days after the end of the Contract Delivery Term (including the calculations pursuant to Paragraph 13 below, if applicable). Each such report shall include reasonable supporting documentation underlying the calculations.

13.

- a. If, as of the end of the Contract Delivery Term, the Accrued Net Supplier Production is negative, then a “Borrowing Shortfall” shall exist. The Borrowing Shortfall shall be allocated among the Contract Years with a negative Net Annual Supplier Production, starting after the last Contract Year in the Contract Delivery Term that had a positive Accrued Net Supplier Production (each a “Shortfall Year”). When allocating the Borrowing Shortfall, any positive Net Annual Supplier Production in a Contract Year during that period shall be applied on a “first in, first out” basis (i.e. credited against earlier Shortfall Years first) such that the negative Net Annual Supplier Production of the oldest Shortfall Year shall be reduced first, and if fully satisfied, the remaining positive balance shall be similarly applied (until exhausted) in ascending order to the next Shortfall Year(s) with a negative Net Annual Supplier Production.

The Borrowing Shortfall, calculated as provided in paragraph (a) above, shall be converted into a dollar amount (the “Outstanding Balance”) equal to the sum of the product of, for each applicable Shortfall Year, (i) the amount of the Borrowing Shortfall in such Shortfall Year, (ii) the simple average of the Monthly Tier 4 REC Prices for such Shortfall Year, and (iii) a rate of interest of 5.75%, compounded annually from the end of such Shortfall Year until the end of the Contract Delivery Term.

- b. Seller shall compensate NYSERDA for the amount of the Outstanding Balance in the following priority:
- (A) To the extent reasonably available, Tier 1 or equivalent renewable attributes (the value of which would be set based on the

reasonable cost of acquiring such RECs) shall be acquired by Seller and transferred to NYSERDA at no cost;

(B) To the extent Tier 1 or equivalent renewable attributes are not reasonably available, any (i) investment made in greenhouse gas reducing activities in New York State, (ii) battery, delivery reduction or firming services or (iii) other form of compensation shall be permitted as a mechanism to compensate NYSERDA for the deficit only to the extent NYSERDA expressly consents thereto, which consent will be provided only if NYSERDA concludes that such alternative compensation measure provides commensurate value to New York State ratepayers; and

(C) To the extent an Outstanding Balance remains after exercise of the above mechanisms, a cash payment in the amount of such deficit will be made to NYSERDA within thirty (30) days after the determination of the final balance.

## EXHIBIT I-1

### FRAMEWORK FOR PROVISION OF DISADVANTAGED COMMUNITY BENEFITS

1. Seller commits to undertake actions of the nature described in this Exhibit I, with the goal of providing that Disadvantaged Communities share in the economic and other benefits that will result from this Agreement. The Parties agree that the standards and criteria for what constitutes Disadvantaged Community Benefits may be subject to modification based on the processes established under the CLCPA related to the definition and identification of Disadvantaged Communities and they agree to apply such standards and criteria as they evolve.
2. Seller will review feedback from Disadvantaged Communities with respect to the appropriate scope and method of determining Disadvantaged Community Benefits to be provided by Seller, including (i) public comments filed in connection with the petition for approval of this Agreement filed with the PSC; and (ii) processes established by the CLCPA to finalize the definition and criteria for identification of Disadvantaged Communities.
3. After reviewing such feedback, Seller and NYSERDA shall negotiate in good faith to establish the details and parameters of an appropriate framework for identifying, measuring and tracking Disadvantaged Community Benefits, taking into account the separate intrinsic benefits resulting from a project of the nature of the Selected Project and Associated New Transmission Facility such as emissions reductions and associated public health benefits, which were recognized by the PSC in the 2020 CES Order.
4. Seller will make reasonable efforts to ensure that members of Disadvantaged Communities are apprised of employment opportunities in connection with the Selected Project and Associated New Transmission Facility and that businesses in Disadvantaged Communities have the opportunity and awareness to compete for contracting opportunities. Seller will keep NYSERDA apprised of these communications and, as appropriate, coordinate messaging between Seller's and NYSERDA's similar efforts within the same communities.
5. The costs incurred by Seller related to its provision of Disadvantaged Community Benefits, as set forth below, will be included in the calculations of the benefits provided.
6. Seller's provision of Disadvantaged Community Benefits are expected to be encompassed within the following general categories, with the understanding that these categories may be modified or expanded as described above.

<b>Benefit Category</b>	<b>Detailed Description of Disadvantaged Community Benefits</b>
<b>Transmission and Generation</b>	<p>Expenditures associated with the construction, operation, and maintenance of the generation and transmission components of the Selected Project and Associated New Transmission Facility, including:</p> <ul style="list-style-type: none"> <li>• Construction payroll-related expenditures benefiting Disadvantaged Communities, including wages and benefits</li> <li>• Administrative and general payroll-related expenditures benefiting Disadvantaged Communities, including wages and benefits</li> <li>• Financial, legal, technical, and other consulting services, including wages and benefits</li> <li>• Purchases of goods and services benefiting Disadvantaged Communities associated with construction, general project-related activities, and supporting consulting services (including sales tax where applicable)</li> <li>• Payroll expenditures associated with operations and maintenance, plant management, and long-term project development</li> <li>• Land use payments associated with the Selected Project and the Associated New Transmission Facility</li> <li>• Host community payments for those municipalities that host all or a portion of a Resource or Associated New Transmission Facility (host community payments are expected to start as of the Commercial Operation Date)</li> </ul>
<b>Workforce Development and Job Creation</b>	<p>Assist in New York’s transition to a clean energy workforce, with a special emphasis on programs that support Disadvantaged Communities, including job training, career awareness, and strengthening the workforce pipeline through education</p>
<b>Economic Development</b>	<p>Develop opportunities for project-related economic development in Disadvantaged Communities touched by the Selected Project and Associated New Transmission Facility, including opportunities for MWBE, VOSB and SDVOB in Disadvantaged Communities</p>
<b>Public Health</b>	<p>Efforts to increase access to health care within Disadvantaged Communities</p>
<b>Environmental Justice</b>	<p>Investments in energy efficiency, clean energy advisory services (solar and storage projects), and clean transportation and expansion of opportunities for creating cleaner, greener homes within Disadvantaged Communities Outreach, education, and access to resources to improve energy literacy to help members of Disadvantaged Communities better understand the impacts of their energy decisions and to guide such decisions</p>

<b>Benefit Category</b>	<b>Detailed Description of Disadvantaged Community Benefits</b>
<b>Community Engagement and Administration</b>	Costs incurred in conducting community engagement, outreach, education, training, and other similar activities related to the above categories of Disadvantaged Community Benefits, along with its administrative costs related to these activities.

## EXHIBIT I-2

### ENVIRONMENTAL AND COMMUNITY BENEFIT PROGRAMS

1. Seller shall cause U.S. Transmission Provider to provide \$117 million over 35 years to finance environmental programs through a new Restoration, and Research/Habitat Improvement Trust Fund (the “Environmental Trust Fund”) in conformance with any requirements identified as part of the process prescribed under Article VII of the New York State Public Service Law. This fund will provide a dedicated stream of funding that will support programs targeted at improving the waterways where the Associated New Transmission Facility will be constructed. This fund The Environmental Trust Fund is currently managed by an Oversight Committee that meets quarterly and has representation from State Agencies, Environmental Nonprofits and U.S. Transmission Provider. The Oversight Committee has formed two working groups, one dedicated to Lake Champlain and the other to the Hudson River and New York Harbor. These working groups will make funding decisions and will be organized by the Hudson River Foundation who is the trust administrator. Input from the stakeholders of these waterways will be a key component as funding decisions are made by the Oversight Committee.
2. Subject to receipt of PSC Approval, Seller shall cause U.S. Transmission Provider to accelerate the undertaking of projects anticipated from the Environmental Trust Fund by having U.S. Transmission Provider work with the signatories to the Champlain Hudson Power Express, Inc. Joint Proposal attached to the Certificate (as defined in Exhibit J) to gain their support for U.S. Transmission Provider to accelerate funding such that amounts available during the project construction period increase from \$2.5 million to \$15 million.
3. In connection with the funding accelerated during the construction period, Seller shall cause U.S. Transmission Provider to seek approval from the Oversight Committee to prioritize research and / or monitoring of sturgeon use of habitat to better understand potential impacts of the U.S. Transmission Line on the Hudson River. All attempts will be made to have this research coincide with the construction of the U.S. Transmission Line in the Hudson River. In addition to the Oversight Committee, input will be sought from other Hudson River stakeholders, including New York State Department of Environmental Conservation and National Oceanic and Atmospheric Administration (NOAA) Fisheries (as defined in Exhibit J).
4. Seller shall cause U.S. Transmission Provider to maintain and carry out the benefits package established for Rockland County, consisting of a \$31 million capital improvement fund for the host towns of Stony Point, Haverstraw and Clarkstown and the host villages of West Haverstraw and Haverstraw and an additional \$2 million fund for capital improvements for the North Rockland School District. This benefits package will offset construction inconveniences that will occur during construction of the Associated New Transmission Facility along a heavily travelled, commercial district of Route 9W in Rockland County and provide post construction upgrades to Route 9W, which is the primary business district in North Rockland and functions as a “Main Street” for five host communities.

5. Seller and Transmission Providers are committed to hiring from the local workforce whenever possible. As part of their community engagement efforts, Seller and Transmission Providers will work closely with contractors to ensure that the workforce includes local labor, women, people of color and residents of disadvantaged communities, available jobs are properly advertised, and recruitment is detailed and thorough.
6. Seller and Transmission Providers have established a \$40 million Green Economy Fund (GEF) to support people living in Disadvantaged Communities who have, for far too long, suffered disproportionately from pollution related to the impacts of fossil fuel generation in their neighborhoods; fossil industry workers seeking retraining in the green economy; and local labor force members from communities and areas that will host the project and experience construction. The GEF and its development seek to demonstrate alignment with the CLCPA goal of providing direct benefits to Disadvantaged Communities. The program shall be designed in close consultation with leading clean energy jobs training programs with a focus on frontline workers, BIPOC workers and retraining of fossil industry employees. The GEF will begin to provide funding sixty days after two trigger events have occurred: the financial close of the Associated New Transmission Facility (Financial Close) and the filing by Hydro-Québec with the Canadian federal government and the government of the Province of Québec of the Environmental Impact Statement supporting the application for permits and approvals authorizing the construction and operation of the cable project linking the U.S. Transmission Line to the bulk power system in Québec, Canada at the Hertel Substation. Sixty days after these two trigger events have occurred, an initial \$2.5 million will be disbursed to establish the fund and cover administrative costs during the construction period of the Associated New Transmission Facility. Once the Associated New Transmission Facility achieves Commercial Operation, yearly payments of \$2.4 million will be deposited into the GEF for a 15-year period. Administrative fees (to amount to 5% of the total fund, namely \$2 million) will be paid in 3 subsequent equal payments of \$500,000, to be made at four (4)-year intervals. Five percent of these payments will cover administrative costs required to manage the GEF. The structure and governance of the GEF will be discussed and agreed with NYSERDA prior to its commencing operation.
7. Subject to the execution of closing documentation with the County Industrial Development Agencies (the “IDAs”) where PILOTs are being pursued, Seller shall cause U.S. Transmission Provider to pay \$12 million in fees to the IDAs located from the international border to New York City. These represent the fees typically paid at IDA closings and will be used by the IDAs to both fund and accelerate economic development efforts in the respective Counties. These fees are payable at the financial close of the U.S. Transmission Line.
8. For Washington and Greene Counties, where the U.S. Transmission Line will transition from water to land and/or vice versa, additional community benefit payments will be made in recognition of the impact construction will have within each county. In Washington County, \$4 million in economic development payments will be paid to the Counties of Warren and Washington Industrial Development Agency (“WWIDA”): \$2

million will be paid at the financial close of the U.S. Transmission Line, and \$2 million will be paid upon Commercial Operation. In Greene County, \$2 million in economic development payments will be paid to the Greene County IDA: \$1 million will be paid at the financial close of the U.S. Transmission Line, and \$1 million upon Commercial Operation. The funds in Greene County will be used for the Greene County IDA's shovel-ready program which develops entitled business parks for the recruitment of new industry to the county.

9. Seller shall cause U.S. Transmission Provider to fund \$1 million of wetlands mitigation to restore, create or enhance wetlands in order to compensate for impacts to wetlands during the construction of the U.S. Transmission Line.
10. U.S. Transmission Provider has been committed to public outreach since the inception of the U.S. Transmission Line, conducting consultations with key stakeholders as well as public meetings throughout the development process. The final design of the U.S. Transmission Line represents the culmination of years of sustained negotiations. This approach to public engagement has only increased in recent years. In 2017, U.S. Transmission Provider brought on a former New York State mayor to serve as its VP of External Affairs with a primary focus on stakeholder outreach. She has coordinated hundreds of meetings with project stakeholders to explain the U.S. Transmission Line, including in Disadvantaged Communities along the route. Outreach will remain ongoing and will continue until construction is completed.
11. Seller shall cause U.S. Transmission Provider to file a complete stakeholder engagement plan with NYSERDA; some of the activities that U.S. Transmission Provider has been, and that Seller shall cause U.S. Transmission Provider to continue to be, engaged in are outlined below:
  - a. An in-depth and dedicated website to facilitate public access to information on the project that is updated regularly to reflect the evolution and progress of the U.S. Transmission Line (<https://chpexpress.com/>).
  - b. Advertisements in local publications and flyers in public spaces and throughout communities to notify residents of upcoming meetings or share general project information.
  - c. Translation of materials describing key elements of the project into Spanish and Creole in communities where those languages are predominant.
  - d. Dedicated outreach personnel whose primary responsibilities are ensuring that residents have regular access to U.S. Transmission Provider employees who can answer questions, conduct project briefings, and ensure information on the project is readily available. As construction nears, there will be a dedicated employee experienced with both labor relations and labor recruitment in Disadvantaged Communities who will work exclusively on ensuring that those living in Disadvantaged Communities will have both awareness of and access to project jobs. That employee will also be involved in the Green Economy Fund outreach to ensure

the public is aware of future jobs training opportunities and grant funding opportunities.

- e. U.S. Transmission Provider makes regular appearances on panels, at conferences and regularly sponsors community and other events including those that involve formal discussions of the U.S. Transmission Line. U.S. Transmission Provider will continue to take advantage of community resources (elected officials, non-governmental organizations (“NGOs”), civic organizations, etc.) for referrals to civic groups; community activists and community members who request information about the project. This effort will continue throughout the U.S. Transmission Line construction.
  - f. The U.S. Transmission Line will have local construction offices in communities where construction will be more involved as well as provide easy to access local phone numbers for contacting outreach staff.
  - g. U.S. Transmission Provider will continue to take advantage of community resources (elected officials, NGOs, civic organizations, etc.) for referrals to civic groups, community activists and community members who request information about the U.S. Transmission Line.
  - h. Detailed project handouts will be available with outreach team members’ contact information. A monitored hotline will be set up in communities during periods of construction and an info@ email address is part of the project website. U.S. Transmission Provider will continue to follow up on additional outreach suggestions as provided by NGOs, community, and civic groups, elected officials and others.
12. Seller will cause Hydro-Québec to abide by the terms of its memorandum of understanding dated May 10, 2021 with the Mohawk Council of Kahnawà:ke concerning the establishment between them of a joint ownership arrangement with respect to the Québec Transmission Line. Key terms of this ownership arrangement are expected to include:
- a. The Mohawk Council of Kahnawà:ke will acquire an equity or equivalent stake in the ownership of the Québec Transmission Line, and as such will be entitled to distributions reflecting that participation.
  - b. Hydro-Québec will use commercially reasonable efforts to foster certain contracting opportunities for Kahnawà:ke contractors in relation to the construction of the Québec Transmission Line.
  - c. Hydro-Québec and the Mohawk Council of Kahnawà:ke will work together to ensure that the perspective of the Mohawks of Kahnawà:ke is taken into account in the environmental assessment related to the Québec Transmission Line, namely the archaeological potential study, the archeological surveys and, if required, the archeological excavations.

13. Seller will cause Hydro-Québec to fulfill its obligations under the contract to purchase the electricity to be produced by the approximate 204 MW Apuiat wind farm, which will be an Additional QRE Resource jointly owned by several Québec Innu communities and Boralex Inc. Key elements of that project and/or the contract include:
  - a. The wind farm will be built within the limits of the Nitassinan, which the Innu Takuaikan Uashat mak Mani-utenam (First Nation) considers to be its traditional territory, on public lands in the City of Port-Cartier in the Côte-Nord Region.
  - b. The Québec Innu communities and Boralex are 50-50 partners in the project. The partners will equally share the profits generated by the sale of electricity as per the terms of their contract with Hydro-Québec.
  - c. Hydro-Québec will purchase approximately 0.7 TWh annually of the electricity from the Apuiat wind farm under a 30-year contract.
  
14. Seller will cause Hydro-Québec:
  - a. To maintain its efforts to prioritize actions taking into account the rights, interests and perspectives of Indigenous peoples in a manner consistent with any principles or declarations regarding Indigenous peoples that the Canadian Government, Québec Government or Hydro-Québec may adopt, particularly regarding the use of their traditional territories.
  - b. In relation to any new power transmission line(s) to be constructed by Hydro-Québec to connect Additional QRE Resource to Hydro-Québec's existing power transmission network, to consult any Indigenous groups identified by Canadian government authorities as having filed a credible comprehensive land claim and/or any Indigenous groups identified according to Canadian constitutional law as having established rights or credible but unproven claims to the land where said power transmission line(s) are located, with the objective of reaching agreement on proper accommodation measures taking into consideration the strength of the prima facie Aboriginal claim and the seriousness of the impact on the underlying Aboriginal or treaty right. Such consultation shall be documented including with appropriate environmental evaluations in view of the contemplated power transmission line and undertaken to assess potential impacts on the relevant Indigenous group(s) and proper accommodation. Upon request by NYSERDA or Seller, and if agreed to by the Indigenous group(s) involved, said documentation will be made available to NYSERDA, Seller and the City of New York.
  - c. In relation to any refurbishment of an existing power plant identified in this Agreement and leading to (i) the replacement or modification of technical equipment that will result in changes in maximum or minimum water levels in the watercourse or (ii) material environmental impacts, to consult any Indigenous groups identified by Canadian government authorities as having filed a credible comprehensive land claim and/or any Indigenous groups identified according to Canadian constitutional law as having established rights or credible but unproven claims to the land where

said existing power plant is located, with the objective of reaching agreement on proper accommodation measures taking into consideration the strength of the prima facie Aboriginal claim and the seriousness of the impact on the underlying Aboriginal or treaty right. Such consultation shall be documented including with appropriate environmental evaluations in view of the contemplated refurbishment and undertaken to assess potential impacts on the relevant Indigenous group(s) and proper accommodation. Upon request by NYSERDA or Seller, and if agreed to by the Indigenous group(s) involved, said documentation will be made available to NYSERDA, Seller and the City of New York.

- d. To conduct whenever required under applicable Québec (provincial) and Canadian (federal) statutory requirements, an impact assessment regarding:
  - i. the construction by Hydro-Québec of any new power transmission line(s) to connect Additional QRE Resource to Hydro-Québec's existing power transmission network; or
  - ii. any refurbishment of an existing power plant identified in this Agreement and leading to the replacement or modification of technical equipment that will result in changes in maximum or minimum water levels in the watercourse,

the results of which will be shared in a timely manner with the relevant Indigenous groups identified according to Canadian constitutional law who will be invited to provide their comments and concerns, if any. If requested by the Indigenous group, such comments and responses may be made public on the Hydro-Québec website or through means agreed upon between Hydro-Québec and the relevant Indigenous groups.

15. Seller acknowledges that NYSERDA is currently negotiating an agreement with the City of New York for the voluntary purchase by the City of New York of Tier 4 RECs from NYSERDA (the "NYC Agreement") that is anticipated by NYSERDA to include the commitments contained in paragraphs 12 through 14 of this Exhibit I-2 (the "Hydro-Québec Commitments"). Accordingly, Seller agrees to reasonably participate in good faith in efforts by NYSERDA and the City of New York to resolve any disputes that arise under the NYC Agreement relating to the Hydro-Québec Commitments.

## EXHIBIT J

### HUDSON RIVER CONSTRUCTION AND OPERATIONAL PROTECTIONS

Seller shall cause U.S. Transmission Provider to adhere to all applicable permits and regulatory approvals that may be required in order to develop and operate the U.S. Transmission Line, as such permits and regulatory approvals may be amended from time to time. As part of the process of securing these permits and approvals, U.S. Transmission Provider has made certain commitments with the parties involved in the regulatory process. As of the Effective Date, such permits and regulatory approvals include the protections summarized below for the Hudson River. These protections, where applicable, are also extended to Lake Champlain, the Harlem River, and the East River. U.S. Transmission Provider also established the Environmental Trust Fund, as further described in Exhibit I-2. In addition, as detailed below, U.S. Transmission Provider has committed to multiple studies aimed at understanding pre- and post-construction conditions.

#### a. Pre-Construction Requirements

The following are examples of some of the pre-construction requirements currently contained in the permits and regulatory approvals committed to by U.S. Transmission Provider:

1. *Coastal Consistency*: In the Hudson River, Harlem River and East River, the installation and operation of the U.S. Transmission Line shall be consistent with all applicable Coastal Consistency decisions issued by the New York Department of State. Specifically, this includes the five conditions enumerated in the Department's June 8, 2011 Conditional Concurrence letter as amended.
2. *Water Supply Intakes*: In the Hudson River and Lake Champlain, U.S. Transmission Provider shall consult with water intake operators and municipalities to minimize impacts to the intakes during construction. This consultation shall include topics including, but not limited to, the location of the US Transmission Line relative to the intakes, construction plans and schedule, preparing for and sharing of information from the pre-installation sediment trial, and monitoring during installation.
3. *Hudson Sediment Trial*: In furtherance of the foregoing, U.S. Transmission Provider shall cause a pre-installation sediment trial to be conducted in the Hudson River as required by the water quality monitoring plan in vicinity of drinking water intakes. The final location of the pre-installation sediment trial shall be reasonably coordinated with the Hudson 7 and is subject to approval by the State of New York.
4. *EM&CP Compliance*: The U.S. Transmission Line's "Environmental Management and Construction Plan" (the "EM&CP") must be approved by the PSC before construction may begin. The EM&CP details the precise "field" location of the U.S. Transmission Line and the special precautions that will be taken during construction to ensure environmental compatibility.

5. *Exclusion Zones*: The U.S. Transmission Line must avoid Exclusion Zones (as such term is defined in the Champlain Hudson Power Express, Inc. Joint Proposal, dated as of February 24, 2012), consistent with allowed deviations set forth in the Certificate of Environmental Compatibility and Public Need, granted by the PSC in that Order Granting Certificate of Environmental Compatibility and Public Need, issued and effective April 18, 2013 (the “Certificate”), unless expressly allowed by the State of New York.
  6. *Significant Coastal Fish and Wildlife Habitat*: The U.S. Transmission Line must avoid re-locations that impact significant coastal fish and wildlife habitat identified in the NYS Coastal Management Program, except such deviations as are allowed in the Certificate, unless expressly allowed by the State of New York.
- b. Compliance Studies

The following are examples of some of the compliance studies currently contained in the permits and regulatory approvals committed to by U.S. Transmission Provider:

1. *Suspended Sediment / Water Quality Monitoring*: In the Hudson River, Lake Champlain, Harlem River and East River, U.S. Transmission Provider shall cause pre-installation trials to be conducted to create baseline information with respect to water quality and shall cause installation monitoring to assess water quality and sediment conducted continuously during cable installation.
2. *Benthic and Sediment Monitoring*: In the Hudson River, Lake Champlain, Harlem River and East River, U.S. Transmission Provider shall cause pre- and post-installation monitoring of sediment and benthic community to be conducted.
3. *Bathymetry, Sediment Temperature, and Magnetic field Study*: In the Hudson River, Lake Champlain, Harlem River and East River U.S. Transmission Provider shall cause the following tests to be performed. For bathymetry, U.S. Transmission Provider shall cause a high resolution multi-beam side scan sonar survey to be conducted pre-installation. For sediment temperature, U.S. Transmission Provider shall cause probes to be installed in up to three (3) feet in waterbody bottom every five (5) miles. For magnetic field, U.S. Transmission Provider shall cause a pre-installation magnetometer survey to be conducted for thirty percent (30%) of the total length of the Hudson River. U.S. Transmission Provider shall cause post-installation monitoring to be conducted at different intervals for up to eight (8) years after Commercial Operation for each survey.
4. *Atlantic Sturgeon Pre-Installation and Post-Energizing Study*: U.S. Transmission Provider shall cause fifty (50) adult Atlantic sturgeon to be tagged in the Hudson River pre-installation. U.S. Transmission Provider shall cause submersible data loggers to be deployed in five (5) tracking areas to monitor sturgeon movements both pre- and post-installation.

c. Construction Requirements

The following are examples of some of the construction requirements currently contained in the permits and regulatory approvals committed to by U.S. Transmission Provider in the Hudson River, Lake Champlain, Harlem River and East River.

1. *Aquatic Inspector*: A qualified inspector shall be employed full time during all underwater installation procedures and they will have stop-work authority and communicate regularly with representatives of applicable New York State agencies.
2. *Construction Windows*: Construction within the Hudson River shall be scheduled to avoid sensitive species life cycles, specified in the Certificate conditions and the Water Quality Certificate.
3. *Horizontal Directional Drills*: All water to land transitions shall be done with a horizontal directional drill.
4. *Dredging*: U.S. Transmission Provider shall adhere to detailed dredging practices and procedures as set forth in the Certificate.
5. *Water Supply Intakes*: A series of notification, coordinating and monitoring procedures have been established and shall be adhered to in order to minimize impacts to public water supply systems during construction. In furtherance of the foregoing, U.S. Transmission Provider shall also continue to work with the municipalities with public water intakes in the Hudson River to avoid adverse impacts to drinking water during construction, including appropriate planning measures to avoid drinking water-impacts.
6. *Water Quality Monitoring Plan*: A water quality monitoring plan consistent with the Water Quality Certificate incorporated in the Certificate shall be followed during construction.
7. *Spill Prevention, Control and Countermeasures Plan*: An Oil Spill Contingency Plan has been developed and shall be adhered to during construction.
8. *Threatened or Endangered Species*: Measures have been established and shall be adhered to for addressing unexpected encounters with threatened or endangered species.
9. *Invasive Species*: An Invasive Species Management Plan has been developed and shall be adhered to for the construction and operation of the U.S. Transmission Line.

Recent Regulatory Review

In 2021, both the U.S. Department of Energy (the “DOE”) and the U.S. Department of Commerce’s National Oceanic and Atmospheric Administration (the “NOAA Fisheries”) undertook a reassessment of the U.S. Transmission Line. This reassessment included an evaluation of the U.S. Transmission Line’s impacts in light of NOAA Fisheries’ 2017

designation of critical habitat in the Hudson River for Atlantic Sturgeon.<sup>6</sup> Both DOE and NOAA Fisheries independently concluded that the U.S. Transmission Line was not likely to adversely affect critical habitat in the Hudson River.

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<sup>6</sup> The NOAA Fisheries concurrence is available at: [https://chpexpress.com/wp-content/uploads/2021/04/2021.03.31\\_CHPE\\_NOAA-Concurrence\\_Presidential-Permit.pdf](https://chpexpress.com/wp-content/uploads/2021/04/2021.03.31_CHPE_NOAA-Concurrence_Presidential-Permit.pdf).

## SCHEDULE 3.01

### DELIVERY VERIFICATION PLAN

The methodology for crediting and verifying deliveries of Qualified Renewable Energy from the Selected Project into Zone J using the Associated New Transmission Facility shall be as set forth below:

#### Section 1.01. Resource and Transmission Measurement.

- (a) Seller shall be responsible for providing, installing, and maintaining dedicated generation meters that will meter and measure each Resource's actual energy production (and in the case of any energy storage facility added in the future as a Resource ("Storage Resource") charge and discharge) at the Injection Point for each Resource on an hourly basis. Such meters at the Injection Point shall be maintained according to Good Utility Practice and in compliance with the Weights and Measures Act (R.S.C. (1985), c. W-6) of Canada (unless an exemption pursuant to this Act has been received).
- (b) Seller shall (or shall cause NYISO to) provide, install, and maintain a dedicated meter that will meter and measure all energy delivered to the Delivery Point from the Associated New Transmission Facility on an hourly basis.
- (c) The dedicated meters described above at the Injection Point shall be compliant with standards IEC 61869 and IEEE C57.13 (with respect to instrument transformers), and, inter alia, standards ANSI C12.20 and IEC 62053-22 (with respect to meters) and all other applicable requirements and standards of NERC and TransÉnergie. The other dedicated meters described above at the Delivery Point shall be compliant with the requirements and standards stated in the NYGATS Operating Rules at Section 5.3. Revenue Metering Standards. Data collected from the meters will be available to NYSERDA and will be used by NYSERDA to verify the monthly settlement statement as further described in Section 1.02 below.

#### Section 1.02. Hourly Matching, Verification and Settlement Statement.

- (a) For each month in the Contract Delivery Term, Seller shall verify each Resource's actual energy produced (or, in the case of any Storage Resource, discharged) metered at its Injection Point and energy deliveries over the Associated New Transmission Facility metered at the Delivery Point, in each case for each hourly settlement period in such month and shall provide a settlement statement to NYSERDA with the month's data in connection with delivery of Seller's invoice for such month as provided in Section 4.05. The settlement statement shall indicate the number of MWh generated and metered by each Resource at its Injection Point in each settlement period hour in such month, and the number of MWh matched from each such Resource to equal the delivered quantity of energy over the Associated New Transmission Facility for each settlement period hour in such month. Such settlement statement shall constitute the definitive accounting of such energy deliveries absent manifest error, subject to the right of NYSERDA to review and confirm such prior month's data at any time as provided in Section 7.01 (for which purpose, information recorded by metering equipment shall be considered "records.").

- (b) If the aggregate energy generation of all Resources (for the avoidance of doubt, not including discharge from any Storage Resource), exceeds the amount of energy delivered over the Associated New Transmission Facility to the Delivery Point in a given hourly settlement period, Seller will determine which Resources' production will be matched with energy delivered over the Associated New Transmission Facility to the Delivery Point to qualify for Tier 4 RECs. Generation from Resources in excess of amounts so matched ("Excess Generation") will either be treated (i) if a Storage Resource is available, as set forth in clause (d) below, or (ii) to the extent a Storage Resource is not available, (A) as set forth under such Resource's Tier 1 REC contract with NYSERDA, if that Resource is subject to such a contract, or (B) otherwise as determined by any other arrangement applicable to the Resource, as determined by Seller.
- (c) For each hour in which there is Excess Generation and any Storage Resource is available for storage, Seller shall meter the energy used to charge any Storage Resource. Excess Generation that is matched with such charging is "Charging Energy." Charging Energy shall be multiplied by (the agreed round trip efficiency of the applicable Storage Resource) and accounted for as "Stored Energy," subject to the maximum storage capacity of the Storage Resources. The round trip efficiency of any Storage Resource will be provided and verified by Seller utilizing equipment models and other available data prior to the date of commencement of Commercial Operation in accordance with standard industry practice for the applicable type of storage facility. Seller will re-verify the round trip efficiency of the applicable Storage Resource every five (5) years thereafter or when a major equipment upgrade is completed.
- (d) If the aggregate energy generation of all Resources (for the avoidance of doubt, excluding discharge from Storage Resources) is less than the amount of energy delivered over the Associated New Transmission Facility to the Delivery Point in a given hourly settlement period, Seller will determine the amount of Stored Energy that was discharged in that hour from any Storage Resource as measured at the Injection Point and matched with energy delivered over the Associated New Transmission Facility during that hour to the Delivery Point in excess of the aggregate energy generation of all Resources (for the avoidance of doubt, excluding discharge from any Storage Resource) to qualify for Tier 4 RECs. Stored Energy that is discharged and so matched is "Discharging Energy."
- (e) Each settlement statement referenced in paragraph (a) of this Schedule 3.01 shall indicate the Charging Energy, Discharging Energy, and the balance of Stored Energy for the month.
- (f) Seller and NYSERDA will cooperate in good faith with each other using commercially reasonable efforts to develop and implement reasonable processes and procedures to account for the transfer by Seller to NYSERDA of Tier 4 eligible RECs and payment to Seller by NYSERDA in accordance with the NYGATS Operating Rules and consistent with the provisions of this Delivery Verification Plan and Section 2.03 of this Agreement.