

AMENDED AND RESTATED TERMINATION AGREEMENT

This AMENDED AND RESTATED TERMINATION AGREEMENT (“**Agreement**”) is entered into as of August 7, 2024 (“**Effective Amendment 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 _____ (“**Seller**”), a limited liability company, having a principal business address of _____.

NYSERDA and Seller are each referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**.”

RECITALS

WHEREAS, NYSERDA and Seller were parties to that certain Renewable Energy Standard (“**RES**”) Agreement dated as of _____, 20__ (as amended and modified from time to time, the “**Tier-1 Agreement**”; capitalized terms not otherwise defined herein have the meaning assigned to such terms in the Tier-1 Agreement), pursuant to which Seller delivered Contract Security to NYSERDA;

WHEREAS, as of the Effective Termination Date (as defined below), NYSERDA has not drawn on the Contract Security;

WHEREAS, NYSERDA and Seller entered into that certain Termination Agreement as of December 14, 2023 (“**Effective Termination Date**”), by which NYSERDA agreed to terminate the Tier-1 Agreement and to treat such Contract Security in accordance with the terms and subject to the conditions set forth therein (the “**Existing Termination Agreement**”);

WHEREAS, pursuant to the terms of the Existing Termination Agreement, in consideration for NYSERDA’s agreement to terminate Seller’s Tier-1 Agreement, NYSERDA continues to hold one hundred percent (100%) of the Contract Security delivered by Seller to NYSERDA under Seller’s Tier-1 Agreement for disposition by NYSERDA in accordance with the provisions of such Existing Termination Agreement;

WHEREAS, pursuant to the Existing Termination Agreement, upon the occurrence of a Termination Event, NYSERDA has the right to retain permanently the Contract Security of the Bid Facility;

WHEREAS, NYSERDA conducted a competitive solicitation to procure Tier-1 RECs in the form of RESRFP23-1, and the Bid Facility was not eligible to participate or was otherwise not an awardee as further described in Section 3(a)(i) below;

WHEREAS, NYSERDA intends to conduct subsequent solicitations to procure Tier-1 RECs, and Seller, as a consequence of the termination of the Tier-1 Agreement, may be eligible to participate in such solicitations, as further described herein; and

WHEREAS, the Parties desire to amend and restate the Existing Termination Agreement to further clarify the circumstances under which NYSERDA shall retain permanently the Contract Security delivered by Seller.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Termination of the Tier-1 Agreement. The Parties acknowledge that, subject to the terms and conditions of this Agreement, the Tier-1 Agreement was terminated effective as of the Effective Termination Date. From and after the Effective Termination Date, the Tier-1 Agreement is of no further force or effect, and the rights and obligations of each of the Parties thereunder have terminated, except for any rights and obligations of the Parties that were and are expressly designated hereunder to survive the termination of the Tier-1 Agreement, as such rights and obligations may be modified herein.

2. Continuation of Contract Security. In consideration for NYSERDA's agreement to terminate the Tier-1 Agreement, and subject to the occurrence of a Termination Event, as defined in Section 3(b)(iii) below, NYSERDA shall continue to hold one hundred percent (100%) of the Contract Security delivered by Seller to NYSERDA pursuant to the Tier-1 Agreement as of the Effective Termination Date as provided in this Agreement. To the extent that such Contract Security has been delivered to NYSERDA in the form of a Letter of Credit, Seller has delivered to NYSERDA (x) a substitute letter of credit in replacement of such Letter of Credit, in the amount of such Letter of Credit, conforming to the requirements of Section 15.04 of the Tier-1 Agreement and substantially in the form of Exhibit A attached hereto (the "**Substitute Letter of Credit**"), or (y) cash or certified funds in replacement of such Letter of Credit, in an amount equal to the nominal amount of such Letter of Credit (the "**Alternative Contract Security**"). During the Term of this Agreement, upon written notice to NYSERDA, Seller may at any time replace the Letter of Credit or Substitute Letter of Credit with Alternative Contract Security.

3. Treatment of Contract Security.

(a) Participation in Upcoming Solicitations.

(i) Pursuant to the Existing Termination Agreement, Seller either (A) participated in good faith in NYSERDA's RESRFP23-1 solicitation and was not an awardee thereto, or (B) prior to the Step Two Bid Proposal submission deadline for RESRFP23-1, NYSERDA determined, pursuant to evidence delivered by Seller, that Seller did not meet the eligibility criteria for participation in the RESRFP23-1 solicitation and Seller therefore did not participate in such solicitation further. In the case of either (A) (so long as the Threshold Point (as defined below) has not been achieved) or (B), NYSERDA shall continue to hold Seller's Contract Security hereunder as provided in Section 2 above pending the outcome of Seller's participation in Tier-1 RES solicitations subsequent to NYSERDA's RESRFP23-1

solicitation during the Term of this Agreement (each such solicitation, a “**Future Tier-1 RES Solicitation**”; and, collectively, “**Future Tier-1 RES Solicitations**”). NYSERDA’s continued retention of such Contract Security shall be in accordance with the provisions of Section 3(a)(ii) below and shall be subject to the disposition of such Contract Security upon the occurrence of a Termination Event under Section 3(b)(iii) below.

(ii) Further to Section 3(a)(i) above, Seller shall either (x) participate in good faith in the immediately succeeding Future Tier-1 RES Solicitation, or (y) prior to the Step Two Bid Proposal submission deadline for such solicitation, deliver to NYSERDA evidence, reasonably satisfactory to NYSERDA, that Seller does not meet the eligibility criteria for participation in such solicitation. In the event that (A) NYSERDA determines, in response to evidence presented by Seller, that Seller is not eligible to participate in such immediately succeeding Future Tier-1 RES Solicitation, or (B) NYSERDA has made all awards in connection with such immediately succeeding Future Tier-1 RES Solicitation, Seller was not an awardee pursuant thereto and the Threshold Point (as defined below) has not been achieved, NYSERDA shall continue to retain the Contract Security and Seller shall repeat the procedure set forth in clauses (x) and (y) of this Section 3(a)(ii) with respect to all subsequent Future Tier-1 RES Solicitations during the Term of this Agreement until the occurrence of either (I) a Termination Event under Section 3(b)(iii)(C) or Section 3(b)(iii)(D)(1) where the Threshold Point has been achieved, at which point the Contract Security will be treated in accordance with Section 3(b)(iii)(y), or (II) a Termination Event under any provision of Section 3(b)(iii) other than Section 3(b)(iii)(C) or Section 3(b)(iii)(D)(1), regardless of whether the Threshold Point has been achieved, at which point the Contract Security will be treated in accordance with Section 3(b)(iii)(x). In the event that Seller submits a Step One Eligibility Application with respect to any Future Tier-1 RES Solicitation during the Term of this Agreement, and NYSERDA determines that such proposal is not eligible to participate in Step Two of such solicitation, NYSERDA shall be deemed to have made a determination that Seller is ineligible to participate in such Future Tier-1 RES Solicitation in accordance with this Section 3(a)(ii).

(iii) For purposes of this Agreement, a facility that is submitted into any Future Tier-1 RES Solicitation during the Term of this Agreement as the “Bid Facility” in such Future Tier-1 RES Solicitation will be considered to be the same Bid Facility as defined in the Tier-1 Agreement and herein, and therefore compliant with Section 3(a)(ii), if such facility (A) utilizes the same renewable energy resource and technology (e.g., solar photovoltaic or wind turbines) as the Bid Facility, (B) retains the same Delivery Point as the Bid Facility, and (C) remains in a location that is materially the same as that of the Bid Facility, in each case as determined by NYSERDA in its sole discretion.

(iv) A facility that is the result of combining the Bid Facility with another facility that is the subject of an agreement with the same terms as this Agreement (a “**Combined Facility**”) will also be considered to be the same Bid

Facility (as defined in the Tier-1 Agreement and herein) if such combined facility satisfies the requirements of Section 3(a)(iii)(A), (B), and (C) with respect to both of the combined facilities.

(v) If the Bid Capacity submitted in any Future Tier-1 RES Solicitation during the Term of this Agreement was or is less than the Bid Capacity under the Tier-1 Agreement, or, in the case of a Combined Facility, less than the sum of the Bid Capacity under the Tier-1 Agreement and the other terminated RES Agreement (as defined below), such reduction in Bid Capacity shall constitute a partial termination (“**Partial Termination**”) subject to the terms of Section 3(b)(iv) below.

(b) All Contract Security retained by NYSERDA pursuant to Section 2 above shall be treated as follows:

(i) [Intentionally Omitted].

(ii) Future Tier-1 RES Solicitations.

(A) In the event that Seller is not eligible to participate in a Future Tier-1 RES Solicitation as provided in Section 3(a)(ii), NYSERDA shall continue to hold such Contract Security pursuant to Section 2 above.

(B) In the event that Seller is an awardee under a Future Tier-1 RES Solicitation and Seller delivers Contract Security in compliance with the terms of such Future Tier-1 RES Solicitation and the Renewable Energy Standard Agreement (“**RES Agreement**”) to be executed with NYSERDA pertaining to such solicitation, the Contract Security delivered pursuant to this Agreement shall be added to, and not credited to or in substitution of, the Contract Security delivered in connection with such Future Tier-1 RES Solicitation (as such term is defined in the RES Agreement, the “**RES Contract Security**”). The Contract Security delivered in connection with this Agreement shall be deemed part of the RES Contract Security and shall be refunded or retained by NYSERDA in accordance with the terms of such Future Tier-1 RES Solicitation and such RES Agreement.

(C) In the event that Seller is an awardee under a Future Tier-1 RES Solicitation and Seller has delivered to NYSERDA a Substitute Letter of Credit under this Agreement, in compliance with the terms of such Future Tier-1 RES Solicitation and the RES Agreement pertaining thereto, Seller shall, in addition to the delivery of the RES Contract Security, deliver to NYSERDA a Letter of Credit in replacement of such Substitute Letter of Credit, which Letter of Credit shall be deemed part of the RES Contract Security, in the amount of such Substitute Letter of Credit, complying with all of the requirements for a Letter of Credit to be delivered as RES Contract Security under the terms of such Future Tier-1 RES Solicitation and such RES Agreement.

(iii) Termination Event. If, upon the earliest to occur of the following (the “**Termination Event**”):

(A) Seller’s failure to submit a timely bid for a Future Tier-1 RES Solicitation or to provide reasonably satisfactory evidence to NYSERDA of its ineligibility to participate in such Future Tier-1 RES Solicitation in accordance with Section 3(a)(ii) above;

(B) [Intentionally Omitted];

(C) Seller submitted a timely bid for NYSERDA’s RESRFP23-1 solicitation, NYSERDA made all awards in connection with RESRFP23-1 and Seller is not an awardee;

(D) Seller has submitted a timely bid for a Future Tier-1 RES Solicitation, NYSERDA has made all awards in connection with such Future Tier-1 RES Solicitation and Seller (1) is not an awardee, (2) does not accept any award under such Future Tier-1 RES Solicitation or withdraws its acceptance of such award, or (3) fails to execute the RES Agreement in a timely manner;

(E) An Event of Default by Seller has occurred under this Agreement; and

(F) the fifth anniversary of the Effective Termination Date;

then, effective upon the Termination Event, NYSERDA shall, as its sole remedy with respect thereto:

(x) for Termination Events described in paragraphs (A), (D)(2), (D)(3), (E) and (F) of this Section 3(b)(iii), terminate this Agreement upon delivery of written notice to Seller, and permanently retain all Contract Security delivered to NYSERDA by Seller prior to the Effective Termination Date, including without limitation drawing on any Substitute Letter of Credit delivered by Seller to NYSERDA as Contract Security or drawing on RES Contract Security, as applicable; and

(y) for Termination Events described in paragraphs (C) and (D)(1) of this Section 3(b)(iii) where the Threshold Point has been achieved, upon delivery of written notice to Seller, terminate this Agreement and permanently retain all Contract Security delivered to NYSERDA by Seller prior to the Effective Termination Date, including without limitation drawing on any Substitute Letter of Credit delivered by Seller to NYSERDA as Contract Security;

provided, however, that, in the case of each of (x) and (y), upon receipt of such written notice of termination from NYSERDA, and prior to NYSERDA’s drawing on any Substitute Letter of Credit, Seller may within one (1) Business Day and upon written notice to NYSERDA, replace the Substitute Letter of Credit with

Alternative Contract Security to be permanently retained by NYSERDA;

and provided, further that, if a Termination Event as described in paragraph (C) or (D)(1) of this Section 3(b)(iii) has occurred and the Threshold Point has not been achieved, Seller shall continue the process described in Section 3(a)(ii) with respect to each Future Tier-1 RES Solicitation until the earlier to occur of (X) its receipt of an award under a Future Tier-1 RES Solicitation, (Y) a Termination Event described in paragraph (C) or (D)(1) where the Threshold Point has been achieved and (Z) a Termination Event other than as described in paragraph (C) or (D)(1).

For purposes of this Section 3(b)(iii), “**Threshold Point**” shall mean a target aggregate amount, established by NYSERDA, of generation associated with Bid Facilities that (i) were subject to mutual termination agreements described in Attachment I to RESRFP23-1, and (ii) subsequently consummated RES Agreements with NYSERDA pursuant to awards under any of RESRFP23-1 or any Future NYSERDA Tier-1 RES Solicitation during the Term of this Agreement.

(iv) Partial Termination. In the event of a Partial Termination, NYSERDA shall have the right, as its sole remedy with respect thereto, to permanently retain a *pro rata* portion of the Contract Security delivered to NYSERDA by Seller prior to the Effective Termination Date corresponding to the proportional reduction in Bid Capacity.

4. Seller’s Representations and Warranties. As a material inducement to NYSERDA to enter into this Agreement, Seller makes the following representations and warranties, all of which shall survive the execution and delivery of this Agreement:

(a) that it requested to terminate the Tier-1 Agreement as provided herein due to its conclusion that, as of the Effective Termination Date and based on its current projections of construction and operating costs and available financing, the Bid Facility was not economically feasible under the pricing agreed to and set forth in such Tier-1 Agreement;

(b) that it has not delivered a notice to its general contractor (or in the event that there is no general contractor to all material internal construction unit(s) and/or third party contractor(s)) to proceed with the construction of the Bid Facility, at a minimum of eighty percent (80%) of the Bid Capacity, other than a limited notice to proceed only with site preparation and/or site civil work (“**Notice to Proceed**”);

(c) that Seller determined in good faith as of the Effective Termination Date that the Commercial Operation Milestone Date under the Tier-1 Agreement would not be timely achieved in accordance with the terms of such Tier-1 Agreement;

(d) that Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;

(e) that Seller has all necessary power and authority to execute and deliver this Agreement and all other agreements contemplated herein and hereby and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller 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 Seller, and no other actions or proceedings on the part of Seller are necessary to authorize this Agreement or any other agreement contemplated herein and hereby or the consummation of the transactions contemplated hereby and thereby;

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

(g) 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 Applicable Law or any provision of the limited liability company agreement or other governing documents of Seller; (ii) 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 (including the limited liability company agreement of Seller), 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 (iii) result in the creation or imposition of any lien upon any property or assets of Seller;

(h) there are no undisclosed material legal actions, claims, or encumbrances, or liabilities pending or, to Seller's knowledge, threatened that may adversely affect Seller's performance of this Agreement or NYSERDA's rights hereunder;

(i) to Seller's knowledge, there are no claims against Seller or NYSERDA relating to or arising out of the Tier-1 Agreement that are not covered by the release contained in Section 7 of this Agreement;

(j) Seller has neither assigned nor transferred any claims released herein, and no person or entity has subrogated to or has any interest or rights in any such claims.

5. NYSERDA's Representations and Warranties. As a material inducement to Seller to enter into this Agreement, NYSERDA makes the following representations and warranties, 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 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 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 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 herein;

(d) that the execution, delivery and performance by NYSERDA of this Agreement will not (i) violate 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;

(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 knowledge of NYSERDA, threatened against NYSERDA or affecting any of its properties or assets which could reasonably be expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

6. Events 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, except for such representations or warranties that are qualified by a standard of materiality, in which case such representations and warranties shall prove to have been false or misleading in any respect, and such false or misleading representation, warranty, or guarantee 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 of up to 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) 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) 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

(c) 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; or (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 an order for relief against a Party, shall be entered in an involuntary case under the Bankruptcy Code; or

(d) Occurrence of Notice to Proceed. The Bid Facility shall achieve Notice to Proceed during the Term of this Agreement, except after Seller has received any award under NYSERDA's RESRFP23-1 solicitation or a Future Tier-1 RES Solicitation for such Bid Facility.

7. Mutual Release.

(a) In consideration of the covenants, agreements, and undertakings of the Parties under this Agreement, each Party, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, managers, shareholders, members, successors, and assigns (collectively, "**Releasors**") hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, managers, shareholders, members, agents, representatives, permitted successors, and permitted assigns (collectively, "**Releasees**") of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity (collectively, "**Claims**"), which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the date of this Agreement arising out of or relating to the Tier-1 Agreement, except for any Claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Agreement (including any surviving indemnification obligations under the Tier-1 Agreement).

(b) Each Party, on behalf of itself and each of its respective Releasors, understands that it may later discover Claims or facts that may be different than, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the

subject matter of the release contained in this Section 7, and which, if known at the time of signing this Agreement, may have materially affected this Agreement and such Party's decision to enter into it and grant the release contained in this Section 7. Nevertheless, the Releasers intend to fully, finally, and forever settle and release all Claims that now exist, may exist or previously existed, as set forth in the release contained in this Section 7, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasers hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts.

(c) This Agreement is not intended to be and shall not be construed as an admission by either Party of any liability, including whether an event of default has occurred with respect to either Party.

(d) Each Party acknowledges that it has had the opportunity to be represented by counsel of its choice throughout the negotiations, which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement. Each Party acknowledges that it has executed this Agreement voluntarily, without coercion or duress of any kind, and on the advice of its counsel. Neither Party, nor any person acting on behalf of either Party has made any statement or representation to any other Party regarding any fact relied upon in entering into this Agreement, and neither Party relies upon any statement, representation, or promise of the other Party, or any person acting on behalf of the other Party, in executing this Agreement, or in making the releases provided for herein, except as expressly stated herein.

(e) Each Party has made such investigation of the facts pertaining to this Agreement, and of all matters pertaining hereto, as it deems necessary. Each Party has read this Agreement and understands its contents. In executing this Agreement, each Party assumes the risk of any misrepresentation, concealment, or mistake. If either Party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, or that any fact was concealed from it, or that its understanding of the facts below is incorrect, such Party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding, regardless of any claims of misrepresentation, concealment of fact, or mistake of law or fact.

(f) Notwithstanding any provision in this Agreement to the contrary, the provisions of this Section 7 shall survive the termination of this Agreement.

8. Indemnification. Seller shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and/or experts' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Seller's breach of this Agreement. 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. Notwithstanding any provision of this Agreement to the contrary, this Section 8 shall survive the termination of this Agreement.

9. Miscellaneous.

(a) Governing Law; Venue. 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. The Parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby 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) 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.

(c) Other Legal Requirements. The references to particular laws of the State of New York in this Article and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of Seller to comply with all legal requirements.

(d) Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Termination Date and shall expire upon the earliest to occur of:

(i) [Intentionally Omitted];

(ii) the execution by NYSERDA and Seller of a RES Agreement and completion of the steps described in Section 3(b)(ii); and

(iii) delivery by NYSERDA of a notice of termination upon the occurrence of a Termination Event in accordance with Section 3(b)(iii) of this Agreement.

(e) Waiver. NYSERDA’s determination to hold and not draw on the Contract Security delivered by Seller prior to the Effective Termination Date in accordance with and

subject to the conditions set forth in this Agreement shall not be deemed to be a waiver of any rights or remedies NYSERDA may have under the Tier-1 Agreement with respect to such Contract Security. 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.

(f) 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.

(g) Assignment. This Agreement may not be assigned by Seller without the prior written consent of NYSERDA. Any assignment by Seller in conflict with this Section 9(g) shall be void *ab initio*.

(h) 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.

(i) 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.

(j) 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.

(k) Notices.

(i) All notices, requests, consents, approvals and other communications which 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:

(A) via certified or registered United States mail, return receipt requested;

- (B) by personal delivery;
- (C) by expedited delivery service; or
- (D) by e-mail, 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 (iii) below:

To Seller:

Company	
Attn:	
Name	
Address	
City, State, Zip Code	
Email Address	

With a copy to:

Company	
Attn:	
Name	
Address	
City, State, Zip Code	
Email Address	

To NYSERDA:

NYSERDA
 Attn: Office of the General Counsel
 17 Columbia Circle
 Albany, New York 12203-6399
 email address: CESLegal@nyserda.ny.gov

With a copy to:

NYSERDA
 Attn: Large-Scale Renewables
 17 Columbia Circle
 Albany, New York 12203-6399
 email address: res@nyserda.ny.gov

(ii) 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 [or Canadian] mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt of an email acknowledgement of receipt.

(iii) The Parties may, from time to time, specify any new or different address in the United States [or Canada] 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 mutually 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.

(l) Confidentiality.

(i) 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).

(ii) Trade Secrets/Commercial Information. 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 which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations.

(iii) 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 pursuant to Section 3(a), must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

(iv) Publication of Agreement. Seller acknowledges that NYSERDA may publish this Agreement. Prior to such publication, NYSERDA will redact any critical electric infrastructure information contained in this Agreement, if any, 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 request to redact price information contained in this Agreement, specifically any terms which may contribute to the calculation of financial obligations under this Agreement.

(m) Effect of Amendment and Restatement. This Agreement is intended to and does completely amend, restate, supersede and replace, without novation, the Existing Termination Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

By:
SELLER

By:
NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

Signature: _____

Signature: _____
NYSERDA Authorized Signatory

Name: _____

Title: _____

By:
SELLER

Signature: _____

Name: _____

Title: _____

**EXHIBIT A
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 NAME]
[SELLER 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].

PAYMENT AGAINST CONFORMING DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT SHALL BE MADE BY US AT OR BEFORE 2:00 P.M., NEW YORK TIME, ON THE NEXT (OR, IN THE CASE OF A PRESENTATION AFTER 10:30 A.M., NEW YORK TIME, THE SECOND NEXT) 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 _____ DATE _____."

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

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENT FOR ONE YEAR PERIODS FROM THE PRESENT OR ANY FUTURE EXPIRY DATE UNLESS AT LEAST 30 CALENDAR DAYS PRIOR TO SUCH EXPIRATION DATE, WE SEND THE BENEFICIARY NOTICE AT THE ABOVE STATED ADDRESS BY OVERNIGHT COURIER, ATTN: NYSERDA GENERAL COUNSEL, WITH ELECTRONIC COPIES SENT TO CESLEGAL@NYSERDA.NY.GOV AND RES@NYSERDA.NY.GOV, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT BEYOND THE INITIAL OR ANY EXTENDED EXPIRY DATE HEREOF.

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.

[NAME OF ISSUING BANK]

[ADDRESS OF ISSUING BANK]

AUTHORIZED SIGNATURE
OF OFFICER OF ISSUING BANK

Annex A to Exhibit A - 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 A - 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 an agreement related to the purchase and sale of Tier-1 Renewable Energy Credits (“Agreement”) or the termination thereof (“Termination Agreement”) in the aggregate amount of \$ _____, (“Letter of Credit Amount”):

_____ a Termination Event has occurred under the Termination Agreement entitling the Beneficiary to draw under this Letter of Credit,

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]