

**BRRFP23-1 – ATTACHMENT A**

**BUILD-READY STANDARD FORM AGREEMENT**

**BY AND BETWEEN**

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

**AND**

**BR PROJECT 1 LLC**

**Dated: \_\_\_\_\_, 2023**

**Agreement No. \_\_\_\_\_**

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This Build-Ready Standard Agreement (“Agreement”) is entered into as of \_\_\_\_\_, ~~2023~~2024 (the “Effective Date”) by and between the New York State Energy Research and Development Authority (“NYSERDA”), a New York State public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and BR Project 1 LLC (“Seller”), a New York State Limited Liability Company, having a principal business address of \_\_\_\_\_. 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 a Clean Energy Standard”<sup>1</sup> (“2016 CES Order”) established a Clean Energy Standard Program, including a Renewable Energy Standard (“RES”); and

WHEREAS, the RES requires each New York electric load-serving entity to serve its retail customers by procuring new renewable resources, evidenced by the proffer of RES Tier-1 Renewable Energy Certificates (“Tier-1 RECs”); and

WHEREAS, the 2016 CES Order directs and authorizes NYSEDA, as the central procurement administrator of the RES program, to procure Tier-1 RECs for sale to New York electric load-serving entities; and

WHEREAS, in July 2019 New York State enacted the Climate Leadership and Community Protection Act (“CLCPA”), which requires the PSC to develop a program for achieving 70% of statewide electrical generation from “renewable energy systems” as defined in the CLCPA and codified at § 66-p(1)(b) of the Public Service Law; and

WHEREAS, on January 16, 2020<sup>2</sup> the PSC authorized NYSEDA to procure both “Fixed RECs” and “Index RECs,” the price of which are indexed to reference energy and capacity prices; and

WHEREAS, on April 3, 2020, Title 9-B of Article 8 of the Public Authorities Law became effective, establishing the Clean Energy Resources Development and Incentives Program (the “Build-Ready Program”) within NYSEDA; and

WHEREAS, on June 5, 2020, NYSEDA filed a petition with the PSC seeking funding and approval for the Build-Ready Program; and

WHEREAS, on October 15, 2020, the PSC issued the Build-Ready Order<sup>3</sup> authorizing NYSEDA to establish the Build-Ready Program; and

WHEREAS, on January 6, 2022, NYSEDA formed BR Project 1 LLC to serve as a development vehicle for a solar energy project with an Anticipated Nameplate Capacity of 12

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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 a Clean Energy Standard, “Order Adopting a Clean Energy Standard,” issued and effective August 1, 2016.

<sup>2</sup>*Id.* “Order Modifying Tier 1 Renewable Procurements,” issued and effective January 16, 2020 (“Index REC Order”).

<sup>3</sup>See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, “Order Approving Build-Ready Program,” issued and effective October 15, 2020 (“Build-Ready Order”).

MW known as BR Benson Mines Solar project located south of the intersection of New York State Route 3 and Benson Mines – Newtown Falls Road, in the Town of Clifton, County of St. Lawrence, New York (the “BR Facility”); and

WHEREAS, NYSERDA has conducted a competitive solicitation in the form of BRRFP23-1 for (i) the purchase by the awarded bidder of 100% of the limited liability company membership interests in Seller (the “Seller Membership Interests”), and (ii) procurement by NYSERDA from the Seller of Tier-1 RECs that will be generated by the Project; and

WHEREAS, BRRFP23-1, which is incorporated herein and made part hereof, provided, among other things, that this Agreement would be employed to govern the rights and obligations of the Parties with respect to the purchase and sale of Tier 1 RECs; and

WHEREAS, [RFP AWARDEE] (“RFP Awardee”), a [State] [entity type] participated in BRRFP23-1 and was selected by NYSERDA with respect to the BR Facility on the basis of, among other things, its proposed Index REC Strike Price (as defined below); and

WHEREAS, simultaneously with the execution of this Agreement, RFP Awardee and NYSERDA have executed that certain Membership Interest Purchase Agreement, dated as of the date hereof, and consummated the purchase by RFP Awardee of the Seller Membership Interests, as contemplated thereby;

WHEREAS, as a consequence of its purchase of the Seller Membership Interest pursuant to the Membership Interest Purchase Agreement, as of the date hereof, RFP Awardee is the sole member and owner of 100% of the Seller Membership Interests;

WHEREAS, Seller hereby agrees to sell to NYSERDA, and NYSERDA agrees to purchase from Seller, the Tier-1 RECs associated with 100% of the Actual Production of the BR Facility subject to the Annual REC Cap during the Contract Delivery Term, on the terms and subject to the conditions set forth herein; and

NOW, THEREFORE, this Agreement has been entered into by the Parties to define, among other things, their rights and obligations concerning the final development, construction and operation of the BR Facility, the Tier-1 RECs associated with the generation of electric energy by the BR Facility, the delivery by Seller of Tier-1 RECs to NYSERDA, and payments by NYSERDA 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 provisions for all purposes of this Agreement (each such 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.

Actual Annual Production: The amount, in MWh, of the Actual Production that the BR Facility produces during a Contract Year.

Actual Production: The amount, in MWh, of the total electric energy production of the BR Facility during any period within the Contract Delivery Term as measured at the Injection Point.

Anticipated Nameplate Capacity: Shall be as defined in Schedule 1 of this Agreement.

Annual Operating Report: An operating report submitted by Seller to NYSERDA on an annual basis, in a form substantially similar to Exhibit I to this Agreement that includes information depicting the performance of the BR Facility for the reporting year, major operations and maintenance activities performed and planned, planned or unplanned outages, curtailment directives, or dispatch issues, including total Excused Production.

Annual REC Cap: The number of Tier-1 RECs equal to the product of (i) the Bid Quantity and (ii) one and two tenths (1.20), rounded down to the nearest whole number of RECs. The Annual REC Cap shall be stated in Schedule 1 of this Agreement unless and until the Bid Quantity is adjusted by Seller in accordance with Section 2.01(e). Seller will retain ownership and all rights to Tier-1 RECs that exceed the Annual REC Cap.

APA Permit: The New York State Adirondack Park Agency permit to construct the BR Facility issued September 15, 2022.

Applicable Zone: The NYISO load zone that includes the Delivery Point. The Applicable Zone shall be as stated in Schedule 1 of this Agreement.

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 tariffs.

Approved Discretionary Interconnection Costs: All costs actually paid by Seller with respect to the BR Facility for interconnection upgrades associated with the Anticipated Nameplate Capacity that are not required under the Interconnection Agreement but may be undertaken in Seller’s discretion, provided that such costs are approved by NYSERDA for inclusion within the Interconnection Cost Allocation.

Award Notification Date: For purposes of this Agreement, the Award Notification Date will be as stated in Schedule 2 of this Agreement.

BR Facility: As defined in the Recitals.

Bid Proposal: Documents submitted by Seller in response to BRRFP23-1 and received by NYSERDA.

Bid Quantity: The number of Tier-1 RECs the BR Facility expects to proffer as performance under this Agreement during each Contract Year during the Contract Delivery Term. ~~Subject to adjustments made pursuant to Article V, for all transactions contemplated and consummated under this Agreement, the~~ The Bid Quantity shall be as stated in Schedule 1 of this Agreement.

Bid Quantity Percentage: The percentage of the BR Facility's Actual Annual Production that will be committed to performance under this Agreement. For all transactions contemplated and consummated under this Agreement the Bid Quantity Percentage shall be as stated in Schedule 1 of this Agreement.

BRRFP23-1 Launch Date: Defined in Schedule 2 of this Agreement.

Business Day: Any day except a Saturday, Sunday or a New York State or NERC recognized holiday.

Change of Control: Any transfer, sale, assignment, pledge, or other disposition of shares in, membership interests of or equity interests in Seller having the result (directly or indirectly and either immediately or after giving effect to the exercise of any options that have vested) of changing the entity or entities which possess the power (directly or indirectly and either immediately or after giving effect to the exercise of any options that have vested) to direct or cause the direction of the management or policies of Seller (from the entity or entities possessing such power as to Seller as of the Effective Date), whether such change is voluntary or involuntary on the part of Seller; provided, however, that a Change of Control with respect to Seller shall not include any transfer, sale assignment, pledge or other disposition if: (a) such transfer, sale, assignment, pledge or other disposition is in connection with a financing of the BR Facility, or is the result of the exercise of remedies by financing parties providing a financing; (b) such transfer, sale, assignment, pledge or disposition is pursuant to a tax equity financing of the BR Facility, or is the result of the exercise of remedies by a tax equity investor upon a default under such tax equity financing documents; or (c) following such transfer, sale assignment, pledge or other disposition, the management and policies of Seller continue to be directly or indirectly controlled solely by an entity or entities that possessed such power as to Seller as of the Effective Date.

Construction Activities: The physical activities associated with the construction of any on-site structure or civil site works including, but not limited to, the clearing, grubbing, grading, staging, installation, erection and placement of the BR Facility and electrical interconnection, as well as start-up and commissioning of the BR Facility.

Construction Period: The period during which the BR Facility is under construction beginning on the date the first Construction Activities take place and ending on the date the BR Facility achieves Commercial Operation.

Commercial Operation: A state of operational readiness of the BR Facility under which (i) the BR Facility has been mechanically constructed and interconnected, (ii) generating capacity from the BR Facility is available and to physically producing produce and deliver electric energy and associated Tier-1 RECs, and (~~iii~~) all rights, abilities, permits and approvals to schedule and deliver energy from the BR Facility to the Injection Point have been obtained.

Commercial Operation Milestone Date: The Initial Commercial Operation Milestone Date, unless and until the Initial Commercial Operation Milestone Date is extended in accordance with the terms of Article II and Article XV of this Agreement, in which case the Commercial Operation Milestone Date shall be the applicable Extended Commercial Operation Milestone Date determined in accordance with Article XV and Schedule 2.

Connecting Transmission Owner: Niagara Mohawk Power Corporation d/b/a National Grid.

Contract Delivery Term: The 20-year period of performance under this Agreement whereby Seller sells Tier 1 RECs to NYSERDA generated by the BR Facility. The Contract Delivery Term will commence on the first day of the month after the month in which the BR Facility commences Commercial Operation.

Contract Security: All amounts provided to NYSERDA as defined in Article XV (Contract Security) of this Agreement.

Contract Tenor: The duration, in years, of the Contract Delivery Term. The Contract Tenor shall be as stated in Schedule 1 of this Agreement.

Contract Year: A 12-month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof within the Contract Delivery Term.

Cost Allocation Increase: The positive sum, if any, between (i) the Interconnection Cost Allocation minus (ii) the Interconnection Cost Allocation Baseline.

Delivery Point: The generator bus or location where the NYISO and Connection Transmission Owner measure or otherwise determine energy production from the BR Facility.

Disadvantaged Communities: The term “Disadvantaged Communities” shall have the meaning established by the CLCPA in § 75-0101(5) of the New York Environmental Conservation Law.

[Disadvantaged Community Commitments: Shall be those commitments contained in the Seller’s Bid Proposal and described in Section 6.10 of this Agreement.]

Excused Production: The total amount of energy, as measured in MWh, that the BR Facility is unable to generate or deliver for any time period due to a Force Majeure Event, as reasonably demonstrated by Seller in accordance with Section 16.01(b). The calculation of the amount of production so curtailed, reduced or redispatched shall take into account (i) during the period of such curtailment, reduction or redispatch, the actual weather-related data available through the BR Facility’s monitoring equipment and other available data or interpolated data determined using prudent utility practices, (ii) the power curve provided by the module supplier (adjusted by historical data for the BR Facility compiled by Seller, including the results of any power curve

testing), and (iii) the actual availability of each unit of the BR Facility and the availability of the BR Facility to deliver energy to the Injection Point, as such deemed energy shall be adjusted taking into account historical data for the BR Facility. Seller shall provide written notice of any claim of Excused Production under Section 16.01(b) within thirty (30) days of the end of the Contract Year during which it occurs; such Notice to NYSERDA must include a detailed description of its claimed Excused Production, including the methodology and calculations used by Seller in calculating the claimed amount, applying the above referenced factors, for NYSERDA's review and consideration. Seller shall cooperate with NYSERDA and the NYISO in providing demonstration of the NYISO or transmission utility direction.

Expected Dollars/MW: The total dollar amount of Incremental Economic Benefits per MW of Nameplate Capacity, as presented in the Bid Proposal and accepted by NYSERDA, expected to accrue to New York as a result of the development, construction, modification and operation of the BR Facility from the BRRFP23-1 Launch Date through the end of the first three (3) Contract Years. The Expected Dollars/MW under this Agreement shall be as stated in Schedule 1 of this Agreement.

Expected MWBE and SDVOB Dollars/MW: The total dollar amount per MW of Nameplate Capacity, as presented in the Bid Proposal and accepted by NYSERDA, expected to accrue specifically to New York State Certified MWBEs and New York State Certified SDVOBs. The amount of Expected MWBE and SDVOB Dollars/MW under this Agreement is set forth in Schedule 1 to this Agreement.

~~Expected MWBE and SDVOB Dollars Shortfall: The amount, if any, by which the Verified MWBE and SDVOB Dollars is less than the product of the Expected MWBE and SDVOB Dollars/MW and the Installed Capacity.~~

Expected U.S. Iron and Steel Dollars/MW: The total dollar amount per MW of Nameplate Capacity associated with expenditures for iron and steel components of the BR Facility manufactured in the United States using iron or steel from steel mills located in the United States. The amount of Expected U.S. Iron and Steel Dollars/MW is set forth in Schedule 1 to this Agreement.<sup>4</sup>

~~Expected U.S. Iron and Steel Dollars Shortfall: The amount, if any, by which the Verified U.S. Iron and Steel Dollars is less than the product of the Expected U.S. Iron and Steel Dollars/MW and the Installed Capacity in MWdc for solar PV.~~

Extended Commercial Operation Milestone Date: Any of the First Extended Commercial Operation Milestone Date, Second Extended Commercial Operation Milestone Date, Third Extended Commercial Operation Milestone Date or Final Extended Commercial Operation Milestone Date, as defined in Schedule 2.

[Fixed REC Price: An as-bid price in dollars per Tier-1 REC as stated in Schedule 1 of this Agreement and as may be adjusted pursuant to Section 4.02(b) [and Section 5.02(e)] of this Agreement.]

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<sup>4</sup>This amount will be based on \$30,000/MWdc nameplate capacity for solar PV.

Incremental Economic Benefits: Incremental Economic Benefits are financial expenditures benefitting New York State as specified by Seller's Step Two Bid Proposal in response to BRRFP23-1 and are those that a Seller can demonstrate: (i) ~~will~~ accrue subsequent to the BRRFP23-1 Launch Date, and (ii) would not have accrued but for the award of this Agreement, or an anticipation of the potential for such an award. Economic benefits previously claimed with respect to a BR Facility that are subject to a pending award under a previous solicitation or that is the subject of a current NYSERDA Agreement are not Incremental Economic Benefits.

[Index REC Price: A price in dollars per Tier-1 REC that nets the as-bid Index REC Strike Price monthly against the sum of the Reference Energy Price and the Reference Capacity Price, as determined pursuant to Section 4.01 of this Agreement.]

[Index REC Strike Price: The as-bid value for each Contract Year as submitted in the Bid Proposal and as stated in Schedule 1 of this Agreement. [The Index REC Strike Price may be adjusted pursuant to Section 5.02(e) of this Agreement.]]

Initial Commercial Operation Milestone Date: The Initial Commercial Operation Milestone Date identified in Schedule 2 of this Agreement.

Injection Point: Shall be the Delivery Point.

Installed Capacity: Installed Capacity shall equal (i) the Nameplate Capacity of the BR Facility as confirmed for purposes of its Statement of Qualification (SoQ) and Operational Certification multiplied by (ii) the Bid Quantity Percentage.

Interconnection Agreement: The Standard Small Generator Interconnection Agreement, as defined in Attachment Z of the NYISO OATT, that has been executed or finalized for the BR Facility.

Interconnection Cost Allocation: The aggregate of all Mandatory Interconnection Costs and all Approved Discretionary Interconnection Costs.

Interconnection Cost Allocation Baseline: An amount equal to three million three-hundred thousand dollars (\$3,300,000.00). The associated scope for the work to be performed under the Interconnection Agreement for the BR Facility at the Anticipated Nameplate Capacity consists of a single-breaker tap station and associated line tap. In determining the Interconnection Cost Allocation, this scope can only be adjusted if approved by NYSERDA.

Interconnection Net Savings: The positive sum, if any, between (i) the Interconnection Cost Allocation Baseline minus (ii) the Interconnection Cost Allocation.

Interconnection Price Increase: The increase in dollars per REC to the Fixed REC Price or Index REC Strike Price (as applicable) as calculated pursuant to Section 5.03 of this Agreement.

Interconnection Price Reduction: The reduction in dollars per REC to the Fixed REC Price or Index REC Strike Price (as applicable) as calculated pursuant to Section 5.03 of this Agreement.

Key Personnel: Those employees and contractors of Seller set forth on Exhibit [\_\_\_].

Knowledge: With respect to a fact or circumstance means the knowledge of a Party after conducting (a) a reasonable review of its books, records and properties relating to matters relevant to such particular fact or circumstance and (b) a reasonable inquiry of each of its employees, officers, directors, agents and vendors who would reasonably be expected to have actual knowledge of such fact or circumstances as a result of such other person's position or duties.

Mandatory Interconnection Costs: all interconnection costs actually paid by Seller with respect to the BR Facility (either directly or through reimbursement to a Connecting Transmission Owner) for interconnection upgrades required under the Interconnection Agreement, except for Approved Discretionary Interconnection Costs.

Maximum Nameplate Capacity: The maximum allowable gross generating capacity of the entire BR Facility in MW. The Maximum Nameplate Capacity shall be as stated in Schedule 1 of this Agreement.

Monthly REC Price: A price in dollars per Tier-1 REC for each month of the Contract Delivery Term. [If the RFP Awardee has been selected by NYSERDA on the basis of a Fixed REC Price bid, the Monthly REC Price shall be the as-bid Fixed REC Price stated in Schedule 1 of this Agreement, as may be adjusted pursuant to Section 4.02(b) [and Section 5.02(e) of this Agreement]. [If the RFP Awardee has been selected by NYSERDA on the basis of an Index REC Price bid, the Monthly REC Price shall be as calculated pursuant to Section 4.01 of this Agreement.]

MW: A megawatt of alternating current electric energy generating capacity.

MWBE: Minority and/or Women-Owned Businesses Enterprises, as such term is as defined under New York State Executive Law Article 15-A.

MWBE and SDVOB Dollars/MW Shortfall: [The amount, if any, by which the Verified MWBE and SDVOB Dollars is less than the product of the Expected MWBE and SDVOB Dollars/MW and the Installed Capacity.](#)

MWh: A megawatt-hour of electric energy.

Nameplate Capacity: The gross generating capacity of the entire BR Facility in MW as bid by the Proposer. The Nameplate Capacity shall be as stated in Schedule 1 of this Agreement.

New York Control Area (NYCA): The control area that is under the control of the NYISO which includes transmission facilities listed in the ISO/TO Agreement Appendices A-1 and A-2, as may be amended from time-to-time.

New York Generation Attribute Tracking System (NYGATS): The tracking system 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-1 RECs. NYGATS will create exactly one Tier-1 REC per MWh of RES eligible generation.

NYGATS Forward Certificate Transfer: A NYGATS Forward Certificate Transfer is an automated monthly transfer of Certificates over the duration of the Contract Delivery Term. Seller will continue to be responsible for providing the Static Data and Dynamic Data required of Projects, notwithstanding the NYGATS Forward Certificate Transfer. See Section 9.3 of the NYGATS Operating Rules.

NYISO: The New York Independent System Operator, Inc., is the administrator of the wholesale power markets in New York and manages the physical electrical operations of the NYCA.

NYISO OATT: The Open Access Transmission Tariff for NYISO, as approved by the Federal Energy Regulatory Commission, and as it may be amended or supplemented from time to time, or any successor tariff thereto.

NYSERDA NYGATS Account: The NYGATS account established by NYSERDA into which Seller shall transfer Tier-1 RECs as performance under this Agreement.

Operating Rules: The NYGATS Operating Rules, the General Terms of Use and other guidelines posted to the NYGATS website at: <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>.

Operational Certification: Verification by NYSERDA (i) that the BR Facility has been constructed and/or will operate in accordance with the ~~proposal submitted~~ [Bid Proposal, as such BR Facility may be modified with mutual consent from time to time in accordance with Section 2.13 in advance of Operational Certification](#), for which a Provisional Statement of Qualification (PSoQ) was granted in accordance with the Operating Rules, and for which an award was made; (ii) ~~that Seller has complied with Sections 6.11, 18.10, and 18.15 of this Agreement;~~ [(iii) for Bid Facilities that include an Energy Storage Component, that the Installed Storage Capacity is equal to or greater than the Bid Storage Capacity; and (iv) for Bid Facilities that include an Energy Storage Component, that the Energy Storage Component has been installed consistent with (a) the Bid Proposal, (b) Section 4 (Demonstrating Continued Project Viability), Section 6 (Quality Assurance, including the Battery Energy Storage Guidebook referenced therein), and (c) Section 9 (Technical Requirements) of the [NYSERDA Bulk Storage Incentive Program Manual](#)]. An Operational Certification request should be submitted after the BR Facility has received a Statement of Qualification (SoQ) in NYGATS.

Permitted Transferee: [Any Person who: i\) meets, or whose parent entity meets, the minimum eligibility criteria for creditworthiness and demonstrated experience set out in RESRFP22-1; and ii\) as of the date of a Change of Control, has not been a party directly adverse to NYSERDA in any litigation, arbitration, or formal dispute resolution proceeding within the preceding five \(5\) years and is not currently a party directly adverse to NYSERDA in any pending litigation, arbitration, or formal dispute resolution proceeding.](#)

Prevailing Wage: Shall have the meaning set forth at and shall be interpreted in accordance with Section 18.10 of this Agreement.

Project Labor Agreement: A pre-hire collective bargaining agreement between Seller, as owner of the BR Facility, or a third party acting on Seller's behalf, and a bona fide building and construction trade labor organization which has established itself, and/or its affiliates, as the collective bargaining representative for all persons who will perform work constructing the BR Facility, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform such construction work on the BR Facility.

Quantity Obligation: Shall mean, for any period during the Contract Delivery Term, the number of Tier-1 RECs equal to the product of (a) the Bid Quantity Percentage multiplied by (b) the Actual Production for such period; subject, however, to adjustments pursuant to Article V (Adjustments); and provided that the Quantity Obligation in any Contract Year shall not exceed the Annual REC Cap for such Contract Year. ~~In~~ and provided, further that in the event of a discrepancy in measurement between the amount of Tier-1 RECs generated by the BR Facility for any period and the Actual Production (in MWh) for that period (for example, due to rounding or meter adjustments), the Quantity Obligation shall be calculated based upon the amount of Tier-1 RECs generated by the BR Facility for that period rather than the Actual Production for such period.

Reference Capacity Price: An amount based on an index of NYISO Capacity Market prices for the Applicable Zone calculated as set forth in Section 4.01 of this Agreement.

Reference Energy Price: An amount based on an index of NYISO Energy Market prices for the Applicable Zone calculated as set forth in Section 4.01 of this Agreement.

Renewable Tax Benefits: Shall mean (i) any investment tax credits under Section 48 of the Internal Revenue Code, as amended from time to time, (ii) any production tax credits under Section 45 of the Internal Revenue Code, as amended from time to time, (iii) any other federal tax credits, depreciation deductions or other tax credits that are intended to provide a specific tax benefit (A) to an owner of, operator of, or security interest holder in a project or facility that is producing or storing electricity, and (B) would not otherwise be available to such person for tax purposes but for the development and operation of the project or facility or production or storage of electricity, (iv) any direct payments or grants that are in lieu of or in addition to the any of the incentives or assistance described in (i), (ii) and (iii), above, and (v) cash grants, cash payments and other financial incentives from the federal government available to the owner of, operator of, or security interest holder in, a project or facility that is producing or storing electricity.

Recovery Factor: The fraction applied to the Cost Allocation Increase and Interconnection Net Savings that amortizes this cost or savings each year over the Contract Tenor, calculated such that the present value of these annual costs at a nominal discount rate of 7.25% is equal to the Cost Allocation Increase or Interconnection Net Savings, respectively.

~~Regional Greenhouse Gas Initiative (RGGI): A cooperative effort among certain U.S. States, including New York State, to cap and reduce power sector CO<sub>2</sub> emissions.~~

SDVOB: Service-Disabled Veteran Owned Businesses as defined under the Service-Disabled Veteran Owned Business Act of New York State.

Statement of Qualification (SoQ): A confirmation by NYSERDA that the energy production of the BR Facility is eligible for the creation by NYGATS of Tier-1 RECs in accordance with NYSERDA's New York State Clean Energy Standard RES Tier 1 Certification Submission Instructions and Eligibility Guidelines, specifically Section 7.2 Demonstration of Commercial Operation. In order for the NYGATS certificates associated with the BR Facility to be flagged with Tier 1 RES eligibility, the associated energy must be delivered into the NYCA in accordance with the delivery requirements specified in the Clean Energy Standard Final Phase 1 Implementation Plan and the NYGATS Operating Rules.

Tier-1 Renewable Energy Certificate (REC) or Tier-1 REC: The electronic record of generation data created by NYGATS and representing all of the attributes of one MWh of electricity generation from a RES Tier-1 BR Facility registered with the NYGATS tracking system. The attributes represented in each Tier-1 REC include all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, and allocations, however characterized, denominated, measured or entitled, attributable to the generation of Actual Production by a BR Facility, including but not limited to: (i) any direct emissions or any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), particulate matter and other pollutants; (ii) any direct or avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases ("GHGs") that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iii) 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 (iv) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above. For greater clarity, Tier-1 Renewable Energy Certificate attributes shall not include federal, state, or local tax benefits, credits, or incentives related to the BR Facility or its generation of electricity.

Transfer/Transferred: The delivery of Tier-1 RECs to the NYSERDA NYGATS Account designated by NYSERDA.

U.S. Iron and Steel Dollars/MW Shortfall: The amount, if any, by which the Verified U.S. Iron and Steel Dollars is less than the product of the Expected U.S. Iron and Steel Dollars/MW and the Installed Capacity in MWdc for solar PV.

Utility: means Niagara Mohawk Power Corporation, d/b/a National Grid.

Utility Delay: A schedule delay that impairs the ability of the Seller to execute the Interconnection Agreement for the Project with the New York Independent System Operator and/or the Utility which delay is directly attributable to either: (a) inability of Seller, after diligent efforts, to reach agreement with the Utility, caused by the Utility's unreasonable delays, as determined by purchaser; or (b) failure by the Utility to meet any time parameters for performance by such Utility which are set forth in the OATT or Interconnection Agreement.

Verified MWBE and SDVOB Dollars: The total dollar amount of Incremental Economic Benefits that accrued specifically to New York State certified MWBEs and New York State

certified SDVOBs, as certified by the Seller and verified by NYSERDA, as a result of the development, construction, modification, operation, and maintenance of the BR Facility; ~~calculated 90 days after the third anniversary of the commencement of the Contract Delivery Term.~~

Verified Total Dollars: The total dollar amount of Incremental Economic Benefits verified by NYSERDA to have accrued to New York as a result of the development, construction, modification, and operation of the BR Facility from the BRRFP23-1 Launch Date through the end of the first three (3) Contract Years.

Verified U.S. Iron and Steel Dollars: The total dollar amount of expenditures through the end of the Construction Period for iron and steel components of the BR Facility manufactured in the United States using iron or steel from steel mills located in the United States, certified by Seller and verified by NYSERDA as set forth in Section 18.15, calculated at the Operational Certification. Only expenditures substantiated by a U.S. Iron and Steel Manufacturer Certification, as found in Exhibit K to this Agreement, shall be eligible to be considered Verified U.S. Iron and Steel Dollars.

## Article II

### Purchase and Sale of Tier-1 Renewable Energy Certificates

#### 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, all right, title and interest in the Tier-1 RECs produced by the BR Facility during each month of the Contract Delivery Term.
- (b) For the avoidance of doubt, the only products Seller is selling and NYSERDA is buying under this Agreement are Tier-1 RECs and all rights, title, and interest associated with those Tier-1 RECs. Seller is not selling to NYSERDA and NYSERDA is not purchasing any electric energy, capacity, or ancillary services associated with the BR Facility.
- (c) As a condition precedent to NYSERDA's purchase obligation in Section 2.01(a), Seller shall deliver to NYSERDA the report of an independent engineer demonstrating the Installed Capacity for comparison to the Nameplate Capacity.
- (d) Notwithstanding Section 2.01(a), in no Contract Year shall NYSERDA be obligated under this Agreement to purchase from Seller, nor Seller obligated under this Agreement to sell to NYSERDA, more Tier-1 RECs than the Annual REC Cap. Seller shall be free to sell, assign, transfer or otherwise subject to any encumbrance any Tier-1 RECs produced by the BR Facility in excess of the Annual REC Cap.

- (e) With NYSERDA's written consent, which shall not be unreasonably withheld, conditioned, or delayed, Seller may, at any time prior to Commercial Operation of the BR Facility, ~~and revise the~~ Bid Quantity upwards (and, thereby, the Annual ~~OREC~~ REC Cap) to reflect changes in the capacity of the BR Facility up to the Maximum Nameplate Capacity.
- (f) NYSERDA is not obligated to buy Seller's test power.

Section 2.02. ~~Such~~The right, title, and interest ~~to the Tier-1 RECs~~ NYSERDA is ~~acquiring under this Agreement~~ shall include perpetual and exclusive rights to ~~the Tier-1~~ such RECs and the underlying ~~attributes~~ Environmental Attributes of the Actual Production up to the Annual REC Cap, including but not limited to the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure ~~rules:~~ Rules: (a) that the energy associated with Tier-1 RECs was generated by the BR Facility; and (b) that New York State and/or the RES Program is responsible for the environmental benefits including reductions in emissions and/or other pollution or any other environmental benefit resulting from the generation of the energy associated with the Tier-1 RECs. For the avoidance of doubt, the only products Seller is selling and NYSERDA is buying under this Agreement are Tier-1 RECs and all rights, title, and interest associated with them. Seller is not selling to NYSERDA and NYSERDA is not purchasing any electric energy, capacity, or ancillary services associated with the BR Facility.

Section 2.03. Seller shall register the BR Facility in NYGATS. Transfer shall be a necessary part of Seller Performance. Seller shall Transfer the Tier-1 RECs to the NYSERDA NYGATS Account via a NYGATS Forward Certificate Transfer on a monthly basis in a percentage equal to the Bid Quantity Percentage. At the time of Transfer by Seller to NYSERDA, the Tier-1 RECs shall be free and clear of all liens, judgments, encumbrances and restrictions. Seller shall not discontinue its election to utilize a NYGATS Forward Certificate Transfer without prior written permission from NYSERDA.

Section 2.04. BRRFP23-1, which is incorporated herein and made part hereof, provided, among other things, that this Agreement would be employed to govern the rights and obligations of the Parties with respect to the purchase and sale of Tier 1 RECs. Seller thereby covenants to undertake all obligations/requirements in BRRFP23-1, including but not limited to Section 3.1.3, Project Execution Plans.

Section 2.05. In the event that Seller becomes entitled to or must apply for or take some other action under any emission-trading, emissions recordation or other regime other than the RES in order to secure a claim, title, credit, ownership, or rights of any type, nature or sort ("Title") to any attributes associated with the Tier-1 RECs, or any certification, registration, verification or other memorialization of the creation of such attributes by the BR Facility to which Seller may be entitled, Seller shall (a) notify NYSERDA of such opportunity; and, if requested to do so by NYSERDA, Seller shall (b) take all actions necessary to apply for and secure such Title, to the maximum extent to which Seller is entitled; (c) provide NYSERDA with evidence of taking such action; and (d) convey such Title to NYSERDA whenever so secured.

Section 2.06. NYSERDA's obligations under this Agreement are expressly conditioned on the BR Facility, from the Effective Date through completion of the Contract Delivery Term, (a) qualifying as a "Renewable Energy System" as defined on the Effective Date in § 66-p(1)(b) of the Public Service Law and the 2020 CES Order, and (b) complying with the "Additional Eligibility Requirements" identified in Appendix A of the 2016 CES Order. NYSERDA and/or its designee shall have reasonable physical access to the BR Facility for the purpose of verifying the continuing eligibility of the BR Facility and its operation. NYSERDA's obligation to purchase Tier-1 RECs under this Agreement will not be reduced or eliminated if the above-referenced definition of "Renewable Energy System" or the "Additional Eligibility Requirements" are changed after the Effective Date in a manner that renders the BR Facility unable to comply.

Section 2.07. Commercial Operation Milestone Date. NYSERDA's obligations to purchase Tier-1 RECs and to make payment under this Agreement are conditioned on the commencement by the BR Facility of Commercial Operation with an Installed Capacity of not less than 80% of the Nameplate Capacity on or before the Commercial Operation Milestone Date. The Commercial Operation Milestone Date shall be as stated in Schedule 2 of this Agreement. Seller may elect to extend the Commercial Operation Milestone Date pursuant to Article XV. Seller may request, and NYSERDA shall not unreasonably deny, an extension of the Commercial Operation Milestone Date, without the requirement to deliver any further Contract Security under Article XV, for any bona-fide Utility Delay, provided that (i) Seller notifies NYSERDA of such Utility Delay within five days of Seller's discovery of such Utility Delay, (ii) Seller provides documentation to NYSERDA substantiating the Utility Delay, (iii) Seller demonstrates to NYSERDA that Seller has undertaken reasonable efforts in good faith to mitigate the impact of any such Utility Delay; and (iv) Seller provides NYSERDA weekly updates on Seller's efforts to resolve any such Utility Delay. The Seller shall not be entitled to an extension of the Commercial Operation Milestone Date in the event that the Seller fails continuously to adhere to the requirements of this Section 2.07 during any Utility Delay.

Section 2.08. NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the Tier-1 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 solely to NYSERDA's benefit, to be applied as determined by NYSERDA as the central procurement administrator of the RES Program, or the benefit of NYSERDA's successor, and shall not affect Seller's rights or obligations under the terms of this Agreement.

Section 2.09. Verification/Metering. The Actual Production of the BR Facility must be capable of accurate and verifiable measurement at the Injection Point by NYISO and the Connecting Transmission Owner through a dedicated generation meter as described in Section 2.10 of this Agreement. Unless specifically agreed to by NYSERDA in writing, the BR Facility must be separately metered and must be functionally represented by a single and discrete Injection Point.

Section 2.10. Dedicated Generation Meter. Seller must provide, install, and maintain a dedicated generation meter at the Injection Point that shall comply with the requirements and standards stated in the NYGATS Operating Rules at Section 5.3. Revenue Metering Standards. Data collected from the meter will be available to NYSERDA and will be used by NYSERDA to verify the monthly Actual Production.

Section 2.11. Decommissioning Bonds. NYSERDA's obligations to purchase RECs and to make payment under this Agreement are conditioned on Seller's furnishing decommissioning bonds in accordance with the APA permit as security for the faithful performance of all Seller's obligations under the APA permit. These bonds shall remain in effect at least until one year after the Contract Tenor or until decommissioning is complete.

Section 2.12. Federal Support: Seller shall use all commercially reasonable efforts to obtain federal financial support for the BR Facility in the form of Renewable Tax Benefits or direct financial benefits expressly intended to incentivize the development and operation of (i) renewable energy infrastructure (including electrical transmission, storage and/or generation), (ii) the payment of prevailing wage, or (iii) domestic facilities that manufacture equipment or components used for such purposes. Seller assumes all risk related to receipt of Renewable Tax Benefits under this Section 2.12.

Section 2.13. Modification of BR Facility. Seller shall not, without NYSERDA's prior written consent, modify or alter the BR Facility in any material respect. Seller shall provide NYSERDA with written notice prior to any material modification of the BR Facility, including but not limited to any modification that is expected to result in a change to the Installed Capacity of the BR Facility, which shall include a written description of the planned modification. NYSERDA shall approve or reject any request to modify or alter the BR Facility within thirty (30) days after its receipt of any such written request, provided that, if NYSERDA does not approve or reject any such request in writing within such thirty (30) day period, such request shall be deemed to have been rejected.

### Article III

#### BR Facility Electricity Delivery Requirements.

Section 3.01. Bid Facilities in the NYCA. The electricity associated with the Tier-1 RECs for Bid Facilities located within the NYCA must be either:

- (a) delivered into a market administered by the NYISO for end-use in New York State; or
- (b) delivered through a wholesale meter under the control of a utility, public authority, or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO; or

- (c) delivered through a dedicated generation meter, in accordance with Section 2.10.

Section 3.02. Reserved.

Section 3.03. Bilateral Sales. Nothing in this Agreement shall be read to prohibit bilateral sales by Seller for electric energy, capacity, or ancillary services produced by the BR Facility. Tier-1 eligible electric energy from the BR Facility sold on a bilateral basis will produce Tier-1 RECs and NYSERDA will purchase such Tier-1 RECs in accordance with Article II of this Agreement, provided that the energy is delivered and sold into the NYCA in accordance with this Article.

Article IV

Pricing and Payment

Section 4.01. Determination of Monthly REC Price for Index REC.

- (a) For an RFP Awardee selected on the basis of an Index REC Price bid, the Monthly REC Price shall equal the Index REC Strike Price minus the Reference Energy Price minus the Reference Capacity Price; (multiplied by the Mitigation Factor, if applicable), subject to the condition that the Monthly REC Price may not exceed the Index REC Strike Price. In the event that the calculation of the Monthly REC Price results in an amount that exceeds the Index REC Strike Price for a given month, then the Monthly REC Price shall equal the Index REC Strike Price for that month.
- (i) The Index REC Strike Price, for each month in the applicable Contract Year shall be as stated in Schedule 1 of this Agreement ~~[-, and as may be modified pursuant to Section 5.02(e) of this Agreement].~~
- (ii) The Reference Energy Price for each month shall be calculated by NYSERDA using data published by NYISO for its day-ahead energy market. NYSERDA shall:
- (A) identify the location-based marginal price (“LBMP”) for each hour of the month in the Applicable Zone; and
- (B) ~~take~~ calculate the around-the-clock simple (not load-weighted) average of each such hourly LBMP during the entire month 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) as published by NYISO for such month in the Applicable Zone (“Reference UCAP Price”);
- (B) ~~take~~ calculate the product of:
  - (1) the Reference UCAP Price (\$/kW-month);
  - (2) the Installed Capacity (MW);
  - (3) a conversion factor of 1,000 kW/MW; and
  - (4) the quotient obtained by dividing the BR Facility’s

Capacity Accreditation Factor ~~for the BR~~, as determined by the NYISO, by the average peak load window capacity factor of the representative unit in the Bid Facility’s Capacity Accreditation Resource Class (CARC), as published by NYISO.

- (C) divide the total amount of dollars calculated in (B) by the total amount of Tier-1 RECs produced by the BR Facility for the subject month (including any Tier-1 RECs produced in excess of the Annual REC Cap or otherwise not committed for sale to NYSERDA under this Agreement) multiplied by the Bid Quantity Percentage to determine the Reference Capacity Price.

~~(D) In any month in which NYISO subjects the Applicable Zone to buyer-side mitigation in a manner that has the effect of excluding one or more generators eligible under Tier-1 of the CES from participating at their full capacity in the NYISO Capacity Market for the Applicable Zone, the Reference Capacity Price shall be multiplied by a Mitigation Factor. The Mitigation Factor shall be calculated as the percentage of UCAP offered in the Applicable Zone by Qualified Renewable Exemption Applicants, as defined in the NYISO Services Tariff Att. H, that has been determined to be exempt from the Offer Floor requirement imposed by the NYISO Services Tariff Att. H, Section 23.4.5.~~

- (b) The following formulae depict the calculation of the Monthly REC Price in accordance with Section 4.01(a).

$$\text{Monthly REC Price} = SP^{\text{Index}} - \text{REP} - \text{RCP} \times \text{MF}$$

where:

$$SP^{\text{Index}} = \text{Index REC Strike Price (\$/MWh)}$$

$$\text{REP} = \text{Reference Energy Price (\$/MWh)}$$

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, through the following equation:~~

$$\begin{aligned}
 RCP &= \frac{RUP \times UPF \times IC \times 1,000}{\text{Total RECs}} RCP \\
 &= \frac{RUP \times IC \times 1,000}{\text{Total RECs} \times BQP} \times \frac{CAF}{\text{Average Capacity Factor of Representative Unit}}
 \end{aligned}$$

where:

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

*IC* = Installed Capacity ~~of the generator~~ (MW)

*Total RECs* = Total amount of Tier-1 RECs produced by the BR Facility in the subject month.

*BQP* = Bid Quantity Percentage

1,000 = kW to MW conversion factor

*CAF* = Capacity Accreditation Factor for the BR Facility's CARC

*Average Capacity Factor of Representative Unit = Capacity Factor during Capability Period Peak Load Window hours of the Representative Unit for the BR Facility's CARC*

Section 4.02. [Determination of Monthly REC Price for Fixed REC.

- (a) For an RFP Awardee selected on the basis of a Fixed REC Price bid, the Monthly REC Price shall equal the Fixed REC Price as stated in Schedule 1 of this Agreement for each month in the respective Contract Year, and as may be modified pursuant to Section 4.02(b) or Section 5.02(e) of this Agreement.
- (b) As directed in the Index REC Order, in the event that a New Carbon Price Mechanism applies to electric generation consumed in New York State, NYSERDA shall reduce the Monthly REC Price prospectively for any Seller selected on the basis of a Fixed REC Bid Proposal ("Fixed REC Carbon Price Adjustment").
  - (i) For purposes of this Agreement a "New Carbon Price Mechanism" is a New York State, NYISO, or federal statute, regulation, rule, order, or policy enacted or promulgated after the submission of the Bid 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 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, RGGI predates the Bid Proposal and, therefore, neither New York’s continued participation in RGGI, nor any programmatic changes to RGGI that occur after the submission of the Bid Proposal shall be considered a New Carbon Price Mechanism.~~

The Fixed REC Carbon Price Adjustment shall be applied on the first day of the first month after the date on which the New Carbon Price Mechanism takes effect and shall last until the cessation of the New Carbon Price Mechanism or the end of the Contract Delivery Term, whichever comes first.

The Fixed REC Carbon Price Adjustment shall be calculated by NYSERDA no less than annually, based on a 12-month period that NYSERDA may select in its reasonable discretion; provided, however that if NYISO publishes data that readily facilitate monthly calculation, NYSERDA shall calculate the Fixed REC Carbon Price each month and apply it to the Monthly REC Price.

- (ii) The value of the Fixed REC Carbon Price Adjustment shall be determined as follows:
  - (A) If NYISO calculates the carbon impact on LBMP (“LBMP<sub>c</sub>”), the Fixed REC Carbon Price Adjustment for each month shall be the generation-weighted LBMP<sub>c</sub> in the Applicable Zone or, if the Carbon Price applies to external resources, at the Proxy Generator Bus as defined in Section 2.16 of the NYISO Market Administration and Control Area Service Tariff; or
  - (B) If NYISO does not calculate the carbon impact on LBMP, the Parties shall amend this Agreement in a manner that provides for calculating the Fixed REC Carbon Price Adjustment using available data and in a manner that reasonably fulfills the directive in the Index REC Order that the incremental revenue associated with a New Carbon Price Mechanism be deducted from the Fixed REC price. ~~The value of RGGI allowances shall not be included in the calculation of the Fixed REC Carbon Price Adjustment and shall not be deducted from the Fixed REC price.~~
  - (C) NYSERDA shall deduct the Fixed REC Carbon Price Adjustment from the Fixed REC Price in order to determine the Monthly REC Price. However, for any month in which the Fixed REC Carbon Price Adjustment exceeds the Fixed REC Price, the Monthly REC Price shall be zero.]

Section 4.03. Invoices.

- (a) Within fifteen (15) days after NYSERDA has received the information for the BR Facility necessary to compute a Monthly REC Price, NYSERDA shall inform Seller of the Monthly REC Price for that month.
- (b) Seller shall submit monthly invoices throughout the Contract Delivery Term of this Agreement for the Tier-1 RECs Transferred by Seller into the NYSERDA NYGATS Account and associated with the Actual Production delivered to the Delivery Point in each month during the Contract Delivery Term. Payments will commence after the BR Facility achieves Operational Certification, retroactive to the commencement of the Contract Delivery Term. Invoices shall not be submitted before NYSERDA provides Seller with the Monthly REC Price for a given month in accordance with Section 4.03(a) of this Agreement; invoices submitted before NYSERDA provides Seller with the Monthly REC Price for a given 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 BR Facility is managed through NYSERDA's Salesforce application, via NYSERDA's Salesforce Portal with Seller's log-in credentials. Invoices shall include a statement of the amount due and payable by NYSERDA to Seller, which amount shall be calculated in accordance with Section 4.04. Invoices must reflect the quantity of Tier-1 RECs Transferred to the NYSERDA NYGATS Account for the month that is the subject of the invoice. With the exception of an invoice submitted in accordance with Article V of this Agreement, NYSERDA shall have no obligation to pay any Invoice submitted more than sixty (60) calendar days after NYSERDA provides Seller with the Monthly REC Price for a given month for which payment is requested. NYSERDA may request additional information and data, as specified in Section 6.01, sufficient for NYSERDA to verify compliance with the BR Facility Electricity Delivery Requirements (Article III) and other requirements as may be outlined in this Agreement.

Section 4.04. Payment.

- (a) The amount payable for each month shall be calculated as: (i) the number of Tier-1 RECs Transferred into the NYSERDA NYGATS Account in accordance with Section 2.01 multiplied by (ii) the Monthly REC Price for the vintage month of the Tier-1 RECs Transferred. NYSERDA will not pay for Tier-1 RECs beyond the Annual REC Cap for any Contract Year.
- (b) Payments will commence after the BR Facility achieves Operational Certification, retroactive to the commencement of the Contract Delivery Term. NYSERDA agrees to grant or deny Operational Certification within thirty (30) days after Seller has submitted a fully complete Operational Certification application demonstrating Tier-1 eligibility and the BR Facility is registered in NYGATS.
- (c) If, for any month, the amount payable to Seller is a negative amount because the Monthly 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 4.05. Prompt Payment Policy. NYSERDA will make payments to Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit C. Such payments shall be made by check or 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 4.06. Reserved.

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 market-based index of energy and/or capacity prices in the Applicable Zone, 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) Notwithstanding paragraphs (a) and (b) of this Section, the Parties agree that recent and ongoing revisions to the Market Administration and Control Area Services Tariff proposed by the New York Independent System Operator, Inc. (NYISO) and approved by the Federal Energy Regulatory Commission (FERC) to adopt a marginal capacity accreditation market design (the “New NYISO Capacity Accreditation Rules”) constitutes a change in Applicable Law, and

accordingly, the Parties shall negotiate in good faith to make such conforming changes as are necessary to the settlement formula found under Article IV of this Agreement prior to the effective date of the New NYISO Capacity Accreditation Rules currently anticipated to take place on May 1, 2024.

## 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 Monthly REC Price to determine if a true-up adjustment is necessary. In the event of such request by the Seller, NYSERDA shall not be obligated to conduct a review of any period prior to the immediately preceding calendar year. 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 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-1 RECs Transferred.

Section 5.02. Other Adjustments. NYSERDA's contractual Payment obligations under this Agreement shall be subject to adjustment under the following circumstances:

- (a) Reserved.
- (b) Should Seller fail to Transfer Tier-1 RECs to the NYSERDA NYGATS Account in a number equal to at least 80% of the Bid Quantity<sup>5.1</sup>, less any Excused Production, for three (3) consecutive Contract Years, the Bid Quantity shall be adjusted for the remainder of the Contract Delivery Term to an amount equal to the highest Actual Annual Production during any Contract Year over that three-year period multiplied by the Bid Quantity Percentage.
- (c) Should Seller fail to reasonably demonstrate to NYSERDA that the Verified Total Dollars divided by Installed Capacity, is at least 85% of the Expected Dollars/MW, the Monthly REC Price payable for the remainder of the Contract Delivery Term shall be adjusted by NYSERDA, upon Notice to Seller. Such reduction in the Monthly REC Price will be made by multiplying the Monthly REC Price each month (beginning with the first month of the fourth Contract Year) by a percentage equal to (i) the Verified Total Dollars divided by the Installed Capacity, divided by (ii) the Expected Dollars/MW.
- (d) Should the Installed Capacity differ from the Nameplate Capacity, Seller agrees that NYSERDA may at its option upon Notice to Seller modify the Contract by adjusting the Bid Quantity, Bid Quantity Percentage, or other relevant terms in Schedule 1 to reflect the Installed Capacity. In making such an adjustment, NYSERDA may consider an independent engineer's production estimate

furnished by Seller substantially in the form of the resource assessment described in Appendix 1 of BRRFP23-1.

- (e) Reserved.
- (f) In the event of an ~~Expected~~ MWBE and SDVOB Dollars/MW Shortfall or an ~~Expected~~ U.S. Iron and Steel Dollars/MW Shortfall, Seller shall pay to NYSERDA (or an account specified by NYSERDA) the amount of the applicable ~~Expected~~ MWBE and SDVOB Dollars/MW Shortfall and/or ~~Expected~~ U.S. Iron and Steel Dollars/MW Shortfall within six (6) months of NYSERDA's notification to Seller of any such shortfall. ~~Upon mutual consent of the Parties, NYSERDA may, in its sole discretion, set off~~ amounts due to NYSERDA under this Section 5.02(f) ~~may be deducted by NYSERDA~~ from payments owed to Seller under Article IV of this Agreement.

Section 5.03. Interconnection Cost Adjustment. In the event of a difference between the Interconnection Cost Allocation Baseline and the Interconnection Cost Allocation, the Index REC Strike Price or Fixed REC Price, as applicable, shall be adjusted as set forth in Exhibit M.

Section 5.04. Inflation Adjustment. A one-time adjustment to the Fixed REC Price or Index REC Strike Price shall be carried out as set forth in Exhibit L to the commencement of the Contract Delivery Term and prior to any other adjustments made pursuant to this Article V.

## Article VI

### Records, Reports and Other Seller Commitments

#### Section 6.01. Provision of Data.

- (a) Seller shall, at NYSERDA's request, provide NYSERDA access to 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 BR Facility was delivered, from the entity or party in control of any meter through which the energy associated with the Quantity Obligation was delivered, and from the administrator of any attribute accounting system operating in such control area. Seller shall waive confidentiality, as to NYSERDA, for 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 BR Facility is delivered of transactional and/or delivery information and data pertinent to the verification of attribute creation and electricity delivery.
- (b) Reserved.
- (c) Upon commissioning of the BR Facility, Seller agrees to make commercially reasonable efforts to work with NYSERDA to validate a final accounting of the BR Facility's (i) carbon footprint and (ii) energy and carbon payback periods.

Seller further agrees to public disclosure of NYSERDA's determination of the BR Facility' carbon footprint, and energy and carbon payback periods, provided that Seller shall have the opportunity to review and provide feedback on NYSERDA's determination prior to such public disclosure.

Section 6.02. Progress Reports

- (a) 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, no later than March 1 (for the preceding period of November 16 through February 15), June 1 (for the preceding period of February 16 through May 15), September 1 (for the preceding period of May 16 through August 15), and December 1 (for the preceding period of August 16 through November 15), which reports shall be in electronic form, through a method specified by NYSERDA, and which shall describe at a minimum the following:
- (i) Seller's progress in obtaining and securing all required environmental or other permits and/or local approvals;
  - (ii) The status of all development and/or construction planning or activities with regard to the BR Facility, including the status of Payment-in-lieu of Taxes (PILOT)/Host Community Agreement (HCA) negotiations, site diligence, and financing;
  - (iii) The status of the interconnection process between the BR Facility and the administrator of the control area;
  - (iv) Purchases, delivery, and/or installation of any major equipment associated with the BR Facility;
  - (v) An estimated date for Commercial Operation and a schedule of key milestones leading up to Commercial Operation;
  - (vi) Information relating to the engagement of contractors and subcontractors engaged in work related to the BR Facility, with specific emphasis on those that are New York State Certified MWBEs and New York State Certified SDVOBs registered with the Department of State,<sup>5</sup> including identifying information for of such firms, the scope of engagement for such firms, the expenditure on such firms, and the time period in which such firms were engaged and Seller's plan to meet or exceed the Expected MWBE and SDVOB Dollars/MW requirement and progress to date as well as compliance with Section 18.14 of this Agreement;

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<sup>5</sup>A database listing registered MWBEs is available here:

<https://ny.newnycontracts.com/FrontEnd/SearchCertifiedDirectory.asp?XID=5255&TN=ny>

A database listing SDVOBs is available here: <https://online.ogs.ny.gov/SDVOB/search>

- (vii) Information as NYSERDA may reasonably request from time to time to identify and substantiate the economic benefits of the BR Facility to Disadvantaged Communities, including but not limited to project spending by function and geographic area, the employment of contractors and subcontractors with a principal place of business in Disadvantaged Communities, and the hiring of workers that reside in Disadvantaged Communities;
- (viii) Additional information requested by NYSERDA related to the Seller's diversity, equity, and inclusion efforts and other metrics tracked under New York State Labor Law § 224-d; and
- (ix) Seller's plan to meet or exceed the Expected U.S. Iron and Steel Dollars /MW requirement and progress to date.

Such Progress Reports shall also include an updated project schedule with key milestones identified, copies of any permits or approvals granted and/or copies of any correspondence of any type denying or refusing any permit or approval. Upon NYSERDA's request, Seller shall also provide an independent engineer's or similar third party's assessment of the long-term expected energy production of the BR Facility. Seller shall notify NYSERDA within ten (10) days of having Knowledge of of any event that could reasonably cause a material delay in any of the activities listed above. During the Construction Period, Seller shall include with each Progress Report either (a) 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 Seller is in compliance with the Prevailing Wage requirement set forth in Section 18.10, or (b) a written certification signed by Seller's contractor providing construction services for the BR Facility, certifying that such services were performed in compliance with the Prevailing Wage requirement set forth in Section 18.10.

- (b) Seller shall continue to report on information listed under Sections 6.02(a)(vi), 6.02(a)(vii), and 6.02(a)(viii) throughout the Contract Delivery Term.
- (c) Seller shall provide NYSERDA with an Annual Operating Report on March 15 of each year within the Contract Delivery Term and one year thereafter covering the activities of the immediately preceding Calendar Year in which any Tier-1 RECs were Transferred to NYSERDA. Annual Operating Reports shall be submitted in a form substantially similar to Exhibit I to this Agreement, as may be modified by NYSERDA from time to time. To maximize efficiencies, NYSERDA will consider accepting, upon Seller request, Annual Operating Report formats that differ from that contained under Exhibit I to match the format of existing reporting formats utilized by Seller.

Section 6.03. Community Outreach. Each Progress Report shall include detail regarding the status of any ongoing communication with host communities and local governments, including community outreach events, open houses, town/planning board meetings, progress

achieved in accordance with the community outreach plan provided in the Bid Proposal, status of organized support and opposition groups, and identification of potential host community issues.

Section 6.04. Economic Benefits Report. Within ~~ninety (90)~~ one hundred twenty (120) days of the third anniversary of the commencement of the Contract Delivery Term, Seller shall submit an Economic Benefits Report prepared by a New York State independent certified public accountant, demonstrating the actual Incremental Economic Benefits and Verified MWBE and SDVOB Dollars that resulted from the construction and operation of the BR Facility. To fulfill this requirement, Seller's independent certified public accountant will be required to prepare an "agreed upon procedures" report in accordance with the procedures outlined in the Economic Benefits Audit Protocol and Economic Benefits Verification Standards that were released with the Notice of Qualification provided to Seller. The Economic Benefits Audit Protocol will serve as a requirements document to guide the independent audit, allowing auditors to understand the process they are asked to perform. The Economic Benefits Verification Standards will define valid expense claims and standardize submission and documentation processes and best practices. The audit will verify the economic benefits created by the BR Facility under the categories and within the eligibility requirements listed in BRRFP23-1. The Economic Benefits Report will be funded at Seller's expense.

Section 6.05. Additional Documents. As of the Effective Date, Seller shall have delivered to NYSERDA, in form and substance acceptable to NYSERDA:

- (a) Resolutions. A copy of one or more resolutions or other authorizations of Seller, certified by an appropriate officer of Seller as being in full force and effect on the Effective Date, authorizing the execution, delivery and performance by Seller of this Agreement and the actions contemplated herein.
- (b) Incumbency. Certificates from Seller, certified by an appropriate officer of Seller and dated the Effective Date, as to the incumbency of the natural persons authorized to execute and deliver this Agreement.
- (c) Formation and Organizational Documents. (i) a copy of the certificate of formation of Seller, certified by the Secretary of State of the applicable State of formation, and (ii) a copy of the operating agreements and the operating agreement of Seller, certified by its secretary or representative.
- (d) Good Standings. (i) certificates of existence (or the equivalent) issued by the applicable Secretary of State or equivalent office of the jurisdiction of incorporation or formation of Seller, certifying that each such Person is in existence (or the equivalent) and is duly authorized to transact business such state.
- (e) To the extent that Seller has obtained equity or debt financing for any element of the development or construction of the BR Facility, delivery to NYSERDA of fully executed financing documents with respect to such financing.

- (f) Ownership Diagram. An ownership diagram of Seller that shows each level of ownership of Seller, RFP Awardee, and all of RFP Awardee’s members and subsidiaries.
- (g) Patriot Act Compliance: All documentation and information requested by NYSERDA that are necessary (including the name, address, tax payer identification number, IRS Form W 9, copies of organizational documents, copies of government issued identification and names of officers of Seller and controlling members of Seller) for NYSERDA to identify each such Person in accordance with any applicable Anti-Terrorism Laws and the requirements of the Patriot Act (including the “know your customer” and similar regulations thereunder).
- (h) ~~certificates~~ Certificates, dated as of the most recent practicable date prior to the Effective Date, issued by the [jurisdiction of Seller’s organization] Secretary of State confirming the corporate good standing of Seller; [and for foreign corporations and companies a copy of the Application for Authority to do business in New York State as filed with the New York State Department of State];

Seller shall promptly provide NYSERDA with updated and corrected versions of the above-referenced certificates upon any change in the information provided therein.

Section 6.06. Maintenance of Records. 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 no earlier than seven (7) years following the creation thereof with the written consent of NYSERDA, such consent not to be unreasonably withheld.

Section 6.07. Reserved.

Section 6.08. Reserved.

Section 6.09. Reserved.

Section 6.10. Specific Disadvantaged Community Commitments.

- (a) Seller agrees to fulfill all specific Disadvantaged Community Commitments identified in the Proposal, which shall include:

*[Include description of each Disadvantaged Community Commitment contained in the Bid Proposal]*

- (b) With NYSERDA's consent, Seller may substitute a Disadvantaged Community Commitment identified in Section 6.10(a) with a substitute Disadvantaged Community Commitment of equal or greater value to Disadvantaged Community(ies) in New York State.
- (c) Should Seller fail to fulfill any Disadvantaged Community Commitment Seller is obligated to fulfill under Section 6.10(a) or 6.10(b) of this Agreement, Seller shall make payment to NYSERDA in the amount of the unfulfilled dollar value of such commitment, or propose a replacement Disadvantaged Community Commitment in the event that there is no dollar value associated with such commitment, no later than sixty (60) days after the BR Facility achieves Commercial Operation or the date identified in such commitment, whichever is later.

Section 6.11. Reserved.

Section 6.12. Outages. Seller agrees to provide NYSERDA with as much advanced notice as possible for any planned outages or reductions in output of the BR Facility during the Contract Delivery Term, but, in any event, not less than five (5) Business Days' notice. During the Contract Delivery Term, Seller agrees to notify NYSERDA of any unplanned outages or reductions in output of the BR Facility no more than two (2) Business Days after the discovery thereof.

Section 6.13. Failure to Report. In the event that at any time after the Effective Date Seller (a) fails to provide information expressly required by this Agreement to be reported to NYSERDA (for example, Progress Reports required under Section 6.02 or Annual Operating Reports required under Section 6.03), or (b) fails to provide information reasonably requested by NYSERDA in connection with the matters contemplated by this Agreement, in either case within the time period required by this Agreement or otherwise reasonably required by NYSERDA and, following written notice of such failure, Seller does not cure the failure within a reasonable time period, not to exceed 15 business days, NYSERDA shall be permitted to (x) draw from Seller's Contract Security (or, if elected by Seller, Seller shall pay NYSERDA), or (y) retain from any amounts due to Seller under this Agreement, an amount equal to \$10,000 per uncured failure to provide information; provided that the amount shall increase to \$20,000 per uncured failure after the first three instances this provision is triggered. The payments contemplated in this Section 6.13 for reporting failures are designed to help compensate NYSERDA for, among other things, the damages that result from the failure to timely submit information to NYSERDA and do not constitute a penalty payment.

## Article VII

### Audit

Section 7.01. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and a period of seven (7) years thereafter to inspect and audit any and all books, accounts and records 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 6.06. 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. Any payment made under this Agreement shall be subject to retroactive adjustment (reduction or increase) regarding amounts included therein which 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.

Section 7.02. Eligibility Audit. NYSERDA may require, at NYSERDA's sole cost and expense, periodic audits of the BR Facility to verify that the BR Facility remains eligible under the RES as described in Section 2.06 of this Agreement. ~~Seller shall provide NYSERDA with written Notice prior to any material modification of the BR Facility, including but not limited to any modification that is expected to result in a change in the Nameplate Capacity of the BR Facility, and shall provide to NYSERDA a written description of the planned modification~~ and to verify whether the BR Facility has been materially modified from the date of Operational Certification. NYSERDA and/or its designee shall have reasonable access to the BR Facility for both such purposes, and NYSERDA shall comply with Seller's security and safety policies and procedures for the BR Facility to the extent applicable in any such audit.

## Article VIII

### Assignment, Change of Control, and Key Personnel

Section 8.01. General Restrictions. Except as specifically permitted by this Article VIII, (a) 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, ~~and (b) any Change of Control without the prior express written consent of NYSERDA shall constitute an Event of Default under this agreement.~~ Any 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 any of Seller's requests for NYSERDA's consent 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. Without limiting NYSERDA's right to reasonably withhold any requested consent, any NYSERDA consent will, in any event, be conditioned on (x) the execution and delivery by Seller and its

proposed assignee of an instrument of assignment pursuant to which such assignee assumes all of Seller's duties and obligations under this Agreement, in a form substantially similar to Exhibit G, and (y), if required to maintain compliance with Article XV, delivery by such assignee of Contract Security to NYSERDA in substitution of the Contract Security provided by Seller hereunder, and (z) the execution and delivery by Seller and NYSERDA of mutual releases of liability with respect to this Agreement, in each case, in form and substance reasonably satisfactory to NYSERDA.

Section 8.02. Permitted Assignments by Seller. Notwithstanding Section 8.01, NYSERDA's consent shall not be required for Seller to either (a) pledge or assign the BR Facility, this Agreement, or the accounts, revenues, or proceeds from this Agreement in connection with financing arrangements, or (b) assign the BR Facility and this Agreement to an affiliate if (1) the then-current Contract Security remains in place, and (2) an Interconnection Agreement has been executed for the BR Facility. Upon Seller's reasonable request, NYSERDA shall execute a consent to assignment associated with a financing in a ~~commercially reasonable~~ form reasonably acceptable to NYSERDA and Seller. For purposes of this Section 8.02, the term "affiliate" shall include any company, corporation, or other entity that ~~-, directly or indirectly,~~ 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. Change of Control. ~~Notwithstanding any provision in this Article VIII to the contrary, Seller may, upon prior written notice to NYSERDA, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity that has at least fifty percent (50%) ownership of the BR Facility, (a) with which or into which such Seller merges or consolidates; (b) which acquires at least 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, in an instrument executed by the Seller and such entity satisfactory in form and substance to NYSERDA, to be bound by the terms hereof, including any obligation to deliver Contract Security; and provided further, that such other entity's creditworthiness is comparable to or superior to that of Seller at the time this Agreement was executed. NYSERDA reserves the right to request any additional documentation deemed necessary to review any change in control under this Section 8.03.~~ NYSERDA's consent shall not be required for any Change of Control that constitutes a disposition to a Permitted Transferee. If Seller provides NYSERDA with written notice of its intent to effectuate a Change of Control setting forth a description of the transferee describing how it fits within the definition of Permitted Transferee and NYSERDA does not respond within fifteen (15) Business Days, NYSERDA shall be deemed to have confirmed that the proposed Change of Control does not require NYSERDA's consent.

Section 8.04. Changes in Tax Identification Number or Authorized Signatories. Within five (5) days after any change in the Seller's federal tax identification number Seller must (i) notify NYSERDA of such change and (ii) provide NYSERDA with a replacement W-9 form. If Seller is a disregarded entity, the requirements of this Section shall apply to any changes to the

W-9 Seller has filed with NYSEDA for payment purposes. In the event that any authorized signatory to any certification or any document delivered to NYSEDA changes, Seller shall provide NYSEDA with an incumbency certificate with respect to such authorized signatory.

Section 8.05. Advance Notice. Subject to any requirements to comply with Applicable Law, Seller agrees to provide NYSEDA advance notice of ~~assignments, mergers, consolidations, transfers, or changes in control to be effectuated under this Article, in~~ accordance with Section 19.01 of this Agreement, of (i) any 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 and (ii) any Change of Control in which Seller has or should reasonably have actual knowledge of such transaction likely to cause the Change of Control, in each case regardless of whether or not NYSEDA's consent is required hereunder. NYSEDA agrees to execute a confidentiality agreement, as reasonably determined by Seller as necessary, to protect the disclosures required by this Section.

Section 8.06. Non-Compliant Assignments. Any assignment in violation of this Article 8 shall be void *ab initio* with respect to this Agreement.

Section 8.07. Key Personnel. Seller shall make no substitutions, nor allow any of its Affiliates, contractors, or subcontractors at any tier to make substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. Seller shall notify NYSEDA within two (2) Business Days after the occurrence of any of these events. Seller shall request and obtain NYSEDA approval for any replacements of Key Personnel. Seller shall provide NYSEDA with sufficient notice of any substitution or replacement of Key Personnel to allow for background screening, review of qualifications, and other investigation as NYSEDA may require. For any proposed substitute or replacement Key Personnel, Seller shall provide the following information to NYSEDA: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s) in a form substantially similar to that provided under Exhibit [ ] to this Agreement, and any additional information requested by NYSEDA. Proposed substitutes or replacements should have qualifications that are equal to or better, as determined by NYSEDA in its sole discretion, than those of the persons being replaced. In the event that at any time after the Effective Date but prior to Commercial Operation the Seller fails to obtain NYSEDA's written approval for a Key Personnel replacement, NYSEDA shall be permitted to (x) draw from Seller's Contract Security (or, if elected by Seller, Seller shall pay NYSEDA), or (y) retain from any amounts due to Seller under this Agreement, an amount equal to \$25,000 per event.

Section 8.08. Modules and Racking. Seller shall utilize the manufactured solar photovoltaic modules and racking system as specified in Seller's Bid Proposal and set forth in Seller's Preliminary Engineering, Procurement and Construction Plan, as defined in BRRFP23-1. Seller shall utilize a top performing module manufacturer listed on the most recent PVEL's PV Module Reliability Scorecard. Seller shall not replace such manufactured solar photovoltaic modules or racking system with that of a different manufacture without prior approval from NYSEDA, which shall not be unreasonably withheld, conditioned or delayed, and which shall

be based upon an determination that the replacement manufactured solar photovoltaic modules and/or racking system is equal to or better than the manufactured solar photovoltaic modules and/or racking system as specified in Seller's Bid Proposal.

## Article IX

### Seller's Representations, Warranties and Guarantees

Section 9.01. Seller Representations, Warranties and Guarantees. As a material inducement to NYSERDA to enter into this Agreement, Seller 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 Seller (i) is a [corporation/limited liability company/partnership] 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/limited liability company] 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 construct, finance, own, maintain and operate the BR Facility, 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;
- (b) 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 violate (i) 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; provided, however, that this subsection (iii) shall not be interpreted to restrict Seller's ability to collaterally assign this Agreement pursuant to any financing arrangements;
- (c) that the Tier-1 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;
- (d) that the attributes included in the Tier-1 RECs Transferred to NYSERDA under this Agreement have not been, nor will they be sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;

- (e) 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;
- (f) as of the Effective Date, 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;
- (g) as of the Effective Date, that Seller has no Knowledge that any information or document or statement furnished by Seller in connection with this Agreement or the documents submitted to NYSERDA under BRRFP23-1 contain any untrue statement of a material fact or omits to state a material fact necessary to make the statement, in light of the circumstances under which it was made, not misleading;
- (h) that Seller shall not, and shall not cause or permit any voluntary abandonment of the development, construction or operation of the BR Facility;
- (i) 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;
- (j) that Seller is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement (~~<http://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf>~~<https://www.nyserda.ny.gov/-/media/Project/Nyserda/files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf>); and
- (k) that Seller will comply with all Applicable Law other than such Applicable Law the failure with which to comply reasonably could not have a material adverse effect on the development, construction or operation of the BR Facility, Seller's ability to generate or deliver Tier-1 RECs in accordance with this Agreement or Seller's performance of any of its other obligations under this Agreement.

Section 9.02. 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 and 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 the occurrence of each such event.

Section 9.03. Limitation on Representations, Warranties and Guarantees. Except as expressly set forth herein, there is no warranty of merchantability or fitness for a particular purpose with respect to the Tier-1 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 Guaranties. 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 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 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;
- (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 herein;
- (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.

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 and 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, NYSERDA has actual knowledge of any event or information that causes any of the representations and warranties in this Article X to be untrue or misleading, NYSERDA shall provide Seller with prompt written notice of the event or information, the representations and warranties 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

Section 11.01. 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 or to the extent caused by any alleged negligence, unlawful act or omission, or intentional misconduct of Seller in the course of the development of the BR Facility, or the production or delivery of Tier-1 RECs under this Agreement. 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-1 RECs, or (iii) the competitive solicitation process held by NYSERDA to procure Tier-1 RECs; or (b) the administration of NYGATS and/or Clean Energy Standard program (including any dispute arising out of the resale of Tier-1 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) and 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.

## Article XII

### Insurance

Section 12.01. Maintenance of Insurance; Policy Provisions. Seller, at no cost to NYSERDA, shall maintain or cause to be maintained, on or before the date upon which ~~construction begins~~ Construction Activities begin and continuing throughout the duration of the Contract Delivery Term, insurance of the types and in the amounts specified in Section 12.02 (Types of Insurance). All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) name or be endorsed to cover NYSERDA and the State of New York as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

Section 12.02. Types of Insurance. Seller shall be required to maintain commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of [insert: \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of personal injury or sickness or death of any one person; [insert \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of personal injury, sickness or death in any one accident or disaster; and [insert \$2,000,000 or \$200,000 per/MW Nameplate Capacity, whichever is lower] in respect of claims arising out of property damage in any one accident or disaster.

Section 12.03. Delivery of Policies; Insurance Certificates. Prior to the commencement of Construction Activities, Seller shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article XII and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event that any policy furnished or carried pursuant to this Article XII will expire on a date prior to the expiration date of this Agreement, Seller, not less than 15 days prior to such expiration

date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and Seller shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request Seller shall deliver to NYSERDA a certified copy of each policy.

### 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, 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 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) Unauthorized Transfer. The transfer or attempted transfer by Seller to any transferee other than NYSERDA of any Tier-1 RECs associated with the Quantity Obligation or any attribute included in any Tier-1 REC Transferred to NYSERDA; or
- (e) Commercial Operation. Failure of the BR Facility to commence Commercial Operation at a minimum of 80% of the Nameplate Capacity on or before the Commercial Operation Milestone Date (which shall be as stated in Schedule 2 of this Agreement, unless extended pursuant to Article II, Section 2.07 and Article XV of this Agreement); or
- (f) Abandonment. ~~Seller's abandonment of the BR Facility or its intentional delay of completion of construction in connection therewith~~ Seller shall have (i) ceased development activities for the Bid Facility for sixty (60) days or (ii) ceased Construction Activities with respect to the BR Facility for a period in excess of sixty (60) days following commencement of the Construction Period, or (iii) ceased operation of the BR Facility for a period greater than fifteen (15) days following achievement of Commercial Operation and such failure in (i), (ii), or (iii) is not remedied within thirty (30) days upon receipt of notice of default by NYSERDA; provided that Seller shall not be considered to have abandoned the BR Facility where Seller has provided evidence to NYSERDA of its undertaking commercially reasonable efforts to advance the development, construction, or operation of the BR Facility during the relevant time period, or at any time where such development, construction, or operation is prevented by a Force Majeure Event; or
- (g) Failure to Transfer Tier-1 RECs. The failure by Seller to Transfer Tier-1 RECs, in conformity with Article II, and such failure is not remedied within five (5) calendar days upon Seller's receipt of a notice of default by NYSERDA; or
- (h) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA and to maintain Contract Security, by the dates and in the amounts set out in Article XV of this Agreement, and such failure is not remedied within ten (10) Business Days of the respective due dates of such additional Contract Security; or
- (i) Prevailing Wage Default. Failure by Seller to cure its failure to pay at least the Prevailing Wage in accordance with Section 18.10 within twelve (12) months from the date of written notification by NYSERDA; provided, however, that if Seller does not cure its failure to pay at least the Prevailing Wage in accordance with Section 18.10 NYSERDA may suspend payment owed to Seller under this Agreement beginning six (6) months after the date of written notification by NYSERDA; or
- (j) Payment. The failure to make, when due, any undisputed payment required pursuant to this Agreement, in accordance with NYSERDA's Prompt Payment Policy (Exhibit C) (in the case of NYSERDA), if such failure is not remedied

within ten (10) Business Days after a notice of such failure is provided by the non-defaulting Party to the defaulting Party; or

- (k) Other Obligations. A Party shall materially default in the performance of any of its obligations under this Agreement, other than as set forth in any of Sections 13.01(g), (h), (i), (j) ~~(l), (m), or (n)~~, and such default shall continue un-remedied for a period of 30 days after the defaulting Party receives ~~Notice~~notice or otherwise has actual knowledge thereof; or

- (l) Non-Permitted Change of Control. A Change of Control of the Seller, other than as specifically permitted by Article VIII, occurs.

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.~~

Section 13.03. Specific Performance. The Parties agree that, in the case of a default of Seller, irreparable damage would occur in the event that NYSERDA could not obtain Tier-1 RECs pursuant to this Agreement from the date of such Event of Default in which Seller was the defaulting Party, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect specific performance of this Agreement to compel the Transfer of all Tier-1 RECs associated with the Quantity Obligation that the BR Facility produces following the date of any such an Event of Default in accordance with the terms hereof, including Payment, 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. Notwithstanding the foregoing, for any Event of Default by Seller prior to the date of commencement of Commercial Operations, NYSERDA shall be entitled only to Stipulated Damages under this Agreement pursuant to Article XV.

#### Article XIV

#### Termination

Section 14.01. Termination. ~~This~~ Without limiting any other remedy a Party may have hereunder, this Agreement may be terminated:

- (a) at any time by either NYSERDA or Seller if: (i) an Event of Default occurs (and following the expiration of any applicable cure period), (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) unless otherwise mutually agreed upon by NYSERDA and Seller in writing, on the expiration of the Contract Delivery Term (subject to Section 18.03 of this Agreement);
- (d) 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; or
- (e) 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.

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.

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. Prior to or upon the Effective Date, unless otherwise agreed to by NYSERDA, Seller must provide Contract Security in an amount equal to the Bid Quantity multiplied by forty dollars (\$40.00). Seller shall provide to NYSERDA Contract Security, in the form of cash, certified funds, or a Letter of Credit conforming to the requirements in Section 15.04.

Section 15.02. Extension of Commercial Operation Milestone Date. Seller may elect to extend the Commercial Operation Milestone Date as follows:

- (a) No later than thirty (30) days prior to the Initial Commercial Operation Milestone Date, Seller may elect to extend the Commercial Operation Milestone Date by six (6) months to the First Extended Commercial Operation Milestone Date (identified in Schedule 2 of this Agreement) by providing to NYSERDA, in addition to the cumulative amount provided under Section 15.01 (a), Contract

Security in an amount equal to two-hundred and fifty thousand dollars (\$250,000);

- (b) No later than thirty (30) days prior to the First Extended Commercial Operation Milestone Date, Seller may elect to extend the Commercial Operation Milestone Date by six (6) additional months to the Second Extended Commercial Operation Milestone Date (identified in Schedule 2 of this Agreement) by providing to NYSERDA, in addition to the cumulative amount provided under Section 15.01 (a) and the incremental amounts provided under 15.02 (a), Contract Security in an amount equal to two-hundred and fifty thousand dollars (\$250,000);
- (c) No later than thirty (30) days prior to the Second Extended Commercial Operation Milestone Date, Seller may elect to extend the Commercial Operation Milestone Date by six (6) additional months to the Third Extended Commercial Operation Milestone Date (identified in Schedule 2 of this Agreement) by providing to NYSERDA, in addition to the cumulative amount provided under Section 15.01 (a) and the incremental amounts provided under 15.02 (a) and 15.02 (b), Contract Security in an amount equal to two-hundred and fifty thousand dollars (\$250,000); and
- (d) No later than thirty (30) days prior to the Third Extended Commercial Operation Milestone Date, Seller may elect to extend the Commercial Operation Milestone Date by six (6) additional months to the Final Extended Commercial Operation Milestone Date (identified in Schedule 2 of this Agreement) by providing to NYSERDA, in addition to the cumulative amount provided under Section 15.01 (a) and the incremental amounts provided under 15.02 (a), Contract Security in an amount equal to two-hundred and fifty thousand dollars (\$250,000).

Section 15.03. Executed Interconnection Agreement. Having provided and maintained the Contract Security identified in Section 15.01 Seller may, in lieu of the additional Contract Security required under Sections 15.02(a), (b), (c), or (d) as the case may be, extend the Commercial Operation Milestone Date to the next applicable Extended Commercial Operation Milestone Date by Seller providing to NYSERDA proof that an Interconnection Agreement has been entered into by the NYISO, the Connecting Transmission Owner, and Seller or a legal representative of Seller. Upon Seller furnishing NYSERDA with a fully executed Interconnection Agreement for the BR Facility, NYSERDA shall promptly refund fifty percent (50%) of the total cumulative Contract Security held by NYSERDA under this Agreement, inclusive of Contract Security provided by Seller under Section 15.01, and any additional Contract Security provided by Seller pursuant to Sections 15.02(a), (b), or (c) as applicable.

Section 15.04. Letter of Credit. A 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 which 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. The 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 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 in the amount to be drawn and the Payment Certificate, in the form of Annex A and Annex B, respectively, to the Letter of Credit, and have an expiration date not shorter than one (1) year. Should the BR Facility not have commenced Commercial Operation by a date 30 days prior to the expiration date of the Letter of Credit, and Seller not having provided NYSERDA or arranged with NYSERDA to provide a substitute Letter of Credit prior to such expiration, 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 until a substitute Letter of Credit has been provided, or for application against subsequent obligations of Seller.

Section 15.05. Replacement. Any assignee of this Agreement pursuant to Article VIII of this Agreement shall, simultaneously with its consummation of such assignment, deliver to NYSERDA a Replacement Letter of Credit or other form of replacement Contract Security acceptable to NYSERDA, as applicable. meeting the requirements of this Article, and NYSERDA shall, within twenty (20) Business Days after receipt of a compliant Replacement Letter of Credit or other form of replacement Contract Security acceptable to NYSERDA, as applicable, return the original Letter of Credit to Seller. Upon the failure of an assignee to deliver a compliant Replacement Letter of Credit or other form of replacement Contract Security acceptable to NYSERDA, as applicable, to NYSERDA simultaneously with its receipt of the assignment, 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. Refund of Security. Amounts provided by Seller as Contract Security will be refunded to Seller by NYSERDA as follows:

- (a) In their entirety, upon the achievement by the BR Facility of an SoQ and Operational Certification, if the Installed Capacity is equal to or greater than the Nameplate Capacity.
- (b) [Intentionally omitted].
- (c) At a prorated amount of the Contract Security, if the Installed Capacity is less than the Nameplate Capacity. Such amount that will be refunded, expressed as a percentage of the total remaining Contract Security, where the percentage is equal to the Installed Capacity divided by the Nameplate Capacity.

Section 15.07. Retention of Security. Amounts provided by Seller as Contract Security will be retained by NYSERDA as follows:

- (a) In their entirety if Seller fails to meet the Commercial Operation Milestone Date under Section 2.07 (as may be extended pursuant to Sections 15.02 or 15.03 of this Agreement).

- (b) At a prorated amount of the Contract Security remaining after the refund referenced under Section 15.03, if the Installed Capacity is less than the Nameplate Capacity. Such amount that will be retained, expressed as a percentage of the total Contract Security remaining after a refund referenced under Section 15.03 has taken place, where such percentage will be equal to the quotient obtained by dividing (i) the sum of (x) the Nameplate Capacity minus (y) the Installed Capacity by (ii) the Nameplate Capacity.
- (c) In their entirety if the Seller is in default of this Agreement and has failed to cure such a default within any applicable cure period.
- (d) In a specific amount for a failure to report information in accordance with Section 6.13 of this Agreement.

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 Article XV, in the proportions stated within this Article, is fair and reasonable under the circumstances and in light of the uncertainty and inability to adequately quantify the harm that would result to NYSERDA as a result of the events that permit NYSERDA to retain such amounts of the Contract Security.

## Article XVI

### Force Majeure

#### Section 16.01. Force Majeure.

- (a) Neither Party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to (x) a cause or circumstance beyond the reasonable control of such Party that could not have been prevented or avoided by such Party through the exercise of reasonable diligence and that directly prohibits or prevents such Party from performing its obligations under this Agreement, including, without limitation, (i) acts of God or the public enemy, (ii) expropriation or confiscation of land or facilities, (iii) compliance with any law, order, regulation or request of any Federal, State, municipal or local governmental authority, including NYSERDA (but only with respect to a Force Majeure Event claimed by Seller), (iv) acts of war, rebellion or sabotage or damage resulting therefrom), (v) major equipment failure, and (vi) fires, floods, storms, explosions, accidents, riots, or strikes (a "Force Majeure Event"); provided, however, that the occurrence of a Force Majeure Event shall not excuse a Party from any payment obligations hereunder with respect to services previously rendered or partial payment to the extent some portion of the Tier-1 RECs continue to be rendered during a period in which a Force Majeure Event renders a Party only partially able to perform. Variability in the frequency or force of the sun will in no event constitute a Force Majeure Event. Failure by Seller to obtain or secure any permit or approval or delay in

obtaining any permit or approval of any sort with regard to Seller's performance under the Agreement shall not constitute a Force Majeure Event.

- (b) Curtailment. Force Majeure Event shall also include a general curtailment, reduction or redispach of generation directed by a specific command of NYISO, a transmission system owner, or the local distribution system owner.
- (c) COVID – 19. If work on the BR 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 BR 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 16.01(c) shall not apply to the extent Seller had or should reasonably have 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.
- (d) 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. Subject to Section 14.01(c),

following the occurrence of a Force Majeure Event that adversely affects a Party's ability to perform under this Agreement, the Parties shall negotiate in good faith to amend the terms and conditions of this Agreement to limit the effects thereof and give effect to the original intent of the Parties hereunder.

## Article XVII

### Compliance with Certain Laws

Section 17.01. 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.

Section 17.02. Laws of the State of New York. Seller shall comply with all of the requirements set forth in Exhibit A hereto.

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.

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 BR Facility over the duration of the Contract Delivery Term. Neither the RES Program nor selection under BRRFP23-1 in any way replaces or modifies the necessity or applicability of any permit or approval process by any jurisdiction. NYSERDA's obligations to make payments to Seller are conditional on the acquisition by Seller of all such permits and approvals. Upon request by NYSERDA Seller must demonstrate such acquisition and/or provide copies of all permits and approvals acquired. 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 BR Facility, 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 substantially impair Seller's performance of obligations under this Agreement. Upon the filing by Seller of an application for a permit to site the BR Facility, Seller shall promptly notify NYSERDA and shall comply with any restrictions NYSERDA may impose regarding communication with NYSERDA staff.

Section 17.05. 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.

## 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-1 RECs to NYSERDA, or with respect to the measurement, tracking, and verification and participation in NYGATS necessary for the creation and Transfer of the Tier-1 RECs and/or the energy with which they are associated, into the NYSERDA NYGATS account.

Section 18.03. Term. Unless terminated earlier under this Article, 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 obligation to the other, except that Article I, Sections 2.02, 2.03, 5.01, 5.02(a), 7.01, 11.01, 11.02, 14.02, 15.06, 15.08, 17.01, 18.03, 18.04, 19.01, 19.02, 20.01, 21.02, 21.03, 21.04, and all payment obligation under Article IV 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 BR Facility and Transfer Tier-1 RECs to the NYSERDA NYGATS Account, and (b) interconnect the BR Facility with a transmission or distribution system and to comply with the BR Facility Electricity Delivery Requirements. 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 the New York Control Area, in accordance with all rules and protocols of the NYISO, throughout the Contract Delivery Term.

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 Program.

Section 18.09. Covenant. Seller hereby covenants and promises that the BR Facility is or will be eligible under any applicable orders of the Public Service Commission issued under Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, as of the Effective Date this Agreement, and that it will remain so throughout the Contract Delivery Term.

Section 18.10. Prevailing Wage. In accordance with New York State Labor Law § 224-d (2), and unless otherwise provided in a Project Labor Agreement covering the construction of the BR Facility that complies with the requirements of Labor Law § 222, all laborers, workmen and mechanics, within the meaning of NYS Labor Law Article 8, performing Construction Activities during the Construction Period with respect to the BR Facility [and the Energy Storage Component, if applicable], including, but not limited to, the staging, installation, erection and placement of BR Facility and its electrical interconnection as well as start-up and commissioning of the BR Facility, whether through long-term or short-term employment, must be paid at least the Prevailing Wage applicable in the area where the BR Facility will be situated, erected and used, in accordance with New York State Labor Law § 220 and as published by the [New York State Department of Labor](#) (DOL)<sup>6</sup> or at least the equivalent Prevailing Wage requirements of the jurisdiction where the BR Facility is located. 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 Bid Proposal. No less than six months prior to the start of Construction Activities, Seller must notify NYSERDA of its intent to commence Construction Activities, and in cooperation with the New York State Department of Labor, generate a prevailing wage determination for the construction of the BR Facility, as will be updated from time to time. Unless relieved of such requirements by entering into a duly executed PLA in accordance with Section 18.12 of this Agreement and Labor Law § 222, Seller will be responsible for complying with all prevailing wage requirements (including but not limited to reporting requirements) under New York State Labor Law §§ 220, 220-b, and 224-d. Should NYSERDA determine that Seller has failed to pay at least the Prevailing Wage in accordance with this Section 18.10, NYSERDA will notify Seller in writing. If the Seller fails to cure such failure within six months of the date of notification, NYSERDA may suspend payments to the Seller until any such failure is cured. During the term of any such suspension of payment under this Section 18.10, Seller shall Transfer Tier-1 RECs to NYSERDA in accordance with this Agreement and the price paid by NYSERDA for each such Tier-1 REC shall be zero dollars until the failure is cured. The total cure period will be 12 months from the date of notification, after which time the Seller's failure to cure shall be considered an Event of Default pursuant to Section 13.01(i) of this Agreement.

Section 18.11. 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 18.12. Project Labor Agreement. The requirements of Section 18.10 shall not apply to Construction Activities performed under a Project Labor Agreement, executed in accordance with New York State Labor Law § 222, and submitted to NYSERDA in accordance with the requirements set forth in Exhibit J to this Agreement.

Section 18.13. Labor Peace Agreement. Pursuant to New York State Public Service Law § 66-r (3), the Parties understand and agree that the Seller, as owner of the BR Facility, or a third party acting on the Seller's behalf, will be obligated to enter into a labor peace agreement

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<sup>6</sup>For NYS DOL Prevailing Wage Schedules, please visit:  
<https://labor.ny.gov/workerprotection/publicwork/PWContents.shtm>

(“Labor Peace Agreement” or “LPA”) in compliance with New York State Public Service Law § 66-r with at least one bona fide labor organization either where such bona fide labor organization is actively representing employees providing necessary operations and maintenance services for the BR Facility at the time of such agreement or upon notice by a bona fide labor organization that is attempting to represent employees who will provide necessary operations and maintenance services for the renewable energy system employed in the state. The Labor Peace Agreement will, at a minimum, protect the State of New York’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the construction or operation of the BR Facility. The Parties further understand and agree that, pursuant to and to the extent legally required by New York State Public Service Law § 66-r (3), the maintenance of such LPA shall be an ongoing material condition of any continuation of payments under this Agreement. Seller agrees to notify NYSERDA of any event triggering Seller’s obligation under this Section, or an obligation under New York State Public Service Law § 66-r (3), within 15 business days of the occurrence of such an event. Within 30 days after the occurrence of any event triggering Seller’s obligation under this Section, Seller, as owner, shall submit to NYSERDA a confidential plan to complete negotiations with its counterparty under New York State Public Service Law § 66-r (3), which shall provide for the execution of an LPA within 60 days of the triggering event or sooner if required by applicable law.

Section 18.14. MWBE and SDVOB Requirements. In addition to Seller’s Economic Benefits obligations pursuant to this Agreement, including those related to Expected MWBE and SDVOB Dollars/MW, Seller shall, and shall cause its subcontractors and service contractors to via subcontract terms and conditions, undertake commercially reasonable efforts to contract with MWBEs and SDVOBs in relation to the development, design, construction, operation and decommissioning of BR Facility. Such opportunities include but are not limited to subcontracting opportunities, mentorship programs, joint venturing, and other business development activities. Seller shall document commercially reasonable efforts undertaken pursuant to this Section in each quarterly Progress Report submitted pursuant to Section 6.02 of this Agreement. Nothing in this Section 18.14 shall excuse Seller’s performance of the Economic Benefits expenditures contained in this Agreement.

Section 18.15. U.S. Iron and Steel Usage. In addition to meeting the Expected U.S. Iron and Steel Dollars/MW requirement, Seller agrees to use commercially reasonable efforts to (a) source and procure components, materials, equipment, spare parts and other items necessary to construct the BR Facility from manufacturing facilities located in New York State, and (b) utilize materials and equipment that uses iron and steel produced by steel mills within the United States. Seller shall report progress with such efforts in its Quarterly Reports submitted pursuant to Section 6.02 of this Agreement. Seller shall include this requirement in all contracts and subcontracts that include the procurement of components, materials, equipment, spare parts, and other items necessary to construct the BR Facility. Seller shall require any contractor or subcontractor that procures iron or steel components to execute and furnish to Seller who shall in turn furnish to NYSERDA a duly executed U.S. Iron and Steel Contractor Certification form as found in Exhibit K.

Article XIX

Notices, Entire Agreement, Amendment, Counterparts

Section 19.01. Notices.

- (a) 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:
  - (i) via certified or registered United States mail, return receipt requested;
  - (ii) by personal delivery;
  - (iii) by expedited delivery service; ~~or~~ from a nationally-recognized overnight courier; or
  - (iv) 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 (c) below:

To Seller:                      Company  
  Attn:  
  Name  
  Address Line 1  
  Address Line 2  
  City, State Zip code  
  email Address:

With a copy to:                Company  
  Attn:  
  Name  
  Address Line 1  
  Address Line 2  
  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](mailto:CESLegal@nyserda.ny.gov)

With a copy to:                NYSERDA  
  Attn: Build-Ready  
  17 Columbia Circle

Albany, New York 12203-6399  
email address: [buildready@nyserda.ny.gov](mailto:buildready@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 [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.
- (c) 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.

Section 19.02. Entire Agreement; Amendment. This Agreement, including the Exhibits hereto, embodies the entire agreement and understanding between NYSERDA and Seller and supersedes all prior agreements and understandings relating to the purchase and sale of Tier 1 RECs generated by the BR Facility. 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 ([including electronically executed](#)) in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## Article XX

### Publicity

Section 20.01. Publicity. Seller and/or the BR Facility owner will collaborate with NYSERDA's Communications Unit, or RES program staff, 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 RES Program. Staff can be contacted by calling 518-862-1090. In any such press release, public announcement publication, or media interview Seller and/or the Owner of the BR Facility and/or its employees shall credit NYSERDA and the funding participation of the Build-Ready Program and the Clean Energy Standard in the activities of the BR Facility. Seller will not represent that positions taken or advanced by Seller represent the opinion or position of NYSERDA, the PSC, or the State of New York.

## 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 BR Facility is delivered of transactional and/or delivery information and data pertinent to the verification of attribute creation and electricity delivery, and thereby to waive confidentiality with respect to the disclosure of such information 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 Law (Public Officers Law § 87(2)(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 this Agreement or any portion hereof not previously published by NYSERDA 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. In connection with any such request, to the extent Seller marks its material as "Confidential" or "Proprietary", Seller agrees to provide NYSERDA with a full set of specific, proposed redactions of the applicable material along with Seller's justification for each proposed redaction. To the extent Seller fails to comply with the immediately preceding sentence, Seller consents to NYSERDA's disclosure of the material in NYSERDA's sole discretion.

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 Bid Proposal Package submitted in response to BRRFP23-1, must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

Section 21.05. 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 the 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 the [Fixed/Index REC Strike Price] or any terms which may contribute to the calculation of financial obligations under the 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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
NYSERDA Authorized Signatory

By:  
SELLER

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule 1**

**FACILITY AND PRICE PARAMETERS**

The following terms, as used and defined in the Agreement, shall have the following values:

Anticipated Nameplate Capacity: 12 MW/ac

Nameplate Capacity: \_\_\_\_\_

Maximum Nameplate Capacity: 20 MW/ac

Annual REC Cap: \_\_\_\_\_

Applicable Zone: E

Bid Quantity: \_\_\_\_\_ MWh

Bid Quantity Percentage: 100%

Contract Tenor: 20 years

Expected Dollars/MW: \$\_\_\_\_\_

Expected MWBE and SDVOB Dollars/MW: \$\_\_\_\_\_

Expected U.S. Iron and Steel Dollars/MWdc: \$30,000

[Fixed REC Price: \$\_\_\_\_\_]

[Index REC Strike Price: \$\_\_\_\_\_]

## Schedule 2

### DATES

The following terms, as used and defined in the Agreement, shall have the following dates:

BRRFP23-1 Launch Date: \_\_\_\_\_

Award Notification Date: \_\_\_\_\_

Initial Commercial Operation Milestone Date: [Example: December 31, 2026]

First Extended Commercial Operation Milestone Date: [Example: June 30, 2027]

Second Extended Commercial Operation Milestone Date: [Example: December 31, 2027]

Third Extended Commercial Operation Milestone Date: [Example: June 30, 2028]

Final Extended Commercial Operation Milestone Date [Example: December 31, 2028]

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 the Agreement specifically requires submission of information in a format 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:

- a) 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).
- b) 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).
- c) 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 NYSERDA 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 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 AND ADDRESS OF ISSUING BANK]

\_\_\_\_\_  
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 execute the Agreement within one-hundred and eighty days (180) calendar days of Seller's receipt of a conformed copy 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

       Seller failed to provide to NYSERDA additional Contract Security in the amount required under Section 15.01(b) 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.

       Seller has failed to perform in that Seller's BR Facility has failed to attain a Statement of Qualification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date; 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 Installed Capacity is less than the Nameplate Capacity; under which circumstance, NYSERDA is authorized to draw a percentage of the Letter of Credit Amount, such percentage will be equal to the Nameplate Capacity minus the Installed Capacity divided by the Nameplate Capacity.

       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 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.

       Seller has defaulted on the Agreement and has failed to cure such a default within the applicable cure period.

       Seller has failed to obtain NYSERDA's written approval for a Key Personnel replacement in accordance with Section 8.07 of the Agreement.

       Seller has failed to report information to NYSERDA and has failed to cure such failure within the applicable cure period pursuant to Section 6.13 of the Agreement.

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>7</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

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<sup>7</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>

requirements set forth in this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)

(i) "Receipt of an Invoice" means:

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

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

(2) 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.

(B) 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.

(ii) 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:

- (i) any defects in the delivered goods, property or services;
- (ii) any defects in the invoice; or
- (iii) 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 1096(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

Intentionally deleted.

EXHIBIT E

Intentionally deleted.

EXHIBIT F

Intentionally deleted.

EXHIBIT G

ASSIGNMENT OF AGREEMENT NO. [#]

[ASSIGNOR] herewith sells, assigns, transfers and conveys all of its rights, title, obligations and interest in Agreement No. [###], executed [DATE] by and between the New York State Energy Research and Development Authority (“NYSERDA”) and [ASSIGNOR], unto [ASSIGNEE], and [ASSIGNEE], hereby accepts and assumes all ASSIGNOR’S rights, title, obligations and interest in Agreement No. [###]. The parties hereto acknowledge and agree that (a) [ASSIGNEE] and NYSERDA are entering into Agreement No. [###A] to replace Agreement No. [###], (b) the “Effective Date” of Agreement No. [###A] is the Effective Date as set forth in Agreement No. [###], (c) as between ASSIGNEE and NYSERDA, notwithstanding that ASSIGNEE is entering into a new Agreement with NYSERDA, ASSIGNEE shall assume all obligations, and shall have all liabilities, of ASSIGNOR under Agreement No. [###] from and including the Effective Date as set forth in Agreement No. [###], and (d), subject to the conditions set forth in clauses (a), (b) and (c), above, upon execution and delivery of Agreement No. [###], between ASSIGNEE and NYSERDA, [ASSIGNOR] will have no obligations or liabilities under or with respect to Agreement No. [###] or Agreement No. [###A].

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration the receipt of which is hereby acknowledged, the parties have hereto executed this Assignment, this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

[ASSIGNOR]

[ASSIGNEE]

SIGNATURE: \_\_\_\_\_  
Name:  
Title:

Signature: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed:

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

\_\_\_\_\_

By: [Name]

Director, Contract Management

EXHIBIT H

~~[For Solar Facilities, BR Facility's Preliminary Facility Area overlaid on MSG 1-4]~~

~~See BRRFP23-1 Sections 4.1.6, 8.3.4, and BRRFP23-1 Appendix 2~~

Reserved.

## EXHIBIT I

### Annual Operating Report Template

#### Table of Contents

1. General Project Information
2. Production
3. Outages and Availability
4. Corrective Maintenance
5. Preventative Maintenance
6. Environmental and Permitting Activities
7. Appendix A: Detailed Production Data

## 1. General Site Information

- a. Project Name
- b. Owner
- c. Address
- d. Latitude-Longitude
- e. AC Capacity
- f. DC Capacity (Solar Only)
- g. Interconnecting Utility
- h. Major Equipment
  - i. Solar
    - 1. Modules
    - 2. Inverters
    - 3. Racking/Trackers
  - ii. Wind
    - 1. Turbines
  - iii. Energy Storage (if applicable)
  - iv. Transformers
- i. PTID/GenID:
- j. Operator:
- k. Subcontractors:
  - i. Vegetation Management:
  - ii. Snow-removal/plowing:
  - iii. Others

## 2. Production

Provide the following project performance metrics for the current year.

Table 1 Production Statistics

<b>Month</b>	<b>Actual MWh</b>	<b>Weather-Adjusted Expected MWh<sup>1</sup></b>	<b>Bid Quantity Expected MWh</b>	<b>Actual/Weather-Adjusted Expected</b>	<b>Actual/Bid Quantity Expected</b>	<b>Capacity Factor<sup>2</sup></b>
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
<b>Total Annual</b>						
<sup>1</sup> Expected production using the latest project production model adjusted for actual weather conditions on site during the current year. <sup>2</sup> Actual MWh / (8760 x AC Capacity)						

### 3. Outages and Availability

Provide a summary of lost generation due to outages during the current year.

Table 2 Outage Summary

	Forced Outages (MWh)	Planned/Maintenance Outages (MWh)	Curtailment <sup>1</sup> (MWh)	Transmission/Distribution Grid Outages <sup>2</sup> (MWh)	Other (MWh)	Total Outage Losses (MWh) <sup>3</sup>	Effective Availability <sup>4</sup> (%)
January							
February							
March							
April							
May							
June							
July							
August							
September							
October							
November							
December							
<b>Total Annual</b>							

<sup>1</sup> NYISO Curtailment Order

<sup>2</sup> Utility Outages or ordered Temporary Disconnection due to emergency, forced outages, maintenance/planned outages, or reliability (adverse operating effects)

<sup>3</sup> Sum of Outages and Curtailment

<sup>4</sup> Total Outage Losses/Actual Production



**4. Corrective Maintenance**

Provide a summary of all Corrective Maintenance activities performed during the current year.

Table 4 Corrective Maintenance Summary (with examples)

Equipment	Issue Description	Corrective Maintenance Description	Outage Start	Outage End	Lost Generation (MWh)	Status	Notes
Inverter 5	IGBT failure	Visual inspection, troubleshooting, replaced IGBT	4/1/2022 1300	4/15/2022 1600	22.5	Complete	Maintenance performed by XXX under warranty
Block 3.2	Portion of trackers stalled	Visual inspection, troubleshooting, replaced TCU encoder	5/1/2022 1000	5/1/2022 1200	0.5	Complete	Maintenance performed by site operator
Blocks 4-6	Module replacements due to hail damage	Replace affected modules	9/1/22	Ongoing	2.1	Ongoing	
Gear Box on WTG 21	Replacement	Proactive replacement of Gear Box due to failures in this turbine model	8/1/22	8/20/22	800	Complete	Gearbox under warranty; replacement performed by site operator

**5. Preventative Maintenance**

**a. Current Year**

Provide a summary of all Preventative Maintenance activities performed during the current year. Weekly or monthly inspections only need to be listed once.

Table 5 Preventative Maintenance Summary – Current Year (with examples)

Equipment	Preventative Maintenance Description	Maintenance Start	Maintenance End	Lost Generation (MWh)	Status	Notes
GSU	Monthly Inspection	1/15/2022 1000	1/15/2022 1200	0.00	Complete	Inspections performed monthly for the entire calendar year.
Met Station	Weekly Inspection and Soiling Calibration	1/3/2022 1100	1/3/2022 1300	0.0	Complete	Inspections performed monthly for the entire calendar year.
Array	Annual Array and Tracker Maintenance	2/1/2022 0900	3/1/2022 1600	2	Complete	
Turbine 21	Inspection	8/1/2022	8/9/2022	340	Complete	Routine Inspection of WTG (biannual)

**b. Next Calendar Year (Planned)**

Provide a summary of Planned Maintenance outages expected to result in lost generation for next Calendar year.

Table 6 Preventative Maintenance Summary – Next Calendar Year (with examples)

Equipment	Preventative Maintenance Description	Planned Maintenance Start	Planned Maintenance End	Planned Lost Generation (MWh)	Notes
Array	Annual Array and Tracker Maintenance	2/1/2023	3/1/2023	0.0	
Combiner	Bi-Annual Combiner Box Maintenance	4/1/2023	5/1/2023	0.0	
GSU	Monthly Inspection	1/15/2023	1/15/2023	0.00	

Turbines 2 – 27	Inspection & cleaning	8/1/2022	9/1/2022	540	

**6. Environmental and Permitting Activities**

Provide a summary of any environmental or permitting activities performed during the current year.

**1. Appendix A: Detailed Production Data (8760)**

Provide 8760 production data in Microsoft Excel for the current year in the format below.

<b>Date</b>	<b>Day</b>	<b>Hour Ending</b>	<b>Production (MWh)</b>	<b>Notes</b>

EXHIBIT J

PROJECT LABOR AGREEMENT REQUIREMENTS

Any PLA presented to NYSERDA under this Agreement shall address the following:

1. Provisions ensuring that contractors or subcontractors that sign the PLA 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 BR 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 BR Facility construction 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 for the resolution of jurisdictional disputes (without disruption to the schedule of the BR 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, 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 minority- or women-owned business enterprise ("MWBE") employment and service-disabled veteran owned business ("SDVOB") 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 K

U.S. IRON AND STEEL CERTIFICATION FORMS

Contractor's Certification

U.S. IRON AND STEEL CONTRACTOR CERTIFICATION FOR CONTRACTS FOR  
CONSTRUCTION OF A COVERED RENEWABLE ENERGY SYSTEM INVOLVING THE  
NEW YORK STATE ENERGY RESEARCH DEVELOPMENT AUTHORITY'S  
PROCUREMENT OF RENEWABLE ENERGY CERTIFICATES

NYSERDA Agreement Number: [To be Populated by NYSERDA]

Project Title:

Contractor's Name:

Covered Renewable Energy Project:

Developer Name:

I certify that iron and steel products that will be permanently incorporated into the BR Facility project will have been manufactured in the United States from the initial melting stage through the application of coatings (except metallurgical processes involving the refinement of steel additives), such that a minimum of \$[X] per megawatt capacity ~~of~~ direct current (MWdc) of iron and/or steel components are manufactured in the United States, as set forth in the BRRFP23-1. I will also develop and maintain the necessary documentation to demonstrate that iron and steel products incorporated into the project were manufactured in the United States, in the amount required, and make such documentation available to NYSERDA or their authorized representatives, upon request.

Signature:

Name:

Title:

Date:

Manufacturer Certification

U.S. IRON AND STEEL MANUFACTURER CERTIFICATION FOR CONTRACTS FOR CONSTRUCTION OF A COVERED RENEWABLE ENERGY SYSTEM INVOLVING THE NEW YORK STATE ENERGY RESEARCH DEVELOPMENT AUTHORITY'S PROCUREMENT OF RENEWABLE ENERGY CERTIFICATES

The following information is provided as a manufacturer's sample letter of certification for compliance with the BRRFP23-1 requirement that that a minimum of \$[X] per megawatt capacity direct current (MWdc) of iron and/or steel components that will be permanently incorporated into the BR Facility will have been manufactured in the United States from the initial melting stage through the application of coatings (except metallurgical processes involving the refinement of steel additives).

Date

Company Name

Company Address City, State Zip

Subject: United States Iron and Steel Certification for [project name], in accordance with RESRFP2022-1 for NYSERDA Agreement Number: [To be Populated by NYSERDA]

I, (company representative), certify that the following iron or steel products and/or materials shipped or provided for the subject project were manufactured in the United States, from the initial melting stage through the application of coatings (except metallurgical processes involving the refinement of steel additives).

Item, Products and/or Materials, and Manufacturing Location:

1. Xxxx

2. Xxxx

3. Xxxx

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

[Signed by company representative]

[Title]

[Contact Information]

[EXHIBIT L

INFLATION PRICE ADJUSTMENT

The Fixed REC Price or Index REC Strike Price will be adjusted according to the following formula:

$$REC_{adj} = REC_{bid} \times \left( 0.25 + 0.75 \times \frac{Index_T}{Index_B} \right)$$

Where:

$REC_{adj}$  = the Fixed REC Price or Index REC Strike Price after inflation adjustment

$REC_{bid}$  = the adjustable Fixed REC Price or Index REC Strike Price as submitted with the Proposal

$Index_B$  = the value for the PPI All Commodities index established as the simple average of the six months of published data available prior to the Proposal Submission Date:  
254.211

$Index_T$  = the value for the PPI All Commodities index established at the time of the REC price adjustment as the simple average of the monthly values for the three months prior to and following the commencement of Construction Activities for the BR Facility:  
[\_\_\_\_\_].

The published data source for the PPI All Commodities index is the U.S. Bureau of Labor and Statistics Data Series WPU00000000, PPI Commodity data for All commodities, not seasonally adjusted.

Any published value for IndexT that is considered by the US BLS as “preliminary” for up to four months after publication will be updated and the IndexT value will be recalculated if the final published value differs from a preliminary value.]

EXHIBIT M

INTERCONNECTION COST ADJUSTMENT

1. Approval of Discretionary Interconnection Costs. Seller may request NYSERDA’s approval for inclusion in the calculation of Interconnection Cost Allocation of costs actually paid for interconnection upgrades for the BR Facility at the associated Anticipated Nameplate Capacity that are not required by the Interconnection Agreement. Any such request shall be delivered in writing to NYSERDA at least 90 days prior to Commercial Operation. In evaluating Seller’s request, NYSERDA will consider whether such interconnection upgrades would provide net benefits to ratepayers either through (i) increased energy deliverability at appropriate cost, (ii) net savings on a system-wide basis, or (iii) otherwise. NYSERDA may approve or reject Seller’s request in its sole discretion.

2. Interconnection Cost Adjustment.

(a) The Seller shall make commercially reasonable efforts to minimize the Interconnection Cost Allocation.

(b) On or before the date that is 90 days prior to the commencement of the Contract Delivery Term, Seller shall make available or cause to be made available to NYSERDA all books and records reasonably necessary for NYSERDA to quantify the Interconnection Cost Allocation.

(c) To the extent that the Interconnection Cost Allocation is greater than the Interconnection Cost Allocation Baseline, the Index REC Strike Price or Fixed REC Price will be increased by the Interconnection Price Increase, calculated as follows:

$$\text{Interconnection Price Increase} = \frac{\text{Cost Allocation Increase (\$)} \times \text{RF}}{\text{Bid Quantity}}$$

where:

Cost Allocation Increase = Interconnection Cost Allocation less Interconnection Cost Allocation Baseline.

RF = Recovery Factor of 0.09623.

To the extent that the Interconnection Cost Allocation is less than the Interconnection Cost Allocation Baseline, the Index REC Strike Price or Fixed REC Price will be decreased by the Interconnection Price Reduction, calculated as follows:

$$\text{Interconnection Price Reduction} = \frac{0.75 \times \text{Interconnection Net Savings (\$)} \times \text{RF}}{\text{Bid Quantity}}$$

where: RF = Recovery Factor of 0.09623.