ISCRFP25-1 – ATTACHMENT A

INDEX STORAGE CREDIT STANDARD FORM AGREEMENT

BY AND BETWEEN

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

[NAME OF SELLER]

Dated: _____, [2025]

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This Index Storage Credit ("ISC") Standard Form Agreement ("Agreement") is entered into as of _____, [2025] (the "Effective Date") by and between the New York State Energy Research and Development Authority ("NYSERDA"), a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203, and _____ ("Seller"), a [insert as appropriate], having a principal business address of _____. NYSERDA and Seller are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

WHEREAS, New York State Public Service Law Section 74 directed the New York State Public Service Commission ("PSC") to establish a statewide energy storage goal for 2030, and a deployment policy to support that goal; and

WHEREAS, to comply with New York State Public Service Law Section 74, the PSC through its "Order Establishing Energy Storage Goal and Deployment Policy"[1] ("2018 BES Order") established a statewide energy storage goal for 2030, which was codified by the 2019 Climate Leadership and Community Protection Act within New York State Public Service Law Section 66-p; and

WHEREAS, the PSC through its "Order Establishing Updated Energy Storage Goal and Deployment Policy" [2] ("2024 BES Order") adopted an updated statewide deployment goal of 6 GW of energy storage resources by 2030, with an interim goal of 1.5 GW by 2025, and further adopted certain recommendations from the "New York's 6 GW Energy Storage Roadmap: Policy Options for Continued Growth in Energy Storage," including the framework for a Bulk Energy Storage Program ("BES Program")[3] and the ISC mechanism for bulk storage; and

WHEREAS, the PSC through its "Order Approving the Bulk Implementation Plan With Modifications" [4] ("Implementation Plan Order") adopted, with modifications, NYSERDA's Bulk Energy Storage Implementation Plan (as modified, the "Implementation Plan") detailing the implementation of an ISC mechanism for bulk storage; and

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[1] *See* Case 18-E-0130, In the Matter of Energy Storage Deployment Program, "Order Establishing Energy Storage Goal and Deployment Policy," issued and effective December 13, 2018.

[2] *See* Case 18-E-0130, In the Matter of Energy Storage Deployment Program, "Order Establishing Updated Energy Storage Goal and Deployment Policy," issued and effective June 20, 2024.

[3] *See* Case 18-E-0130, In the Matter of Energy Storage Deployment Program, "New York's 6 GW Energy Storage Roadmap: Policy Options for Continued Growth in Energy Storage," filed by NYSERDA and New York State Department of Public Service Staff on December 28, 2022.

[4] *See* Case 18-E-0130, In the Matter of Energy Storage Deployment Program, "Order Approving the Bulk Implementation Plan With Modifications," issued and effective March 21, 2025.

WHEREAS, NYSERDA has conducted a competitive solicitation in the form of ISCRFP25-1 to procure ISCs; and

WHEREAS, NYSERDA ISCRFP25-1 provided, among other things, that this Agreement would be employed to govern the rights and obligations of the Parties; and

WHEREAS, Seller has participated in ISCRFP25-1 and has been selected by NYSERDA with respect to the [name of facility] (as further defined below, the "Bid Facility"); and

WHEREAS, Seller agrees to sell to NYSERDA, and NYSERDA agrees to purchase from Seller, the ISCs associated with the energy storage capacity of the Bid Facility described in the Bid Proposal submitted in response to ISCRFP25-1 during the Contract Delivery Term, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, this Agreement has been entered into by the Parties to define, among other things, their rights and obligations concerning the ISCs associated with the energy storage capacity of the Bid Facility, the delivery by Seller of ISCs 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. All capitalized terms defined in the NYISO OATT or other related NYISO documents, as provided in this Article I, shall have the definitions set forth in the NYISO OATT or other related NYISO document in effect on the Effective Date and, subject to the provisions of Section 4.05 of this Agreement, as such definitions may be thereafter amended or modified from time to time. However, to the extent this Agreement may define a term otherwise defined in the NYISO OATT, the definition herein shall govern. 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.

"Adjustment Percentage": The fraction obtained by dividing the highest Monthly ISC Quantity in the applicable Non-Compliance Period by the Monthly Bid Quantity.

"Affiliate": With respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, will mean (a) the direct or indirect right to cast at least 50% of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least 50% of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

"Applicable Class Year": The Class Year in which the Bid Facility has been placed for purposes of the NYISO interconnection process.

"Applicable Class Year Study": The Class Year Study of which the Bid Facility is a part for purposes of the NYISO interconnection process.

"Applicable Cluster Study": The Cluster Study of which the Bid Facility is a part for purposes of the NYISO interconnection process.

"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.

"Assumed Round-Trip Efficiency": The ratio, reflected as a percentage, of the energy output of an energy storage technology to the charging energy input received by such energy storage technology, as set forth in ISCRFP25-1. The Assumed Round-Trip Efficiency for the Bid Facility is set forth in Schedule 1 to this Agreement.

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

"Bid Energy Capacity": The energy storage capacity of the entire Bid Facility as bid to NYSERDA measured in MWh. The Bid Energy Capacity must equal the product of Bid Power Capacity (MW) and Bid Storage Duration (hours). The Bid Energy Capacity shall be as stated in Schedule 1 of this Agreement.

"Bid Facility": The electric energy storage project that has been identified and described in the Bid Proposal submitted by Seller, as such Bid Facility may be mutually modified from time to time in accordance with Section 2.09.

"Bid Power Capacity": The Energy Storage System Power Capacity of the entire Bid Facility as bid to NYSERDA measured in MW. The Bid Power Capacity shall be as stated in Schedule 1 of this Agreement.

"Bid Price Submission Date": [ ], 20[ ][5]

"Bid Proposal": Documents submitted by Seller in response to ISCRFP25-1 and received by NYSERDA.

"Bid Storage Duration": The Energy Storage System Duration of the Bid Facility as bid to NYSERDA in (integer) hours. The Bid Storage Duration shall be as stated in Schedule 1 of this Agreement.

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

"Capacity Accreditation Factor" or "(CAF)": The Capacity Accreditation Factor for the CARC applicable to the Bid Facility based on the Bid Storage Duration as determined by NYISO in accordance with the New Capacity Accreditation Rules.

"Capacity Accreditation Resource Class" or "(CARC)": The Capacity Accreditation Resource Class applicable to the Bid Facility as determined by the NYISO based on the Bid Storage Duration, technology type and location under the New Capacity Accreditation Rules.

"Change in Law Date": Shall have the meaning set forth in Section 4.05(a) of this Agreement.

"Change in Law Notice": Shall have the meaning set forth in Section 4.05(f) of this Agreement.

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[5] Note to Draft: To be the Bid Price Submission Deadline for ISCRFP 25-1.

"Change of Control": Any transfer, sale, assignment, pledge, or other disposition of shares 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 Bid 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 Bid 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.

"Class Year": The group of projects included in any particular Class Year Study.

"Class Year Study": A Class Year Interconnection Facilities Study as that term is defined in the NYISO OATT.

"Climate Resiliency Plan": The Climate Resiliency Plan described in Section 6.08 of this Agreement.

"Cluster Study": The study conducted by NYISO to determine a list of interconnection projects, the upgrades required to accommodate such interconnection, the cost of such upgrades, and the time required to interconnect such projects.

"Construction Activities": The physical activities that occur on or after the Effective Date 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 Bid Facility and electrical interconnection, as well as start-up and commissioning of the Bid Facility.

"Commercial Operation": A state of operational readiness of the Bid Facility under which (i) the Bid Facility has been mechanically constructed and interconnected, (ii) power capacity is available to physically store and discharge electric energy to the Delivery Point and qualify for the receipt of associated ISCs, and (iii) all rights, abilities, permits and approvals to store, schedule and discharge energy to the Delivery Point have been obtained; provided, however, that for the avoidance of doubt, discharge of electric energy for testing or other purposes prior to achievement of the foregoing clause (iii) shall not constitute Commercial Operation.

"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 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.

"Contract Delivery Term": The period commencing on the first day of the month after the month in which the Bid Facility commences Commercial Operation and terminating on the last day of the Contract Tenor.

"Contract Security": Shall have the meaning set forth in Section 15.01 of this Agreement.

"Contract Tenor": The duration, in Contract Years, of the Contract Delivery Term. The Contract Tenor shall be as stated in Schedule 1 of this Agreement, unless shortened in accordance with Section 14.05.

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

"Delivery Point": The generator bus or location where (a) the administrator of the wholesale power market or (b) the operator of the transmission/distribution utility, public authority or municipal electric company, measures or otherwise determines energy charge and discharge from the Bid Facility.

"Disadvantaged Communities": Shall have the meaning established by the New York Climate Leadership and Community Protection Act in § 75-0101(5) of the New York Environmental Conservation Law.

["Disadvantaged Community Commitments": Those commitments to provide benefits to Disadvantaged Communities contained in the Seller's Bid Proposal as described in Section 6.10 of this Agreement. For the avoidance of doubt, a community that meets the definition of a Disadvantaged Community as of the Effective Date will be deemed to constitute a Disadvantaged Community with respect to the Disadvantaged Community Commitments set forth in Section 6.10 of this Agreement, and a community that meets the definition of a Disadvantaged Community as of the date of any substitute Disadvantaged Community Commitment made under Section 6.10 will be deemed to constitute a Disadvantaged Community with respect to such replacement Disadvantaged Community Commitment.]

"Economic Benefits Start Date": December 28, 2022, the filing date of New York's 6 GW Energy Storage Roadmap: Policy Options for Continued Growth in Energy Storage.

"Energy Storage System Duration": The length of time (in hours) an energy storage system can discharge continuously at its rated output power.

"Energy Storage System Power Capacity": The maximum amount of energy that the system can deliver instantaneously, measured in MW.

"Expected Dollars/MWh": The total dollar amount of Incremental Economic Benefits per MWh of Bid Energy 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 Bid Facility from the Economic Benefits Start Date through the end of the first three (3) Contract Years. The Expected Dollars/MWh under this Agreement shall be as stated in Schedule 1 of this Agreement.

"Expected Governmental Grant Funding": Any Governmental Grant Funding that was expected at the time of the Bid Price Submission Date and disclosed accordingly in Seller's Bid Proposal.

"Extended Commercial Operation Milestone Date": The Commercial Operation Milestone Date, as extended in accordance with Article XV.

["Final Investment Decision" or "FID": An unequivocal final decision of the directors, members, or partners with authority to make financial decisions on behalf of the Seller to commit to the expenditure of all necessary capital to construct the Bid Facility, including to (i) execute agreements with third party equity capital providers and (ii) award and engage an EPC contractor.]

"Fire Code Recommendations Report": The New York State Interagency Fire Safety Working Group's report titled "Fire Code Recommendations," dated as of July 2024.

["Full Notice to Proceed" or "FNTP": An authorization from the Seller, or its representative, to its general contractor (or in the event that there is no general contractor to all material third party contractors) to construct the entire Project, as opposed to a limited notice to proceed with only a subset of the work such as site preparation and/or site civil work.

"Governmental Grant Funding": Any non-refundable governmental grant, reimbursement, contribution or other direct monetary assistance provided for the specific purpose of supporting the development, construction, operation or maintenance of the Bid Facility. Governmental Grant Funding shall not include any governmental debt or equity financing, tax credits or other tax-related incentives or non-monetary governmental assistance.

"Incremental Economic Benefits": Incremental Economic Benefits are financial expenditures benefitting New York State within the categories specified in Section 4.4 of ISCRFP25-1 that a Seller can demonstrate: (1) were incurred on or after the Economic Benefits Start Date, and (2) would not have accrued but for an award under a NYSERDA competitive solicitation to procure

ISCs or in anticipation of the potential for such an award. Economic benefits previously claimed with respect to a Bid 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.

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

"ISCs": The Index Storage Credits created by the Bid Facility, as determined in accordance with the provisions of Section 2.01 of this Agreement.

"ISCRFP25-1 Launch Date": The ISCRFP25-1 Launch Date, as stated in Schedule 2 of this Agreement.

"Knowledge": With respect to a fact or circumstance, 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.

"MAC Notice Period": Shall have the meaning set forth in Section 14.01(f) of this Agreement.

"Material Adverse Change": Shall have the meaning set forth in Section 18.12 of this Agreement.

"Material Modification": Any modification to the technology, major equipment (e.g., batteries, inverters, racking), interconnection attributes (e.g., electrical configuration, CRIS/ERIS rights, kV line, withdrawal from queue, NYISO Zone), metering or tariff type (including any addition of behind the meter load), or to the size or location of the Bid Facility or its point of interconnection that materially changes the characteristics of such Bid Facility compared with those described in either (A) the Bid Proposal or (B) the information provided by Seller in connection with [(1) the Peer Review Site Design Review and the Peer Review Report, each as provided for in the Program Manual,][6] (2) Post-Construction QA Inspection, as provided for in the Program Manual, or (3) Operational Certification, to the extent applicable. Notwithstanding the foregoing, the following shall not constitute Material Modifications: (i) changes required by a permitting or regulatory authority to the location of equipment installed within the Bid Facility's site, (ii) changes to components that do not affect the ability of the Bid Facility to safely deliver the Monthly Bid Quantity, (iii) augmentation of the Bid Facility for capacity maintenance purposes that does not cause the Energy Storage System Power Capacity to exceed the Energy Storage System Power

[6] Note to Draft: Not applicable for a Bid Facility that is a lithium-ion battery energy storage system located in the City of New York.

Capacity as approved during the peer review process described in the Program Manual, or (iv) changes in the information included in the Bid Proposal relating to Project Viability and Maturity (including, without limitation, Creditworthiness and Financing, Community Engagement, Climate Resiliency), Electricity System Value, and Societal and Economic Benefits (including, without limitation, Incremental Economic Benefits), as those terms are used in ISCRFP25-1.

"Maximum Monthly ISCs": The maximum number of ISCs that can be created by the Bid Facility during a Settlement Period as calculated pursuant to Section 2.01 of this Agreement.

"Monthly Availability Percentage": For each Settlement Period, shall mean the percentage representing the Bid Facility's operational availability during a Settlement Period, as calculated pursuant to Section 2.01 of this Agreement.

"Monthly Availability Report": A report submitted by Seller to NYSERDA on a monthly basis, in a form substantially similar to Exhibit E to this Agreement, that includes information depicting the operational availability of the Bid Facility. See Exhibit E for the recommended data sources for availability reporting.

"Monthly Bid Quantity": The number of ISCs to be created by the Bid Facility during each monthly Settlement Period as bid to NYSERDA. The Monthly Bid Quantity shall be as stated in Schedule 1 of this Agreement.

"Monthly Debit": Shall have the meaning set forth in Section 4.03(c) of this Agreement.

"Monthly ISC Cap": An amount equal to the Maximum Monthly ISCs, unless and until the Monthly ISC Cap is adjusted pursuant to Section 5.02(a).[7]

"Monthly ISC Price": A price in dollars per ISC for each month of the Contract Delivery Term as calculated pursuant to Section 4.01 of this Agreement.

"Monthly ISC Quantity": Shall have the meaning set forth in Section 2.01 of this Agreement.

"Monthly Settlement Payment": For a given Settlement Period, an amount in dollars equal to the product of the Monthly ISC Price and the Monthly ISC Quantity, as calculated pursuant to Section 4.01(b).

[7] Note to Draft: Unless and until an adjustment described in Section 5.02(a) occurs, the Monthly ISC Cap will not have any effect. This is because the maximum theoretical quantity of ISCs that can be created pursuant to Section 2.01 is the Monthly Maximum ISCs (if the Monthly Availability Percentage were to be 100% in a month).

"MW": A megawatt of energy storage power capacity, measured in alternating current.

"MWh": A megawatt-hour of electric energy storage capacity. The MWh rating of an energy storage system reflects maximum energy capacity or the total amount of energy that the system can store over a period of time.

"New Capacity Accreditation Rules": NYISO's tariff revisions to its Services Tariff to adopt a marginal capacity accreditation market design, approved by the federal Energy Regulatory Commission (Docket No. ER22-772) on May 10, 2022.

"New York Control Area" or "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.

"Non-Compliance Period": Shall have the meaning set forth in Section 5.02 of this Agreement.

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

"OATT": NYISO's Open Access Transmission Tariff.

"Operational Certification": In accordance with the Program Manual, verification by NYSERDA or its designee that the Bid Facility has been constructed and will operate in accordance with the Bid Proposal, as such Bid Facility may be modified with mutual consent from time to time in accordance with Section 2.09 in advance of Operational Certification, and that associated power and energy storage discharge capacity is in compliance with all requirements specified in the Implementation Plan Order, the Implementation Plan, and the Program Manual.

"Permitted Transferee": (A) Affiliate of Seller, (B) the New York Power Authority ("NYPA"), provided that NYPA satisfy all eligibility requirements set forth in ISCRFP 25-1, including for the avoidance of doubt ISCRFP25-1 Section 2.1.6, or (C) any Person who: i) meets, or whose parent entity meets, the minimum eligibility criteria applicable to the Seller for creditworthiness and demonstrated experience set forth in ISCRFP25-1; and ii) as of the date of a Change of Control, has not been a party, or whose Affiliates are not currently a party, adverse to NYSERDA in any litigation, arbitration, or formal dispute resolution proceeding within the preceding five (5) years and is not currently a party, and whose Affiliates are not currently a party, adverse to NYSERDA in any pending litigation, arbitration, or formal dispute resolution proceeding, where "adverse" means prosecuting or defending a direct claim against NYSERDA or participating in any litigation in support of a party that is prosecuting or defending a direct claim against NYSERDA.

"Person": A natural person, corporation, electric cooperative, partnership, limited liability company, trust, association, joint venture, real estate or investment trust or business trust

(including any beneficiary thereof), unincorporated association, municipal corporation, municipally-owned utility, municipality or other governmental authority, and any other form of business or legal entity.

"Pre-Effective Date Construction Activities": Construction Activities that occur prior to the Effective Date.

"Prevailing Wage": Shall have the meaning set forth at and shall be interpreted in accordance with Section 18.09(a) of this Agreement.

"Prevailing Wage Failure": Shall have the meaning set forth in Section 18.09(b) of this Agreement.

"Program Manual": The NYSERDA Bulk Energy Storage Program's Program Manual, which will be updated as needed and maintained in full effect at the time of NYSERDA's acceptance of the Bid Facility. The Program Manual identifies current rules for participation, energy storage system requirements (including fire safety), technical review processes, and site visit protocols.[8]

"Progress Reports": Shall have the meaning set forth in Section 6.02 of this Agreement.

"Project Labor Agreement or PLA": A pre-hire collective bargaining agreement between Seller, as owner of the Bid 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 Bid 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 Bid Facility.

"Qualifying Governmental Support": Any direct governmental financial support to the Bid Facility expressly intended to incentivize the development and operation of energy infrastructure in the form of (i) Qualifying Tax Benefits or direct financial benefits that in either case arise from a statute enacted after the Bid Price Submission Date, or (ii) Unexpected Governmental Grant Funding (regardless of whether or not it arises from a statute enacted after the Bid Price Submission Date). Qualifying Governmental Support shall not include ordinary course tax deductions, research grants or any financing from or supported by the U.S. Department of Energy's Loan Program Office.

"Qualifying Governmental Support Amount" or "QGS Amount": The economic value realized by the Seller or any of its Affiliates from the Qualifying Governmental Support or the monetization thereof. Subject to the foregoing, the QGS Amount shall include, without limitation or duplication:

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[8] Note to Draft: Please refer to the "Bulk Energy Storage Program Resources" section of the Bulk Energy Storage Program website for the latest Program Manual.

(i) any reduction in tax liability realized by Seller or its Affiliates in connection with the Qualifying Governmental Support; (ii) any amounts received directly from a governmental entity in connection with the Qualifying Governmental Support, (iii) any excess economic value realized by the Seller or its Affiliates in any tax equity financing or other transaction the primary purpose of which is for a party to realize the value of Qualifying Governmental Support and in which the Qualifying Governmental Support is exchanged for economic value (relative to a scenario with no Qualifying Governmental Support) and includes without limitation any leasing transaction (including a sale-leaseback, inverted lease or the like) that has the result of the foregoing; and (iv) any reduction in procurement, equipment supply, or other direct costs related to the Bid Facility and realized by the Seller or its Affiliates as a result of the Qualifying Governmental Support.

"Qualifying Governmental Support Deductible Amount" or "QGS Deductible Amount": means any of the following resulting from Seller's (or its Affiliate's) realization of applicable Qualifying Governmental Support: (a) any reduction in the current or future economic value of the Bid Facility and (b) any costs (excluding internal costs associated with funding applications or negotiations and general overhead) incurred that would not otherwise have been incurred. The QGS Deductible Amount costs shall be calculated by Seller in good faith using all relevant information reasonably available to Seller and shall include, for example: (i) increases in cost due to local content or national sourcing requirements, (ii) increases in cost due to delays or transportation costs arising out of either of the foregoing and (iii) other increases in construction or operating expenses.

"Qualifying Governmental Support Price Reduction" or "QGS Price Reduction": The reduction in dollars per ISC to the Strike Price as calculated pursuant to Section 5.05 of this Agreement.

"Qualifying Tax Benefits": means (i) any investment tax credits under Section 48 (or its successor found at Section 48E) of the Internal Revenue Code, as amended from time to time, (ii) any production tax credits under Section 45 (or its successor found at Section 45Y) of the Internal Revenue Code, as amended from time to time, (iii) any other production 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 a governmental entity available to the owner of, operator of, or security interest holder in, a project or facility that is producing or storing electricity.

"Reference Price": For any Settlement Period, the sum of the monthly Reference Energy Arbitrage Price and the monthly Reference Capacity Price for such period.

"Reference Capacity Price" or "RCP": 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 Arbitrage Price" or "REAP": An amount representing the energy market arbitrage opportunity calculated as set forth in Section 4.01 of this Agreement.

"Reference UCAP": Shall have the meaning set forth in Section 4.01 of this Agreement.

"Seller ISC Debit": Shall have the meaning set forth in Section 4.01(b) of this Agreement.

"Settlement Period": A period of a calendar month for which a Monthly Settlement Payment is calculated.

"Strike Price": The strike price for an ISC as bid by the Seller, as set forth in Schedule 1 to this Agreement.

"Technical Consultant": A technical consultant appointed by NYSERDA qualified to conduct third-party data review.

"UCAP": Shall have the meaning set forth in Section 4.01 of this Agreement.

"Unavailable Insurance": Shall have the meaning set forth in Section 12.02(d) of this Agreement.

"Unexpected Governmental Grant Funding": Governmental Grant Funding other than Expected Governmental Grant Funding.

"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 Bid Facility from the Economic Benefits Start Date through the end of the first three (3) Contract Years.

Article II
Purchase and Sale of ISCs

Section 2.01. NYSERDA's obligations to purchase ISCs and to make payment under this Agreement are conditioned on the Bid Facility achieving, at the time of commencement of Commercial Operation, an Energy Storage System Power Capacity and Energy Storage System Duration equal to or greater than ninety-five percent (95%) of the Bid Power Capacity and ninety-five percent (95%) of the Bid Storage Duration, respectively. The number of ISCs created in any Settlement Period (the "Monthly ISC Quantity") shall equal the product of (i) the Maximum Monthly ISCs and (ii) the Monthly Availability Percentage, as calculated below:

(a) The Maximum Monthly ISCs shall be calculated as the amount equal to the product of (i) the Bid Power Capacity, (ii) the lesser of the Bid Storage Duration and 8 hours, and (iii) the number of days in the Settlement Period.

(b) The Monthly Availability Percentage shall be calculated based on Outages (defined below), Bid Power Capacity, and total hours, as follows:

$$Monthly\ Availability\ Percentage = 1 - \frac{Monthly\ Outage\ MWh}{Bid\ Power\ Capacity \times Total\ Monthly\ Hours}$$

Where:

Monthly Outage MWh = Sum of all Outages (in MWh) for the Settlement Period

"Outage" means the operational unavailability of the Bid Facility, either fully or partially, to deliver the Bid Power Capacity into the New York Control Area for any reason whatsoever in any hour during a Settlement Period.

Bid Power Capacity = Bid Power Capacity of the Bid Facility (in MW).

Total Monthly Hours = Total number of hours in the Settlement Period

Section 2.02. On the terms and subject to the conditions and provisions of this Agreement, Seller agrees to sell, assign, convey and deliver to NYSERDA, and NYSERDA agrees to purchase from Seller, all right, title and interest in the ISCs created by the Bid Facility during each Settlement Period of the Contract Delivery Term, subject to the Monthly ISC Cap as further described in Section 4.03.

Section 2.03. Such right, title and interest shall include perpetual and exclusive rights to the ISCs that NYSERDA purchases from Seller. For the avoidance of doubt, Seller is not selling to NYSERDA, and NYSERDA is not purchasing any other product, including electric energy, capacity, or ancillary services associated with the Bid Facility.

Section 2.04. In the event that Seller becomes entitled to or must apply for or take some other action under any regime other than the BES Program in order to create ISCs, or any certification, registration, verification or other memorialization of the creation of such ISCs, Seller shall (a) notify NYSERDA of such opportunity; and, if requested to do so by NYSERDA, Seller shall (b) take all commercially reasonable actions necessary to comply with such regime; and (c) provide NYSERDA with evidence of taking such action.

Section 2.05. NYSERDA's obligations under this Agreement are expressly conditioned on the Bid Facility, from the Effective Date through completion of the Contract Delivery Term, complying with the eligibility requirements identified in the 2018 BES Order, 2024 BES Order, the Implementation Plan Order, the Implementation Plan and ISCRFP25-1. Notwithstanding the foregoing, NYSERDA's obligation to purchase ISCs under this Agreement will not be reduced or eliminated if the eligibility requirements of the 2018 BES Order, 2024 BES Order, the Implementation Plan Order, Implementation Plan and ISCRFP25-1 are changed after the Effective Date in a manner that renders the Bid Facility unable to comply.

Section 2.06. Commercial Operation Milestone Date. NYSERDA's obligations to purchase ISCs and to make payment under this Agreement are conditioned on the commencement by the Bid Facility of Commercial Operation on or before the Commercial Operation Milestone Date and receipt of the Operational Certification. The Initial Commercial Operation Milestone Date shall be as stated in Schedule 2 of this Agreement. The Commercial Operation Milestone Date may be extended pursuant to Article XV or as otherwise agreed to in writing by NYSERDA.

Section 2.07. NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the ISCs 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 BES Program, or the benefit of NYSERDA's successor, and shall not affect Seller's rights or obligations under the terms of this Agreement.

Section 2.08. Dedicated Generation Meter. Seller must provide, install, and maintain a dedicated generation meter at the Delivery Point that shall comply with the requirements and standards stated in the Program Manual. Data collected from the meter will be available to NYSERDA and will be used by NYSERDA to verify the Bid Facility's Monthly Availability Percentage.

Section 2.09. Modification of Bid Facility. Seller shall not, without NYSERDA's prior written consent, make any Material Modifications to the Bid Facility. Seller shall provide NYSERDA with written notice prior to any Material Modification of the Bid Facility, which notice shall include a written description of the planned modification. NYSERDA shall not unreasonably withhold, condition, or delay such a request and shall use reasonable efforts to approve or reject any such request within thirty (30) days after its receipt of the written request. Notwithstanding the foregoing, to the extent that the Monthly ISC Quantity is less than the Monthly Bid Quantity, Seller and NYSERDA shall act in accordance with Sections 5.02(a).

Article III
Bid Facility Interconnection Requirements.

Section 3.01. Bid Facilities in the NYCA. The Bid Facility must be electrically interconnected into New York State's transmission, sub-transmission or distribution systems for a market administered by the NYISO for end-use in New York State.

Section 3.02. Participation in Wholesale Markets. The BES program does not require wholesale market participation. A Bid Facility will create ISCs in accordance with this Agreement regardless of its participation or non-participation in the wholesale market. Nothing in this

Agreement shall be read to prohibit bilateral sales by Seller for electric energy, capacity, or ancillary services produced by the Bid Facility.

Article IV
Pricing and Payment

Section 4.01. Determination of Monthly Settlement Payment.

(a) The Monthly ISC Price for each ISC shall equal the difference between the Strike Price and the Reference Price, as calculated below.

(i) The Reference Price for each month shall be an amount equal to the sum of the monthly Reference Energy Arbitrage Price ("REAP") and the monthly Reference Capacity Price ("RCP").

(ii) The Reference Energy Arbitrage 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) determine and pair the top and bottom-priced hours (1st highest and 1st lowest, 2nd highest and 2nd lowest, etc.) in the hourly day-ahead market, repeating this process iteratively to create a number of pairs equal to the lesser of the Bid Storage Duration for the Bid Facility and 8 hours; and

(C) for each pair, calculate the spread between each (i) top-priced hour and (ii) the quotient of the bottom-priced hour divided by the Assumed Round-Trip Efficiency;

(D) for each pair, replace any spreads with a negative value with "0";

(E) sum the spreads;

(F) divide the sum of all the spreads by the lesser of the Bid Storage Duration for the Bid Facility and 8 hours, to arrive at the Daily REAP

This is represented as a formula below.

$$REAP_D = \frac{\sum_{n=1}^{x} \max\left(\left[T_n - \left(\frac{B_n}{RTE}\right)\right], 0\right)}{x}$$

Where:

n = Hour

x = Lesser of the Bid Storage Duration of the Bid Facility and 8 hours

T_n = Price of the top-priced hour in the day

B_n = Price of the bottom priced hour in the day

RTE = Assumed Round-Trip Efficiency

(G) for purposes of determining the monthly Settlement Price provided in 4.1(b), below, sum the Daily REAP for each day of the Settlement Period, and divide the sum by the number of days in the Settlement Period, to arrive at the Monthly REAP:

$$REAP_M = \frac{\sum_{D=1}^{k} REAP_D}{k}$$

Where:

D = Day

k = Days in the Settlement Period

(iii) The Reference Capacity Price for each month shall be calculated by NYSERDA using data published by NYISO for its 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) calculate the product of:

(1) the Reference UCAP Price ($/kW-month);

(2) a conversion factor of 1,000 kW/MW; and

(3) the Capacity Accreditation Factor, as defined above.

(C) divide the total amount of dollars calculated in (B) by the Total Monthly Hours for the subject Settlement Period to determine the Reference Capacity Price, as follows:

$$RCP = \frac{RUP\ x\ 1{,}000\ x\ CAF}{Bid\ Storage\ Duration\ \times k}$$

Where:

RUP = Reference UCAP Price ($/kW-month) described in Section 4.01(a).

k = Number of days in Settlement Period

1,000 = kW to MW conversion factor

CAF = Capacity Accreditation Factor (defined above)

(b) The Monthly Settlement Payment for the purchase of ISCs in each month shall be calculated, based on the calculations set forth in Section 4.01(a), as follows:

$$Monthly\ Settlement\ Payment = Monthly\ ISC\ Price \times Monthly\ ISC\ Quantity$$

Where:

Monthly ISC Price = Strike Price ($/ISC) – Reference Price.

Reference Price = Monthly REAP ($/ISC) + Monthly Capacity Price

Monthly ISC Quantity = The ISCs created by the Bid Facility in such Settlement Period.

In the event that the Monthly Settlement Payment is positive, NYSERDA shall make a payment to the Seller. In the event that the Monthly Settlement Payment is negative, the Seller shall incur a debit to NYSERDA (a "Seller ISC Debit") in an amount equal to the product of such Monthly Settlement Payment and -1. Each Seller ISC Debit shall be settled in accordance with the provisions of Section 4.03(c).

Section 4.02. Invoices.

(a) Seller shall submit a Monthly Availability Report in accordance with Section 6.02(d). Within fifteen (15) days after NYSERDA has received the information for the Bid Facility necessary to compute a Monthly ISC Price and Monthly Settlement Payment, including for the avoidance of doubt the Monthly Availability Percentage, in each case as may be validated by a Technical Consultant, NYSERDA shall provide an invoice to Seller that includes the Monthly ISC Price and Monthly Settlement Payment for that month.

(b) NYSERDA shall prepare monthly invoices throughout the Contract Delivery Term of this Agreement for the ISCs created by Seller. Payments will commence after the Bid Facility achieves Operational Certification, retroactive to the commencement of the Contract Delivery Term. Invoices shall not be approved before NYSERDA provides Seller with the Monthly ISC Price for a given month in accordance with Section 4.02(a) of this Agreement; invoices approved before NYSERDA provides Seller with the Monthly ISC Price for a given month shall not be considered proper invoices for purposes of NYSERDA's Prompt Payment Policy. Invoices shall be approved electronically 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 4.03. Invoices must reflect the quantity of ISCs delivered to NYSERDA for the Settlement Period that is the subject of the invoice. With the exception of an invoice submitted in accordance with Article V of this Agreement, Seller shall approve or dispute an invoice through the Salesforce portal (or its successor) within thirty (30) calendar days after NYSERDA provides Seller with the monthly invoice for a given Settlement Period. To the extent Seller disputes an invoice in the Salesforce portal (or its successor), the Parties shall work in good faith to resolve the dispute in line with the requirements of this Agreement. NYSERDA may request additional information and data, as specified in Section 6.01, sufficient for NYSERDA to verify compliance with the requirements as may be outlined in this Agreement.

Section 4.03. Payment.

(a) The amount payable for each month shall be calculated as set forth in Section 4.01, provided, however, that NYSERDA will not pay for ISCs beyond the Monthly ISC Cap for any Settlement Period.

(b) Payments will commence after the Bid 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 complete Operational Certification application to NYSERDA, in accordance with Section 5 of the Program Manual.

(c) If, for any Settlement Period, the amount payable to Seller is a negative amount as provided in Section 4.01(b), NYSERDA shall make no payment to Seller for that month and instead shall record a Seller ISC Debit for such month (a "Monthly Debit"), provided however that the Seller ISC Debit for any Settlement Period shall not exceed an amount equal to the Strike Price multiplied by the Monthly ISC Quantity for such Settlement Period. 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 Debits 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 4.04. 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 4.05. Changes in Law.

(a) In the event that 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 Arbitrage Price or Reference Capacity Price becomes impossible or no longer reasonably reflects the objective of providing a market-based index of energy price arbitrage or capacity prices in the Applicable Zone, in each case as they existed on the Effective Date, the Parties shall, in accordance with Section 4.05(f, 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, in accordance with Section 4.05(f), 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 energy storage systems in the Applicable Zone under the new resource adequacy construct.

(c) In the event that a change in Applicable Law effected by the Federal Energy Regulatory Commission, NYISO, or the PSC after the Effective Date affects the reasonable revenue expectations of the Bid Facility on a significant and sustained basis, the Parties shall, in accordance with Section 4.05(f), negotiate in good faith to amend this Agreement, prospective from the Change in Law Date to make such conforming changes as are necessary to preserve the reasonable economic expectations of the Parties.

(d) In the event that a change in Applicable Law after the Effective Date changes the codes, standards or requirements applicable to the construction of energy storage systems in a manner that affects the Bid Facility on a significant and sustained basis, the Parties shall, in accordance with Section 4.05(f), negotiate in good faith to amend this Agreement, prospective from the Change in Law Date, to make such conforming changes as are necessary to preserve the reasonable economic expectations of the Parties; provided that (i) no change to the Monthly ISC Price shall be made for any change in Applicable Law under this clause (d) that would translate to an increase in the Strike Price of less than five percent (5%) and (ii) if the change in Applicable Law under this clause (d) translates to an increase of the Strike Price of more than five percent (5%), the Strike Price will be increased by the amount above such five percent (5%) threshold that such change in Applicable Law translates to, up to a maximum of five percent (5%) increase in the Strike

Price. For example, if a change in Applicable Law under this clause (d) translates to an eight percent (8%) increase in the Strike Price, the Strike Price will be increased by three percent (3%).

(e) Any adjustment to the calculation of the Monthly ISC Price pursuant to Section 4.05(a), (b) or (c) shall be designed such that the reasonably expected net impact of such adjustment combined with the applicable change in Applicable Law itself shall in the aggregate be reasonably revenue-neutral to an energy storage project of Seller's type and location compared to the circumstances that existed prior to the change in Applicable Law and the implementation of the adjustment.

(f) In the event that a change in Applicable Law as set forth in Section 4.05(a), (b), (c) or (d) occurs or is likely to occur, Seller shall promptly deliver to NYSERDA a written notice ("Change in Law Notice"), and the Parties will take the following actions:

(i) After NYSERDA receives a Change in Law Notice, NYSERDA shall reasonably determine whether a change in Applicable Law as set forth in Section 4.05(a), (b), (c) or (d) has occurred or is likely to occur. Following such determination, NYSERDA shall provide notice to Seller and all other ISC sellers of such change in Applicable Law and shall provide a reasonable opportunity for affected ISC sellers to respond to requests for information or proposals for modifications to the Agreement.

(ii) NYSERDA shall reasonably consider any feedback received from Seller and all other affected ISC sellers and shall, within a reasonable period after receipt of such proposals, propose an adjustment to the calculation of the Monthly ISC Price. Such proposal shall not be considered an offer to amend the Agreement unless expressly stated by NYSERDA in such proposal.

(iii) NYSERDA, in its sole discretion, may request additional information or feedback on its proposed adjustment released pursuant to paragraph (ii) of this Section 4.05(f).

(iv) NYSERDA shall reasonably consider any feedback from Seller and all other ISC sellers, if any, and may, in its sole discretion, make modifications prior to releasing the final adjustment to the calculation of the Monthly ISC Price. NYSERDA will notify all sellers when any such proposed adjustment shall constitute an offer to amend the Agreement consistent with such proposed adjustment. Within a reasonable period after NYSERDA has released to Seller and all other ISC sellers a proposed adjustment to the calculation of the Monthly ISC Price that NYSERDA has expressly identified as an offer to amend the Agreement,

Seller shall accept such adjustment unless (A) NYSERDA has not reasonably considered Seller's feedback in determining such adjustment, or (B) such adjustment fails to comply with the standards set forth in Section 4.05(d) or (e). Any dispute hereunder shall be subject to good-faith negotiation pursuant to Section 14.03 of this Agreement. In the event that the Seller accepts such adjustment, the Agreement shall be deemed amended to reflect such adjustment.

(v) Seller shall continue to create ISCs in accordance with this Agreement pending resolution of any dispute pursuant to this Section 4.05. Notwithstanding any such dispute, the Parties shall continue to issue invoices and make Monthly Settlement Payments pursuant to Sections 4.02 and 4.03 of this Agreement, and promptly upon the resolution of such dispute, the Parties shall make Monthly Settlement Payments or credits thereof in accordance with any amendment of this Agreement, prospective from the Change in Law Date or such other date as the Parties may agree.

Article V
Adjustments

Section 5.01. True-Up Adjustments. NYSERDA may (and, at the request of Seller, shall) review past invoices, including, but not limited to, the calculation of the Reference 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.

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

(a) Should the Monthly ISC Quantity of a Bid Facility fall below 80% of the Monthly Bid Quantity for thirty six (36) consecutive months (the "Non-Compliance Period"), the Monthly ISC Cap shall be adjusted for each Settlement Period during the remainder of the Contract Delivery Term to an amount equal to the Maximum Monthly ISCs for such Settlement Period multiplied by the Adjustment Percentage.

(b) Should Seller fail to reasonably demonstrate to NYSERDA that the Verified Total Dollars divided by Bid Energy Capacity is at least 85% of the Expected Dollars/MWh, the Monthly ISC Price for the subsequent seven (7) Contract Years of the Contract Delivery Term shall be adjusted by NYSERDA, upon Notice to Seller. Such reduction in the Monthly ISC Price will be made by multiplying the applicable Monthly ISC Price (beginning with the first month of the fourth Contract Year) by a percentage equal to (i) the Verified Total Dollars divided by the Bid Energy Capacity, divided by (ii) the Expected Dollars/MWh.

[Section 5.03. Component Cost Indices Adjustment. Prior to the commencement of the Contract Delivery Term and prior to any other adjustments made pursuant to this Article V, a one-time adjustment to the Strike Price (as set forth in Schedule 1) shall be carried out as set forth in Exhibit G, provided, however, that notwithstanding any provision of this Article V or Schedule 1, any increase or decrease in the Strike Price as a result of such adjustment shall not exceed twelve percent (12%). Seller may request that such one-time adjustment to the Strike Price be promptly completed once the final IndexT values (as described in Exhibit G) become available.][9]

Section 5.04. LPO Financing. In the event that the Bid Facility obtains financing from or supported by the U.S. Department of Energy's Loan Program Office (or its successor), the Strike Price shall be reduced by one percent (1%).

Section 5.05. Qualifying Governmental Support.

(a) In the event that Seller or any of its Affiliates receives Qualifying Governmental Support, Seller shall determine the QGS Amount and provide notice of the same to NYSERDA, including supporting calculations thereto. Seller shall also make available or cause to be made available to NYSERDA all books and records in its control that are reasonably necessary to determine the QGS Amount and shall use commercially reasonable efforts to provide NYSERDA with any other books and records reasonably requested by NYSERDA. Such books and records shall include all tax and other filings made with respect to obtaining any of the Qualifying Tax Benefits that Seller or any tax equity party is claiming or proposing to claim as well as all work papers and other due diligence and compliance records, files and data related to the qualification for the Qualifying Tax Benefits to which Seller has in its possession or reasonably has access.

(b) The QGS Amount shall be calculated on a net basis, taking into account all QGS Deductible Amounts. Seller shall send to NYSERDA a detailed, itemized calculation of the QGS Amount, including a detailed itemized calculation of any QGS Deductible Amounts and thereafter NYSERDA shall have a period of forty-five (45) days to review Seller's calculation. If NYSERDA fails to deliver to Seller a written notice of objection to or request for clarification of Seller's calculation of the QGS Amount prior to the expiration of such forty-five (45) day period, Seller's calculation of the QGS Amount shall be deemed accepted. If NYSERDA delivers a written notice of objection to or request for clarification of Seller within such forty-five (45) period, the Parties agree to negotiate in good faith pursuant to Section 14.03 to come to an agreement on

[9] Note to Draft: Pursuant to ISCRFP25-1 Section 2.5.2, the CCIA Adjustment is not available to Projects that have issued a Full Notice to Proceed or Final Investment Decision prior to the Bid Price Submission Deadline.

the calculation of the QGS Amount within forty-five (45) days of delivery of NYSERDA's written notice. Should the Parties fail to reach agreement, then either Party may seek resolution according to the dispute provisions of this Agreement.

(c) If applicable, the QGS Price Reduction shall be applied prospectively from the beginning of the Contract Year immediately following the date that the economic value of the Qualifying Governmental Support benefit is realized, computed in accordance with the following formula:

$$\text{QGS Price Reduction} = \frac{\text{QGS Amount (\$)} \times 0.75 \times \text{RF}}{\text{Bid Quantity}}$$

where:

RF = Recovery Factor determined in accordance with Schedule 3, based on the number of full Contract Years remaining in the Contract Delivery Term:

(d) In the event that any Qualifying Governmental Support changes (including through modification, repeal and/or any other action) after the determination of the QGS Amount and/or the application of the QGS Price Reduction, Seller shall provide prompt notice of such occurrence to NYSERDA and redetermine the QGS Amount based on such development using the process set forth in Sections 5.05(a) and (b). In such event, the adjusted QGS Price Reduction shall be applied prospectively in a manner that reflects the effect of such change.

Article VI
Records, Reports and Other Seller Commitments

Section 6.01. Provision of Data.

(a) Seller shall, at NYSERDA's written request, provide NYSERDA access to storage and duration data, including detailed daily and monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Bid Facility was made available for discharge, including any data related to any outages, including, without limitation, any outage data reported to the NYISO using the Generating Availability and Data Systems (GADS). Seller may be required to 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 Bid Facility is made available for discharge of transactional and/or delivery information.

(b) Upon NYSERDA's reasonable request, Seller shall provide NYSERDA with all reasonably requested information regarding Pre-Effective Date Construction Activities.

(c) Upon commissioning of the Bid Facility, Seller agrees to make commercially reasonable efforts to work with NYSERDA to validate a final accounting of the Bid Facility's (i) carbon footprint and (ii) energy and carbon payback periods. With Seller's consent, NYSERDA may disclose the Bid 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. Quarterly Progress Reports; Annual Operating Reports; Monthly Availability Reports.

(a) Beginning on the first such date following the Effective Date, and continuing until the commencement of the Contract Delivery Term, Seller shall provide quarterly written progress reports to NYSERDA, in form and substance reasonably satisfactory to NYSERDA ("Progress Reports"), 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, including providing NYSERDA with any SEQRA materials submitted to or received from the SEQRA lead agency;

(ii) The status of all development and/or construction planning or activities with regard to the Bid 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 Bid Facility and the administrator of the control area;

(iv) Purchases, delivery, and/or installation of any major equipment associated with the Bid Facility, including without limitation status of key equipment supply and labor agreements, if applicable, needed to procure the major equipment for and construct the Bid Facility;

(v) An estimated date for Commercial Operation and a schedule of key milestones leading up to Commercial Operation;

(vi) reserved;

(vii) Information as NYSERDA may reasonably request from time to time to identify and substantiate the economic benefits of the Bid 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) In a form to be provided by NYSERDA, information reasonably required to meet the reporting obligations set forth under the 2024 BES Order;

(ix) Any material changes to the Climate Resiliency Plan;

(x) Status of any outstanding financing needs to proceed to construction of the project, including financial close or demonstration of self-financing;

(xi) Any planned changes of control of the project, which will be subject to Article VIII of this Agreement; and

(xii) Any additional information reasonably requested by NYSERDA about the Bid Facility or in relation to any of the foregoing.

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.

Seller shall notify NYSERDA within ten (10) days of having Knowledge of any event that could reasonably cause a material delay in any of the activities listed above.

During the period in which Construction Activities are ongoing, Seller shall include with each Progress Report either (a) a written attestation prepared by a New York State independent certified public accountant, in a form to be agreed upon, confirming that Seller is in compliance with the Prevailing Wage requirement set forth in Section 18.09, or (b) a written certification signed by Seller's contractor providing construction services for the Bid Facility, certifying that such services were performed in compliance with the Prevailing Wage requirement set forth in Section 18.09.

(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) Beginning on the first such date following the commencement of the Contract Delivery Term and continuing until one year after the Contract Delivery Term, 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 ISCs were delivered to NYSERDA. Annual Operating Reports shall be submitted in a form substantially similar to Exhibit F 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 F to match the format of existing reporting formats utilized by Seller.

(d) On the tenth (10^{th}) day of each month throughout the Contract Delivery Term, Seller shall submit to NYSERDA or its designee and the Technical Consultant a Monthly Availability Report covering the activities of the immediately preceding Settlement Period in which any ISCs were delivered to NYSERDA. Monthly Availability Reports shall be submitted in a form substantially similar to Exhibit E to this Agreement, as may be modified by NYSERDA from time to time.

Section 6.03. Community Outreach.

(a) 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.

(b) Each Progress Report shall further include detail regarding the development and implementation of the Fire and Safety Plan that conforms with the Fire Code Recommendations Report.

Section 6.04. Economic Benefits Report. Within 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 that resulted from the construction and operation of the Bid 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 Incremental Economic Benefits Reporting Standards and Agreed Upon Procedures Report that were released with the Notice of Qualification provided to Seller as part of ISCRFP25-1. The Economic Benefits Report will be funded at Seller's expense.

Section 6.05. Additional Documents. Prior to the Effective Date, Seller shall have provided to NYSERDA a certificate of an authorized officer of Seller attaching:

(a) a true, correct and complete copy of the [articles or certificate of organization or other similar formation], as filed with the secretary of state or similar government official of the state of [__], together with any and all amendments thereto currently in effect;

(b) a true, correct and complete copy of the [bylaws, articles or certificate of incorporation, partnership agreement, certificate of partnership, operating agreement or other management agreement] of Seller, together with any and all amendments thereto currently in effect;

(c) a true, correct and complete copy of the resolutions of Seller, authorizing and approving all matters in connection with the transactions contemplated hereby;

(d) 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]; and

(e) a certificate of incumbency certifying the names and signatures of the officers of Seller authorized to sign any documents to be delivered hereunder.

Seller shall promptly provide NYSERDA with updated and corrected versions of the above-referenced documents upon any material 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 6.06 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. Compliance with Program Manual. The Bid Facility must strictly comply with the peer review, emergency response plan and fire safety training, and commissioning and decommissioning requirements set forth in the Program Manual in effect as of the Bid Price

Submission Date. The Bid Facility must materially comply with all other requirements, including provision of any data, set forth in the Program Manual in effect as of the Bid Price Submission Date. The Program Manual may be updated by NYSERDA from time to time, and Seller shall use commercially reasonable efforts to comply with all Program Manual updates released after the Bid Price Submission Date.

Section 6.08. Climate Resiliency Plan. As soon as reasonably practicable following the Effective Date, but in any case no later than the time of Operational Certification, Seller shall submit to NYSERDA a Climate Resiliency Plan that demonstrates how the potential impacts of climate change over the Contract Delivery Term have been evaluated and incorporated into the Bid Facility's siting, design, technology selection, construction, and operation plan to ensure reliability and maintain expected performance ("Climate Resiliency Plan"). The Climate Resiliency Plan will include the following elements except to the extent NYSERDA confirms that any particular element is not reasonably necessary to meet the purposes of the Climate Resiliency Plan described above (such confirmation not to be unreasonably withheld, conditioned or delayed):

(a) Identification of the key climate hazards and risks the Bid Facility may face based on its location and anticipated useful life. The level of exposure to climate hazards will be project and location specific. Main climate hazards in New York State include but are not limited to extreme storms, high winds, sea level rise, extreme heat and cold, increased temperature, and increased rainfall. Sellers may reference existing resources for climate risk and resiliency assessment and adaptation, including NYS Climate Impacts Assessment, NYS DEC Flood Risk Management Guidance, NYS DOH Heat Vulnerability Index, NYS Future Coastal Floodplain Mapper, Northeast Regional Climate Center intensity-duration-frequency curves for heavy precipitation, Columbia's Hudson River Flood Map, NYSIO's Climate Change Impact and Resilience Study and others. All referenced resources in the Climate Resiliency Plan should be included by citation, for which purpose NYSERDA recommends utilizing the guidelines outlined in the Publication Manual of the American Psychological Association, 7th edition.

(b) An assessment of how the identified climate risks could impact the Bid Facility's energy charging and discharging, reliability, and operational lifetime (considering direct and indirect impacts).

(c) Specific design features, adaptive strategies, and/or operational plans the Seller has incorporated into the project to mitigate the identified climate risks and enhance resilience.

(d) Quantitative metrics, modeling, or examples illustrating the effectiveness of the proposed resilience measures where possible.

(e) A plan for continuous monitoring of climate data/projections and implementing adaptive management if future climate changes diverge from initial assumptions.

To the extent a similar plan or analysis has been presented to and accepted by, or prepared by, (i) an unaffiliated financing, insurance or similar third party as part of financing, insurance or similar purposes or (ii) a regulatory authority, a copy of that plan or analysis, along with any supplements reasonably required by NYSERDA in accordance with the purposes described above, may be provided to NYSERDA in lieu of the creation of separate documentation and shall constitute the Climate Resiliency Plan for purposes of this Section 6.08.

Any material updates to the Climate Resiliency Plan shall be noted in the Progress Reports as required by Section 6.02. Seller shall undertake all activities and perform all obligations described in the Climate Resiliency Plan, except to the extent that such activities or obligations are impractical in light of project objectives or unnecessary to protect environmental resources, in which case Seller shall provide a description of such circumstances to NYSERDA.

Section 6.09. Fire and Safety Plan. As soon as reasonably practicable following the Effective Date, but in any case no later than the time of Operational Certification, Seller shall submit to NYSERDA a Fire and Safety Plan that demonstrates the Bid Facility's compliance with the Fire Code Recommendations Report and the Fire Code of New York State, including completion of the peer review requirement set forth in the Program Manual, and further includes the following elements:

> [(a) For a Bid Facility located outside of New York City, verification that the Bid Facility is equipped with an emergency response plan for first responders, which must be maintained on-site outside the fence line and which shall be shared with the local fire department. To the extent possible, the emergency response plan shall be developed in consultation with the local fire department to ensure that it is in alignment with such fire department's operating procedures, capabilities, and resources.]
>
> [(b) For a Bid Facility that is a lithium-ion storage project located outside of New York City, verification that the Seller has offered annual, site-specific training to the local fire department to familiarize personnel with the project, hazards associated with lithium-ion battery energy storage systems, and procedures outlined in the emergency response plan.]

Any material updates to the Fire and Safety Plan shall be noted in the progress reports as required by Section 6.02. Seller shall undertake all activities and perform all obligations described in the Fire and Safety Plan, and the Bid Facility shall at all times be in compliance with all Applicable Laws related to fire safety.

Section 6.10. Specific Disadvantaged Community Commitments. Seller agrees to fulfill all specific Disadvantaged Community Commitments identified in Exhibit H to this Agreement.[10]

(a) 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.

(b) 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 Bid Facility achieves Commercial Operation or the date identified in such commitment, whichever is later.

(c) Seller shall verify any payments made towards any Disadvantaged Community Commitments incurred prior to the third anniversary of Commercial Operation pursuant to Section 6.04 of this Agreement. Seller shall report any payments made towards any Disadvantaged Community Commitments not covered or in addition to those verified under Section 6.04 of this Agreement 60 days following the fourth anniversary of Commercial Operation and annually thereafter throughout the Contract Delivery Term.

Section 6.11. Outages. Seller agrees to provide NYSERDA with as much advanced notice as possible for any planned outages or material reductions in availability of the Bid 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 availability of the Bid Facility no more than two (2) Business Days after the discovery thereof.

Section 6.12. Thermal Events. Seller shall (i) promptly provide notice to NYSERDA of any thermal runaway event that occurs at the Bid Facility and (ii) upon reasonable request by NYSERDA, use reasonable best efforts to promptly provide NYSERDA with information related to such thermal event, including but not limited to any "Root Cause Analysis" prepared by an equipment manufacturer and shared with Seller.

[10] Note to Draft: Exhibit H will be populated by NYSERDA based on materials provided by Seller as part of its bid package.

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 Monthly Operating Reports required under Section 6.02(c) but excepting any Prevailing Wage reporting set forth in Section 18.09), or (b) fails to provide material 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. Facility Audit. NYSERDA may require periodic audits of the Bid Facility (a) to verify that the Bid Facility remains eligible under the PSC orders as described in Section 2.06 of this Agreement, (b) to verify whether the Bid Facility has been Materially Modified from the date of Operational Certification and (c) to complete quality assurance inspections in accordance with the Program Manual. NYSERDA shall provide Seller with reasonable notice of any request to visit the Bid Facility. NYSERDA and/or its designee, including verification and peer review personnel, shall have reasonable access to the Bid Facility for such purposes, and NYSERDA shall comply with Seller's security and safety policies and procedures for the Bid Facility to the extent applicable in any such audit.

Article VIII
Assignment and Change of Control

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. 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 D, (y) if required to maintain compliance with Article XV, delivery of Contract Security to NYSERDA in substitution of the Contract Security provided by Seller hereunder in accordance with Section 15.04, 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 Bid Facility, this Agreement, or the accounts, revenues, or proceeds from this Agreement in connection with financing arrangements, including in connection with any tax equity financing or (b) assign the Bid Facility and this Agreement to an Affiliate if the then-current Contract Security remains in place. Upon Seller's reasonable request, NYSERDA shall execute a consent to assignment associated with a financing in a form reasonably acceptable to NYSERDA and Seller. Upon consummation of any assignment of the Agreement by Seller, Seller shall promptly provide NSYERDA with evidence of such assignment.

Section 8.03. Change of Control. 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 (or in the case of a disposition to NYPA, within sixty (60) calendar days), NYSERDA shall be deemed to have confirmed that the proposed Change of Control does not require NYSERDA's consent. Seller shall deliver to NYSERDA: (a) no later than fifteen (15) Business Days prior to such Change of Control being

effectuated, a completed Change of Control form, as provided by NYSERDA; (b) within five (5) Business Days after such Change of Control is effectuated, evidence of such Change of Control in the form of (1) an executed assignment of membership interests or related documentation and (2) if necessary, as determined in NYSERDA's sole discretion, a redacted copy of the purchase agreement effectuating such Change of Control; (c) within ten (10) Business Days after such Change of Control is effectuated, (1) if necessary, updated notice details to replace the information set forth in Section 19.01, (2) if necessary and without duplication, an updated certificate delivered pursuant to Section 6.05 and (3) if necessary, a completed change form, as provided by NYSERDA; and (d) any other materials NYSERDA may reasonably request.

Section 8.04. Change in Tax Identification Number. 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 8.04 shall apply to any changes to the W-9 Seller has filed with NYSERDA for payment purposes.

Section 8.05. Advance Notice. Subject to any requirements to comply with Applicable Law, including the U.S. securities laws, Seller agrees to provide NYSERDA, in accordance with Section 19.01 of this Agreement, (i) fifteen (15) Business Days' advance Notice of 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) fifteen (15) Business Days' advance Notice of any Change of Control or sixty (60) days' advance Notice of any Change of Control to NYPA, in each case regardless of whether or not NYSERDA's consent is required hereunder. NYSERDA agrees to execute a confidentiality agreement, as reasonably determined by Seller as necessary, to protect the disclosures required by this Section 8.05.

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

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

(c) that the execution, delivery and performance by Seller, the entry into this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement will not (i) violate 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;

(d) that Seller has provided to NYSERDA, by the Effective Date, the certificate of an authorized officer of Seller pursuant to Section 6.05;

(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 is no action, suit or claim at law or in equity, or before or by a governmental authority pending, or to Seller's Knowledge, threatened against Seller 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 ISCRFP25-1 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 the Bid Facility remains in the interconnection queue, and has not been voluntarily withdrawn therefrom, and that Seller has taken no actions with a view toward voluntarily withdrawing the Bid Facility from the interconnection queue][11];

(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, the current version of which is attached hereto as Exhibit I and made available here: https://www.nyserda.ny.gov/-/media/Project/Nyserda/files/About/Board-Governance/NYSERDA-Code-of-Conduct-Contractors.pdf (the "Code of Conduct"), and Seller will use commercially reasonable efforts to comply with updates made from time to time to the Code of Conduct by NYSERDA; and

(k) that Seller will comply with all Applicable Law except where the failure to so comply would not result in a material adverse effect on Seller's ability to perform under this Agreement.

Section 9.02. Nature of Representations, Warranties and Guarantees. The representations, warranties and guarantees set forth in this Article IX are made as of the Effective Date, 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 9.02 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 ISCs created hereunder, and any and all implied warranties are disclaimed.

[11] Note to Draft: Not required for 8+ hour resources that have not entered the interconnection queue prior to the Effective Date.

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;

(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 under this Agreement; 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, funding or assets which could reasonably be expected to

result in a material adverse effect on NYSERDA's ability to perform its obligations under this Agreement.

Section 10.02. Nature of Representations, Warranties and Guarantees. The representations, warranties and guarantees set forth in this Article X are made as of the Effective Date, 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 10.02 shall be given as soon as practicable after the occurrence of each such event.

Article XI
Indemnification

Section 11.01. Indemnification. Seller shall protect, defend, 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 "Loss") 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 Bid Facility, or the creation of ISCs under this Agreement. Seller shall have no obligation to protect, defend, 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 the legal validity of (i) this Agreement, (ii) the purchase or sale of ISCs, or (iii) the competitive solicitation process held by NYSERDA to purchase ISCs. The obligations of Seller under this Article X shall survive any expiration or termination of this Agreement and shall not be limited by the amount of Seller's insurance coverage.

For the avoidance of doubt, Seller shall protect, defend, indemnify and hold harmless NYSERDA and the State of New York from and against all Loss imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to failure by Seller or any of Seller's affiliates, contractors, subcontractors, agents or other representatives to pay the correct amount of wages, including, but not limited to prevailing wages, overtime, spread of hours, on call pay, call-in pay, scheduling pay, shift or other differential pay, frequency of pay, holiday pay, sick pay or leave, vacation pay, disability or family or parental leave pay, fringe or any other benefits or any claims any kind of wages or benefits allegedly due to any employees or contractors under state, federal or local laws of any kind, notwithstanding whether or not such a failure to pay the correct amount of wages is the result of alleged negligence or omission by NYSERDA or Seller.

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 XI may apply or promptly after NYSERDA has actual knowledge of any other Loss that would result in a claim for indemnification, provided that any failure by NYSERDA to provide such timely notice shall not affect Seller's indemnification obligations under this Article XI, except to the extent that Seller is materially prejudiced by such failure. 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 Seller acquires control of the project site on which the Bid Facility is to be located and continuing throughout the duration of the Contract Delivery Term, insurance of the types and in the amounts specified in Section 12.02, and such additional coverages and terms as may be required by Applicable Laws, with under policies issued in accordance with the laws of the state in which the services are to be performed and with insurance companies that have an A.M. Best's Insurance Rating of not less than A-, VII. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller's defense and indemnity obligations. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds. Liability limits under this Section 12.02 may be met with any combination of primary or excess/umbrella insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

(a) except with respect to worker's compensation, or any other coverage line that does not permit addition of other parties, name or be endorsed to cover NYSERDA

and its officers, agents and employees, the State of New York, and such additional parties as may be required by Applicable Laws, 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 (except if cancellation is due to non-payment of premiums, in which case notice must be provided at least 10 days prior to cancellation); and

(c) be reasonably satisfactory to NYSERDA in all other respects.

Section 12.02. Types of Insurance.[12]

(a) Seller shall be required to maintain:

(i) comprehensive commercial general liability insurance covering claims for bodily injury, including, sickness or death, and damage to property, including the loss of use thereof, occurring in, upon or about the Bid Facility or resulting from the performance of this Agreement, or any neighboring property, building, street, drive, sidewalk, curb or passageway, in standard form with minimum limits of not less than [$2,000,000]/[$200,000 per/MW Bid Power Capacity][13] per occurrence and [$2,000,000]/[$200,000 per/MW Bid Power Capacity][14] in the aggregate, which insurance shall include operations and contractual liability coverage that insures contractual liability under the indemnification set forth in Article XI hereof (but such coverage or the amount thereof shall in no way limit such indemnification);

(ii) automobile liability insurance, including owned, non-owned and hired car liability insurance for combined limits of liability of $1,000,000 per occurrence;

(iii) pollution liability insurance policy ("PLL") insuring losses for clean-up, bodily injury or property damage to third parties, including government entities arising from Seller's operations at the Bid Facility. The PLL policy shall contain no less than the following coverage: (i) new pollution conditions, (ii) existing pollution conditions, (iii) on-site and offsite cleanup coverage, (iv) third-party claims; (v) transportation coverage, (vi) non-owned disposal site coverage, (vii) business interruption (unless coverage for business interruption caused by a

[12] Note to Draft: The insurance requirements in Section 12.02 are generally applicable for Li-ion projects. NYSERDA may adjust these requirements as necessary for any awarded non-Li ion technologies.

[13] Note to Draft: To insert whichever is lower.

[14] Note to Draft: To insert whichever is lower.

pollution condition is provided under another policy), (viii) products – pollution liability, and (ix) natural resource damage . The insured location shall be the Bid Facility. The Environmental Policies shall have with minimum combined limits of liability not less than $5,000,000 per occurrence, and aggregate limits of not less than $5,000,000;

(iv) "Special form" property insurance, insuring against loss or damage to the improvements at the Bid Facility, including all furnishings, fixtures and equipment used in connection therewith, in an amount sufficient to prevent the application of any co-insurance contributions on loss and in an amount not less than the full replacement cost of the improvements and all furnishings, fixtures and equipment used in connection therewith, and including the "replacement cost" endorsement, with a waiver of depreciation;

(v) umbrella/ excess liability insurance on an occurrence basis with limits of not less than $5,000,000 per occurrence in excess of the limits provided by the commercial general liability, and automobile liability insurance. The coverage terms of the umbrella/excess insurance must be on a no less than follow-form basis.

(b) In addition to the insurance required to be maintained by Seller as set forth in Section 12.02(a), during the performance of any Construction Activities at the Bid Facility, the Seller shall purchase and maintain, in a company or companies lawfully authorized to do business in New York, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the total cost of construction with the exception of sublimits for natural catastrophe perils and other standard sub-limits, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Construction Activities at the Bid Facility on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until operational property policy is in place. This insurance shall include the interests of NYSERDA, the general contractor/construction manager, subcontractors and sub-subcontractors involved in the Construction Activities as their interests may appear. Construction all risk property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Seller's contractor and consultants services and expenses required as a result of such insured loss.

(c) Seller shall require all contractors performing Construction Activities, to obtain and maintain in full force and effect and cause any subcontractor to secure and keep in full force and effect, until the Construction Activities are finally completed and contractor and

all subcontractors have left the premises and removed all of their property therefrom, the following insurance coverage at its contractors' sole cost and expense. Such insurance shall be primary, notwithstanding any other insurance that might be in effect for any Seller:

(i) commercial general liability insurance, including contractual liability, products and completed operations liability (including XCU coverage), broad form property damage, personal and advertising injury liability, all written on a CG0001 or equivalent occurrence form, with combined bodily injury and property damage limits of liability of no less than $1,000,000 per occurrence, $2,000,000 per location general aggregate, $2,000,000 personal and advertising injury and $2,000,000 products and completed operations liability with an aggregate limit per project;

(ii) completed operations coverage shall be maintained for six (6) years from the date of substantial completion of the work;

(iii) worker's compensation insurance providing statutory benefits for employees and employer's liability coverage in an amount that is no less than $1,000,000;

(iv) automobile liability insurance, including owned, non-owned and hired car liability insurance for combined limits of liability of $1,000,000 per occurrence;

(v) if the contractor's work involves demolition, abatement or handling of pollutants or hazardous materials, excavation or subsurface installations, contractor's pollution liability coverage including liability for the generation of and arranging for transportation for disposal and disposal of any contaminated waste, debris, or water from the project site in connection with the Construction Activities;

(vi) umbrella/ excess liability insurance on an occurrence basis with limits of not less than $1,000,000 per occurrence in excess of the limits provided by the employer's liability, commercial general liability, and automobile liability insurance. The coverage terms of the umbrella/excess insurance must be on a no less than follow form basis. The policy should be written on form CG 00 01 07 98 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard ISO form; and

(vii) property coverage covering damage to, or loss of use of equipment of the contractor and its subcontractors and materials delivered to the project site until installed.

(d)

To the extent an insurance policy required pursuant to this Section 12.02 is not available on commercially reasonable terms (an "Unavailable Insurance"), Seller may request that NYSERDA approve a substitute insurance policy that provides substantially similar coverage in scope and

limits as the Unavailable Insurance; provided, that, such request shall be in writing and include (1) evidence that Seller has used commercially reasonable efforts and taken prudent measures to obtain the Unavailable Insurance and (2) documentation that the substitute insurance policy provides substantially similar coverage as the Unavailable Insurance. NYSERDA shall approve or deny such request in its reasonable discretion within fifteen (15) Business Days of receipt of such request.

Section 12.03. Delivery of Policies; Insurance Certificates. Upon acquisition of control of the underlying property of the Bid Facility and 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 such Party 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 with respect to 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) Operation and Maintenance. The failure by Seller to operate and maintain the Bid Facility in accordance with industry-accepted methods, procedures, and standards that ensure the Bid Facility is operated safely, reliably, and efficiently, and such failure materially and adversely impacts either Seller's ability to perform its obligations under the Agreement or the operational characteristics of the Bid Facility, and such failure is not fully cured within thirty (30) days after the Seller receives notice or discovers its failure, provided, however, that such period shall be extended for an additional period of up to sixty (60) days if the Seller is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Seller until such breach has been corrected; or

(e) Commercial Operation. Failure of the Bid Facility to achieve an Energy Storage System Power Capacity and Energy Storage System Duration equal to or greater than ninety-five percent (95%) of the Bid Power Capacity and ninety-five percent (95%) of the Bid Storage Duration, respectively 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 2.06 and Article XV of this Agreement); provided that if Seller delivers to NYSERDA a notice for the extension of the Commercial Operation Milestone Date pursuant to Section 15.02, then an Event of Default shall not occur unless and until NYSERDA has reviewed and rejected the extension request; or

(f) Abandonment. Seller shall have (i) ceased development activities for the Bid Facility for one hundred and twenty (120) calendar days or (ii) ceased Construction Activities with respect to the Bid Facility for a period in excess of ninety (90) calendar days following commencement of Construction Activities, (iii) ceased operation of the Bid Facility for a period greater than thirty (30) days following achievement of Commercial Operation, or (iv) voluntarily withdrawn the Bid Facility from the interconnection queue, including without limitation as a result of failure to make timely payments or failure to accept its

finalized System Upgrade Facilities cost allocation as a result of the Bid Facility's Applicable Class Year Study or Applicable Cluster Study (or equivalent), and such failures in (i), (ii), (iii), or (iv) are not remedied within thirty (30) calendar days upon receipt of notice of default by NYSERDA; provided that Seller shall not be considered to have abandoned the Bid Facility where Seller has provided evidence to NYSERDA of its undertaking commercially reasonable efforts to advance the development, construction, or operation of the Bid Facility during the relevant time period, or the Bid Facility is withdrawn from the interconnection queue, its Applicable Class Year, or its Applicable Cluster Study process at no fault or action of the Seller and Seller makes good faith efforts to qualify for the immediately following Class Year or otherwise re-enter the interconnection queue as soon as practicable, or at any time where such development, construction, or operation is prevented by a Force Majeure Event; or

(g) Program Manual; Fire Safety. Failure by Seller to comply with Program Manual pursuant to Section 6.07, and such failure is not fully cured within thirty (30) days after a notice of such failure is provided by NYSERDA, provided, however, that such period shall be extended for an additional period of up to thirty (30) days if the Seller is unable to cure within the initial thirty (30) day period so long as such cure is diligently pursued by the Seller until such breach has been corrected; provided, however, that there shall be no applicable notice or cure period for failure by Seller to materially comply with the terms set forth in the Emergency Response Plan (as defined in the Program Manual) and all Applicable Laws related to fire safety; or

(h) Failure to Provide 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 Contract Security; or

(i) Prevailing Wage Default. A Prevailing Wage Failure has occurred and Seller has failed to cure it within twelve months of notice from NYSERDA of such Prevailing Wage Failure under Section 18.09(b)(i) of the Agreement ; 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(a)-(j), and such default shall continue un-remedied for a period of thirty (30) days after the defaulting Party receives notice or otherwise has actual knowledge thereof, provided,

however, that such period shall be extended an additional thirty (30) days or such longer period of time the non-defaulting Party may specify so long as such cure is being diligently pursued by the defaulting Party; or

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

(m) Out of State Delivery. The discharge of electric energy from the Bid Facility outside of the NYCA at Seller's direction; or

(n) Insurance. The failure by Seller to obtain or maintain insurance in accordance with Article XII, if such failure is not remedied within twenty (20) Business Days after a notice of such failure is provided by NYSERDA; provided that if Seller delivers to NYSERDA a request for substitute insurance pursuant to Section 12.02(d), then an Event of Default shall not occur unless and until NYSERDA has reviewed and rejected such request[; or]

[(o) Interconnection. The failure of the Bid Facility to enter the interconnection queue by [DATE].][15]

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, and during the continuance of, an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement.

Article XIV
Termination; Remedies

Section 14.01. Termination. 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) and is continuing, (ii) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (iii) the non-defaulting Party has not waived such Event of Default in writing;

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

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[15] Note to Draft: Only applicable for 8+ hour resources that are not in the interconnection queue as of the Effective Date. The default date will be determined after award in conjunction with any such awardee, taking into account the timelines set forth in the Bid Proposal.

(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.

(f) (i) by Seller if a Material Adverse Change has occurred and is continuing for one hundred and eighty (180) days after the period set forth in Section 18.12(a)(D) (or a shorter period if agreed by the Parties), which termination must (unless otherwise agreed) be exercised by written notice to NYSERDA within one hundred and eighty (180) days (the "MAC Notice Period") after such 180-day continuation period has elapsed or (ii) if Seller does not exercise its right to terminate before the expiration of such MAC Notice Period, by NYSERDA, unless Seller elects in a writing delivered to NYSERDA before the expiration of such MAC Notice Period to withdraw Seller's assertion of the occurrence of such Material Adverse Change.

(g) by either NYSERDA or Seller if a Force Majeure Event, other than a Force Majeure Event arising as provided in Section 18.12, has occurred and is continuing for two hundred and seventy (270) days (or a shorter period if agreed by the Parties), which termination must (unless otherwise agreed) be exercised within ninety (90) days after such period has elapsed.

(h) by Seller if a change in Applicable Law pursuant to Section 4.05(d) (prior to applying the limitations set forth in the Section 4.05(d)(i) and (ii)) translates to an increase of the Strike Price of more than fifteen percent (15%).

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. In the event of a termination of this Agreement that is carried out (a) following the occurrence of a Material Adverse Change in accordance with the terms of this Agreement pursuant to Section 14.01(f), (b) following the occurrence of a Force Majeure in accordance with the terms of this Agreement pursuant to Section 14.01(g), (c) following the occurrence of a change in Applicable Law pursuant to Section 14.01(h) or (d) following termination by Seller for a NYSERDA Event of Default,, NYSERDA shall not prohibit Seller or the Bid Facility from participating in future ISC solicitations to the extent Seller and/or the Bid Facility otherwise meet the eligibility requirements for such solicitations.

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 in respect of claims or causes of action brought by a Person other than a Party, or (b) either Party's liability for fraud.

Section 14.05. Other Remedies, Without limiting any other remedy a Party may have hereunder, should Seller be ineligible for an extension of the Commercial Operation Milestone Date as set forth in Section 15.02, and upon the occurrence of an Event of Default pursuant to Section 13.01(e) of this Agreement, NYSERDA may, as an alternative to terminating this Agreement, unilaterally determine that the Contract Tenor shall be shortened on a day-for-day basis by the number of days that elapse between the Commercial Operation Milestone Date and the date the Bid Facility commences Commercial Operation.

Article XV
Contract Security

Section 15.01. Seller shall deliver or shall have delivered to NYSERDA as security for its performance under the terms of this Agreement, cash, certified funds, or a Letter of Credit conforming to the requirements in Section 15.03 ("Contract Security"), in the amounts, and according to the schedule and conditions, set forth in the Article XV:

(a) As of the Effective Date, NYSERDA acknowledges that Seller has provided Contract Security in an amount equal to the product of (x) the Bid Power Capacity and (y) twenty thousand dollars ($20,000), as required pursuant to ISCRFP25-1 Section 7.2;

(b) No later than two (2) years after the Effective Date, Seller must provide additional Contract Security in an amount equal to the product of (i) the Bid Power Capacity and (ii) ten thousand dollars ($10,000). Seller may, in lieu of the additional Contract Security required under this Section 15.01(b) provide 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.

(c) No later than one (1) year prior to the Initial Commercial Operation Milestone Date, Seller must provide additional Contract Security in an amount equal to the

product of (i) the Bid Power Capacity and (ii) ten thousand dollars ($10,000). **Failure to provide the additional Contract Security required by this Subsection 15.01(c) will constitute a default and may result in termination of this Agreement.**

Section 15.02. Extension of Commercial Operation Milestone Date. If construction of the Bid Facility is delayed beyond the Initial Commercial Operation Milestone Date, Seller shall notify NYSERDA of such circumstances no later than one hundred and eighty days (180) days prior to the Initial Commercial Operation Date, together with a report providing the following: (1) description of the delays, (2) evidence that such delays are caused by conditions beyond Seller's control and (3) evidence that construction has commenced. Upon NYSERDA's determination that such report is reasonably satisfactory, NYSERDA may, in its sole discretion, grant Seller an extension of the Commercial Operation Milestone Date (such extended date, the "Extended Commercial Operation Milestone Date") upon delivery by Seller of Contract Security, in addition to the cumulative amounts provided under Section 15.01 (a), (b) and (c), in an amount equal to the product of (i) the Bid Power Capacity and (ii) five thousand dollars ($5,000).

Section 15.03. 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) an owner bank of The Clearing House,[16] 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 Bid 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. NYSERDA shall endeavor to provide advance courtesy notice of any such draw, provided, however, that failure to provide such notice shall not constitute a breach or waiver by NYSERDA.

[16] Please see the owner bank membership for The Clearing House available from https://www.theclearinghouse.org/about/owner-banks

Section 15.04. Replacement. To the extent Seller wishes or is required to replace the existing Contract Security with replacement Contract Security, NYSERDA shall not be obligated to return such existing Contract Security until such replacement Contract Security has been provided to NYSERDA and meets the requirements of this Article XV. 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 Contract Security to Seller. 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 XV. 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. NYSERDA shall endeavor to provide advance courtesy notice of any such draw, provided, however, that failure to provide such notice shall not constitute a breach or waiver by NYSERDA.

Section 15.05. Refund of Security. Amounts provided by Seller as Contract Security and not retained pursuant to Section 15.06 below will be refunded to Seller by NYSERDA as follows:

(a) In their entirety, upon the achievement by the Bid Facility of Operational Certification at the Bid Power Capacity and the Bid Storage Duration.

(b) In an amount equal to ninety percent (90%) of the Contract Security, upon termination of this Agreement as a result of a Material Adverse Change.

(c) In an amount equal to ninety percent (90%) of the Contract Security, upon termination of this Agreement as a result of a Force Majeure pursuant to Section 14.01(g).

(d) In an amount equal to ninety percent (90%) of the Contract Security, upon termination of this Agreement as a result of a change in Applicable Law pursuant to Section 14.01(h).

Section 15.06. 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 provide to NYSERDA, on or before the date that is one (1) year prior to the Initial Commercial Operation Milestone Date, Contract Security in the amount required under Section 15.01(b), above.

(b) In their entirety if Seller fails to meet the Commercial Operation Milestone Date under Section 2.06 and the Seller fails to provide to NYSERDA, on or before the expiration of the Commercial Operational Milestone Date under Section 2.06, the additional Contract Security in the amount required under Section 15.02 if applicable.

(c) In an amount equal to ten percent (10%) of the Contract Security, upon termination of this Agreement as a result of a Material Adverse Change.

(d) In an amount equal to ten percent (10%) of the Contract Security, upon termination of this Agreement as a result of a Force Majeure Event pursuant to Section 14.01(g).

(e) In an amount equal to ten percent (10%) of the Contract Security, upon termination of this Agreement as a result of a change in Applicable Law pursuant to Section 14.01(h).

(f) In their entirety for an Event of Default by Seller, and Seller and has failed to cure such Event of Default within any applicable cure period.

(g) In a specific amount for a failure to report information in accordance with Section 6.13 of this Agreement.

Section 15.07. 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 XV, 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. The obligations of Seller under this Article XV shall survive any expiration or termination of this Agreement.

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 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 ISCs 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 wind, of the sun, of rainfall, or of water levels 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 unless such failure was caused by a Force Majeure Event.

(b) Pandemics and Epidemics. If work on the Bid Facility is delayed, disrupted, suspended, or otherwise materially impacted as a direct or indirect result of a pandemic- or epidemic-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 pandemic or epidemic; and/or (v) fulfillment of contractual or legal health and safety obligations associated with the pandemic or epidemic, 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 supply chain disruptions related to a pandemic or epidemic, the resumption of the ability to obtain the materials and equipment needed to construct the Bid Facility. Upon the occurrence of pandemic- or epidemic- related impact, Seller shall use commercially reasonable efforts to mitigate the effects of such pandemic- or epidemic- 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 pandemic- or epidemic- related impact. The relief provided for in this Section 16.01(b) shall not apply to the extent Seller had or should reasonably have had knowledge of such a pandemic- or epidemic- related impact prior to the Effective Date. Seller affirms that the Commercial Operation Milestone Date includes all pandemic- or epidemic- related impacts known to Seller as of the Effective Date.

(c) If either Party is unable, wholly or in part, by a Force Majeure Event to perform obligations under this Agreement, such performance shall be excused and

suspended (including a day for day extension on any deadline under this Agreement affected by such Force Majeure) so long as the circumstances that give rise to such inability exist or would exist if the Party claiming the Force Majeure Event 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 Event, 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 Event, 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 Event. 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(g), 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 Bid Facility over the duration of the Contract Delivery Term. Neither the Bulk Energy Storage Program nor selection under ISCRFP25-1 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, including the completion of any required SEQRA review. 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 Bid 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 Bid 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 XVII 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 with respect to Seller's provision of ISCs to NYSERDA or the services with which they are associated.

Section 18.03. Term; Survival. Unless terminated earlier under Article XIV, this Agreement shall expire upon the expiration of the Contract Delivery Term. Upon such date or upon earlier Termination of this Agreement under Article XIV, neither Party shall have any further obligation to the other, except that Article I, Sections 2.03, 7.01, 11.01, 11.02, 11.03, 14.02, 14.03, 14.04, 15.04, 15.05, 15.06, 15.07, 15.08, 17.01, 18.01, 18.03, 18.04, 18.10, 19.01, 19.02, 20.01, 21.02, 21.03, 21.04, and all payment obligations 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) deliver the Monthly Availability Report to NYSERDA, and (b) interconnect the Bid Facility with a transmission or distribution system and to comply with the Bid 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. Covenant. Seller hereby covenants and promises that the Bid Facility is or will be eligible under any applicable orders of the PSC issued under Case 18-E-0130, In the Matter of Energy Storage Deployment Program, as of the Effective Date of this Agreement, and that it will remain so throughout the Contract Delivery Term.

Section 18.09. Prevailing Wage.

(a) In accordance with the 2024 BES Order, and unless otherwise provided in a Project Labor Agreement covering the construction of the Bid Facility that complies with the requirements of Exhibit J of this Agreement, all laborers, workmen and mechanics, within the meaning of NYS Labor Law Article 8, performing construction work with respect to the Bid Facility, whether through long-term or short-term employment, must be paid at least the minimum hourly wage and supplemental payments that are prevailing in the area where the Bid Facility will be situated, erected and used, as published by the New York State Department of Labor (DOL)[17] or at least the equivalent prevailing wage requirements of the jurisdiction where the Bid Facility is located (the "Prevailing Wage"). 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. Furthermore, in accordance with the 2024 BES Order, Seller shall include in the quarterly Progress Reports delivered pursuant to Section 6.02 a certification by a New York State licensed certified public account that such Prevailing Wage has been paid. The Parties agree that all citations in this Agreement to NYS Labor Law Article 8 are solely for reference purposes to establish the amount of the Prevailing Wage required to be paid pursuant to this Section 18.09 and the categories of persons required to be paid such Prevailing Wage. The Parties agree that NYS Labor Law Article 8 does not and shall not apply to or govern this Agreement, the development, construction, installation, operation,

[17] For NYS DOL Prevailing Wage Schedules, please visit: https://labor.ny.gov/workerprotection/publicwork/PWContents.shtm

maintenance or repair of the Bid Facility (or its electrical interconnection), or to the performance by Seller (directly or through any of its contractors, subcontractors, representatives, consultants, agents or representatives) of its obligations hereunder.

(b) Failure to Pay Prevailing Wage.

(i) Should Seller have Knowledge of or receive notice that Seller (including Seller's contractors and/or subcontractors) has failed to pay Prevailing Wage ("Prevailing Wage Failure"), Seller shall promptly notify NYSERDA, and NYSERDA shall promptly issue notice to Seller of the requirement to cure such Prevailing Wage Failure within 12 months of obtaining such Knowledge or receiving such notice. Seller's failure to cure such Prevailing Wage Failure within this timeframe in the circumstances set out in Sections 18.09(b)(ii) or (iii) shall constitute an Event of Default under Section 13.01(i) of this Agreement.

(ii) NYSERDA's Right to Withhold Operational Certification in the Event of a Prevailing Wage Failure. Should a Prevailing Wage Failure occur prior to NYSERDA's granting of Operational Certification, NYSERDA may, in its sole discretion, withhold granting Operational Certification until such failure is cured. For the avoidance of doubt, in circumstances of a Prevailing Wage Failure occurring after the Bid Facility's achievement of Commercial Operation but prior to NYSERDA's granting of Operational Certification, Seller shall commence and continue to Transfer ISCs to NYSERDA in accordance with this Agreement. Once such Prevailing Wage Failure is cured, NYSERDA shall, within a reasonable time, grant Operational Certification (provided that all other requirements for Operational Certification have been met by Seller) and issue payment for the ISCs transferred during the period from the notice of Prevailing Wage Failure until its cure.

(iii) Prevailing Wage Failure After Operational Certification. In the event of a Prevailing Wage Failure after Operational Certification, if the Seller (including Seller's contractors and/or subcontractors) does not cure such failure within 6 months of notice from NYSERDA, NYSERDA may suspend payments to the Seller until the Prevailing Wage Failure is cured. After such suspension, Seller shall continue to transfer ISCs to NYSERDA in accordance with this Agreement. Once such Prevailing Wage Failure is cured and the suspension is lifted, NYSERDA shall, within a reasonable time, issue payment for the ISCs transferred during the suspension period consistent with Article IV of the Agreement.

Section 18.10. 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 18.11. Project Labor Agreements. The requirements of Section 18.09 shall not apply to Construction Activities performed under a Project Labor Agreement, executed in accordance with the requirements set forth in Exhibit J of this Agreement and as submitted to NYSERDA.

Section 18.12. Material Adverse Change.

(a) For purposes of this Agreement, any material change prior to Commercial Operation in (i) a permitting authority's requirements or response timelines compared with prior practice, (ii) the federal tax incentives for energy storage resources or (iii) federal tariffs in effect shall be considered a "Material Adverse Change" and treated with the same force and effect as a Force Majeure Event (except that Seller shall continue to comply with the reporting requirements set forth in Section 6.02) to the extent that Seller provides (x) notice of the change's occurrence within the later of fifteen (15) days after the Effective Date or fifteen (15) days after Seller becomes aware of the change's occurrence and (y) within the later of sixty (60) days after the Effective Date or sixty (60) days after Seller becomes aware of the change's implications and impacts on the Bid Facility, reasonable evidence which NYSERDA does not refute based on reasonable justification within a reasonable period of time following receipt of such evidence, that such change (A) was not within the control of the Seller, (B) could not have been prevented, mitigated or avoided by Seller through the exercise of reasonable diligence, mitigation actions or reasonable best efforts, (C) results in either a material increase in cost or a material delay in the schedule of the Bid Facility, in each case compared to reasonable expectations as of the Bid Price Submission Date and (D) exists for ninety (90) days (or a shorter period if agreed by the Parties).

(b) For the avoidance of doubt, any change in Applicable Law addressed by Section 4.05 shall be deemed to not be a "Material Adverse Change" for purposes of this Agreement.

(c) For the avoidance of doubt, no Executive Order in and of itself (absent implementation by the applicable agencies of the federal government), nor any change in Applicable Law that has not yet caused a material adverse effect on the Bid Facility, shall be considered a Material Adverse Change; provided, however, that the implementation of such an Executive Order may result in a Material Adverse Change.

(d) Any change in Applicable Law that makes it impossible for Seller to achieve the base investment tax credit will be presumed to have satisfied conditions set forth in Section 18.12(a)(iii) and (a)(C) above absent clear circumstances that offset the economic loss arising from such change in Applicable Law; provided that this Section 18.12(d) shall not apply if, at the time of Bid Price Submission Date, Seller did not reasonably expect to achieve the base investment tax credit for the Project (as reasonably determined by NYSERDA taking into account information provided by Seller).

(e) [If (i) the Strike Price is adjusted pursuant to Section 5.03 to address the effects of any change that would satisfy the requirements of a "Material Adverse Change" and (ii) such adjustment to the Strike Price does not materially compensate Seller for the effects of such change, Seller may terminate this Agreement in accordance with Section 14.01(f).][18]

(f) [If (i) Seller, in the Bid Proposal, opted out of the one-time component cost indices adjustment mechanism and (ii) a change or multiple changes occur that would, individually or in the aggregate, satisfy the requirements of a "Material Adverse Change" as set forth in this Section 18.12, such change will be deemed to not be a "Material Adverse Change" if such component cost indices adjustment mechanism would have materially compensated for such change or changes.][19]

(g) A local moratorium affecting the Project shall not be deemed a "Material Adverse Change" if such moratorium existed as of the Bid Price Submission Date; provided, that a subsequent restrictive law that prohibits the construction or development of the Bid Facility may be a "Material Adverse Change" if such subsequent law satisfies the requirements set forth in Section 18.12(a).

(h) Seller shall notify NYSERDA in writing within five (5) days of the conclusion of a Material Adverse Change. If NYSERDA reasonably believes that a Material Adverse Change has concluded, NYSERDA shall notify Seller in writing of such conclusion (such notice, the "MAC Notice") and, in the event that Seller does not agree with NYSERDA's position in the MAC Notice, Seller shall have the right to provide evidence reasonably acceptable to NYSERDA that such Material Adverse Change has not concluded. NYSERDA shall have the right to accept or reject Seller's evidence in its reasonable discretion. If Seller does not provide evidence acceptable to NYSERDA within ten (10) Business Days after the delivery of NYSERDA's MAC Notice, Seller shall be deemed to have consented to NYSERDA's position that such Material Adverse Change has concluded.

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:

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[18] Note to Draft: To be included if Seller's Bid Proposal elected to include Component Cost Indices Adjustment.

[19] Note to Draft: To be included if Seller's Bid Proposal did not elect to include Component Cost Indices Adjustment.

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

(ii) by personal delivery;

(iii) by expedited delivery service; 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
With a copy to:	NYSERDA Attn: Large-Scale Resources 17 Columbia Circle Albany, New York 12203-6399 email address: bulkstorage@nyserda.ny.gov

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or

registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of 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 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 subject matter hereof, except for a Non-Disclosure Agreement entered by the Parties dated [__]. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the Party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.

Section 19.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Article XX
Publicity

Section 20.01. Publicity. Seller and/or the Bid Facility owner will collaborate with NYSERDA's Communications Unit, or BES 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 BES 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 Bid Facility and/or its employees shall credit NYSERDA and the funding participation related to Index Storage Credits in the activities of the Bid 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 Bid 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)) 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 FOIL 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 Public Officers Law section 89(5) and NYSERDA's FOIL regulations.

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 submitted in response to ISCRFP25-1, 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 Strike Price or any terms which may contribute to the calculation of financial obligations under the Agreement.

[*signature pages follow*]

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:_____ Name: Title:

Schedule 1

FACILITY AND PRICE PARAMETERS

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

Assumed Round-Trip Efficiency: _____

Applicable Zone: _____

Bid Energy Capacity: _____ MWh

Bid Power Capacity: _____MW

Bid Storage Duration: _____ hours

Monthly Bid Quantity: _____

For a Settlement Period with 28 days: _____

For a Settlement Period with 29 days: _____

For a Settlement Period with 30 days: _____

For a Settlement Period with 31 days: _____

Contract Tenor: _____ years

Strike Price: $/ISC _____

Expected Dollars/MWh: $_____

Schedule 2

DATES

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

ISCRFP25-1 Launch Date: [_____, 2025]

Award Notification Date: _____

Initial Commercial Operation Milestone Date: _____[20]

[20] Note to Draft: To be no later than December 31, 2030.

Schedule 3

TABLE OF RECOVERY FACTORS FOR QUALIFYING GOVERNMENTAL SUPPORT

Nominal Annual Discount Rate 7.46%

Full Contract Years Remaining in Contract Delivery Term	Recovery Factor
1	1.0746
2	0.5566
3	0.3843
4	0.2983
5	0.2469
6	0.2128
7	0.1885
8	0.1705
9	0.1565
10	0.1454
11	0.1364
12	0.1290
13	0.1228
14	0.1175
15	0.1130
16	0.1091
17	0.1057
18	0.1027
19	0.1001
20	0.0978

EXHIBIT A

REVISED 1/24

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 an agreement for a public work covered by Article 8 of the Labor Law or a building service 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, if this is an agreement for a public work or a building service as covered above, or a covered project as defined in Labor Law section 224-a, 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, ATTN: NYSERDA GENERAL COUNSEL, WITH ELECTRONIC COPIES SENT TO CESLEGAL@NYSERDA.NY.GOV AND RES@NYSERDA.NY.GOV, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT BEYOND THE INITIAL OR ANY EXTENDED EXPIRY DATE HEREOF.

MISCELLANEOUS

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

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

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

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

[NAME 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 by the required deadline under ISCRFP25-1, 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 failed to provide to NYSERDA additional Contract Security in the amount required under Section 15.01(c) 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 Bid Facility has failed to commence Commercial Operation on or before the Commercial Operation Milestone Date and/or obtain Operational Certification; 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 achieve Operational Certification at ninety five (95) percent of the Bid Power Capacity, 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 achieve Operational Certification at ninety five (95) percent of the Bid Storage Duration, under which circumstance NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

_____The Agreement has been terminated as a result of a Material Adverse Change, under which circumstance NYSERDA is authorized and entitled to draw an amount equal to ten (10) percent of the Letter of Credit Amount.

_____The Agreement has been terminated as a result of a change in Applicable Law under Section 14.01(h), under which circumstance NYSERDA is authorized and entitled to draw an amount equal to ten (10) percent of the Letter of Credit Amount.

_____The Agreement has been terminated as a result of a Force Majeure Event, under which circumstance NYSERDA is authorized and entitled to draw an amount equal to ten (10) percent of the Letter of Credit Amount.

_____ Seller has assigned its rights under the Agreement and the assignee has not delivered to the undersigned Beneficiary a replacement letter of credit satisfying the requirements of the Agreement; under which circumstance

NYSERDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount.

_____ The Letter of Credit is currently set to expire within thirty (30) days and 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 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.[21]

(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

[21] 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

for NYSERDA not to be liable for interest pursuant to Section 504.6.

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

(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

ASSIGNMENT OF AGREEMENT NO. [#]

[ASSIGNOR] ("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] ("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, 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. [###A] 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: _____	Signature: _____
Name:	Name:
Title:	Title:

Accepted and agreed:

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

_____

By: [Name]
Director, Contract Management

EXHIBIT E

Form of Monthly Availability Report

- The Monthly Availability Report shall include two reporting formats. The first (daily availability data) summarizes the availability data that is used to calculate Outage MWh for each day of the month. The second (monthly outage data) constitutes the monthly total of Outage MWh as an input to the Monthly Availability Percentage calculation. While the second is used for settlement purposes, we require provision of both formats. uThe recommended data source for availability reporting is the Upper Operating Limit (UOL) data utilized in the Decision Support System (DSS) report that New York Installed Capacity (ICAP) market participants must provide to NYISO. Within the DSS, UOL is reported as "RTD Gen Upper Op Limit (MW)" in the report entitled "Settlement Details — Power Supplier — Balancing Energy." UOL represents the potential of the system to discharge at a given capacity for a given period of time and is an appropriate measure of operational availability that also captures partial availability at the necessary time scale (e.g. a 100 MW system available to discharge 80 MW for a given hour). Hourly increments are appropriate data intervals for the purpose of availability calculation. In aggregating from subhourly increments, the hourly value shall consist of the average UOL increments over the course of the hour. uProjects that are not ICAP market participants during a given settlement period must still provide UOL or equivalent data for the purpose of calculating operational availability and the Monthly Availability Percentage. uIf applicable, data provided in this Monthly Availability Report shall not conflict with any GADS outage data that the Seller has provided to the NYISO.uBelow is an example daily availability data reporting table for a given day, followed by a calculation of the outage MWh for that day (Daily Outage MWh). u u**Table 1 – Daily Availability Data**
- Bid Power Capacity (MW): 100

Hour of Day 19 (DATE)	UOL (MW)	Description of Any Outage
0:00-1:00	100	
1:00-2:00	100	
2:00-3:00	50 (partial outage)	Inverter Failure: Full or partial reduction in the unit's ability to inject power.

3:00-4:00	50 (partial outage)	Rack/Module Outages: Individual battery racks or cells disconnecting.
4:00-5:00	50 (partial outage)	Auxiliary System Failure: Issues with cooling systems or other auxiliary components that require the system to run at a reduced capacity.
5:00-6:00	50 (partial outage)	Tripped circuit breakers: Tripped breaker in specific part BESS module.
6:00-7:00	100	
7:00-8:00	100	
8:00-9:00	100	
9:00-10:00	100	
10:00-11:00	100	
11:00-12:00	100	
12:00-13:00	100	
13:00-14:00	100	
14:00-15:00	100	
15:00-16:00	100	
16:00-17:00	100	
17:00-18:00	100	
18:00-19:00	100	
19:00-20:00	100	
20:00-21:00	0 (full outage)	Safety Management Event: Requiring shutdown.
21:00-22:00	0 (full outage)	Software Updates: Scheduled updates that may require a temporary reduction in available capacity.
22:00-23:00	100	

23:00-24:00	100
Total	**2000 MWh**

$$Daily\ Outage\ MWh = (Bid\ Power\ Capacity\ \times Daily\ hours) - Daily\ Availability$$

$$Daily\ Outage\ MWh\ (Day\ 19) = (100\ MW\ \times 24\ h) - 2000\ MWh = 400\ MWh$$

- Daily Outage MWh calculations for each day of the month shall be summed in a Monthly Outage MWh table and accompanied by a Monthly Availability Percentage calculation. Below is an example of Monthly Outage MWh reporting, followed by a calculation of the Monthly Availability Percentage. Table 2 shall be used for the purpose of the Monthly ISC Settlement.

Table 2 – Monthly Outage Data

- Bid Power Capacity (MW): 100
- Total Monthly Hours (h): 744

Day of Month	Daily Outage MWh
1	400
2	0
3	0
4	0
5	0
6	0
7	0
8	0
9	0
10	0
11	0
12	0
13	0
14	500

15	0
16	0
17	0
18	0
19	400
20	0
21	0
22	0
23	0
24	0
25	0
26	0
27	0
28	0
29	500
30	0
31	0
Total (Monthly Outage MWh)	1800

$$Monthly\ Availability\ Percentage = 1 - \frac{Monthly\ Outage\ MWh}{Bid\ Power\ Capacity \times Total\ Monthly\ Hours}$$

$$Monthly\ Availability\ Percentage = 1 - \frac{1800\ MWh}{(100\ MW\ \times 744\ h)} = 1 - 0.024 = 0.975 = 97.5\%$$

- Provide in Microsoft Excel the raw data used to calculate the Outage MWh values in Table 2 above.

EXHIBIT F

Form of Annual Operating Report

The objective of this annual report is to support evaluation of the performance of the Bulk Energy Storage program across its portfolio of projects. This report can be compiled using information derived from *NYISO Generating Availability Data System (GADS) or Outage Management System (OMS)* reporting or notifications or reporting in accordance with NYISO's *Outage Scheduling Manual* and *Installed Capacity Manual or information in a form reasonably acceptable to NYSERDA.*

While this report is not intended for ISC settlements, all data incorporated herein must align with and not contradict data furnished in any Monthly Availability Report delivered to NYSERDA.

1. Annual Outage Summary

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

Month	**Planned/ Maintenance Outages (MWh)**	**Unplanned / Forced Outages (MWh)**	**Total Outage (MWh)**
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			

November

December

Total

Note:

- "Planned/ Maintenance Outages" are defined as outages scheduled in advance in line with NYISO outage notification requirements, with a defined duration, that may occur once or twice per year. This category should include planned partial outages or derates.
- "Unplanned/Forced Outages" are defined as the unscheduled unavailability of a Project. This category should include unplanned partial outages or derates.

2. Corrective action / repairs

Provide a summary of all corrective action / repair activities performed during the current year.

Table Summary (with examples)

Equipment	Issue Description	Corrective Maintenance Description	Outage Start (Date, Time)	Outage End (Date, Time)	Lost Availability (MWh)	Status	Notes
Battery Systems	Overvoltage	Troubleshooting and replacing the affected cell.	11/11/2026, 13:00	11/11/2026, 16:00	0.5	Complete	Maintenance and replacement of cell performed by XXX
Power Conversion Systems	Inverter tripping	Visual inspection, troubleshooting, replacing faulty power switch	12/11/2026, 10:00	12/11/2026, 12:00	0.4	Complete	Maintenance performed by site operator
HVAC System	Abnormal temp. variations	Fitting/Assembly Issues repaired	12/11/2026, 10:00	12/11/2026, 10:00	1	Ongoing	
Battery Management System (BMS)	Data error	Sensor failure	01/11/2027, 10:00	01/11/2027, 11:00	none	Ongoing	
Balance of System (Electrical wiring, Fire suppression system)	Loose wiring. Faulty sprinkler head	Proactive replaced wiring and sprinkler head	02/11/2027, 10:00	02/11/2027, 12:00	none	Complete	Maintenance performed by OEM

3. Environmental and Permitting Activities

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

EXHIBIT G

COMPONENT COST INDICES ADJUSTMENT

[For each of the below technology-specific formulas:

ISC_{adj} = The Strike Price after component cost indices adjustment, subject to the limitations set forth in Section 5.03, including the 12% cap and floor described therein.

ISC_{orig} = The original Strike Price submitted with the Proposal

$Index_B$ is the value of each index established and published by NYSERDA prior to the Bid Proposal Submission Deadline, calculated as the average of the last six months or two quarters of published data available prior to the Bid Proposal Submission Deadline

$Index_T$[22] is the value of each index established at the date of the earlier of Final Investment Decision and Full Notice to Proceed, calculated as the average of the monthly or quarterly values for the six-month period preceding FID or FNTP (as applicable) for a Bid Facility

Fixed = Unchanged value reflective of the operating expense share of battery storage costs

If the availability of a data source for any index listed below is interrupted, suspended or discontinued, NYSERDA will work in good faith with Seller to determine a replacement data source.

Lithium-ion Battery Bid Facilities:

For Bid Facilities using lithium-ion battery technology, the Strike Price will be adjusted according to the following formula:

[22] Any published value for $Index_T$ that was calculated using data from the US BLS that is considered as "preliminary" by the US BLS for up to four months after publication will be updated and the $Index_T$ value will be recalculated if the final published value differs from a preliminary value.

$$ISC_{adj} = ISC_{orig} \times \left(0.80\left(0.31\left(\frac{Index_{T,Con}}{Index_{B,Con}}\right) + 0.09\left(\frac{Index_{T,Steel}}{Index_{B,Steel}}\right) + 0.07\left(\frac{Index_{T,EPSTM}}{Index_{B,EPSTM}}\right) + 0.21\left(\frac{Index_{T,Cons\ Mat}}{Index_{B,Cons\ Mat}}\right) + 0.32\left(\frac{Index_{T,Batt\ Man}}{Index_{B,Batt\ Man}}\right)\right) + 0.20\left(\frac{Fixed}{Fixed}\right)\right)$$

Where:

$Index_{Con}$ = Construction value, using the Bureau of Labor Statistics' new nonresidential building construction in the Northeast Producer Price Index, Data Series PCU2365002365001

$Index_{Steel}$ = Steel value, using the Bureau of Labor Statistics' steel product manufacturing from purchased steel Producer Price Index, Data Series PCU33123312

$Index_{EPSTM}$ = Electric Power and Specialty Transformer Manufacturing value, using the Bureau of Labor Statistics' electric power and specialty transformer manufacturing Producer Price Index, Data Series PCU335311335311

$Index_{Cons\ Mat}$ = Construction Materials value, using the Bureau of Labor Statistics' construction materials Producer Price Index, Data Series WPUSI012011

$Index_{Batt\ Man}$ = Battery Manufacturing value, using the Bureau of Labor Statistics' storage battery manufacturing Producer Price Index, Data Series PCU3359133591

Underground Pumped Hydro Storage Bid Facilities:

For Bid Facilities using underground pumped hydro storage technology, the Strike Price will be adjusted according to the following formula:

$$ISC_{adj} = ISC_{orig} \times \left(0.80\left(0.31\left(\frac{Index_{T,MiningServices}}{Index_{B,Mining\ Services}}\right) + 0.06\left(\frac{Index_{T,Ready-mix\ Concrete}}{Index_{B,Ready-mix\ Concrete}}\right) + 0.06\left(\frac{Index_{T,Piping\ Metals}}{Index_{B,Piping\ Metals}}\right) + 0.14\left(\frac{Index_{T,Industrial\ Pumps}}{Index_{B,Industrial\ Pumps}}\right) + 0.14\left(\frac{Index_{T,Motors\&\ Generators}}{Index_{B,Motors\ \&\ Generators}}\right) + 0.09\left(\frac{Index_{T,Switchgear}}{Index_{B,Switchgear}}\right)\right) + 0.20\left(\frac{Fixed}{Fixed}\right)\right)$$

Where:

$Index_{MiningServices}$ = Mining Services value, using the Bureau of Labor Statistics' metal and nonmetallic minerals mining services Producer Price Index, Data Series WPU60110601

$Index_{Ready\text{-}mix\ Concrete}$ = Ready-mix Concrete (Northeast Region) value, using the Bureau of Labor Statistics' ready-mix concrete for Northeast census region Producer Price Index, Data Series WPU13330101A

$Index_{Piping\ Metals}$ = Metals, Steel Pipe value, using the Bureau of Labor Statistics' metals and metal products: steel pipe and tube, carbon Producer Price Index, Data Series WPU10170652

$Index_{Industrial\ Pumps}$ = Industrial Pumps value, using the Bureau of Labor Statistics' machinery and equipment: industrial pumps, except hydraulic fluid power pumps Producer Price Index, Data Series WPS114102

$Index_{Motors\ \&\ Generators}$ = Motors and Generators value, using the Bureau of Labor Statistics' machinery and equipment: other motors and generators Producer Price Index, Data Series WPU11731101

$Index_{Switchgear}$ = Switchgear and Switchboard Apparatus value, using the Bureau of Labor Statistics machinery and equipment: switchgear and switchboard apparatus Producer Price Index, Data Series WPU117522

Zinc Halide Battery Projects:

For Bid Facilities using zinc halide battery storage technology, the Strike Price will be adjusted according to the following formula:

$$ISC_{adj} = ISC_{orig} \times \left(0.80\left(0.28\left(\frac{Index_{T,Plastics\ \&\ Resins}}{Index_{B,Plastics\ \&\ Resins}}\right) + 0.13\left(\frac{Index_{T,Zinc}}{Index_{B,Zinc}}\right) + 0.13\left(\frac{Index_{T,Electrolyte\ chemicals}}{Index_{B,Electrolyte\ chemicals}}\right) + 0.08\left(\frac{Index_{T,Felt}}{Index_{B,Felt}}\right) + 0.06\left(\frac{Index_{T,Nonferrous\ Metals}}{Index_{B,Nonferrous\ Metals}}\right) + 0.06\left(\frac{Index_{T,Con}}{Index_{B,Con}}\right) + 0.03\left(\frac{Index_{T,EPSTM}}{Index_{B,EPSTM}}\right) + 0.02\left(\frac{Index_{T,Semiconductors}}{Index_{B,Semiconductors}}\right) + 0.01\left(\frac{Index_{T,Steel}}{Index_{B,Steel}}\right)0\right) + 0.20\left(\frac{Fixed}{Fixed}\right)\right)$$

Where:

$Index_{Plastics\ \&\ Resins}$ = Plastics and Resins value, using the Bureau of Labor Statistics' plastics materials and resins manufacturing Producer Price Index, Data Series PCU325211325211

$Index_{Zinc}$ = Zinc value, using the Bureau of Labor Statistic's global price of zinc index, Data Series PZINCUSDM

$Index_{Electrolyte\ Chemicals}$ = Electrolyte Chemicals value, using the Bureau of Labor Statistics' chemicals and allied products: inorganic chemicals, other than alkalies and chlorine Producer Price Index, Data Series WPU061302

$Index_{Felt}$= Felt value, using the Bureau of Labor Statistics' carbon and graphite product manufacturing Producer Price Index, Data Series PCU335991335991

$Index_{Nonferrous\ Metals}$ = Nonferrous Metals value, using the Bureau of Labor Statistics' metals and metal products: nonferrous metals Producer Price Index, Data Series WPU102

$Index_{Con}$= Construction value, using the Bureau of Labor Statistics' new nonresidential building construction in the Northeast Producer Price Index, Data Series PCU2365002365001

$Index_{EPSTM}$ = Electric Power and Specialty Transformer Manufacturing value, using the Bureau of Labor Statistics' electric power and specialty transformer manufacturing Producer Price Index, Data Series PCU335311335311

$Index_{Semiconductors}$ = Semiconductors value, using the Bureau of Labor Statistics' semiconductor and related device manufacturing Producer Price Index, Data Series PCU334413334413

$Index_{Steel}$ = Steel value, using the Bureau of Labor Statistics' metals and metal products: steel mill products Producer Price Index, Data Series WPU1017

Advanced Compressed Air Energy Storage (A-CAES) Projects:

For Bid Facilities using advanced compressed air energy storage technology, the Strike Price will be adjusted according to the following formula:

$$ISC_{adj} = ISC_{orig} \times \left(0.80 \left(0.24 \left(\frac{Index_{T,Mining}}{Index_{B,Mining}} \right) + 0.12 \left(\frac{Index_{T,Compressor}}{Index_{B,Compressor}} \right) + 0.08 \left(\frac{Index_{T,Turbine}}{Index_{B,Turbine}} \right) + 0.08 \left(\frac{Index_{T,Tank}}{Index_{B,Tank}} \right) + 0.08 \left(\frac{Index_{T,Piping}}{Index_{B,Piping}} \right) + 0.08 \left(\frac{Index_{T,Transmission}}{Index_{B,Transmission}} \right) + 0.04 \left(\frac{Index_{T,Heat\ Exchanger}}{Index_{B,Heat\ Exchanger}} \right) + 0.04 \left(\frac{Index_{T,Motor}}{Index_{B,Motor}} \right) + 0.04 \left(\frac{Index_{T,EPSTM}}{Index_{B,EPSTM}} \right) \right) + 0.20 \left(\frac{Fixed}{Fixed} \right) \right)$$

Where:

$Index_{Mining}$ = Subsurface mining value, using the Bureau of Labor Statistics' total mining industries Producer Price Index, Data Series PCUOMINOMIN

$Index_{Compressor}$ = Compressor value, using the Bureau of Labor Statistics' air and gas compressor manufacturing Producer Price Index, Data Series PCU333912333912

$Index_{Turbine}$= Turbine value, using the Bureau of Labor Statistics' turbine and turbine generator set units manufacturing: steam, gas, and other turbines and turbine generators Producer Price Index, Data Series PCU33361133361105

$Index_{Tank}$ = Tanks value, using the Bureau of Labor Statistics' metal tanks, heavy gauge, manufacturing Producer Price Index, Data Series PCU332420332420

$Index_{Piping}$= Piping value, using the Bureau of Labor Statistics' steel pipe and tube Producer Price Index, Data Series WPU101706

$Index_{Transmission}$= Transmission value, using the Bureau of Labor Statistics' electric power transmission, control, and distribution Producer Price Index, Data Series PCU2211222112

$Index_{Heat\ Exchanger}$ = Heat Exchanger value, using the Bureau of Labor Statistics' power boiler and heat exchanger manufacturing Producer Price Index, Data Series PCU332410332410

$Index_{Motor}$ = Motors value, using the Bureau of Labor Statistics' motor and generator manufacturing Producer Price Index, Data Series PCU335312335312

$Index_{EPSTM}$ = Electric Power and Specialty Transformer Manufacturing value, using the Bureau of Labor Statistics' electric power and specialty transformer manufacturing Producer Price Index, Data Series PCU335311335311

Above Ground Compressed Gas Energy Storage Projects:

For Bid Facilities using above ground compressed gas energy storage technology, the Strike Price will be adjusted according to the following formula:

$$ISC_{adj} = ISC_{orig} \times \left(0.80 \left(0.42 \left(\frac{Index_{T,Heat\ Exchanger}}{Index_{B,Heat\ Exchanger}} \right) + 0.20 \left(\frac{Index_{T,EPSTM}}{Index_{B,EPSTM}} \right) + 0.08 \left(\frac{Index_{T,Cons\ Mat}}{Index_{B,Cons\ Mat}} \right) + 0.05 \left(\frac{Index_{T,Con}}{Index_{B,Con}} \right) + 0.05 \left(\frac{Index_{T,Turbine}}{Index_{B,Turbine}} \right) \right) + 0.20 \left(\frac{Fixed}{Fixed} \right) \right)$$

Where:

$Index_{Heat\ Exchanger}$ = Heat Exchangers value, using the Bureau of Labor Statistics' power boiler and heat exchanger manufacturing Producer Price Index, Data Series PCU332410332410

$Index_{EPSTM}$ = Electric Power and Specialty Transformer Manufacturing value, using the Bureau of Labor Statistics' electric power and specialty transformer manufacturing Producer Price Index, Data Series PCU335311335311

$Index_{Cons\ Mat}$ = Construction Materials value, using the Bureau of Labor Statistics' construction materials Producer Price Index, Data Series WPUSI012011

$Index_{Con}$ = Construction value, using the Bureau of Labor Statistics' new nonresidential building construction in the Northeast Producer Price Index, Data Series PCU2365002365001

$Index_{Turbine}$= Turbine value, using the Bureau of Labor Statistics' turbine and turbine generator set units manufacturing: steam, gas, and other turbines and turbine generators Producer Price Index, Data Series PCU33361133361105]

[EXHIBIT H

DISADVANTAGED COMMUNITY COMMITMENTS]

EXHIBIT I

NYSERDA'S CODE OF CONDUCT FOR CONTRACTORS, CONSULTANTS, AND VENDORS
Code of Conduct for NYSERDA Contractors,

Consultants, and Vendors November 2019

Introduction

The purpose of this Code of Conduct for NYSERDA Contractors, Consultants, and Vendors ("Contractor Code of Conduct") is to advise the New York State Energy Research and Development Authority's ("NYSERDA") many contractors, consultants, and vendors ("Vendors") on what is expected of them to ensure a business relationship with NYSERDA that is consistent with ethical business practices.

NYSERDA requires its Board Members (in their capacity as NYSERDA Board Members) and employees (including its Officers) to adhere to high ethical standards, and it also requires its many Vendors with whom it does business to adhere to the highest ethical standards.

Towards this end, NYSERDA has established a corporate system of internal controls to ensure that its Board Members and employees perform their official duties consistent with the requirements of the New York State Public Officers Law Code of Ethics and other applicable laws, Executive Orders, rules, regulations, and internal policies of NYSERDA. This internal control system is also intended to encourage and support a fair, open, and honest business relationship among NYSERDA Members, its employees, and its Vendors.

Contractor Conduct

To promote ethical business relationships with NYSERDA, our Vendors are to:

- furnish all required goods, materials, and services in a manner that is consistent with the underlying terms and conditions of the contract and any applicable program solicitation,
- submit complete and accurate reports and invoices to NYSERDA and to other related program participants as required,
- not seek, solicit, demand, or accept any information, verbal or written, from NYSERDA or others involved in NYSERDA efforts that provides an unfair advantage over a competitor,
- not engage in any activity or course of conduct that restricts open and fair competition on NYSERDA-related programs, projects, or transactions, or that is inconsistent with

any law, rule, or regulation,

- ❖ not engage in any course of conduct with NYSERDA Members and employees or others involved in NYSERDA efforts that constitutes a conflict of interest, in fact or in appearance,
- ❖ not offer any gifts or gratuities in excess of nominal value to NYSERDA Members or employees (including special event tickets or other items of value), and
- ❖ not engage in other conduct that violates this Contractor Code of Conduct.

Lobbying

All Vendors are to comply with the Omnibus Lobbying Reform Act of 2005, with respect to NYSERDA solicitations, by contacting only the NYSERDA employees named in the solicitation, during the Restricted Period, as defined and required by such Act. The Vendor is required to ensure compliance with the Act's requirements and must direct every individual or entity retained, employed, designated by, or acting for, or on behalf of, the Vendor to attempt to influence the NYSERDA procurement process, to limit their contacts with NYSERDA concerning specific procurement actions to the NYSERDA designated contact(s) for that procurement.

Advocacy

To ensure appropriate use of public funds, Vendors are to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement. In performing policy implementation or any other work for or on behalf of NYSERDA, Vendors are to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA. Any lobbying or influencing activities undertaken by Vendors other than those explicitly contracted for by NYSERDA must be supported by non-NYSERDA funding sources and must not give the appearance of being supported by NYSERDA.

Non-Collusion and Independence of Bid

Vendors are to calculate price(s) contained in their bid or proposal, independently, without collusion, consultation, communication, or agreement with any other competing Vendor for the purpose of restricting competition.

Unless otherwise required by law, the price(s) which a Vendor quotes in its bid or proposal shall not knowingly be disclosed by the Vendor, directly or indirectly, to any other competing Vendor prior to the closing date for bids or proposals. In addition, a Vendor shall not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.

Vendor Ethics Program

NYSERDA encourages its Vendors to advance and support ethical business conduct and practices among their respective directors, officers and employees, through the adoption of corporate ethics awareness training programs and written codes of conduct. In addition to considering technical competence and financial ability, NYSERDA may also consider its past experience with a Vendor in this regard, prior to awarding any new contracts or issuing any new purchase orders.

Limits on Gifts to NYSERDA Members and Employees

NYSERDA strongly discourages Vendors from offering or giving anything of value to NYSERDA Members and employees under circumstances which may constitute, or even suggest, impropriety. Section 73(5) of the Public Officers Law expressly prohibits any firm or its agents, either doing or seeking to do business with NYSERDA, from directly or indirectly offering or giving, any gift having more than a nominal value to NYSERDA Members and employees under circumstances in which it:

could be reasonably inferred the gift was intended to influence NYSERDA Members or employees in the performance of their official duties, or

- could reasonably be expected to influence NYSERDA Members or employees in the performance of their official duties, or
- was intended as a reward for the NYSERDA
  that restricts open and fair competition on NYSERDA-related programs, projects, or transactions, or that is

- inconsistent with any law, rule, or regulation,
- not engage in any course of conduct with NYSERDA Members and employees or others involved in NYSERDA efforts that constitutes a conflict of interest, in fact or in appearance,
- not offer any gifts or gratuities in excess of nominal value to NYSERDA Members or employees (including special event tickets or other items of value), and
- not engage in other conduct that violates this Contractor Code of Conduct.

For purposes of determining compliance with this requirement, all gifts to NYSERDA Members and employees during any 12-month period are aggregated. Also, even if a particular gift would

not be more than nominal value, the offering or giving of a gift of any value to NYSERDA Members and employees may be considered inappropriate because the nature of pending matters may give rise to the appearance of impropriety (e.g., gifts given during the contract procurement process). Violations of these limits on gifts may be grounds for immediate contract termination and/or referral for civil action or criminal prosecution.

Employing Relatives of NYSERDA Employees

Vendors may employ relatives of NYSERDA Members and employees, but must notify NYSERDA of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. NYSERDA reserves the right to request that work assignments of a NYSERDA Member's or employee's relative by modified if a conflict of interest, or the appearance thereof, is deemed to exist.

Hiring Former NYSERDA Members and Employees

Vendors may hire former NYSERDA Members and employees. However, as a general rule, under the Public Officers Law, former Members and employees of NYSERDA may neither appear nor of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a matter before NYSERDA, for a period of two years following their separation from NYSERDA service. Also, former NYSERDA Members and employees are subject to a "lifetime bar" which prevents them from working on or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with NYSERDA.

Harassment and Discrimination

NYSERDA prohibits harassment in the workplace. Harassment based on race, ethnicity, color, creed, sex (including pregnancy), sexual orientation, gender identity, transgender status, familial status, marital status, age, national origin, disability, military status, genetic information or predisposition, domestic violence victim status, known relationship or association with any member of a protected class, or any other basis may violate the law and will not be tolerated. In addition, retaliation against an individual who opposes a discriminatory practice, reports a violation in good faith, or participates in an investigation of such a complaint is also a violation and will not be tolerated.

All vendors must submit an affirmation that they have a sexual harassment policy in place and have trained all employees on this policy.

Reporting Violations

Vendors are to remain alert to and report possible violations of this Contractor Code of Ethics, either by its employees directly or by an inappropriate solicitation by a person acting on behalf of NYSERDA. Vendors must promptly report such potential violations directly to NYSERDA or indirectly by contacting the NYSERDA independent and anonymous fraud and abuse hotline at

1-866-219-1122. Vendors are required to fully cooperate in any investigation of a possible violation.

Questions

Any questions on these guidelines should be directed to the responsible Project Manager, Program Manager or Program Director, the Director of Contract Management, the Internal Control Officer, or the Office of the General Counsel at 518-862-1090.

When in doubt, please seek guidance.

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 Bid 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 Bid 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 Bid 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 for the use of apprentices; and

7. Appropriate provisions for rules governing worksite access and conduct.