

RFP 3257 – ATTACHMENT G

RPS STANDARD FORM CONTRACT

(NON-FUEL BASED BID FACILITIES)

BY AND BETWEEN

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

AND

[NAME OF SELLER]

Dated: _____, 2016

This Agreement ("Agreement") is entered into as of _____, 2016 (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 [Offeror] ("Seller"), a [insert as appropriate], having a principal business address of _____. NYSEDA and Seller are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

WHEREAS, the New York State Public Service Commission ("PSC") adopted a Renewable Portfolio Standard ("RPS") program to address the energy, economic, and environmental objectives of New York State by creating the potential to build new industries in the State based on clean, environmentally responsible energy technologies (*See* Case 03-E-0188, "Order Regarding Retail Renewable Portfolio Standard" issued and effective September 24, 2004, and subsequent orders under Case No. 03-E-0188 (the "Orders")) and the Orders designate NYSEDA as the Central Procurement Administrator of the RPS Program and all associated funding; and

WHEREAS, on February 26, 2015 the Public Service Commission's Reforming the Energy Vision, "Order Adopting Regulatory Policy Framework and Implementation Plan" (14-M-0101) directed NYSEDA to conduct an additional Renewable Portfolio Standard Main Tier Solicitation in 2016; and

WHEREAS, funding authorization for this solicitation was confirmed by the Public Service Commission's January 21, 2016 Clean Energy Standard "Order Authorizing the Clean Energy Fund Framework" (14-M-0094), and

WHEREAS, NYSEDA has conducted a competitive Request for Proposals ("RFP 3257") to procure rights to RPS-eligible renewable energy attributes; and

WHEREAS, NYSEDA RFP 3257, which is incorporated herein and made part hereof, provided, among other things, that this RPS Standard Form Contract ("Agreement") would be employed to govern the rights and obligations of the Parties; and

WHEREAS, Seller has participated in RFP 3257 and has been selected by NYSEDA as a winning bidder with respect to the [name of facility] ("Bid Facility"); and

WHEREAS, the Seller agrees to sell to NYSEDA, and NYSEDA agrees to purchase from Seller, the RPS Attributes, as defined herein, and including the Certificates created by the New York Generation Tracking System associated with the RPS Attributes attributable to the energy production of the Bid Facility described in the Bid Proposal submitted in response to RFP 3257 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 generation of RPS Attributes by Seller and delivery of all right and title to RPS Attributes to NYSEDA, and the payments by NYSEDA to Seller during the term of this Agreement.

Article I

Definitions

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

Actual Annual Production: The amount, in MWh, of the total electric energy produced by the Bid Facility during any Contract Year, measured at the Injection Point.

Actual Annual Eligible Production: The amount, in MWh, of the Actual Eligible Production during a full Contract Year.

Actual Eligible Production: The amount, in MWh, of the electric energy produced by the Bid Facility during any period within a Contract Year, measured at the Injection Point, except that:

- (i) for a Repowering or Hydroelectric upgrade, the Actual Eligible Production shall be the product of (a) Actual Production of the Bid Facility, multiplied by (b) the percentage of the Actual Production resulting from the upgrade or Repowering established through the Provisional/Operational Certification Process. The incremental upgrade under this Agreement shall be ____%
- (ii) intentionally omitted

Actual Production: The amount, in MWh, of the total electric energy production of the Bid Facility during any period within a Contract Year.

Bid Capacity: Bid Capacity shall equal the Bid Quantity Percentage multiplied by the Nameplate Capacity of the Bid Facility. [In the case of repowering and hydroelectric upgrades, the Bid Capacity shall equal the Bid Quantity divided by the Expected Average Annual Production, multiplied by the Nameplate Capacity.] The Bid Capacity under this Agreement shall be __ MW.

Bidder: An individual or entity submitting an Application Package and Bid Proposal in response to RFP 3257. Such entity need not be the owner of the Bid Facility, but must have secured rights to the RPS Attributes from the Bid Facility sufficient to satisfy all performance requirements stated in this RFP and the RPS Standard Form Contract.

Bid Facility: The electric generating station that has been identified and described in the Provisional Certification Form submitted to NYSERDA and identified on page 1 of this Agreement.

Bid Price: A single fixed production payment, expressed in \$/MWh, applicable to each RPS Attribute offered as performance throughout the Contract Delivery Term. Subject to Article V, for all transactions contemplated and consummated under this Agreement the Bid Price shall be \$ _____.

Bid Quantity: The amount, in MWh, of RPS Attributes the Bid Facility expects to proffer as performance under the RPS Standard Form Contract over each Contract Year during the Contract Delivery Term. The Bid Quantity must be the same for each Contract Year throughout the Contract Delivery Term, subject to adjustments pursuant to Article IV (Payment) and Article V (Adjustments). [This number will equal the Expected Annual Eligible Production multiplied by the Bid Quantity Percentage.] Subject to Article V, for all transactions contemplated and consummated under this Agreement the Bid Quantity shall be ____ MWh.

Bid Quantity Percentage: The percentage of the Bid Facility's [Actual] Expected Annual Eligible Production that will be committed to performance under an RPS Standard Form Contract. The Bid Quantity Percentage must be at least 30% and may not exceed 95%, and will be applied to Actual Eligible Production in any period during the Contract Delivery Term to establish compliance with contract requirements. For all transactions contemplated and consummated under this Agreement the Bid Quantity Percentage shall be ____%.

Capacity Factor: The ratio, expressed as a percentage up to two decimal places, of the total electricity that the Bid Facility expects to produce during a Contract Year compared to the total potential electricity that could be produced if the Bid Facility operates at 100% of the Nameplate Capacity during every hour of the Contract Year.

Certificate: The NYGATS electronic record of generation data representing all of the attributes from one MWh of electricity generation from a Bid Facility registered with the NYGATS tracking system. NYGATS will create exactly one Certificate per MWh of generation.

Certification and Assignment of Rights Form: The Certification and Assignment of Rights Form in the form attached as Exhibit B hereto.

Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy and associated RPS Attributes, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Injection Point have been obtained.

Commercial Operation Milestone Date: The Commercial Operation Milestone Date shall be April 30, 2018. The Commercial Operation Milestone Date may be extended (see Article II, Purchase and Sale of Rights to RPS Attributes, Section 2.09).

Contract Delivery Term: The period of performance under this Agreement. The Contract Delivery Term will commence on the first day of the month after the Bid Facility commences Commercial Operation. For Bid Facilities in Commercial Operation as of the date of selection for an award, unless otherwise agreed to in writing by NYSERDA, the Contract Delivery Term shall commence on the first day of the month after the Effective Date of the RPS Standard Form Contract. The Contract Delivery Term shall extend for the term of the Contract Tenor.

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

Contract Tenor: The duration, in years, of the Contract Delivery Term as defined on the Bid Proposal form submitted for the Bid Facility. The Contract Tenor shall be ___ years.

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

Customer-Sited Bid Facility: A Bid Facility interconnected on the customer side of a retail electric meter.

Delivery Point: The Delivery Point shall be the Injection Point.

Expected Total Dollars: The total dollar amount of Incremental Economic Benefits, as presented in the Bid Proposal, expected to accrue to New York as a result of the development, construction, modification, and operation of the Bid Facility through the first three (3) Contract Years. The Expected Total Dollars under this Agreement shall be \$_____.

Hydroelectric Upgrade: A hydroelectric upgrade results from investments made to an existing hydroelectric renewable electric generating facility that cause an increase in renewable generation incremental to a historical baseline level of generation, as determined through the Provisional/Operational Certification process.

Incremental Economic Benefits: Incremental Economic Benefits are financial expenditures benefitting New York State within the categories specified in Section XI **Error! Reference source not found.**, A; Section 3 of RFP 3257 and are those that a Bidder can demonstrate: (1) will accrue subsequent to an award under RFP 3257, and (2) would not have accrued but for the award of a contract under RFP 3257. Economic benefits previously claimed with respect to a Bid Facility that is subject to a pending award under a previous solicitation or that is the subject of a current RPS contract are not Incremental Economic Benefits.

Injection Point: The generator bus or location where (a) the administrator of the wholesale power market, (b) the operator of the transmission/distribution utility, public authority or municipal electric company, or (c) in the case of customer-sited generation, the dedicated generation meter at which a third party, measures, or otherwise determines, energy production from the Bid Facility.

Installed Bid Capacity: Installed Bid Capacity shall equal the gross generating capacity, in MW, of the entire Bid Facility that achieves Operational Certification multiplied by the Bid Quantity

Percentage. In the case of repowering and hydroelectric upgrades, the Installed Bid Capacity shall equal the Bid Quantity Percentage multiplied by the portion of the gross generating capacity (MW) that has been repowered, upgraded and or retrofitted-as determined by Operational Certification.

Intermittent Bid Facility: For purposes of this Agreement the Bid Facility identified herein is an Intermittent Bid Facility.

Nameplate Capacity: The gross generating capacity of the entire Bid Facility, post upgrade/repowering, in MW. The Nameplate Capacity under this Agreement shall be ___ MW.

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

New York Generation Attribute Tracking System (NYGATS): The tracking system that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating tradable generation attribute Certificates.

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

Operational Certification: Under the Orders, Operational Certification must be granted by the New York State Department of Public Service before payment under this Agreement may be made by NYSEERDA. Operational Certification verifies that the Bid Facility has been constructed and/or will operate in accordance with the proposal submitted, for which Provisional Certification was granted and for which an award was made.

Quantity Obligation: Shall mean, for any period during the Contract Delivery Term, the number of MWh calculated as the Bid Quantity Percentage multiplied by the Actual Eligible Production; subject, however, to adjustments pursuant to Article V, Adjustments.

Repowering: Shall mean a generation unit other than a Hydroelectric Upgrade, with an initial date of Commercial Operation no later than December 31, 2002, that has been or will be substantially and verifiably repowered on or after January 1, 2003, such that the Actual Annual Production from the facility after Repowering is or will be demonstrably greater than the Actual Annual Production prior to the January 1, 2003 level by at least 5%.

RPS-eligible Attributes: Shall mean all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of Actual Eligible Production by a Bid Facility. One RPS-eligible Attribute shall be created upon the generation by a Bid Facility of one MWh of Actual Eligible Production. RPS-eligible Attributes include but are not limited to: (i) any direct emissions or any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO),

particulate matter and other pollutants; (ii) any direct or avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs made unnecessary for compliance in such program as a result of performance under an RPS agreement, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (iv) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above. If the Bid Facility is a biomass or landfill gas facility and the Seller receives any tradable credits, benefits, emissions reductions, offsets, and allowances based on the greenhouse gas reduction benefits attributed not to the production of electricity but rather to its fuel production, collection, conversion or usage, it shall provide NYSERDA or its designee with sufficient credits, benefits, emissions reductions, offsets, and allowances to ensure that there are zero net GHGs associated with the production of electricity from such Bid Facility.

RPS-eligible Attributes do not include (i) any energy, capacity, reliability or other power products, such as ancillary services; (ii) production tax credits associated with the construction or operation of the Bid Facility or other financial incentives in the form of credits, reductions, or allowances associated with the Bid Facility that are applicable to a state or federal income taxation obligation; (iii) fuel-related subsidies or "tipping fees" that may be paid to the Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the Bid Facility for compliance with local, state, or federal operating and/or air quality permits.

Once operational, NYGATS will create Certificates associated with RPS Attributes, which will embody title on a per megawatt hour (MWh) basis to the RPS-eligible attributes.

RPS Attributes: The RPS-eligible Attributes associated with the Quantity Obligation which shall be delivered as performance during the Contract Delivery Term. (See Article II, Purchase and Sale of Rights to RPS Attributes).

RPS Standard Form Contract: The standard contractual document issued as a part of RFP 3257 to be entered into by NYSERDA and selected Bidders, which shall define, among other things, their rights and obligations concerning the generation of RPS Attributes, the delivery of all right and title to RPS Attributes to NYSERDA, and the payments by NYSERDA during the term of the agreement.

SEQRA: New York's State Environmental Quality Review Act.

Transfer: Until such time as the NYGATS is available for purposes of transferring Certificates associated with RPS Attributes, the assignment and transfer ("Transfer") of RPS Attributes to NYSERDA shall be accomplished through their inclusion on the Certification and Assignment of Rights Form, which must accompany each invoice; upon the availability of NYGATS, Transfer will be accomplished by the delivery of Certificates associated with each RPS Attribute to an account designated by NYSERDA. See Article IV; Section 2.04.

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 through the first three (3) Contract Years.

Voluntary Market: The market through which sales are made of renewable attributes for purposes other than compliance.

Article II

Purchase and Sale of Rights to RPS Attributes

Section 2.01. 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 the Seller, all right, title and interest in the RPS Attributes associated with the Quantity Obligation of the Bid Facility, and, once NYGATS is fully functional, the Certificates associated with the RPS Attributes, during each month of the Contract Delivery Term.

Section 2.02. Such right, title and interest shall include perpetual and exclusive rights to all RPS Attributes, including but not limited to the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure rules: (a) that the energy associated with RPS Attributes was generated by the Bid Facility; and (b) that New York State and or the RPS Program is responsible for the environmental benefits including reductions in emissions and/or other pollution or any other environmental benefit resulting from the generation of the energy associated with RPS Attributes.

Section 2.03. At the time of such sale, assignment and conveyance by Seller to NYSERDA, the RPS Attributes and the Certificates associated with the RPS Attributes shall be free and clear of all liens, judgments, encumbrances and restrictions.

Section 2.04. Assignment and Transfer of Rights to RPS Attributes. Until such time as the NYGATS is available for purposes of transferring Certificates associated with RPS Attributes, the assignment and transfer (“Transfer”) of RPS Attributes to NYSERDA shall be accomplished through their inclusion on the Certification and Assignment of Rights Form, which must accompany each invoice; upon the availability of NYGATS, Transfer will be accomplished by the delivery of Certificates associated with each RPS Attribute to an account designated by NYSERDA. Seller acknowledges that, at the time of the execution of this Agreement, New York has begun the launch of NYGATS which will provide for the tracking, registration, and trading of Certificates. Seller shall register the Bid Facility in NYGATS and deliver the Certificates associated with each RPS Attribute, at the earliest time such Certificates become available for delivery, to an account designated by NYSERDA; Seller further agrees to transfer to the NYSERDA account any Certificates created by NYGATS corresponding to RPS Attributes previously transferred to NYSERDA by a Certification and Assignment of Rights Form, prior to the availability of NYGATS.

Section 2.05. Except as may be permitted under Section 2.11, Suspension of Performance, Seller agrees that it may not and shall not apply for or otherwise seek to achieve compliance under Section 242-8.7 (CO₂ budget units that co-fire eligible biomass) of the CO₂ Budget Trading Program (6 NYCRR Part 242), or any other state program operating as a part of the Regional Greenhouse Gas Initiative, on the basis of any MWh or emission of CO₂ or reduction in emissions of CO₂ or other benefit associated with RPS Attributes or for any activity constituting performance under this Agreement.

Section 2.06. In the event that Seller becomes entitled to or must apply for or take some other action under any emission-trading, emissions recordation or other regime other than the NY RPS in order to secure a claim, title, credit, ownership, or rights of any type, nature or sort (“Title”) to any RPS-eligible Attributes associated with Quantity Obligations, or any certification, registration, verification or other memorialization of the creation of such RPS-eligible Attributes by the Bid Facility to which Seller may be entitled, Seller shall (i) notify NYSERDA of such opportunity, and, if requested to do so by NYSERDA, Seller shall (ii) take all actions necessary to apply for and secure such Title, to the maximum extent to which Seller is entitled, (iii) provide NYSERDA with evidence of taking such action; and (iv) convey such Title to NYSERDA whenever so secured.

Section 2.07. NYSERDA’s obligations under this Agreement are expressly conditioned on the eligibility of Seller’s Bid Facility, at the time of execution of this Agreement and throughout the duration of the Contract Delivery Term, under the Main Tier eligibility rules and requirements, as such requirements existed on April 21, 2016, as originally stated at Appendix C to the September 24, 2004 Order and as amended by the attachment to the June 28, 2006 “Order on Customer Sited Tier Implementation,” and as further defined and clarified by subsequent Orders. NYSERDA and/or its designee shall have reasonable access to the Bid Facility for the purpose of verifying the continuing eligibility of the Bid Facility and its operation. Bid Facilities selected under this RFP will not be subject to subsequent changes in RPS eligibility rules; however, in the event that the Bid Facility fails to maintain eligibility consistent with the RPS requirements as they existed on April 21, 2016, such ineligibility will extend to the attributes emanating from the Bid Facility. See also Section 17.04 Permits and Approvals.

Section 2.08. Pending the availability of NYGATS, NYSERDA’s obligation to purchase RPS Attributes and to make payment under this Agreement are conditional on the ability of Seller to demonstrate to the satisfaction of the New York State Department of Public Service that the creation of and title to the RPS-eligible Attributes is sufficiently verifiable for purposes of the New York Environmental Disclosure Program.

Section 2.09. Commercial Operation Milestone Date. NYSERDA’s obligations to purchase RPS Attributes and to make payment under this Agreement are conditional on the commencement by the Bid Facility of Commercial Operation at a minimum of 80% of the Bid Capacity on or before the Commercial Operation Milestone Date. The Commercial Operation Milestone date shall be April 30, 2018. [Seller may elect to extend the Commercial Operation Milestone Date from April 30, 2018 to July 31, 2019], on condition that such election is made by written Notice to NYSERDA, on or before February 28, 2018, and that Seller provides to NYSERDA, one of the following:

- (1) Contract Security, in addition to the amounts provided under Section 15.01(a) and (b), below, in the amount of six dollars (\$6.00) multiplied by the Bid Quantity; or
- (2) if the electricity associated with the Quantity Obligation will be delivered into a market administered by the NYISO, proof that an interconnection agreement has been entered into by the NYISO, the Connecting Transmission Owner, and the Seller or a legal representative of the Seller, with respect to the Bid Facility; or
- (3) if the Bid Facility intends to satisfy the Electricity Delivery Requirement through option 2 or 3 of Section 3.01, below, a comparable interconnection agreement has been entered into

with all the necessary sites, service providers and parties that will be enable and permit the transmission of the energy from the Bid Facility to the point of its consumption.

Section 2.10. NYSERDA shall be free to sell, assign, transfer or otherwise subject to any encumbrance, any of the RPS Attributes or the right, title and interest to the NYGATS-created Certificates NYSERDA shall acquire 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 RPS Program or a successor, and shall not affect the Seller's rights or obligations under the terms of this Agreement.

Section 2.11. Suspension of Performance.

- (a) Seller may, at its option, and upon sufficient notice to NYSERDA, suspend its obligation to deliver RPS-eligible Attributes to NYSERDA, in whole or in part, if such RPS-eligible Attributes are sold into the Voluntary Market in New York State or pursuant to a New York State Executive Order 111 or other mandated New York State governmental procurement. Such notice must be written, as provided under Section 19.01 hereto, must be provided to NYSERDA at least one month prior to the commencement of the requested suspension period, must identify the quantity of the RPS-eligible Attributes as to which delivery is to be suspended and the duration of such suspension, which shall be no less than six (6) months in duration. The quantity suspended may be either a specific percentage of the Quantity Obligation or a specific quantity of RPS Attributes to be suspended each month during the suspension period; in either case the quantity to be suspended must exceed the lower of (i) 10% of the Bid Quantity or (ii) one thousand (1,000) RPS-eligible Attributes per month. During each month during the period of suspension, Seller shall present documentation to NYSERDA establishing that the RPS-eligible Attributes created during the prior month as to which delivery has been suspended were either (a) settled into an account of an entity serving retail load in New York ("LSE") or otherwise accounted for as a part of the residual system mix for purposes of the Environmental Disclosure Program administered by the Department of Public Service, or (b) upon the full availability of NYGATS, documentation verifying the retirement of such Certificates associated with RPS Attributes into a voluntary customer account in New York, including accounts associated with compliance with a mandated New York State governmental procurement. For all quantities suspended, Seller shall apply to and shall pursue with the New York State Department of Environmental Conservation a Voluntary Renewable Energy Market Set Aside Allocation under 6 NYCRR Part 242, Subpart 242-5; CO2 Budget Trading Program. The suspension of RPS-eligible Attributes shall not relieve or excuse Seller from compliance with the Bid Facility Electricity Delivery Requirements set forth in Section 3.01 for suspended RPS Attributes. Seller shall continue to provide reports and data throughout the duration of any period of suspension. Seller will be required to submit invoices monthly regardless if 100% of the Bid Quantity is suspended or if there is no production for the previous month. NYSERDA shall not be obligated to purchase or pay for suspended RPS-eligible Attributes during the suspension period; however, RPS-eligible Attributes suspended will be credited to the Quantity Obligation;

- (b) intentionally omitted;
- (c) intentionally omitted.

Section 2.12. Verification/Metering. The Actual Production and Actual Eligible Production of the Bid Facility must be capable of accurate and verifiable measurement at the Injection Point by the local ISO, a transmission utility, public authority, municipal electric company, and in the case of a Customer-Sited Bid Facility, an independent third party through a Dedicated Generation Meter. Unless specifically agreed to by NYSERDA in writing, the Bid Facility must be separately metered and must be functionally represented by a single and discrete Injection Point.

Section 2.13. Dedicated Generation Meter. Seller must provide, install, and maintain a dedicated generation meter at the Injection Point that shall be an internet enabled electric meter that displays instantaneous AC power and cumulative total AC energy production and, at a minimum, can record cumulative total AC energy production of the Bid Facility on an hourly basis, store the hourly readings for at least 7 days, and can transmit recorded readings once per day to a NYSERDA designated Data Agent via e-mail, FTP, HTTP or Modbus TCP/IP. The meter must meet the American National Standards Institute (ANSI) C12.20, be Revenue grade with a +/- 0.2% accuracy, and be calibrated in the manner and frequency, and otherwise generally maintained in accordance with the manufacturer's recommendations. The meter must also have battery backup to prevent the loss of data during power outages. Seller must provide, and maintain, an active internet connection to the meter throughout the Contract Delivery Term to support daily data transmissions. Data collected from the meter will be available to NYSERDA, and will be used by NYSERDA to verify the monthly Actual Eligible Production.

Article III

Bid Facility Electricity Delivery Requirements.

Section 3.01. For all Bid Facilities, the electricity associated with the Quantity Obligation must be:

1. delivered into a market administered by the NYISO for end-use in New York State; or
2. delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO; or
3. delivered through a Bid Facility Dedicated Generation Meter, which shall be approved by and subject to independent verification by NYSERDA, to a customer in New York State (excluding customers in the service territory of the Long Island Power Authority) whose electricity was obtained through the NYISO/utility system as of November 24, 2010.

For Bid Facilities seeking to satisfy the Electricity Delivery Requirement through options 2 or 3, above, all costs associated with measurement, tracking, and verification, to the satisfaction of

NYSERDA and New York State Department of Public Service Staff, and participation in NYGATS must and will be borne by Seller. See also Section 2.12. Verification/Metering and Section 2.13 Dedicated Generation Meter.

Section 3.02. Bilateral Sales. Bilateral sales for electricity associated with the Quantity Obligation produced by the Bid Facility are permissible provided the Seller can demonstrate that the purchaser of the electricity associated with the Quantity Obligation is a New York State Load Serving Entity (LSE), or one or more New York State end-users.

Article IV

Payment

Section 4.01. Invoices. Seller shall submit monthly invoices throughout the term of this Agreement for RPS Attributes created in the prior month during the Contract Delivery Term. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to invoices@nyserda.ny.gov with a copy to [xxx@nyserda.ny.gov]. Such invoices shall make reference to the Agreement number shown on page 1 of this Agreement. Such invoices shall include a statement of the amount due and payable by NYSERDA to Seller, which amount shall be calculated in accordance with Section 4.02. Pending the availability of NYGATS, all such invoices must and shall be accompanied by a completed Certification and Assignment of Rights Form, in the form provided at Exhibit B hereto, and must otherwise demonstrate the Transfer of the RPS Attributes. All invoices must be accompanied by information and data, as specified in Section 6.01, sufficient for NYSERDA to verify the creation of the RPS Attributes and compliance with the Bid Facility Electricity Delivery Requirements and other requirements as may be outlined in this Agreement. Upon the availability of NYGATS, invoices should reflect the quantity of RPS-eligible Certificates Transferred to NYSERDA's designated account for the prior month, which shall determine the amount payable.

Section 4.02. Payment. NYSERDA will make payment to Seller of the amount of Quantity Obligation in whole MWh invoiced. NYSERDA will not pay for RPS Attributes beyond the maximum it is required to purchase under this Agreement, in accordance with Section 4.04. The maximum amounts payable in a given month shall be calculated as follows: the multiplicative product of (a) the Actual Eligible Production of the Bid Facility during the prior month; (b) the Bid Quantity Percentage; and (c) the Bid Price. Upon the availability of NYGATS, NYSERDA will not pay for any RPS Attribute for which Seller has not Transferred the associated Certificate to NYSERDA's designated account.

Section 4.03. Prompt Payment Policy. NYSERDA will make payments to the Seller in accordance with and subject to its Prompt Payment Policy Statement, attached hereto as Exhibit D. Such payments shall be made by check or wire transfer to an account designated by the Seller. NYSERDA will not pay any invoice not accompanied by a completed Certification and Assignment of Rights Form and all information required in accordance with Section 6.01.

Section 4.04. Maximum Commitment/Limitation. The maximum number of RPS Attributes NYSERDA shall be obligated to purchase under this Agreement shall be equal to the Bid Quantity multiplied by the number of years in the Contract Delivery Term. The maximum

aggregate amount payable by NYSERDA to Seller hereunder is (\$ _____00). NYSERDA shall not be obligated to purchase or make payment for, with respect to any Contract Year, RPS Attributes in excess of the Bid Quantity. Should Seller elect to suspend performance under Section 2.11, such maximum aggregate amounts will be modified by subtracting any periods of Suspension from the number of Contract Years, and by reducing the Bid Quantity by the number of RPS Attributes suspended. NYSERDA shall not be obligated to purchase or pay for suspended RPS-eligible Attributes during the suspension period.

Article V

Adjustments

Section 5.01. True-Up Adjustments. NYSERDA may adjust payments to subsequent invoices consistent with adjustments by NYGATS pursuant to its Operating Rules based on NYISO or other local control area billing settlement true-up procedures, based on actual metered production data measured at the Injection Point, actual and verified data reflecting compliance with the Bid Facility Electricity Delivery Requirements, and/or based on the number of RPS Attributes Transferred.

Section 5.02. Other Adjustments. NYSERDA may adjust its contractual Payment obligations under this Agreement under the following circumstances:

- (a) NYSERDA may adjust amounts payable to Seller to reflect any costs borne by NYSERDA, if any, for participation in any renewable energy attribute accounting system operating in the Bid Facility's local control area, including all fees and charges, if any, for the delivery, registration and/or retirement of the attributes or Certificates associated with each RPS Attribute into a NYSERDA account, inclusive of accounts in New York State.
- (b) Should an Intermittent Bid Facility's Quantity Obligation fail to achieve 85% of the Bid Quantity for three (3) consecutive Contract Years, NYSERDA may at its option upon Notice to Seller, modify the Contract by adjusting the Bid Quantity for the remainder of the Contract Delivery Term to equal the highest Actual Annual Eligible Production during any Contract Year over that three-year period multiplied by the Bid Quantity Percentage.
- (c) Should Seller fail to reasonably demonstrate that the total dollar amount of Incremental Economic Benefits having accrued to New York as a result of the development, construction, modification, and operation of the Bid Facility through the first three (3) Contract Years of operation (Verified Total Dollars), divided by Installed Bid Capacity, is at least 85% of Expected Total Dollars divided by the Bid Capacity, NYSERDA may at its option upon Notice to Seller, modify the Contract by reducing the Bid Price payable for the remainder of the Contract Delivery Term. Such reduction in the Bid Price will be made by an amount equal to the percentage shortfall between the Verified Total Dollars divided by the Installed Bid Capacity compared to the Expected Total Dollars divided by the Bid Capacity.
- (d) Should the Installed Bid Capacity differ from the Bid Capacity, Seller agrees that NYSERDA may at its option upon Notice to Seller modify the Contract by adjusting the

Bid Quantity, Bid Quantity Percentage, or other relevant terms to reflect the Installed Bid Capacity.

Article VI

Records and Reports

Section 6.01. Monthly Reports. Seller shall submit with each invoice generation data or access to generation data, measured at the Injection Point, in Microsoft Excel format or such other format to be agreed upon. NYSERDA will also require the Seller to provide detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Bid Facility was delivered, from the entity or party in control of any meter through which the energy associated with the Quantity Obligation was delivered, and from the administrator of any attribute accounting system operating in such control area. Seller 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 delivered of transactional and/or delivery information and data pertinent to the verification of RPS Attribute creation and electricity delivery. Should the Quantity Obligation of the Bid Facility be zero for any month Seller shall submit a statement stating such.

Section 6.02. Progress Reports. Beginning on the first such date following the Effective Date, and continuing through the commencement of the Contract Delivery Term, Seller shall provide quarterly written Progress Reports to NYSERDA, on March 1, June 1, September 1, and December 1, which reports shall be in letter form, and which shall describe at a minimum (1) Seller's progress in obtaining and securing all required environmental or other permits and/or local approvals; (2) the status of development and/or construction planning or activities with regard to the Bid Facility; (3) the status of the interconnection process between the Bid Facility and the administrator of the control area; (4) purchases, delivery, and/or installation of any major equipment associated with the Bid Facility; and (5) an estimated date for Commercial Operation. Such reports shall also include an updated Project Schedule Form (RFP 3257 Attachment C), copies of any permits or approvals granted and/or copies of any correspondence of any type denying or refusing any permit or approval. Upon NYSERDA's request, Seller shall also provide an independent engineers or similar third party's assessment of the long-term expected energy production of the Bid Facility.

Section 6.03. Economic Benefits Report. Seller shall submit a report including third party documentation demonstrating the actual Incremental Economic Benefits that resulted from the construction and operation of the Bid Facility. Such report should include copies of sufficient records and documentation relating to employment, purchases, and other payments necessary to demonstrate the economic benefits created by the Bid Facility under the categories and within the eligibility requirements listed in accordance with XI, A, Section 3 of RFP 3257. Examples of acceptable documentation include but are not limited to, invoices with proof of payment, tax documentation, contracts, or similar documentation demonstrating the actualization of economic benefits in New York State. Seller will be required to submit such report within sixty (60) days of the third anniversary of the commencement of the Contract Delivery Term.

Section 6.04. Annual Reports. Seller shall submit, annually for the duration of the Contract Delivery Term, a detailed report identifying and describing the Incremental Economic Benefits actually created as a result of the development, operation and/or construction of the Bid Facility. Such report shall include the number of short and long-term jobs created including an accounting of total expenditures incurred for all short and long-term jobs, and shall identify, describe and quantify all payments made to any State, municipal or local governmental entity, any payments made for the usage of land or fuel purchases, and all in-state purchases made as a result of the development, construction, and operation of the Bid Facility. Such report shall be filed with NYSERDA within sixty (60) days of each anniversary of the commencement of the Contract Delivery Term. Such report shall also identify, describe, and quantify any and all Federal or local tax incentives received or awarded for the construction and/or operation of the Bid Facility including grants, government backed loans, tax credits or similar government sponsored financial assistance.

Section 6.05. Additional Documents. Within 10 business days of Notice from NYSERDA of selection under RFP 3257, Seller shall provide to NYSERDA:

- (a) certificates, dated as of the most recent practicable date prior to the Effective Date, issued by the [insert - jurisdiction of Seller's organization] Secretary of State confirming the corporate good standing of the Seller;
- (b) a certificate of an appropriate officer of the Seller, dated as of the Effective Date, in form and substance reasonably satisfactory to NYSERDA and certifying: (1) the names and signatures of the officers of the Seller authorized to sign a Certification and Assignment of Rights Form and any other documents to be delivered hereunder, and (2) the accuracy and completeness of resolutions of the Seller, authorizing and approving all matters in connection with the transactions contemplated thereby.

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

Section 6.06. Maintenance of Records. The Seller shall keep, maintain, and preserve at its principal office throughout the term of the 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 the Seller in the course of such performance.

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 such period 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 the Seller where they are then being kept, maintained and

preserved. 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 the Seller by an agency of the United States, the State of New York or NYSERDA not to constitute a properly invoiced amount.

Section 7.02. Eligibility Audit. NYSERDA may require periodic audits of the Bid Facility to verify that the Bid Facility remains eligible under the eligibility rules and requirements; as such requirements existed on April 21, 2016. Prior to any material modification of the Bid Facility, including but not limited to any modification that is expected to result in a change in the Nameplate Capacity of the Bid Facility, Seller shall provide NYSERDA with written Notice and will provide to NYSERDA a written description of the planned modification.

Article VIII

Assignments

Section 8.01. General Restrictions. Except as specifically provided otherwise in this Article VIII, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Seller's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld.

Section 8.02. Seller may, without NYSERDA's prior written consent, grant a security interest in or assign this Agreement as collateral in connection with financing arrangements; Seller shall promptly notify NYSERDA of the completion and the nature of any such grant or assignment.

Section 8.03. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment.

Article IX

Seller's Warranties and Guarantees

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

- (a) (1) that Seller is [corporation/limited liability company/partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (2) has or will have all requisite corporate power, and has or will have all material governmental permits necessary to own its assets or lease and operate its properties and carry on its business as now being or as proposed to be conducted, to construct, finance, own, maintain and operate the Bid Facility, to execute and deliver this Agreement, and to consummate the transactions contemplated herein; and (3) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary;
- (b) that the execution, delivery and performance by Seller, the entry into this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement: (1) have been duly authorized by all requisite corporate action (including any required action of its members); and (2) will not (i) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency 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 respective limited liability company agreements 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 the Seller;
- (c) that the Bid Facility is or will be eligible under the Orders and that it will remain so throughout the Contract Delivery Term;
- (d) that the Certificates associated with RPS Attributes, as to which right and title is to be transferred to NYSERDA under this Agreement, are eligible and compliant with the Renewable Portfolio Standard;
- (e) that the Certificates associated with RPS Attributes, as to which right and title is to be transferred to NYSERDA under this Agreement, are free and clear of any liens, encumbrances and/or defects of title;
- (f) that the Certificates associated with RPS Attributes, as to which right and title is to be Transferred to NYSERDA under this Agreement shall not have otherwise been, nor will be sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction;
- (g) that Seller will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;
- (h) that this Agreement and each Certification and Assignment of Rights Form will be duly executed and delivered by Seller and will constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof;

- (i) that the Seller has no knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that Seller's performance under this Agreement will infringe any patent or otherwise interfere with any other right of any person;
- (j) as of the Effective Date, that there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect Seller's performance of this Agreement or NYSERDA's rights hereunder;
- (k) that Seller has no knowledge that any information or document or statement furnished by the Seller in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading;
- (l) that Seller shall not, and shall not cause or permit any voluntarily abandonment of the development, construction or operation of the Facility; and
- (m) 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.

Article X

NYSERDA's Warranties and Guarantees

Section 10.01. As a material inducement to Seller to enter into this Agreement, NYSERDA makes the following 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, 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 (1) violate any applicable provision of law, statute, rule, regulation or order of any governmental agency or, any provision of the Public Authorities Law; (2) 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 (3) result in the creation or

imposition of any lien upon any property or assets of NYSERDA. This Agreement will not conflict with any other agreement or contract to which NYSERDA is a party;

- (d) that this Agreement has been duly executed and delivered by NYSERDA and constitutes the legal, valid and binding obligation of NYSERDA enforceable against NYSERDA in accordance with the terms thereof;
- (e) that NYSERDA is familiar with and in compliance with all general and specific laws, except where the failure to so comply would not result in a material adverse effect on NYSERDA's ability to perform its obligations; and
- (f) that there is no action, suit or claim at law or in equity, or before or by a governmental authority pending or, to the best knowledge of NYSERDA after due inquiry, threatened against NYSERDA or affecting any of its properties or assets which could reasonably be expected to result in a material adverse effect on NYSERDA's ability to perform its obligations.

Article XI

Indemnification

Section 11.01. Indemnification. Seller shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and/or experts' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Seller's performance under this Agreement. The obligations of Seller under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XII

Insurance

Section 12.01. Maintenance of Insurance; Policy Provisions. The Seller, at no cost to NYSERDA, shall maintain or cause to be maintained, commencing with the Effective Date and continuing throughout the duration of the Contract Delivery Term, insurance of the types and in the amounts specified in Section 12.02 (Types of Insurance). All such insurance shall be evidenced by insurance policies, each of which shall:

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

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

Section 12.03. Delivery of Policies; Insurance Certificates. Within 30 days of the effective date of this Agreement, 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; or
- (b) Other Obligations. A Party shall default in the performance of any of its obligations under this Agreement and such default shall continue unremedied for a period of 30 days after the defaulting Party receives Notice or otherwise has actual knowledge thereof; or
- (c) Voluntary Proceedings. A Party shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) make a general assignment for the benefit of its creditors; (c) commence a voluntary case under the Bankruptcy Code; (d) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts; (e) fail to convert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code; or (f) take any corporate action for the purpose of effecting any of the foregoing; or

- (d) Involuntary Proceedings. A proceeding or case shall be commenced against a Party, without its application or consent, in any court of competent jurisdiction, seeking (a) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets; or (c) 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 undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed 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
- (e) Judgments. A judgment or judgments for the payment of money in the amount of \$1,000,000 or more shall be rendered by a court or courts against Seller, and the same shall not be paid or otherwise discharged for a period of more than 60 days unless such judgment has been stayed, released or vacated; or
- (f) Unauthorized Transfer. The transfer or attempted transfer by Seller to any transferee other than NYSERDA of any RPS Attribute or Certificate associated with this Agreement, except as authorized pursuant to Section 2.11 of this Agreement; or
- (g) Commercial Operation. Failure of the Bid Facility to commence Commercial Operation at a minimum of 80% of the Bid Capacity on or before the Commercial Operation Milestone Date (April 30, 2018, unless extended pursuant to Article II, Section 2.09 of this Agreement); or
- (h) Abandonment. Seller's abandonment of the Facility or its intentional delay of completion of construction in connection therewith; or
- (i) Failure to Produce. The failure of the Quantity Obligation of any Bid Facility to achieve at least 65% of the Bid Quantity during any Contract Year; or
- (j) Failure to Transfer RPS Attributes. The failure by Seller to Transfer rights to NYSERDA in the RPS Attributes associated with the Quantity Obligation of the Bid Facility, and the Certificates associated with the RPS Attributes, in conformity with Article II; or
- (k) Failure to Provide Additional Contract Security. Failure by Seller to provide to NYSERDA, on or before May 2, 2017, additional Contract Security, in an amount equal to six dollars (\$6.00) per MWh multiplied by the Bid Quantity (See Section 15.01(b)).

Section 13.02. Effect of an Event of Default. In addition to any other remedy available to it under this Agreement or under applicable Law, upon any occurrence of an Event of Default, the non-defaulting Party shall be entitled to suspend performance of its obligations under this Agreement until the earlier of such time as (a) such Event of Default has been cured, or (b) the non-defaulting Party has elected to terminate this Agreement pursuant to Article XIV below.

Article XIV

Termination

Section 14.01. Termination. This Agreement may be terminated:

- (a) at any time by either NYSERDA or Seller if: (1) an Event of Default occurs (and following the expiration of any applicable cure period), (2) the Party seeking to terminate this Agreement hereunder is the non-defaulting Party, and (3) the non-defaulting Party has not waived such Event of Default in writing;
- (b) at any time by the mutual written consent of Seller and NYSERDA;
- (c) unless otherwise mutually agreed upon by NYSERDA and Seller in writing, on the expiration of the Contract Delivery Term (subject to Section 18.03 of this Agreement);
- (d) intentionally omitted;
- (e) by NYSERDA in the event it is found that the certification filed by the Seller in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete;
- (f) by NYSERDA in the event it is found that the certification filed by the Seller in accordance with New York State Tax Law Section 5-a was intentionally false when made;

Section 14.02. Effect of Termination. Except as otherwise set forth in Section 18.03 below, in the event of a termination of this Agreement as provided in Section 14.01 above, neither Party shall have any further right or obligation hereunder. In addition, the Parties hereto agree that, in the case of a termination based on the default of Seller, irreparable damage would occur in the event that NYSERDA could not obtain rights to RPS Attributes pursuant to this Agreement from the date of Event of Default in which Seller was the defaulting party, and accordingly, each Party hereby agrees that NYSERDA shall be entitled to elect to compel specific performance of this Agreement to compel the Transfer of all RPS-eligible Attributes that the Bid Facility produces following the date of any termination for such an Event of Default in accordance with the terms hereof, including Payment, together with any other remedy at law or equity available to NYSERDA in connection therewith, without the necessity of demonstrating the inadequacy of money damages. Notwithstanding the foregoing, for any termination by NYSERDA or Seller prior to the date of commencement of Commercial Operations, NYSERDA shall be entitled only to Stipulated Damages pursuant to Article XV.

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.

Article XV

Contract Security

Section 15.01. (a) Within ten (10) days of Notice from NYSERDA of selection under RFP 3257, unless otherwise agreed to by NYSERDA, Seller shall provide to NYSERDA Contract Security, in the form of cash, certified funds, or a Letter of Credit conforming to the requirements below, in an amount equal to the product of (1) Bid Quantity and (2) nine dollars (\$9.00).

NYSERDA may rescind and cancel the award to Bidder under RFP 3257 should Bidder/Seller fail to provide Contract Security within such 10-day period; (b) on or before May 2, 2017, Seller must provide additional Contract Security in an amount equal to six dollars \$6.00 multiplied by the Bid Quantity. **Failure to provide the additional Contract Security by May 2, 2017 will constitute a default and may result in termination of this Agreement;** (c) on or before February 28, 2018, Seller may elect to extend the Commercial Operation Milestone Date from April 30, 2018 to July 31, 2019 by providing to NYSERDA one of the following: Contract Security, in addition to the amounts provided under “a” and “b,” above, in the amount of \$6.00 per MWh multiplied by the Bid Quantity; for Bid Facilities from which the electricity associated with the Quantity Obligation will be delivered into a market administered by the NYISO, proof that an interconnection agreement has been entered into by the NYISO, the Connecting Transmission Owner, and the Bidder or a legal representative of the Bidder, with respect to the Bid Facility; for Bid Facilities seeking to satisfy the electricity delivery requirement through options 2 or 3 of Section **Error! Reference source not found.**; A, proof that a comparable interconnection agreement has been entered into with all the necessary sites, service providers and parties that will be enable and permit the transmission of the energy from the Bid Facility to the point of its consumption.

Section 15.02. 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 a member of the New York Clearinghouse Association, substantially in the form of the letter of credit attached hereto as Exhibit C (“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.

Section 15.03. Replacement. Any assignee within Article VIII of this Agreement shall, simultaneously with its receipt of the assignment, deliver to NYSERDA a Replacement Letter of Credit meeting the requirements of this Article, and NYSERDA shall, within twenty (20) business days after receipt of a compliant Replacement Letter of Credit, return the original Letter of Credit to Seller. Upon the failure of an assignee to deliver a compliant Replacement Letter of Credit to NYSERDA simultaneously with its receipt of the assignment, NYSERDA shall be

thereupon entitled to draw on the Letter of Credit for the full amount then outstanding and the funds received shall be held by NYSERDA for application against subsequent obligations of Seller and/or the assignee under this Agreement.

Section 15.04. Refund of Security. Amounts provided by Seller as Contract Security will be refunded to Seller by NYSERDA as follows:

- (a) In their entirety if the Installed Bid Capacity is equal to or greater than the Bid Capacity and upon receipt of notice from the New York State Department of Public Service that Operational Certification has been granted for the Bid Facility.
- (b) At a prorated amount if the Installed Bid Capacity is less than the Bid Capacity. Such amount that will be refunded, expressed as a percentage of the total Contract Security, will be equal to the Installed Bid Capacity divided by the Bid Capacity and upon receipt of notice from the New York State Department of Public Service that Operational Certification has been granted for the Bid Facility.

Section 15.05. 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 May 2, 2017, Contract Security in the amount required under Section 15.01(b), above.
- (b) At a prorated amount if the Installed Bid Capacity is less than the Bid Capacity. Such amount that will be retained, expressed as a percentage of the total Contract Security, will be equal to the Bid Capacity minus the Installed Bid Capacity divided by the Bid Capacity.

Section 15.06. Stipulated Damages. NYSERDA and Seller hereby agree, acknowledge and stipulate that NYSERDA's retention of amounts provided by Seller as Contract Security pursuant to Article XV, in the proportions stated within this Article, is fair and reasonable under the circumstances and in light of the uncertainty and inability to adequately quantify the harm that would result to NYSERDA as a result of the events that permit NYSERDA to retain such amounts of the Contract Security.

Article XVI

Force Majeure

Section 16.01. Force Majeure. 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, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, or strikes. Variability in the frequency or force

of the wind, of rainfall, or of water levels will in no event constitute force majeure events. 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.

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 the 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 the 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.

Section 17.04. Permits and Approvals. The 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 RPS Program nor selection under this RFP in any way replaces or modifies the necessity or applicability of any permit or approval process by any jurisdiction including SEQRA. NYSERDA's obligations to make payments to Seller will be conditional on the acquisition of all such permits and approvals. Upon request by NYSERDA Seller must demonstrate such acquisition and/or provide copies of all permits and approvals acquired. Seller shall provide prompt Notice to NYSERDA of the initiation of any criminal or regulatory investigation, hearing, proceeding, or review process ("Process") by any federal or State entity regarding any actual or alleged violation of any permit or approval obtained or applied for with respect to the 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.

Section 17.05. Other Legal Requirements. The references to particular laws of the State of New York in this Article and elsewhere in this Agreement are not intended to be exclusive

and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the 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. Seller shall be responsible for and obligated to pay all present and future taxes, fees and levies that may be assessed by any entity upon the Seller's provision of RPS Attributes to NYSERDA, or with respect to the creation of the RPS Attributes and/or the energy with which they are associated, up to the Delivery Point, and, if any, for the delivery and registration and/or retirement of the attributes or Certificates associated with each RPS Attribute into the NYSERDA account.

Section 18.03. Term. Unless terminated earlier under this Article, this Agreement shall expire upon the expiration of the Contract Delivery Term, provided that payment has been made for all RPS Attributes as to which a Certification and Assignment of Rights Form has been delivered to NYSERDA. 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 Sections 11.01, 17.01, 20.01, 21.02, 21.03, 21.04, and NYSERDA's Payment obligation under Article IV shall survive.

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

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 (1) register the Bid Facility and Transfer Certificates to NYSERDA through NYGATS, and (2) 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. Environmental Disclosure. The Parties agree that, at the time of the execution of this Agreement, New York does not employ any registry for the tracking, registration, or trading of renewable or environmental attributes or credits, but rather has instituted the Environmental Disclosure Program, under which the New York State Department of Public Service will conduct Conversion Transactions to accomplish verification of the transactions consummated hereunder. In the event that an attribute or credit registry is adopted in the future, Seller and NYSERDA agree to: (1) take such steps as are required under such system to continue to transfer RPS Attributes to NYSERDA in accordance with the terms of this Agreement; and (2) amend this Agreement as needed to effect its intent and to comply with any requirements of such attribute or credit registry. Should the PSC create, sanction, adopt or begin participation in a tracking system for accounting for attributes or Certificates associated with generation in the New York Control Area, Seller shall deliver the attributes or Certificates associated with each RPS Attribute to an account designated by NYSERDA.

Section 18.09. Covenant. Seller hereby covenants and promises that the Bid Facility is or will be eligible under the Orders in effect as April 21, 2016 and that it will remain so throughout the Contract Delivery Term.

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:

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

To NYSERDA: NYSERDA
 Attn: Office of the General Counsel
 17 Columbia Circle
 Albany, New York 12203-6399
 E:mail address: pete.keane@nyserda.ny.gov

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

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

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

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

Article XX

Publicity

Section 20.01. Publicity. Seller and/or the Bid Facility owner will collaborate with NYSERDA's Communications Unit, or RPS 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 RPS 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 of the Renewable Portfolio Standard 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 or the State of New York.

Article XXI

Confidentiality

Section 21.01. In order to enable NYSERDA and the administrator of the New York State Environmental Disclosure Program to verify delivery of RPS Attributes, NYSERDA will require the Seller to provide detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market and/or the operator of the transmission/distribution utility into which energy from the Bid Facility was produced and/or delivered. Seller will be required to waive confidentiality, as to NYSERDA, for the direct transfer to NYSERDA by such entities of transactional and/or delivery information and data pertinent to the verification of RPS Attribute and associated electricity delivery.

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. Claim of Confidentiality. Information of any tangible form including any document that Seller wishes to be protected from disclosure to third parties, including any information provided as a part of a Bid Proposal Package submitted in response to RFP 3257, must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

Section 21.04. Trade Secrets/Commercial Information. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." If NYSERDA receives a

request from a third party for information or a document received from Seller and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations.

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

Seller: NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____

By _____

Name _____

Title _____

Title _____

STATE OF _____)

) SS:

COUNTY OF _____)

On the ____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary

EXHIBIT A

REVISED 5/12

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:

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

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

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

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

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

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

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

EXHIBIT B
CERTIFICATION AND ASSIGNMENT OF RIGHTS FORM

NYSERDA Agreement No. _____

Name of Seller: _____

Name of Bid Facility: _____

Invoice Number _____

Seller hereby sells, assigns, conveys and delivers to NYSERDA all right, title and interest in the RPS Attributes, such RPS Attributes having been created in the month of _____, in the year _____, for which payment is requested by the accompanying invoice. Such right, title and interest shall include perpetual and exclusive rights to the RPS Attributes for which payment is requested, including but not limited to the exclusive rights to claim, consistent with New York State Environmental Disclosure rules: (i) that the energy associated with these RPS Attributes was generated by the Bid Facility; and (ii) that New York State and or the RPS Program is responsible for the environmental benefits resulting from the generation of that portion of the Bid Facility's energy that is associated with these RPS Attributes.

Seller further certifies and guarantees that all of the information provided on the attached invoice requesting payment from NYSERDA under the terms of NYSERDA Agreement No. _____ is true and accurate; that the Bid Facility named above was at all times relevant and is now an eligible facility under the rules of the NYS Renewable Portfolio Standard; that the RPS Attributes to which all right, title and interest is transferred to NYSERDA by this instrument are free and clear of all liens, judgments, encumbrances and restrictions, and have not have otherwise been, nor will be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in any other jurisdiction.

Date: _____

By: _____
Signature of Seller's Authorized Officer

Name of Seller's Authorized Officer

EXHIBIT C
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.

DEMANDS PRESENTED BY FACSIMILE (TO FACSIMILE NUMBER _____) ARE ACCEPTABLE: PROVIDED THAT IF ANY SUCH DEMAND IS PRESENTED BY FACSIMILE, THE ORIGINAL SIGHT DRAFT, STATEMENT, AND LETTER OF CREDIT SHALL BE SIMULTANEOUSLY FORWARDED BY OVERNIGHT COURIER SERVICE TO OUR OFFICE LOCATED AT THE ADDRESS STATED ABOVE; PROVIDED FURTHER THAT THE FAILURE OF THE COURIER SERVICE TO TIMELY DELIVER SHALL NOT AFFECT THE EFFICACY OF THE DEMAND.

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].

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 _____ DATED _____."

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

MISCELLANEOUS

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

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

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500 (PROVIDED, HOWEVER, THAT DRAWINGS PERMITTED HEREUNDER SHALL NOT BE DEEMED TO BE DRAWINGS BY INSTALLMENTS WITHIN ARTICLE 41 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, GLOBAL TRADE SERVICE, MENTIONING OUR REFERENCE NUMBER AS IT APPEARS ABOVE.

[NAME AND ADDRESS OF ISSUING BANK]

AUTHORIZED SIGNATURE
OF OFFICER OF ISSUING BANK

Annex A to Exhibit C - 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. _____.

To: [Issuing Bank]

[Address]

Attention: _____

As Beneficiary

By: _____
[Name and Title]

Annex B to Exhibit C - 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 NYSEDA Agreement No. _____ ("Agreement") in the aggregate amount of \$_____, ("Letter of Credit Amount") either [check the appropriate space]:

_____ Seller failed to provide to NYSEDA, on or before May2, 2017, Contract Security in the amount required under Section 15.01(b) of the Agreement, under which circumstance NYSEDA 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 attain Operational Certification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date of April 30, 2018; under which circumstance NYSEDA 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 attain Operational Certification and/or to commence Commercial Operation on or before the Commercial Operation Milestone Date of July 31, 2019; under which circumstance NYSEDA is authorized and entitled to draw an amount equal to one-hundred (100) percent of the Letter of Credit Amount;

_____ The Installed Bid Capacity is less than the Bid Capacity; under which circumstance, NYSEDA is authorized to draw a percentage of the Letter of Credit Amount, such percentage will be equal to the Bid Capacity minus the Installed Bid Capacity divided by the Bid Capacity.

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

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

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

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

As Beneficiary

By: _____
[Name and Title]

EXHIBIT D

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.¹

(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, Exhibit B of this Agreement.

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

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

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

¹ This is only a summary; the full text of Part 504 can be accessed at:
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

(g)(1) “Receipt of an Invoice” means:

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

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

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

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

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

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

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

504.4. Payment Procedures.

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

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

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

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

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

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

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

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

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

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

or issues raised as a result of such inspection have been corrected or otherwise resolved.

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

504.6. Interest Eligibility and Computation. If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 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 Exhibit B to 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.