



Case 15-0302

Clean Energy Standard

Tier 4 Implementation Plan  
Proposal

October 11, 2024

Filed by Staff of the New York Energy Research and  
Development Authority

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# 1. Introduction and Background

On June 18, 2020, Department of Public Service (DPS) Staff and NYSERDA filed the White Paper on Clean Energy Standard (CES) Procurements to Implement New York’s Climate Leadership and Community Protection Act (CLCPA) (the White Paper).<sup>1</sup> The White Paper proposed, among other things, to create a new Tier 4 of the CES that would provide support for renewable energy projects that deliver energy into New York Independent System Operator, Inc. (NYISO) Zone J, which encompasses New York City. The White Paper explained that reducing New York City’s reliance on fossil-fuel fired generation would be essential to achieving the Climate Act’s 70% renewable energy goal.<sup>2</sup>

On October 15, 2020, the CES Modification Order<sup>3</sup> added Tier 4 to the CES and directed NYSERDA to conduct a competitive solicitation for the procurement of Tier 4 Renewable Energy Certificates (RECs). Regarding the cost allocation for the Tier 4 program, the Public Service Commission (Commission) directed that each Load Serving Entity (LSE) would be obligated to purchase qualifying Tier 4 RECs in proportion to its overall share of statewide load. The CES Modification Order further ordered NYSERDA to file an implementation plan for stakeholder comment and ultimate Commission approval that includes a description of the Tier 4 compliance obligation calculations, process and structure, as well as a Tier 4 standard purchase agreement.

## 2. Implementation of Tier 4 REC Voluntary Sales

NYSERDA proposes to offer Tier 4 RECs for sale to the voluntary market, as directed by the Commission, which would help defray the cost of the Tier 4 program to New York ratepayers.<sup>4</sup> While the CES Modification Order noted that “[r]e-sales of Tier 4 RECs should be competitively priced, such that if the demand for Tier 4 RECs outstrips supply, the price may exceed NYSERDA’s procurement costs,” NYSERDA is not proposing to implement a competitive auction process at this time. NYSERDA is seeking to slightly deviate from this aspect of the CES Modification Order and is seeking Commission approval of the approach detailed in this implementation plan. As detailed below, NYSERDA proposes that the Tier 4 REC voluntary sale process follow the Tier 1 REC voluntary sale process that was detailed in the Phase 5 Implementation Plan<sup>5</sup>. This will provide consistency for those endeavoring to purchase RECs from NYSERDA. This is important as NYSERDA completed its first ever voluntary REC sale in 2024. Additionally, utilizing this approach for Tier 4 will also provide insight into the demand for Tier 4 RECs in the voluntary market due to the continued market evolution since the CES Modification Order was issued. As discussed later in this implementation plan, NYSERDA proposes that NYSERDA and Staff review the results of the first annual Pre-Sale to determine if demand justifies moving to a more sophisticated auction process. At this stage, NYSERDA proposes Tier 4 RECs would be offered at no less than NYSERDA’s own net-levelized cost to procure, including any Commission-approved administrative

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<sup>1</sup> Case 15-E-0302, White Paper on Clean Energy Standard Procurements to Implement New York’s Climate Leadership and Community Protection Act (filed June 18, 2020).

<sup>2</sup> The CLCPA became effective on January 1, 2020. <https://climate.ny.gov/>

<sup>3</sup> Case 15-E-0302, Proceeding to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued and effective October 15, 2020).

<sup>4</sup> CES Modification Order, p. 99.

<sup>5</sup> Case 12-E-0302, Phase 5 Implementation Plan (filed August 30, 2023)

adder. Currently, NYSERDA submits to the Commission, on an annual basis, a request for CES administrative funding which may include an administrative adder for the program. Potential voluntary purchasers may include various organizations from the higher education and municipal government sectors, as well as energy service companies (ESCOs), businesses from the commercial and industrial sectors, health care organizations and brokerage firms, among others. Considering feedback received, NYSERDA proposes a hybrid approach for the voluntary sale of RECs would be best, including a long-term contracting option, an annual REC Presale and an annual REC Resale, all described in greater detail below. This approach has been implemented with the sale of Tier 1 RECs to the voluntary market starting in July 2024.

## 2.1 Long-Term Contracting

Through this proposal, NYSERDA would be able to enter into voluntary long-term contracts with creditworthy entities for the purchase of Tier 4 RECs. The terms and conditions of the contracts would include, but would not be limited to: contract length, Tier 4 REC quantity, Tier 4 REC price, and payment terms. The terms and conditions would be memorialized within the individual contracts. Under any voluntary long-term contract, participants would be required to purchase Tier 4 RECs at no less than the NYSERDA net-weighted average price plus any administrative adder approved by the Commission for that compliance year. Any revenue NYSERDA receives from the long-term contracts would be recognized as Long-Term Contract Revenue for the purpose of the LSE Tier 4 Obligation Reconciliation and, as such, would reduce the total cost of the Tier 4 REC program to ratepayers. The Tier 4 Reconciliation is discussed later in the implementation plan.

## 2.2 Annual Voluntary Tier 4 REC Presale

NYSERDA recognizes that some entities could also desire an alternative to long-term contracts. As a result, NYSERDA proposes to offer an Annual Voluntary Presale of Tier 4 RECs, covering a one-year period with a NYSERDA-projected Tier 4 REC price. This sale derives its name from the fact that it would occur before the compliance year, thus offering voluntary purchasers an opportunity to secure REC purchases for the upcoming compliance year.

Under this proposed process, NYSERDA would hold an Annual Voluntary Presale prior to the start of the next Tier 4 compliance year. Through this Presale, NYSERDA would offer a percentage of the net expected Tier 4 REC inventory for the following compliance year for sale. The length of the Presale period would be fourteen (14) days and proceed according to the Tier 4 REC Presale Process Schedule as shown in Table 1 below. NYSERDA would conduct Annual Voluntary Presales throughout the life of the Tier 4 Program. NYSERDA would announce the quantity of Tier 4 RECs available for sale, Presale price, and Presale process no later than July 15 each year through the end of the Tier 4 program. If changes to the sale timing or duration are needed, NYSERDA proposes that the changes be filed with the Secretary to the Commission.

Table 1: Sample of Forward Tier 4 REC Presale Process Schedule

Trading Period	Voluntary Tier 4 REC Pre-Sale Offer Announcement	Voluntary Tier 4 REC Pre-Sale Process Conclusion
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days

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YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days

### 2.2.1 Annual Tier 4 REC Presales Eligible Purchasers

Private businesses, such as commercial real estate companies, state entities, hospitals, universities, municipalities, and corporations and organizations such as non-profits with ESG goals, as well as LSEs and CCAs (“Purchasers”), would be eligible to participate in the proposed NYSERDA Tier 4 REC Annual Presales. This proposed approach would be in alignment with the potential to mitigate Tier 4 costs to ratepayers by supporting the sale of all RECs purchased by NYSERDA in the voluntary market, regardless of tier.

NYSERDA would hold informational sessions and webinars with specific details for potential purchasers prior to the proposed Annual Presale. These sessions and webinars would include details about the Presale and how potential purchasers would be able to register and participate. This is the current approach utilized to inform the market for the sale of Tier 1 RECs. It is anticipated that these efforts would increase due to the anticipated demand for Tier 4 RECs.

### 2.2.2 Annual Tier 4 Presale REC Inventory

The available inventory for proposed Annual Voluntary Presales would be the total expected Tier 4 supply minus the quantity needed to fulfill Tier 4 voluntary long-term purchase contracts multiplied by an eligible sale percentage (less than 100%), to help ensure that NYSERDA has sufficient Tier 4 RECs to fulfill Voluntary Tier 4 REC Presale orders. NYSERDA would coordinate with DPS Staff to review the determination for the eligible sale percentage.

Example:

$$\text{Net Annual Tier 4 REC Inventory} = (\text{Total Expected Tier 4 Supply} - \text{Long-Term Contract Demand}) * \text{Eligible Sale Percentage}$$

Where:

Long-Term Contract Demand = The forecasted total number of Tier 4 RECs for that year contracted under long-term contracts

### 2.2.3 Annual Tier 4 REC Presale Price

The proposed Voluntary Tier 4 REC Presale price would be based on the projected net-weighted average cost of Tier 4 RECs after subtracting the voluntary long-term contract commitments, plus any Commission-approved administrative adder. NYSERDA requests flexibility to transition to an auction process in the future. If approved, NYSERDA would have the ability to pursue an auction mechanism that could include variable pricing. It is in the best interest of ratepayers for NYSERDA to have the ability to

pursue a potential auction structure that could meet the needs of the market, maximizes voluntary sales, and minimizes ratepayer obligations necessary to achieve the goals of the Climate Act and the CES. NYSERDA would have the ability to both directly offer RECs for Presale at the net-weighted average cost to procure or to conduct Presale auctions as described herein at this time and would seek additional approval for other potential sale mechanisms once they are more fully developed. NYSERDA would have the ability to implement a Presale auction structure that would sell at or above NYSERDA's forecasted net-weighted average cost to procure RECs for the upcoming compliance year. Under such a structure, the forecasted REC price would serve as an auction reserve price for blocks of RECs that voluntary Purchasers may bid on for a designated period. This auction mechanism would enable NYSERDA to minimize ratepayer impacts from the program by maximizing the potential purchase price for Tier 4 RECs.

Example:

Net Weighted Average Price = Net Annual Tier 4 REC Overall Cost / Net Annual Tier 4 REC Inventory

Where:

Annual Tier 4 REC Overall Cost = Projected Total Overall Cost – Long-Term Contract Revenue

NYSERDA acknowledges that the actual weighted average cost of Tier 4 RECs purchased by NYSERDA during the calendar year may differ from its Presale projection. In determining the Presale price of Tier 4 RECs, NYSERDA would sum the projected cost and annual MWhs of compliant energy delivered by the Tier 4 projects to calculate the projected weighted average cost. No reconciliations would be made for the Voluntary Tier 4 REC Presale price to the actual weighted average price for purchasers participating in the Presale. Any revenue or deficit stemming from the Voluntary Tier 4 REC Presale would be included during the annual compliance reconciliation process discussed later in this Implementation Plan. This approach was previously utilized by NYSERDA for Tier 1 RECs prior to the adoption of the Phase 4 Implementation Plan.

## 2.2.4 Annual Tier 4 REC Presale Process

For the proposed Voluntary Tier 4 REC Presale, NYSERDA would announce to Purchasers, at minimum on the NYSERDA website, the timing of the Voluntary Tier 4 REC Presale, as well as the following information:

- The Tier 4 REC inventory available for the Presale;
- The Presale reserve price at which the Tier 4 RECs would be offered;
- Potential minimum order quantity or block amounts.

NYSERDA would use the New York Generation Attribute Tracking System (NYGATS) to collect orders from Purchasers that desire to participate in a Presale. NYSERDA may also evaluate whether an online auction tool should be implemented. Participating Purchasers would be required to agree to the terms and conditions of Presale when the order is submitted, i.e., at the point of sale.

## 2.2.5 Annual Tier 4 REC Presale Allocation

Similar to the process that was approved by the Commission for Voluntary Sales and Tier 2 REC resale, NYSERDA would neither limit nor guarantee a minimum number of Tier 4 RECs to purchasers participating in the Voluntary Tier 4 annual Presale process. The Tier 4 REC Presale would be a voluntary

process, and the Tier 4 RECs would be purchased to, among other things, back voluntary products/obligations or sustainability claims. Purchases made during the Presale do not offset LSE compliance obligations under the Tier 4 program.

NYSERDA would allocate the Tier 4 RECs based upon the following:

- If the demand for Tier 4 RECs were to be below the expected Voluntary Tier 4 Presale inventory, each Purchaser would be allocated a quantity of RECs equal to their order quantity; or
- If total order quantity were to be above the expected Tier 4 REC inventory, each Purchaser would receive a pro-rata share of Tier 4 RECs based upon their total order quantity.

### 2.2.6 Annual Tier 4 REC Presale Invoices

Invoices would be distributed within approximately seven (7) business days from the end of each Presale period. The Purchasers' payment terms would be full payment within 30 calendar days. If the full funds are not transferred to NYSERDA according to the payment terms, NYSERDA would reserve the right to cancel the Purchaser's order.

The proceeds from the annual Voluntary Tier 4 REC Presale would be considered Tier 4 annual revenue and included in the reconciliation process discussed later in this Implementation Plan.

## 2.3 Annual Tier 4 REC Resale

NYSERDA requests the ability to hold a Voluntary Tier 4 REC Resale at the end of each compliance year if there were sufficient demand for such and NYSERDA were to have a sufficient volume of Tier 4 RECs. At this juncture, NYSERDA believes that the proposed Voluntary Tier 4 Presale approach would meet the needs of both the prospective market participants and NYSERDA. It is possible that there could be additional sufficient demand for Tier 4 RECs from voluntary Purchasers after the end of the calendar year. NYSERDA would consult with DPS Staff before initiating any such Voluntary Resales.

If NYSERDA were to hold a Voluntary Tier 4 REC Resale, the Tier 4 RECs would be priced at the actual weighted average price incurred by NYSERDA, plus any applicable administrative adder. NYSERDA would use the same sale methodologies for Resale as it will for Presale as described above, with one substantive difference, i.e., NYSERDA would have the ability to design an auction process that would sell at or above NYSERDA's actual (rather than forecasted) net-weighted average cost to procure RECs for the compliance year. This auction mechanism would enable NYSERDA to minimize ratepayer impacts from the program by maximizing the potential purchase volume and price for Tier 4 RECs for sale to the voluntary market. Any revenue from the proposed Voluntary Tier 4 REC Resale will be treated as Tier 4 annual sale revenue and included in the reconciliation process discussed later in this Implementation Plan.

## 2.4 REC Transfers

Voluntary Tier 4 REC transfers via NYGATS from NYSERDA to a voluntary Purchaser's NYGATS account would occur after the Tier 4 compliance year is complete. This proposed process would occur for Tier 4 RECs under long-term contracts, Annual Presale purchases, and Annual Resale purchases. Account holders would have fourteen (14) days to accept the pending transfer from NYSERDA per the NYGATS Operating Rules.

## 2.5 Transferability

NYGATS account holders, including Voluntary Purchasers, would be allowed to transfer Voluntary Tier 4 RECs purchased from NYSERDA. Tier 4 RECs could not be transferred outside of NYGATS which is consistent with other programs.

## 3. Implementation of Tier 4 Load Share Obligation

The CES Modification Order requires LSEs to purchase from NYSERDA their load share of the Tier 4 RECs purchased by NYSERDA annually.<sup>6</sup> NYSERDA proposes the process would be based upon the “pay-as-you-go” model that was implemented by NYSERDA beginning with the Commission approval of the ZEC Implementation Plan.<sup>7</sup> Under the “pay-as-you-go” model, a uniform wholesale per MWh charge would be applied to each LSE’s actual wholesale load to calculate its monthly Tier 4 REC obligation payments. Under this process, LSEs would be required to make payments to NYSERDA based on their load share and the quantity and cost of Tier 4 RECs purchased by NYSERDA each year, less any sales made through the voluntary sales process described earlier in this Implementation Plan. This approach would ensure NYSERDA has the necessary funds to meet its contractual obligations to Tier 4 suppliers while procuring Tier 4 RECs to fulfill the goals of the CES.

## 4. Special Participation

The New York Power Authority (NYPA) and Long Island Power Authority (LIPA) are voluntary participants in the CES. LIPA supports the achievement of the CES goals through its own programs and by participating in some NYSERDA-administered CES programs. Similar to LIPA’s participation in the Zero Emissions Credit Requirement (ZEC-R), LIPA will participate in Tier 4 through established NYSERDA mechanisms. Voluntary participation in Tier 4, along with other CES tiers, allows for the equitable allocation of costs associated with the achievement of the CLCPA goals.

## 5. LSE CES-Obligation and Reconciliation

This section includes NYSERDA’s proposal to reconcile LSE obligations under the proposed load share framework set forth in this Implementation Plan. This proposed approach is very similar to the processes currently utilized for reconciliation of other CES Tiers. NYSERDA would execute form contracts with LSEs, as set forth in Appendix A to this petition, that would memorialize the LSE load share obligation requirements described below.

### 5.1 LSE Tier 4 Obligation

This section addresses how each LSE’s initial Tier 4 REC obligation would be calculated and how LSEs would remit Tier 4 REC obligation payments. Under the proposed method, a uniform wholesale per MWh charge would be applied to each LSE’s actual wholesale load to calculate their monthly Tier 4 REC obligation payments. This “pay-as-you-go” payment methodology was originally adopted through the

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<sup>6</sup> CES Modification Order, p.30.

<sup>7</sup> Case 15-E-0302, Clean Energy Standard Zero Emissions Credit (ZEC) Implementation Plan (filed August 3, 2018).



ZEC Implementation Order.<sup>8</sup> It would provide NYSERDA with necessary operating liquidity to continue to purchase Tier 4 RECs and provides LSEs with a more uniform payment structure.

## 5.2 LSE Tier 4 REC Rate

Each year, NYSERDA would determine, in collaboration with DPS Staff, the dollar per MWh charge (LSE Tier 4 REC Rate) owed by each LSE for the next compliance year of the Tier 4 program. The LSE Tier 4 REC Rate would be used by all LSEs and NYSERDA to determine the monthly payment an LSE would be responsible for making to NYSERDA. The LSE Tier 4 REC Rate would be a wholesale rate that would be applied to the wholesale load data NYSERDA receives from the New York Independent System Operator (NYISO).<sup>9</sup> The cost component of the LSE Tier 4 REC Rate would be based on the total forecasted cost for NYSERDA to purchase Tier 4 RECs, including any administrative adder. The load component of the LSE Tier 4 REC Rate would be based on statewide forecasted load.

The LSE Tier 4 REC Rate to be paid by each LSE for the compliance year would be calculated according to the following formula:

LSE Tier 4 REC Rate = (NYSERDA's estimated total cost to procure Tier 4 RECs – Long-Term Contract Revenue – Tier 4 Annual Presale Revenue) / Forecasted statewide electric load<sup>10</sup>

The proposed “pay-as-you-go” payment methodology relies on an LSE’s monthly wholesale load requirements for their retail customers. NYSERDA would utilize Version 1<sup>11</sup> of the total LSE load data, as settled by the NYISO each month, as a basis for each LSE’s monthly payment to NYSERDA.

An LSE’s monthly Tier 4 payment obligation would be calculated using the LSE Tier 4 REC Rate, the number of MWh the LSE served using the NYISO Version 1 load data, and a Load Modifier Rate, according to the following formula:

LSE Tier 4 monthly payment obligation = (LSE Tier 4 REC Rate) x (LSE’s Version 1 MWh) x (Load Modifier Rate)

A final reconciliation would occur in June after the close of each year as described later in this Implementation Plan.

### 5.2.1 Cost Component

The proposed cost component of the LSE Tier 4 REC Rate would be the cost for NYSERDA to procure Tier 4 RECs plus any Commission approved administrative adder less any revenue made through the voluntary sale process. It should be noted that NYSERDA LSR Tier 4 RECs can vary in both quantity and price, which introduces a degree of uncertainty. NYSERDA recognizes that with the implementation of index-priced RECs, there could be a variation between the forecasted Tier 4 REC price and the actual

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<sup>8</sup> Case 15-E-0302, Order Approving Zero-Emissions Credit Implementation Plan with Modifications (issued and effective September 20, 2019).

<sup>9</sup> It should be noted that the LSE Tier 4 REC Rate is based on wholesale purchases and not retail sales; the wholesale rate must be adjusted to account for delivery losses that occur between the LSE’s wholesale purchases from the NYISO and retail sales to customers.

<sup>10</sup> Forecasted statewide electric load is an estimate by NYSERDA and DPS Staff based on information from the NYISO’s Load & Capacity Data Report (NYISO Goldbook). <https://www.nyiso.com/documents/20142/2226333/2023-Gold-Book-Public.pdf>

<sup>11</sup> NYISO Version 1 load data is part of the NYISO settlement process. This is the initial monthly billing period data from the NYISO.

price NYSERDA pays for Tier 4 RECs. NYSERDA would review the Tier 4 REC cost estimate forecast with DPS Staff to ensure concurrence, in an effort to minimize the variation between the estimated cost and the actual cost that could be utilized in the annual Tier 4 REC reconciliation. In short, the cost component of the LSE Tier 4 REC rate is the estimated cost NYSERDA would be expected to incur to purchase Tier 4 RECs during the compliance period. Any discrepancies between projected costs and actual costs would be settled during the annual reconciliation process discussed later in this Implementation Plan.

#### 5.2.1.1 Initial Compliance Year

NYSERDA recognizes that a Tier 4 project could come online late in a calendar year, creating a stub year. NYSERDA proposes that if a Tier 4 project is scheduled to come online after October 1 of a given year, the cost to purchase any Tier 4 RECs generated in that year could be included in the calculation of the LSE Tier 4 REC Rate for the *following* year rather than including it in the LSE Tier 4 REC Rate and/or the reconciliation of costs for the year the project begins operation.

### 5.2.2 Load Component

The proposed approach would place additional importance on load forecasting, as such forecasts would be used to determine the LSE Tier 4 REC Rate. If actual statewide load were to be less than the forecasted statewide load used to determine the LSE Tier 4 REC Rate, NYSERDA would be short in its collections to purchase Tier 4 RECs. Conversely, if the actual statewide load were to exceed the forecasted statewide load, excess funds would be collected by NYSERDA from LSEs.

To provide further process transparency, NYSERDA and DPS Staff would use a published forecast, such as the Baseline Forecast of Annual Energy & Coincident Peak Demand that Reflects Impacts of Energy Savings Programs & Behind-the-Meter Generation, which is published annually in the NYISO's *Load and Capacity Data*, commonly referred to as the Goldbook, as the basis of determining the statewide load component.

### 5.3 Load Modifier Rate

Each of the IOUs and some of the municipal utilities have load modifiers which are added to their NYISO Version 2 reported load. As part of the ZEC Implementation Plan, NYSERDA conferred with the affected entities and determined that a load modifier rate could be used to adjust their monthly payments to NYSERDA. An annual load modifier rate, based on load modifier generation data from the previous year, would also be applied in this proposal. In consultation with DPS Staff and NYSERDA, affected LSEs would calculate the load modifier rate for each LSE prior to the start of each compliance year. Applying the load modifier rate would better estimate the affected entities load, with the goal of reducing reconciliation amounts.

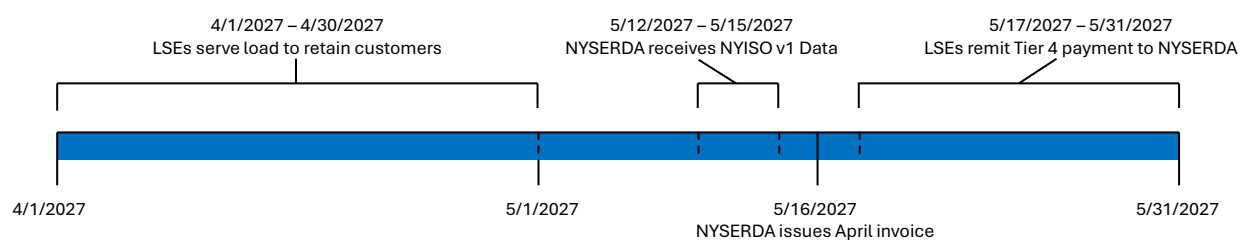
### 5.4 Notification/Publication

NYSERDA would notify each LSE of the LSE Tier 4 REC Rate for the upcoming calendar/compliance year as well as any load modifier adjustments and a load modifier rate, if applicable, after it has been calculated by NYSERDA and DPS Staff. This notification would occur after Commission approval of any NYSERDA administrative adder for the compliance year but at least by November 1st. NYSERDA would also publish the LSE Tier 4 REC Rate on the NYSERDA website.

## 5.5 Tier 4 Obligation Payment Determination

The proposed Tier 4 obligation payment determination would utilize the “pay-as-you-go” payment methodology developed under the ZEC Implementation Plan.<sup>12</sup> This process relies on an LSE’s monthly wholesale load requirements for their retail customers. NYISERDA would utilize Version 1 of the total LSE load data, as settled by the NYISO each month, as a basis for each LSE’s monthly payment to NYISERDA. NYISERDA typically receives monthly load data from the NYISO on or around the 15th day of the following month. NYISERDA would then determine the LSE’s Tier 4 monthly payment obligation to NYISERDA using the formula specified and issue an invoice as depicted in Figure 1. LSEs would submit their payment to NYISERDA within fifteen (15) days from the issuance of the invoice. This proposed “pay-as-you-go” method would likely result in LSEs having a varying payment obligation each month.

Figure 1: Timeline for LSE Payment Obligation



## 5.6 CES-Obligated LSE Reconciliation

The following proposed reconciliation process would occur after the Tier 4 compliance year ends on December 31 each year. NYISERDA would reconcile financial obligations to Tier 4 contracted suppliers. Next, NYISERDA would offset the total financial obligation to Tier 4 contracted suppliers with any Tier 4 Long-Term Contract Revenue, as well as any Tier 4 Annual Presale or Resale revenue, to determine the net LSE financial obligation. NYISERDA would reconcile the funds collected from each LSE to the net LSE financial obligation necessary to meet their requirement based on the Version 2 load data that is provided from the NYISO and recorded in NYGATS. This load would be adjusted for load modifiers. This reconciliation would account for the actual adjusted statewide load, the actual number of Tier 4 RECs purchased by NYISERDA, the actual price paid by NYISERDA for those Tier 4 RECs, and any Tier 4 revenue from the long-term or annual voluntary sales. NYGATS account holders, including LSEs, would not be allowed to transfer Tier 4 RECs transferred from NYISERDA for compliance purposes as a result of the reconciliation process.

## 5.7 NYISERDA Agreements with LSEs

NYISERDA would establish new agreements with LSEs to reflect the terms of the issued Order. The contracts would be modified as needed in subsequent years. A Tier 4 Form Agreement is attached to this Implementation Plan as Appendix A. All LSEs would be required to accept the agreement within sixty (60) days of filing this Implementation Plan. NYISERDA would inform LSEs regarding acceptance procedures within thirty (30) days of filing this Implementation Plan.

<sup>12</sup> Case 15-E-0302, supra, Final Zero Emissions Credit Implementation Plan, (issued and effective November 14, 2019), p. 2.

## 6. Reporting Requirements

Tier 4 will henceforth be included in NYSERDA's CES progress reports to DPS, including the biennial review, NYSERDA's annual financial administrative reporting, and other applicable filings.

## 7. Appendix A: Tier 4 Agreement

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

This Agreement (the "Agreement") is made as of [\_\_\_\_\_] ("Effective Date") by and between the New York State Energy Research and Development Authority, a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203 ("NYSERDA"), and the Load Serving Entity entering this Agreement ("LSE Buyer"). NYSERDA and LSE Buyer are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

#### **RECITALS:**

WHEREAS, the New York State Public Service Commission ("PSC") through its "Order Adopting a Clean Energy Standard"<sup>13</sup> ("2016 CES Order") established the Clean Energy Standard ("CES") and modified further refined and modified the CES through a series of Orders under Case 15-E-0302 including the "Order Adopting Modifications to the Clean Energy Standard"<sup>14</sup> (collectively, the "CES Orders"); and

WHEREAS, the CES Orders direct NYSERDA to administer a competitive Request for Proposals ("RFP") for the purchase of Tier 4 RECs (defined below) from eligible generating facilities; and

WHEREAS, the CES Orders authorize NYSERDA to enter into agreements with eligible facilities receiving competitive awards under the Tier 4 RFP; and

WHEREAS, the PSC issued the "Order Adopting Modifications to the Clean Energy Standard" on October 15, 2020 and the "Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates" on April 14, 2022 ("Tier 4 Orders"),<sup>15</sup> which directed that each LSE purchase Tier 4 RECs from NYSERDA at a uniform wholesale per MWh charge in an amount based upon each LSE Buyer's proportional load share; and

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<sup>13</sup> Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, "Order Adopting a Clean Energy Standard," issued and effective August 1, 2016.

<sup>14</sup> Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, "Order Adopting Modifications to the Clean Energy Standard," issued and effective October 15, 2020.

<sup>15</sup> *Id.*; Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, "Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates," issued and effective April 14, 2022.

WHEREAS, the [\_\_\_\_\_] <sup>16</sup> approved this form of agreement for the procurement of Tier 4 RECs by LSEs from NYSERDA; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, which the Parties agree is sufficient, and the Parties, intending to be legally bound, agree as follows:

#### ARTICLE 1: DEFINITIONS

1.1 Definitions. In addition to any other terms defined herein, the following terms shall have the meaning ascribed to them below:

- (a) “Administrative Adder” means the total dollar amount, of any adder or other charge approved by the Commission to be paid by LSEs to NYSERDA in their purchases from NYSERDA of Tier 4 RECs.
- (b) “Agreement” means this Tier 4 Renewable Energy Certificate Purchase and Sale Agreement, including Exhibits A ([Standard Terms and Conditions for All NYSERDA Agreements](#)); B ([NYSERDA Prompt Payment Policy Statement](#))<sup>17</sup>; all of which are incorporated herein and made part hereof.
- (c) “Annual Tier 4 Obligation Amount” shall be calculated as an amount equal to the sum of (i) the Total Tier 4 Net Expenditure plus any approved (ii) Administrative Adder, multiplied by (iii) the LSE Buyer Load Share. Restated as a formula, Annual Tier 4 Obligation Amount = (i+ii)\*iii
- (d) “Annual Tier 4 REC Quantity” shall be calculated as the quantity of RECs equal to the product of (i) the Total Annual NYSERDA Retained Tier 4 RECs multiplied by the (ii) LSE Buyer Load Share.
- (e) “Compliance Year” shall mean January 1 to December 31 of each year during which NYSERDA is purchasing Tier 4 RECs.
- (f) “Annual Settlement Payment” shall mean the final settlement payment due to either LSE Buyer or NYSERDA as calculated at the end of each Compliance Year pursuant to Section 2.7.
- (g) “Energy Services Company” or “ESCO” means any eligible competitive energy services company operating in New York State pursuant to the Uniform Business Practices approved by the PSC.
- (h) “Load Modifier” means the adjustment made by certain LSEs to account for the fact that NYISO data may not accurately capture the load in New York State served by those LSEs due to some of such load being served other than through the NYISO wholesale market.
- (i) “Load Modifier Projection” means the estimated Load Modifier, if any, applicable to the LSE Buyer as determined by NYSERDA each Compliance Year in accordance with the CES Orders based on information provided by LSE Buyer.
- (j) “Load Serving Entity” or “LSE” means any entity or individual that sells retail commodity electricity supply to an end-use customer located in New York State, including any ESCO and each electric distribution company regulated by the PSC, serving in their roles as electric

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<sup>16</sup> Reference will be to the order approving the implementation plan, if and when approved.

<sup>17</sup> Available at: <https://www.nyserda.ny.gov/Funding-Opportunities/Standard-Forms-and-Agreements>

commodity supplier of last resort, jurisdictional municipal utilities, community choice aggregators not otherwise served by an ESCO, customers purchasing power directly from NYISO, and Long Island Power Authority (“LIPA”) and the New York Power Authority (“NYPA”) to the extent LIPA and NYPA have voluntarily agreed to act as LSEs.

- (k) “LSE Buyer Load Share” means the percentage of the total electric energy load in New York State that is served by LSE Buyer, incorporating any adjustment to NYISO load share data based on the LSE Buyer’s Load Modifier (if applicable), during such Compliance Year.
- (l) “LSE Tier 4 REC Rate” means the per MWh charge used by all LSEs and NYSERDA as calculated by the formula adopted in the [\_\_\_\_\_] <sup>18</sup> and as posted on NYSERDA’s website, including any administrative adder approved by the Commission.
- (m) “Monthly Obligation Payment” means the monthly payment due from LSE Buyer to NYSERDA, calculated as the product of (i) the wholesale load served by LSE Buyer, in MWh, for the applicable month based on NYISO Version 1 data or such other data generally used by NYGATS for similar purposes at such time, as adjusted by the Load Modifier Projection, if any applicable to the LSE Buyer, multiplied by (ii) the LSE Tier 4 REC Rate.
- (n) “NYGATS” means the New York Generation Attribute Tracking System, 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, including Tier 4 RECs.
- (o) “NYGATS Operating Rules” means the rules governing the operation of the NYGATS by NYSERDA and its designated NYGATS Administrator, and the participation in and use of the NYGATS by users. The Operating Rules describe how the system is operated and delineate the roles, requirements and responsibilities of all parties. <sup>19</sup>
- (p) “NYISO” means the New York Independent System Operator.
- (q) “New York State Public Service Commission” or “PSC” means the commission duly authorized to operate in New York State pursuant to Articles 1 and 2 of the Public Service Law.
- (r) “Total Annual NYSERDA Retained Tier 4 RECs” means the total number of Tier 4 RECs purchased by NYSERDA during the Compliance Year minus the number of Tier 4 RECs sold by NYSERDA during such Compliance Year.
- (s) “Total Tier 4 Net Expenditure” shall mean the total dollars expended by NYSERDA to purchase Tier 4 RECs during the Compliance Year minus all revenues received by NYSERDA from Voluntary Sales of Tier 4 RECs during such Compliance Year.
- (t) “Tier 4 RECs” means renewable energy certificates generated by NYGATS representing the environmental attributes associated with electrical energy produced by Tier 4 eligible electric

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<sup>18</sup> Reference will be to the order approving the implementation plan, if and when approved.

<sup>19</sup> Available at: <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>

generation sources. Each Tier 4 REC represents the environmental attributes associated with one (1) megawatt-hour of electrical energy.

- (u) “Voluntary Sales” means any sales of Tier 4 RECs by NYSERDA other than those made for purposes of CES compliance.

## **ARTICLE 2: PURCHASE AND SALE OF TIER 4 RECS**

2.1 Procurement. Subject to the terms and conditions of this Agreement, (a) NYSERDA agrees to sell to LSE Buyer, and LSE Buyer agrees to purchase from NYSERDA, the Annual Tier 4 REC Quantity of Tier 4 RECs in each Compliance Year and (b) LSE Buyer agrees to pay the Annual Tier 4 Obligation Amount for such Tier 4 RECs. LSE Buyer shall pay the Monthly Obligation Payment each month in accordance with the provisions below, and the Parties shall carry out the settlement and reconciliation process described in Section 2.7 each Compliance Year.

2.2 Transfer. Upon conclusion of the settlement and reconciliation process described in Section 2.7, NYSERDA will transfer in NYGATS to LSE Buyer, Tier 4 RECs for which LSE Buyer has provided payment to NYSERDA for purposes of Tier 4 of the CES compliance in accordance with this Agreement.

2.3 Monthly Invoicing. NYSERDA will provide invoices to the LSE Buyer on a monthly basis for the Monthly Obligation Payment.

2.4 Monthly Payments. Payments in the amount of the Monthly Obligation Payment shall be due to NYSERDA within fifteen (15) days of the invoice date. Any and all payments due to NYSERDA shall be made by wire/ACH payment using electronic banking information provided by NYSERDA.

When making payment, LSE Buyer shall include the Customer ID that NYSERDA previously sent to LSE Buyer by e-mail and available in NYGATS.

2.5 Taxes/Fees. NYSERDA shall pay any taxes or other fees, if any, imposed on the creation of Tier 4 RECs in NYGATS.

2.6 Term. The purchase and sale obligations under this Agreement shall commence in Compliance Year 2026 and remain in effect until the date on which all of NYSERDA’s obligations to purchase Tier 4 RECs pursuant to agreements entered into in accordance with Tier 4 of the Clean Energy Standard have expired or been terminated.

2.7. Annual Settlement. After the required data becomes available following each Compliance Year, the Parties will undertake the following on a timely basis:

- (a) NYSERDA shall calculate LSE Buyer’s Annual Tier 4 Obligation Amount for each Compliance Year based on the NYISO Version 2 of the LSE load data or such other data generally used by NYGATS for similar purposes at such time.
- (b) Should the aggregate amount of Monthly Obligation Payments paid by LSE Buyer in a Compliance Year exceed the Annual Tier 4 Obligation Amount for that Compliance Year, NYSERDA shall pay LSE Buyer the difference between such amounts.

- (c) Should the aggregate amount of Monthly Obligation Payments paid by LSE Buyer in a Compliance Year be less than the Annual Tier 4 REC Obligation Amount for that Compliance Year, LSE Buyer shall pay NYSEDA the difference between such amounts.

### **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

3.1 NYSEDA Representations and Warranties. NYSEDA hereby represents and warrants to LSE Buyer as follows:

- (a) NYSEDA has and, at all times during the Term will have, all necessary power and authority to execute this Agreement and to perform its obligations hereunder.
- (b) The execution of and performance under this Agreement by NYSEDA has been duly authorized by all necessary action and does not violate any of the terms or conditions of NYSEDA governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to NYSEDA. This Agreement constitutes the valid and binding obligation of NYSEDA enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.
- (c) There is no pending or (to NYSEDA's knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects NYSEDA's ability to perform its obligations under this Agreement.
- (d) The Tier 4 payments made by LSE Buyer to NYSEDA hereunder shall be made for compliance under the CES Orders including the [\_\_\_\_\_] <sup>20</sup>.
- (e) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NYSEDA EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

3.2 LSE Buyer Representations and Warranties. LSE Buyer hereby represents and warrants to NYSEDA as follows:

- (a) LSE Buyer is duly organized, validly existing and in good standing and has the requisite power and authority to own, lease and operate its properties and to carry on its business as being conducted on the Effective Date. LSE Buyer has, and at all times during the Term will have, all necessary power and authority to execute this Agreement and to perform its obligations hereunder.
- (b) The execution of and performance by LSE Buyer under this Agreement has been duly authorized by all necessary action and does not violate any of the terms or conditions of LSE Buyer's governing documents, or any contract to which it is a party, or any law, rule, regulation, order,

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<sup>20</sup> Reference will be to the order approving the implementation plan, if and when approved.



judgment or other legal or regulatory determination applicable to LSE Buyer. This Agreement constitutes the valid and binding obligation of the LSE Buyer enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.

- (c) There is no pending or (to LSE Buyer's knowledge) threatened litigation or administrative proceeding against LSE Buyer that materially and adversely affects LSE Buyer's ability to perform its obligations under this Agreement.
- (d) LSE Buyer has, and at all times during the Term will use reasonable efforts to maintain, the financial capability to perform its obligations hereunder.
- (e) LSE Buyer is an Account Holder as defined in the NYGATS Operating Rules.

#### **ARTICLE 4: EVENTS OF DEFAULT**

4.1 Events of Default. For purposes of and during the Term, each of the following shall constitute an event of default ("Event of Default") by a Party:

- (a) if a Party materially breaches any or all of its obligations as described in this Agreement and such breach is not cured within fifteen (15) Business Days of written notice of such breach from the other Party;
- (b) if any representation or warranty made by a Party in Article 3 of this Agreement proves to have been misleading or false in any material respect when made; and/or
- (c) if a Party:
  - (i) makes an assignment or any general arrangement for the benefit of its creditors;
  - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it;
  - (iii) otherwise becomes bankrupt or insolvent (however evidenced); or
  - (iv) becomes unable to pay its debts as they become due.

#### **ARTICLE 5: REMEDIES UPON DEFAULT**

5.1 Remedies. Upon an Event of Default, the non-defaulting Party may (a) terminate this Agreement upon written notice to the defaulting Party, (b) withhold any payments due in respect of this Agreement, (c) set off any payments due against any other credits or payments under other agreements between the Parties, (d) withhold the transfer of Tier 4 RECs to the defaulting Party, and/or (e) exercise its legal rights to secure payment of amounts due and owing to the non-defaulting Party by the defaulting Party. Notices by LSE Buyer pursuant to this section shall be served on NYSERDA and the PSC. NYSERDA may enforce this Agreement and pursue the collection of any unpaid portion of the Monthly Obligation Payment, Annual Settlement Payment or any other amounts due to NYSERDA under this Agreement by referring the matter to the New York State Attorney General or by any other legal means.

- 5.2 Exclusive Remedy. The remedies set forth in this Article 5 shall be the sole and exclusive remedies of the respective parties in the event of a default, and a party's liability shall be limited as set forth in this section. All other remedies or damages at law are hereby waived.
- 5.3 Limitation of Liability. In the event of a default, the defaulting party's liability shall be limited as set forth herein. In no event shall any other liability be incurred by either Party for any obligations that arise under this Agreement, including (but not limited to) liability for consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise.

## ARTICLE 6: NOTICES

### 6.1 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 LSE Buyer:           At address, electronic mail addresses confirmed through prior communications

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

With a copy to:         NYSERDA  
                                   Attn: Large Scale Renewables  
                                   17 Columbia Circle  
                                   Albany, New York 12203-6399  
                                   Email address: ces@nyserda.ny.gov

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt of an email acknowledgement of receipt.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually

designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

- 6.2 The addresses for notice and payment specified in Section 6.1 may be changed from time to time by written notice by either Party to the other Party without amendment of this Agreement.

#### **ARTICLE 7: MISCELLANEOUS**

- 7.1 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. In the event that such failure or delay occurs, the claiming Party shall notify the other Party of the occurrence thereof as soon as possible, shall use reasonable efforts to resume performance as soon as possible, and shall regularly consult with the other Party during the pendency of the force majeure event. In the event that the force majeure event lasts more than forty-five (45) days, NYSERDA may terminate this Agreement with no further obligation or liability to LSE Buyer other than to transfer to LSE Buyer for Tier 4 REC compliance purposes any Tier 4 RECs for which LSE Buyer has made payment prior to termination.
- 7.2 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.
- 7.3 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.
- 7.4 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.
- 7.5 Assignment. Except as specifically provided otherwise in this Section 7.5, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the LSE Buyer’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. 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.

- 7.6 Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the LSE Buyer and, excepting any Tier 4 reconciliation process provided for by prior agreement, supersedes all prior agreements and understandings relating to the subject matter hereof, including but not limited to any prior agreement between the parties regarding the purchase and sale of Tier 4 RECs. 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.
- 7.7 All Legal Provisions Deemed Included. It is the intent and understanding of LSE Buyer 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.
- 7.8 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.
- 7.9 Intentionally left blank.
- 7.10 Headings. The Article and Section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.
- 7.11 No Third Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.
- 7.12 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); 21 NYCRR Part 501. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof for numerous reasons, including but not limited to protected material 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 (21 NYCRR Part 501).

- 7.13 Claim of Confidentiality. Information of any tangible form including any document that LSE Buyer wishes to be protected from disclosure to third parties, including this Agreement must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA. Notwithstanding the foregoing, NYSERDA shall be permitted to report to the New York State Department of Public Service through its Records Access Officer seeking confidential treatment as appropriate, as to the amounts received from LSE Buyer for Tier 4 purchases as against the total due each month and on LSE Buyer's compliance or noncompliance, generally, with the terms of this Agreement.
- 7.14 Electronic Execution. LSE Buyer acknowledges, confirms and agrees that any signature (including any electronic symbol or process attached to, or associated with, this standard Tier 4 Renewable Energy Certificate Purchase and Sale Agreement or other record and adopted by LSE Buyer with the intent to sign, authenticate or accept such contract or record hereto or to any other certificate, agreement or document necessary to this transaction shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and the parties hereby waive any objection to the contrary.

[Signature Page Follows]

NEW YORK STATE ENERGY RESEARCH  
AND DEVELOPMENT AUTHORITY

Signature: \_\_\_\_\_

Name:

Title:

LSE BUYER

Signature will be set forth in a separate signature page.