

Expanded Solar for All Participation Agreement

This Agreement (“Agreement”) is made between Niagara Mohawk Power Corporation d/b/a National Grid (“the Utility”), and:

E-SFA CDG Project (“E-SFA CDG Project”): _____

E-SFA CDG Project Identification Number: _____

E-SFA CDG Application Number: _____
(To be completed by the Utility)

E-SFA CDG Project Compensation Level: _____%

The Utility and the E-SFA CDG Project are also individually referred to herein as a “Party” or collectively as “Parties.”

Whereas, the New York State Public Service Commission (“Commission”) authorized the Expanded Solar for All (“E-SFA”) program in its January 20, 2022 Order Approving Expanded Solar for All Program with Modifications and its September 15, 2022 Order Modifying Expanded Solar For All Program (“the Orders”); and

Whereas, the Utility’s tariff on file with the Commission, P.S.C. No. 220 Electricity (“the Tariff”), sets forth the terms governing the E-SFA program in accordance with the Orders; and

Whereas, the Utility together with the New York State Energy Research and Development Authority (“NYSERDA”) filed an E-SFA Program Implementation Plan with the Commission on March 21, 2022 (most recently revised October 3, 2023) setting forth, among other things, a framework for NYSERDA to conduct competitive solicitations to select projects for enrollment in the E-SFA program; and

Whereas, pursuant to a competitive solicitation process NYSERDA selected E-SFA CDG Project to participate in the E-SFA program.

NOW THEREFORE, the Parties hereto, each in consideration of the Agreement of the other, which the Parties agree is sufficient, do hereby agree as follows:

- 1. Definitions.** Capitalized terms used in this Agreement shall be defined as set forth below:

- 1.1. **Commission** is the New York State Public Service Commission.
- 1.2. **Confidential Information** is as defined in Sections 9.1 and 9.2 of this Agreement.
- 1.3. **E-SFA Program** is the Utility's Expanded Solar for All program as implemented pursuant to the Orders.
- 1.4. **E-SFA CDG Project** is the entity that owns the subject generating facility, has entered into an interconnection agreement with the Utility for the subject generating facility, and that is the host billing customer of record in the Utility's billing system.
- 1.5. **E-SFA CDG Project Identification Number** is the interconnection case number in the Utility's interconnection portal for the underlying E-SFA CDG Project.
- 1.6. **E-SFA CDG Application Number** is the Utility's interconnection portal case number, which is assigned following submission of the application.
- 1.7. **E-SFA CDG Project Payment** is the payment from the Utility to the E-SFA CDG Project based on the Compensation Level to the E-SFA CDG Project, as defined in the Selection Letter and described in the Tariff.
- 1.8. **E-SFA Enrollment Commencement Date** is the date on which the E-SFA CDG Project submits to the Utility this Agreement, together with a copy of written notification from NYSERDA confirming selection in the E-SFA competitive solicitation process.
- 1.9. **Representative** means any contractor, subcontractor, or other entity to which Confidential Information may be transferred under this Agreement.
- 1.10. **Selection Letter** is the document issued by NYSERDA to the E-SFA CDG Project following a successful bid in the competitive solicitation run by NYSERDA.
- 1.11. **Utility Administrative Fee** is the amount of the monthly value of the E-SFA CDG Project's Value Stack Credits that the Utility will retain, as approved by the Commission.
- 1.12. **Value Stack Credits** are the credits generated from electricity generated from the E-

SFA CDG Project pursuant to Rule 40.2 of the Tariff.

2. Effective Date. This Agreement shall become effective upon the last date written on the signature page below.

3. Term/Termination

3.1. The term of this Agreement shall be from the Effective Date until the date 25 years from the E-SFA CDG Project's interconnection date. This Agreement shall remain in effect until terminated (i) in accordance with its terms or (ii) by an order of the Commission, whichever shall occur first.

3.2. Notwithstanding anything to the contrary elsewhere in this Agreement or in the Tariff, the Utility, by written notice to the E-SFA CDG Project, may if permitted in a proceeding, terminate this Agreement in whole or in part with respect to the E-SFA CDG Project or suspend further performance without terminating this Agreement upon the occurrence of any of the following:

- (a) the E-SFA CDG Project terminates or suspends doing business, except where such suspension is caused by Force Majeure;
- (b) the E-SFA CDG Project becomes subject to any bankruptcy or insolvency proceeding under federal or state law (and which proceeding is not removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to the direct control of a transferee, receiver or similar authority in relation to a bankruptcy or insolvency proceeding, or (except as otherwise provided in Section 13.7) makes an assignment for the benefit of creditors;
- (c) the E-SFA CDG Project commits a material breach of any of its obligations under this Agreement with respect to the E-SFA Program and has not cured such breach within thirty (30) days after receipt of a written notice from the other Party specifying the nature of the breach (provided, however, that if such breach cannot be cured within thirty (30) days, the cure period will be extended as long as the E-SFA CDG Project is pursuing diligent efforts to cure, such extended cure period not to exceed an additional thirty (30) days); or
- (d) the E-SFA CDG Project is in material violation of the Utility's electric standards, including but not limited to provisions related to interconnection and safety and has not cured such violation within thirty (30) days after receipt of a written notice from the other Party specifying the nature of the violation (provided, however, that if such breach cannot be cured within thirty (30) days, the cure

period will be extended as long as the E-SFA CDG Project is pursuing diligent efforts to cure, such extended cure period not to exceed an additional thirty (30) days).

Notwithstanding the aforementioned cure provisions or any other provision of this Agreement, the Utility may take immediate actions with respect to the E-SFA CDG Project interconnection if deemed necessary by the Utility, in its sole discretion, to protect the safety of the public, customers, or employees, or the operation of the electric system.

- 3.3. The foregoing notwithstanding, the E-SFA CDG Project may, upon written notice to Utility, remove the E-SFA CDG Project from the E-SFA Program, subject to the terms in the Tariff.

4. Representations

- 4.1. The E-SFA CDG Project represents that it is and shall remain in compliance with all applicable laws, tariffs, regulations, and the Utility's electric standards, safety, and cybersecurity standards with respect to the E-SFA CDG Project during the term of this Agreement including the Tariff.
- 4.2. Each person executing this Agreement for the respective Parties represents and warrants that he or she has authority to bind that Party.
- 4.3. Each Party represents that (a) it has the full power and authority to execute, deliver, and perform its obligations under this Agreement; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes that Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 4.4. The Utility and the E-SFA CDG Project shall exercise all reasonable care, diligence and good faith in the performance of their duties pursuant to this Agreement and carry out their duties in accordance with applicable recognized professional standards.

5. E-SFA CDG Project Rights and Responsibilities

- 5.1. The E-SFA CDG Project will enroll in the E-SFA Program, and agrees to the Compensation Level defined in the Selection Letter and described in the Tariff, including, if applicable, the Compensation Level set forth in the Tariff for projects

selected to receive bonus tax credits under Section 48(e) of the United States Internal Revenue Code for Category 4 facilities (qualified low-income economic benefit projects).

- 5.2. The E-SFA CDG Project shall provide the Utility with all information and shall respond promptly (within no more than two (2) business days) to the Utility's requests for E-SFA Program related data to the extent such data is required for the Utility to perform hereunder.
- 5.3. The E-SFA CDG Project shall cooperate with and provide the Utility with necessary documentation relating to any transactions resulting hereunder.
- 5.4. The E-SFA CDG Project agrees that services rendered by the Utility shall not relieve the E-SFA CDG Project from any obligation to maintain records or otherwise comply with applicable laws. The E-SFA CDG Project agrees that it will maintain backup data and files for all information provided to the Utility as protection against loss of such information.

6. Utility Rights and Responsibilities

- 6.1. The Utility shall remit the E-SFA CDG Project Payment to the E-SFA CDG Project via Automated Clearing House (ACH). Such remittance shall be performed at least monthly and shall be completed in a commercially reasonable time frame.
- 6.2. The Utility shall be responsible for resolving customer inquiries and complaints.

7. Utility Compensation. To compensate the Utility for implementation of the E-SFA Program, the Utility will retain the Utility Administrative Fee, as described in the Tariff.

8. Taxes. The Utility is not responsible for assessing or collecting any taxes on payments made to the E-SFA CDG Project. Nothing in this Agreement shall be construed as imposing upon the Utility the obligation of remitting to any federal, state, or local taxing authority those taxes that are the collection and remittance responsibility of the E-SFA CDG Project.

9. Confidential Information

- 9.1. Except as otherwise provided herein, the Parties agree not to disclose to any third party and to keep confidential, and to cause their affiliates, officers, directors, members, employees and Representatives not to disclose to any third party and to

keep confidential, any and all customer information obtained by either Party from the other relating to this Agreement (including but not limited to, all business-sensitive and competitive information disclosed by either Party to the other Party, including billing information, issues, or data associated with any customer). Information described in this paragraph 9.1 and described in paragraph 9.2 of this Section 9 is collectively referred to as “Confidential Information.” Each Party will require its affiliates, officers, directors, members, employees, and Representatives to comply with this Agreement and any other agreement regarding the exchange of Confidential Information, including but not limited to the terms and conditions of an applicable Interconnection Agreement, Data Security Agreement, Professional Services Contract, General Contract Conditions, or Non-Disclosure Agreement.

In addition, each Party acknowledges that all information furnished and identified by the other Party as being confidential or proprietary information, trade secret, confidential commercial information, critical infrastructure, or other information that is confidential pursuant to state, federal or local law, regulation or rule, is and shall remain the sole and exclusive property of such other Party.

- 9.2.** Information and data provided to the Utility by the E-SFA CDG Project under this Agreement shall be used by the Utility for the purposes of billing, receiving, depositing, posting, or processing the amounts due the E-SFA CDG Project. Confidential Information may be disclosed by the receiving Party to its employees, agents, consultants and Representatives on a need-to-know basis only.
- 9.3.** The receiving Party is required to destroy Confidential Information within six (6) years from the date received or the date when the information is no longer required for the operation of the E-SFA Program, whichever occurs last, and thereafter, to destroy such Confidential Information or, at the request of the disclosing Party, return such Confidential Information.

The confidentiality obligations of this Article do not apply to information which:

- (a) is already known to the receiving Party free of any restriction at the time it is obtained from the disclosing Party;
- (b) is subsequently learned by the receiving Party from an independent third party free of any restriction and without breach of this Agreement;
- (c) is or becomes publicly available through no wrongful act of either Party;

(d) is independently developed by the receiving Party without reference to any Confidential Information of the disclosing Party;

(e) is disclosed by one Party to a third party, with the express written permission of the disclosing Party;

(f) is disclosed to the extent required by applicable laws and regulations or by any subpoena or similar legal process (where the receiving Party proposing to produce the Confidential Information must seek confidential treatment from the appropriate court of law or regulator of competent jurisdiction and must inform the disclosing Party as soon as practicable to allow the disclosing Party to intervene and seek protection of the Confidential Information); or

(g) is disclosed pursuant to the lawful requirement or formal request of a governmental agency or a party in any regulatory proceeding, provided that if one Party is requested or, in the written opinion of its counsel, legally compelled by a governmental agency or a party in any regulatory proceeding to disclose any Confidential Information of the other Party, such Party, to the extent permitted by law, agrees to provide the other Party with prompt written notice of such request so that the other Party has the opportunity to pursue its legal and equitable remedies regarding such potential disclosure. The receiving Party further agrees that if the disclosing Party is not successful in precluding the requesting legal or governmental body from requiring disclosure of the Confidential information, the receiving Party will furnish only that portion of the Confidential Information which, in the written opinion of its counsel, it is legally required to disclose, and will exercise all reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

9.4. Each Party acknowledges and agrees that its breach or threatened breach of this Article may cause the other Party irreparable harm which may not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach by either Party, such Party agrees to the granting of equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any legal remedies to which the other Party may be entitled, without proof of actual damages.

9.5. The provisions of this Article shall survive the expiration or termination of this Agreement.

10. Resolution of Disputes between Utility and the E-SFA CDG Project

- 10.1.** Each Party agrees to attempt to resolve all disputes arising under this Agreement promptly, equitably, and in a good faith manner.
- 10.2.** If the Parties fail to resolve any dispute under this Agreement within ten (10) days after written notice of the dispute, the Parties agree to submit the dispute to mediation by a mutually acceptable mediator, in a mutually convenient location in New York State, in accordance with the then current International Institute for Conflict Prevention & Resolution Procedure, or to mediation by a mediator approved by the Commission. The Parties agree to participate in good faith in the mediation for a period of up to ninety (90) days. If the Parties are not successful in resolving their disputes through mediation, the Parties may then refer the dispute for resolution to the Commission, which shall maintain continuing jurisdiction over this Agreement.

11. Indemnification

- 11.1.** The E-SFA CDG Project shall indemnify, defend, and hold the Utility and its corporate affiliates and their respective officers, directors, trustees, employees, agents, successors, Representatives and assigns harmless from and against any and all loss, liability, damage or expense (including reasonable attorneys' fees), statutory or administrative fines or penalties or claims for injury or damages arising out of the performance of this Agreement or breach thereof by E-SFA CDG Project, including any claims, demands, causes of action, litigation, suits, proceedings, hearings or investigations (collectively "Claims") by a third party for payments based upon any agreement or understanding alleged to have been made by the third party, directly or indirectly, with E-SFA CDG Project in connection with any of the transactions contemplated by this Agreement, except to the extent caused by the gross negligence or willful misconduct of Utility.
- 11.2.** The obligations of this Article 11 will survive the expiration, suspension or termination of this Agreement or the E-SFA Program.

12. Force Majeure

- 12.1.** Neither Party shall be considered in default under this Agreement or responsible in tort, strict liability, contract or other legal theory to the other Party for damages of any description for any interruption or failure of service or deficiency in the quality or quantity of service, or any failure to perform if such failure is caused by factors beyond

the Party's reasonable control that by exercise of reasonable diligence the Party is unable to prevent or overcome, including without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor dispute, sabotage, war, insurrection, act of God or the public enemy, action of a court, or public authority ("Force Majeure").

12.2. If any Force Majeure occurs, the Party delayed or unable to perform shall give immediate written notice to the other Party. During the pendency of the Force Majeure, the duties of the Party affected by the Force Majeure conditions shall be abated and shall resume without liability thereafter, provided that an obligation to make payments under this Agreement shall not be excused by the occurrence of an event of Force Majeure.

13. Miscellaneous

13.1. Entire Agreement. This Agreement, all Exhibits and attachments hereto and all documents referenced herein, constitute the entire agreement between the Parties and supersedes all other agreements, communications, and representations. Paragraph headings are for convenience only and are not to be construed as part of this Agreement.

13.2. Amendment. Unless otherwise provided herein, no modification of, or supplement to, the terms and provision stated in this Agreement shall be or become effective without the written consent of both Parties. If the E-SFA Program is suspended by statute or Commission order, this Agreement will be modified in accordance with such statute or order.

13.3. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same document.

13.4. Severability. In the event that any portion or part of this Agreement is deemed invalid, against public policy, void or otherwise unenforceable by a court of law, the validity and enforceability of the remaining portions thereof shall otherwise be fully enforceable.

13.5. Change in Law. To the extent that new mandatory regulatory, legislative or accounting changes, tax law changes, other regulatory policy changes, or other events materially affect the ability of either Party to comply with the provisions of

this Agreement, including but not limited to material financial consequence, managerial, mechanical or technical compliance, the Parties agree to meet and use best efforts to renegotiate the terms and conditions of this Agreement to restore the position of the detrimentally affected Party to a financially neutral position or to be able to meet the managerial, mechanical and technical requirements of compliance. Methods that the Parties may consider to restore the detrimentally affected Party's ability to comply with this Agreement shall include, but not be limited to cost recovery through rates, payment for service by the unaffected Party, technical assistance, or other assistance as may be agreed upon. Renegotiated terms and conditions shall be effective when reduced to writing and signed by both Parties. If the Parties are unable to renegotiate acceptable changes, they may avail themselves of the dispute resolution mechanism set forth in Section 10 of this Agreement, and the existing terms and conditions of this Agreement shall continue to be effective through the conclusion of such dispute resolution mechanism.

13.6. Waiver. No waiver by any Party of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any other present or future default, whether of a like or different character. No delay by either Party in enforcing any of its rights hereunder shall be deemed a waiver of such rights.

13.7. Assignment.

13.7.1. Neither Party may assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned, provided however that the E-SFA CDG Project has a right to assign (and/or collaterally assign, in connection with a financing transaction) its right to payments to be made by the Utility hereunder. The E-SFA CDG Project shall provide the Utility with a copy of the document in which the assignment is made or so much of the document as maybe necessary to make clear the identity of the parties thereto and the terms of the assignment. The E-SFA CDG Project hereby waives any claim against the Utility for making payments pursuant to the assignment.

13.7.2. An assignment, transfer or other disposition of the Utility's rights and obligations under this Agreement resulting from or associated with (i) any restructuring of the assets of the Utility or (ii) any acquisition, consolidation,

merger or other form of combination of the Utility by, into, or with any person or entity shall not be subject to the prior notice and consent requirements of this sub-article.

13.7.3. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement. Any assignment, transfer or other disposition of this Agreement, or any rights, duties or obligations hereunder by either Party, except as specifically permitted herein, is in violation of this sub-article and void.

13.8. Subcontracting. Each Party may subcontract all or any portion of the performance to be rendered hereunder without the express approval of the other as to the tasks to be subcontracted and the subcontractor, provided, however that each Party shall be fully responsible for the acts and omissions of its subcontractors and their agents as it is for its own acts and omissions.

13.9. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. Nothing contained herein shall be deemed to confer any rights or grant any remedies or give any benefit to any third party.

13.10. Relationship of the Parties. This Agreement is not intended, and shall not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of or otherwise bind the other Party.

13.11. Governing Law. This Agreement is governed by the laws of the State of New York without regard to the doctrines governing choice of law. All disputes arising hereunder shall be brought either before the Commission the state courts of the State of New York, or a federal court located in the State of New York.

13.12. Construction. In the event of any conflict between the provisions of this Agreement and the provisions of the Tariff, the applicable provisions of the Tariff shall apply.

13.13. Notices. Except as otherwise provided herein, any notices given under this Agreement shall be in writing and shall be delivered to the recipient Party at the address set forth in Exhibit A, by hand or sent by (a) electronic mail, (b) certified

mail, return receipt requested, first class postage prepaid, or (c) nationally recognized courier service. Notices given hereunder shall be deemed to have been given upon receipt or refusal to receive. The address to which such notices shall be given by either Party may be changed by written notice given by such Party to the other Party pursuant to this sub-article.

13.14. Other Remedies. Nothing contained herein shall be construed as a limitation on the right of either Party to pursue any remedy it may have at law or in equity.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the last date written below.

(signatures of the Parties follow on the next page)

E-SFA CDG Project

Name (Print): _____

Signature: _____

Title: _____

Date: _____

Niagara Mohawk Power Corporation

Name (Print): _____

Signature: _____

Title: _____

Date: _____

EXHIBIT A

All notices and information addressed to the Utility shall be addressed as follows:

E-SFA@nationalgrid.com

All notices and information addressed to the E-SFA CDG Project shall be addressed as follows:
