ENERGY STORAGE SERVICES AGREEMENT

between

ORANGE AND ROCKLAND UTILITIES, INC.

and

[*OWNER*]

Dated as of [_____], 2022

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ENERGY STORAGE SERVICES AGREEMENT

between

ORANGE AND ROCKLAND UTILITIES, INC.

and

[*OWNER'S NAME*]

THIS ENERGY STORAGE SERVICES AGREEMENT, together with the exhibits attached hereto (as amended and in effect from time to time, this "Agreement") is made and entered into as of [_____], 2022 ("Effective Date") by and between **ORANGE AND ROCKLAND UTILITIES, INC.**, a New York corporation ("O&R"), and **[*OWNER*]**, a **[*Owner entity and state of formation*]** ("Owner"). O&R and Owner are sometimes referred to herein individually as a "Party" and together as the "Parties." Capitalized terms used and not defined herein have the meanings given in Exhibit A.

RECITALS

A. O&R is an investor-owned electric utility serving customers in the City of New York, New York and Westchester County, New York.

B. O&R seeks to procure bulk energy storage scheduling and dispatch rights as directed by the New York State Public Service Commission (the "NYPSC") in Case 18-E-0130, in its *Order Establishing Energy Storage Goal and Deployment Policy* (issued December 13, 2018), as modified by *Order Directing Modifications to Energy Storage Solicitations* (issued April 16, 2021).

C. Owner is willing to construct, own, operate and maintain an energy storage system in O&R's service territory consistent with the requirements set forth herein, exclusively for the benefit of O&R during the Term, including bulk energy storage scheduling and dispatch rights and all Products (as hereinafter defined) the energy storage system is capable of producing.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

ARTICLE 1
PROJECT AND EXCLUSIVE USE

1.01 Product.

(a) The "Product" consists of any and all Capacity, Energy, Ancillary Services, and any other products or benefits associated with the Project (whether or not saleable in NYISO or any other electric wholesale market), including, without limitation, Installed

Capacity (ICAP), Energy, Operating Reserve Service (including both Non-Synchronized and Spinning Reserves), Voltage Support Service and Regulation Service, each as defined in the NYISO Tariff, products in markets other than NYISO (including any credits or other products associated with environmental, public policy or other attributes) and products associated with uses of the Project for the benefit of O&R's distribution or transmission system unrelated to sales into NYISO or any other market.

(b) Owner shall not substitute or purchase any portion of the Product from any other generating resource, non-generator resource, or storage device or from the market for delivery hereunder.

1.02 Project. The "Project" consists of the Storage Unit, Owner's Interconnection Facilities, Prevention Equipment and System Protection Facilities, together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the Project, all as more fully described in Exhibit B.

(a) Project Name. **[*name*]**.

(b) Location of Project. **[*project address*]**, as further described in Exhibit B.

(c) Energy Delivery Point. The Energy Delivery Point shall be the Interconnection Point.

(d) Interconnection Point. The Interconnection Point is **[*insert name and location*]**, as specified in Exhibit B.

(e) Interconnection Queue Position. **[*number to be inserted*]**.

1.03 Contract Capacity. The contracted Power Capacity of the Project ("Contract Capacity") shall be established pursuant to the Initial Commercial Operation Test. Owner shall maintain the Contract Capacity throughout the Contract Term.

1.04 Exclusive Rights. Subject only to the Operating Restrictions set forth in Exhibit D, O&R shall have the exclusive use of the Project from Substantial Completion through the Contract Term, including all rights to market, use and sell the Product, all rights to store, charge, and dispatch electric energy, and any associated rights and rights to all revenues generated from such use of the Project.

1.05 NYSERDA Incentive. If a NYSERDA Incentive is determined to be necessary to meet the accepted bid price, Owner and NYSERDA shall enter into that certain Bulk Storage Incentive Standard Agreement, a copy of which is attached hereto as Attachment 1 (the "NYSERDA Agreement"), under which NYSERDA will provide, subject to the conditions therein, certain market acceleration bridge incentive funding in support of the Project, which funding is in addition to the consideration to be paid by O&R hereunder.

1.06 Data from Project. All data and information related to the operation, scheduling, dispatch, testing, and maintenance of the Project that is generated, stored or transmitted during the Contract Term, in whatever form or medium generated, stored, or transmitted, shall be and remain

the property of O&R; provided, however, that O&R agrees to license the same to Owner during and after the Contract Term for the exclusive purpose of operation, scheduling, dispatch, testing, and maintenance of the Project. Such license shall not permit Owner to transfer such data and information to any Person other than the Generator Operator or an Affiliate of Owner or sell such data and information to any other Person except in connection with the sale of the Project.

ARTICLE 2
TERM; DELIVERY PERIOD; SUBSTANTIAL COMPLETION DEADLINE; GUARANTEED COMMERCIAL OPERATION DEADLINE

2.01 Term. The "Term" of this Agreement shall commence upon the Effective Date, and shall continue for the Contract Term.

2.02 Delivery Period. The "Delivery Period" shall commence on the Commercial Operation Date, and shall continue until midnight on the date that is ten (10) years after the Commercial Operation Date.

2.03 Substantial Completion Deadline. The "Substantial Completion Deadline" is [June 1, 2025], which date may be extended due to Force Majeure or a O&R Event of Default, up to the Guaranteed Commercial Operation Deadline. In no event will the Substantial Completion Deadline be extended beyond the Guaranteed Commercial Operation Deadline.

2.04 Substantial Completion. "Substantial Completion" shall occur upon notice from O&R to Owner that O&R has received evidence reasonably satisfactory to O&R of satisfaction of all of the following conditions. The Parties agree that review and approval of these conditions may occur on an incremental basis as such conditions are satisfied:

(a) Owner has entered into, and complied in all material respects with its obligations under, the Interconnection Agreement; interconnection of the Project has been completed in accordance with the Interconnection Agreement, including installation of all metering and telemetry equipment required to deliver the Product in accordance with the NYISO Tariff; the Interconnection Facilities are sufficient to enable delivery of the installed capacity of the Project up to the Contract Capacity; and the Interconnection Agreement remains in full force and effect;

(b) Owner shall have provided a certificate from an Independent Engineer that the Project has been mechanically completed in all material respects, excepting items that do not adversely affect the ability of the Project to achieve Commercial Operation in accordance with the requirements of this Agreement;

(c) Owner has obtained all Permits necessary for Owner to perform its obligations under this Agreement and all such Permits are in final form and in full force and effect;

(d) Owner has obtained authority from FERC, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, for wholesale sales of electric energy, capacity and ancillary services at market-based rates ("Market-Based Rate Authority");

(e) Owner is registered in NYISO as a market participant (as defined in the NYISO Tariff) for the Project;

(f) Owner has registered the Project in NYISO for use as a dispatchable energy storage resource operating in the NYISO Markets;

(g) Owner has completed all registrations with NERC and NPCC as applicable to Owner as the owner and operator of the Project;

(h) If applicable, the NYSERDA Agreement shall be in full force and effect and Owner shall not be in breach or default of any of its obligations thereunder;

(i) Owner has delivered to O&R all insurance documents required under Section 14.07 (Insurance) and all documented insurance shall be in full force and effect with all required premiums paid;

(j) the Project shall not be subject to any Encumbrances other than Permitted Encumbrances;

(k) Owner shall have delivered a final, comprehensive list of remaining tasks required for completion of the Project ("Punch List") revised to reflect comments from O&R on a draft Punch List provided by Owner; and

(l) Owner shall not be in default of any obligation under this Agreement.

2.05 Substantial Completion Delay Liquidated Damages.

(a) If Owner fails to achieve Substantial Completion by the Substantial Completion Deadline, as it may have been extended in accordance with Section 2.03, Owner shall be liable for and pay to O&R liquidated damages in an amount equal to $400 per MW[1] of Contract Capacity per day ("Substantial Completion Delay Liquidated Damages") for each day from and including the Substantial Completion Deadline to and excluding the earlier to occur of (i) the date that the Project achieves Substantial Completion or (ii) the Guaranteed Commercial Operation Deadline.

(b) As soon as Owner anticipates that it will not achieve Substantial Completion by the Substantial Completion Deadline, and in any event prior to the Substantial Completion Deadline, Owner shall notify O&R in writing of the date on which it reasonably expects the Project to achieve Substantial Completion. If thereafter Owner anticipates that the Project will fail to achieve Substantial Completion by the revised date, then Owner shall, upon such assessment, and in any event prior to the revised date, again notify O&R in writing of the date on which it reasonably expects the Project to achieve Substantial Completion. O&R shall track the accrual of Substantial Completion Delay Liquidated Damages. O&R may invoice Owner, in accordance with Section 3.03(e), no more frequently than monthly for all accrued and unpaid Substantial Completion Delay

[1] *Note*: For 1-hour battery, $100 per MW.

Liquidated Damages and may set off any unpaid Substantial Completion Delay Liquidated Damages against the Commercial Operation Payment. Nothing herein shall alter Owner's performance obligations, require O&R to accept a revised schedule(s) or alter O&R's right to terminate this Agreement as set forth herein (including Sections 4.07 and 10.01).

2.06 Guaranteed Commercial Operation Deadline. The "Guaranteed Commercial Operation Deadline" is December 31, 2025.

2.07 Commercial Operation. "Commercial Operation" shall occur upon notice from O&R to Owner that O&R has received evidence reasonably satisfactory to O&R of satisfaction of all of the following conditions prior to the Guaranteed Commercial Operation Deadline. The "Commercial Operation Date" shall be the date the Project achieves Commercial Operation. The Parties agree that review and approval of these conditions may occur on an incremental basis as such conditions are satisfied:

(a) Substantial Completion shall have occurred;

(b) Owner shall have (i) completed testing and commissioning of all components of the Project, individually and in the aggregate, to ensure the Project is mechanically, electrically and structurally capable of performing in accordance with the requirements of this Agreement, including completion of an end-to-end system controls test and verification in accordance with the testing protocols set forth in Exhibit C, (ii) provided to O&R test results that demonstrate that the Project meets or exceeds the Contract Capacity and the Guaranteed Round-Trip Efficiency, and (iii) delivered a certificate from an Independent Engineer affirming each of (i) and (ii) above;

(c) Owner shall have obtained all Permits necessary for Owner to perform its obligations under this Agreement and all such Permits are in final form and in full force and effect;

(d) Owner shall have delivered to O&R the applicable Performance Assurance pursuant to Section 7.02(b) and executed and delivered to O&R all other documents or instruments required under ARTICLE 7 (Credit and Collateral);

(e) Owner shall have designated O&R as the Financially Responsible Party (as defined by the NYISO Tariff) for the Project, at such time mutually agreed upon with O&R;

(f) Owner shall have obtained confirmation from NYISO that it has satisfied all NYISO requirements to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service in amounts not less than the Contract Capacity and the commensurate Contract Capacity Energy, respectively;

(g) Owner shall have delivered to O&R a NYISO-approved initial Outage Schedule for the Project;

(h) If applicable, NYSERDA shall have confirmed that Owner has satisfied all conditions to Commercial Operation and is entitled to payment under the NYSERDA Agreement;

(i) the Project shall not be subject to any Encumbrances other than Permitted Encumbrances; and

(j) Owner shall not be in default of any obligation under this Agreement.

2.08 Failure to Meet Guaranteed Commercial Operation Deadline. Failure to achieve Commercial Operation on or before the Guaranteed Commercial Operation Deadline shall constitute an Event of Default by Owner. In such event, this Agreement shall terminate automatically at midnight on the Guaranteed Commercial Operation Deadline and Owner shall owe to O&R a Termination Payment calculated in accordance with Section 10.03(a)(i).

ARTICLE 3
BILLING AND PAYMENTS

3.01 Interim Period Payment. From the date that (i) O&R has been designated as the Financially Responsible Party (as defined by the NYISO Tariff) for the Project and (ii) the Project has achieved Substantial Completion, but before the Project achieves Commercial Operation ("Interim Period"), O&R shall be entitled to seventy percent (70%) of the net positive revenue from the sale of Product from the Project ("Pre-COD Sales") and Owner shall be entitled to thirty percent (30%) of the net positive revenue from Pre-COD Sales. To the extent there are no net revenues, Owner shall be responsible for any net costs during the Interim Period. Before the Interim Period, Owner shall be entitled to any and all revenue the Project derives from NYISO Markets and any and all costs of the Project.

3.02 Compensation to Owner.

(a) Commercial Operation Payment. O&R shall pay Owner the Commercial Operation Payment after Owner achieves Commercial Operation of the Project.

(b) Annual Post-Commercial Operation Payments. Provided that no Event of Default has occurred and is continuing, O&R shall pay Owner annually, in arrears, an Annual Post-Commercial Operation Payment.

3.03 Billing and Payment.

(a) Billing Information. On or before Substantial Completion, and in any event promptly after O&R's request, Owner shall provide its wiring instructions and W-9 tax information to O&R in writing, certified as true and correct by a duly authorized officer of Owner.

(b) Interim Period.

(i) *Invoicing.* No later than the tenth (10th) Business Day of a calendar month following a calendar month that is part of the Interim Period, O&R shall deliver a statement of the net revenues from the Pre-COD Sales in the preceding month, including revenue received from NYISO and all costs associated with the Pre-COD Sales. To the extent that there are no net revenues, Owner shall be

invoiced for any net costs incurred. Owner shall be solely responsible for Distribution Charging Energy Costs.

(ii) *Payment*. No later than ten (10) Business Days after O&R delivers the statement, O&R shall pay Owner for thirty percent (30%) of the net revenue from Pre-COD Sales or, if there are no net revenues, Owner shall pay O&R for net costs of the Project.

(c) Commercial Operation Payment.

(i) *Invoice.* No later than five (5) Business Days after the Commercial Operation Date, Owner shall deliver an invoice to O&R setting forth in reasonable detail the amount of the Commercial Operation Payment.

(ii) *Payment*. Within thirty (30) days of receiving an invoice from Owner for the Commercial Operation Payment, O&R shall pay the amounts invoiced, subject to any offset in accordance with Section 2.05.

(d) Annual Post-Commercial Operation Payment.

(i) *Invoice.* No later than the tenth (10^{th}) Business Day of the anniversary month of the Commercial Operation Date, Owner shall deliver an invoice to O&R setting forth in reasonable detail the amount of the then-applicable Annual Post-Commercial Operation Payment.

(ii) *Payment*. On or before the last day of the anniversary month of the Commercial Operation Date, O&R shall pay the amounts invoiced by Owner for the Annual Post-Commercial Operation Payment, subject to any right O&R exercises to setoff amounts owed to O&R by Owner under Section 3.05.

(e) Amounts Payable by Owner.

(i) *Invoice.* In the event Owner incurs a liability to O&R for damages (including liquidated damages), penalties, fees, reimbursement or otherwise, O&R shall prepare and deliver an invoice to Owner setting forth in reasonable detail the amount of outstanding amounts payable by Owner.

(ii) *Payment.* No later than ten (10) Business Days after receipt of an invoice from O&R, Owner shall pay O&R all amounts invoiced.

(f) Failure to Pay. Any amounts not paid by Owner by the due date will be deemed delinquent and will accrue interest at the Default Interest Rate from and including the due date until paid in full.

3.04 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or invoice adjustment provided by the other Party by providing written notice within thirty (30) days of receipt of an invoice or invoice adjustment, stating the basis for the Dispute. A Party that does not deliver such notice within thirty (30) days is deemed to have

waived its right to dispute. Subject to Section 3.05 or manifest error, the disputing Party shall pay the entire amount due under the disputed invoice contemporaneously with or prior to delivering its dispute notice. Any amounts owed to the disputing Party shall be made within two (2) Business Days of resolution of the Dispute, together with interest accrued at the Interest Rate, from and including the date of such overpayment until the date of repayment. In no event shall O&R be obligated to pay amounts to which it exercises its right of setoff under Section 3.05.

3.05 Netting and Setoff Rights. In addition to other legal remedies available to O&R under Applicable Laws, O&R reserves the right to net any amounts otherwise due to Owner hereunder against any amount Owner owes to O&R hereunder, including any costs associated with the supply and delivery of power for Station Use.

3.06 Non-O&R Compensation to Owner.

(a) NYSERDA Payment. If the NYSERDA Agreement is entered into pursuant to Section 1.05, Owner acknowledges that NYSERDA is solely responsible for payment of the NYSERDA Incentive, O&R shall have no obligation to pay to Owner amounts in respect of the NYSERDA Incentive, and any failure by NYSERDA to pay amounts due under the NYSERDA Agreement shall not relieve Owner of any obligation hereunder.

(b) Tax Incentives Total Compensation Reduction.

(i) If at any time prior to the end of the Term, any Person (including Owner or Owner's Lender, parent, or other Affiliate) realizes any economic or monetary benefit with respect to the Project from Energy Storage Incentive Legislation ("Economic Benefit"), which Owner shall diligently pursue in accordance with Section 4.01(u), the Total Compensation Amount shall be reduced by an amount equal to seventy percent (70%) of the realized Economic Benefit (the "Reduction Amount").

(ii) Owner shall provide Notice to O&R within seven (7) days of realizing an Economic Benefit for the Project. If Owner fails to provide such Notice within the seven-day period, the Reduction Amount shall be increased by applying the Default Interest Rate to the Reduction Amount for each day after the end of the seven-day period and before the day Owner provides the notice.

(iii) If the Economic Benefit is realized on or before the Commercial Operation Date, then the Total Compensation Amount shall be reduced automatically by the Reduction Amount with immediate effect. If the Economic Benefit is realized after the Commercial Operation Date, then the remaining Annual Post-Commercial Operation Payments shall be reduced by applying the Reduction Amount to each payment in the order of their respective due dates. In the event the Reduction Amount is greater than the sum of the remaining Annual Post-Commercial Operation Payments, Owner shall pay O&R the amount of such excess within thirty (30) days of providing the Notice to O&R required under Section 3.06(b)(ii)(ii).

(iv) An Economic Benefit is deemed realized under Section 3.06(b)(ii)(ii) upon the earliest occurrence of any of the following: (A) the closing of any Tax Equity Financing for the Project by Owner, Owner's parent or other Affiliate, (B) a transfer of any income tax credits related to the Project are created as a result of Energy Storage Incentive Legislation, (C) the use of any income tax credits related to the Project on the federal income tax return (on the date such return is filed) of any entity, or (D) the date upon which an Economic Benefit for the Project not otherwise listed in this Section 3.06(iv)(iv) is realized.

ARTICLE 4
OWNER'S OBLIGATIONS WITH RESPECT TO THE PROJECT

4.01 Generally. At no cost to O&R, Owner shall:

(a) obtain Site Control by the date specified in the Critical Path Milestone schedule and maintain Site Control during the Term;

(b) design and construct the Project as required for Owner to perform its obligations under this Agreement;

(c) not modify the Project without obtaining prior written consent from O&R;

(d) design, construct, own, operate and maintain the Project as required under this Agreement, in accordance with Good Utility Practice and in compliance with all Applicable Laws, Permits, site agreements, the Interconnection Agreement, and, if applicable, an Environmental, Health, and Safety Plan;

(e) except as expressly permitted under Section 14.04, retain exclusive ownership over the entirety of the Project;

(f) not make any use of the Project other than as directed by O&R;

(g) timely file all applications and acquire and maintain, all Permits required for siting, construction, operation and maintenance of the Project during the Term;

(h) complete all environmental impact assessments, statements, or studies required pursuant to Applicable Laws, including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;

(i) obtain and maintain in full force and effect all agreements necessary for electric service for Station Use and Charging Energy Requirements;

(j) obtain and maintain without modification, and take no action to invalidate, manufacturer's warranties on the components of the Project, which minimum warranty requirements are identified in Exhibit E ("Warranty Requirements"), during the Delivery Period;

(k) not withdraw the Interconnection Queue Position without O&R's prior written consent;

(l) ensure the Interconnection Facilities are sufficient to enable delivery of the installed capacity of the Project up to the Contract Capacity;

(m) provide O&R, before commencing construction activities on the Site, with a report from an Independent Engineer certifying that Owner has a written plan for the safe construction and operation of the Project in accordance with Good Utility Practice;

(n) comply with any NERC Reliability Standards applicable to the Project, including registering with NERC as the Generator Owner and Generator Operator (or other applicable category) for the Project and implementing all applicable processes and procedures required by FERC, NERC, NPCC, the NYISO or other Governmental Authorities;

(o) comply with all requirements of the Interconnection Agreement, including furnishing and installing relays, circuit breakers and all other devices necessary for proper and safe operation of the Project in parallel with the Transmission Owner's electric system;

(p) provide accurate and complete operating characteristics of the Project in compliance with the NYISO Tariff:

(i) at least thirty (30) days before Substantial Completion, and

(ii) within ten (10) days after such information changes after Substantial Completion;

(q) comply with O&R's cybersecurity requirements, set forth in Exhibit M,[2] as applicable to third parties interconnected with O&R's information systems (as may be updated by O&R from time to time and with which updates Owner shall be obligated to comply);

(r) comply with the Federal Acquisition Regulations Compliance Requirements, which compliance requirements are set forth in Exhibit H;

(s) maintain and preserve its existence as a **[*insert applicable entity formation information*]**, formed under the law of the State of **[*applicable state of formation or incorporation*]** and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement;

(t) in such time period as O&R may reasonably require, provide to O&R all data and information requested by O&R from time to time, to be able to sell Products and to substantiate the costs for the Project, which costs may be part of an inquiry or

[2] Note to Draft: Exhibit M reflects the current cybersecurity requirements, which requirements may be updated from time to time.

investigation by the NYISO, or a proceeding before FERC, NYPSC or other Governmental Authority;

(u) apply for and diligently pursue all incentives or benefits available to the Project (including but not limited to tax incentives or benefits), including any Economic Benefit;

(v) comply with its obligations under the NYSERDA Agreement, if applicable;

(w) obtain and maintain Market-Based Rate Authority from FERC as applied to sales made within the NYISO Markets;

(x) take all actions necessary to register and maintain the qualification of the Project under the NYISO Tariff required to sell the Products; and

(y) comply with all requirements to qualify for and maintain CRIS and ERIS at least equal to Contract Capacity pursuant to the NYISO Tariff.

4.02 Use of EPC Contractor and Subcontractors; Approval by O&R.

(a) Owner may subcontract all or any portion of the work related to the procurement, construction, commissioning and maintenance of the Project, including to an EPC Contractor, provided it obtain O&R's prior approval where material work (whether design, construction or O&M related) is to be subcontracted.

(b) Owner shall provide O&R with written notice of the proposed subcontractor's name, address, experience, and proposed role on the Project, together with appropriate supporting documentation. Within ten (10) days of receipt of such notice, O&R shall notify Owner that either approves or rejects the use of such subcontractor. If O&R fails to respond to Owner within ten (10) Business Days of receipt of such notice from Owner, then the identified subcontractor shall be deemed approved.

(c) Nothing contained herein shall create any contractual rights in any subcontractor against O&R. No subcontractor or supplier of Owner is intended to be or shall be deemed a third-party beneficiary of this Agreement.

(d) Owner shall remain liable for the acts and omissions of any subcontractor (including its employees) that Owner engages to the same extent as if such acts or omissions were made by Owner or its employees. Further, Owner shall not be relieved of any of its obligations under this Agreement by reason of such subcontracting. Owner shall be responsible for all fees and expenses payable to its subcontractor.

4.03 Provision of Information. In addition to other information required to be provided to O&R in accordance with this Agreement, Owner shall provide the following information to O&R:

(a) Prior to Commercial Operation, Owner shall provide O&R with the following documents within ten (10) Business Days of Owner's receipt (unless otherwise noted below):

(i) any completed Interconnection Study for the Project;

(ii) letters, notices, filings, approvals, and other material correspondence related to Permits for the Project;

(iii) executed Interconnection Agreement;

(iv) within thirty (30) days of the Effective Date, a Project Summary Schedule (or a Level 2 Schedule) for the entire Project time frame divided into categories consistent with CSI Masterformat Divisions;

(v) a detailed 3-line diagram of the Project; and

(vi) the EPC Contract, and any other agreements with subcontractors expected to perform material work on the Project, as related to design, engineering, procurement, or construction services for the Project, including all amendments thereto.

(b) Following Substantial Completion, Owner shall provide O&R with copies of the following documents within ten (10) Business Days following Owner's receipt:

(i) any executed agreements with subcontractors related to the operation and maintenance services for the Project, including all amendments thereto; and

(ii) any reports, data or information provided to NYISO, the NYPSC, NYSERDA or any Governmental Authority relating to the Project.

(c) At any time during the Term, Owner shall promptly, and in any event within ten (10) Business Days, provide O&R with copies of:

(i) information, reports and responses requested by O&R for O&R to comply with disclosure requirements of the NYPSC or, as it relates to the NYSERDA Incentive, NYSERDA, which requests for information, reports and responses Owner shall use commercially reasonable efforts to accommodate, even for requests to verify data provided by Owner;

(ii) any reports, studies, or assessments done for Owner by an independent engineer on the Site or the Project; and

(iii) any other information reasonably requested by O&R from Owner.

4.04 Inspection and Access Rights. O&R shall have the right at any time from and after execution of this Agreement and during the Term to enter onto the Site during normal business

hours on any Business Day to inspect the Project, witness testing, verify conditions have been met, evaluate circumstances regarding Outages or unavailability, or for any other reasonable purpose. O&R shall ensure that any O&R personnel that enters the Site, including pursuant to Section 4.05, complies with the safety and security procedures established by Owner and its EPC Contractor with respect to the Site. O&R shall have the right to inspect or audit Owner's EPC Contract and its books and records to verify Owner's compliance with the Milestone Schedule and other obligations under this Agreement. In addition, Owner shall, and shall cause its subcontractors to, provide O&R with prompt access to the Site and all applicable documents and records to permit O&R to determine whether:

(a) Owner has obtained and maintained all Permits, and that such Permits do not contain Permit Requirements that may restrict O&R's ability to charge, discharge, or store energy in, the Project as provided for in this Agreement;

(b) any agreements with subcontractors and suppliers, as described in Section 4.02, have been entered into and have become effective and neither Owner nor any other party thereto is in default thereunder;

(c) all contracts or other arrangements necessary to interconnect the Project have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Owner is not in default thereunder;

(d) all contracts and other arrangements necessary to support the construction, installation, operation, and maintenance of the Project, including any agreements and other arrangements for the interconnection and procurement of power for Station Use and Charging Energy Requirements and, if necessary, water supply and waste disposal have been entered into and become effective on a timely basis and Owner is not in default thereunder; and

(e) any statement, claim, charge or calculation made by Owner pursuant to this Agreement is accurate.

Owner shall retain, and O&R shall have the right to request, copies of the aforementioned documents, records, and data for a period of two (2) years following the expiration or earlier termination of this Agreement, unless the documents, records, or data are the subject of or are relevant to an outstanding indemnity or other claim under this Agreement, in which event such documents, records, or data shall be retained until such indemnity or other claim is resolved and is no longer subject to appeal.

4.05 Environmental, Health and Safety Plan. Owner has presented and O&R has approved an environmental, health and safety plan ("Environmental, Health and Safety Plan") for the Project. Owner shall perform its obligations under this Agreement in accordance with Owner's Environmental, Health and Safety Plan and Owner shall assume all costs associated with compliance therewith. O&R's review and approval of Owner's proposed Environmental, Health and Safety Plan does not in any way relieve Owner of its responsibility regarding environmental

conditions, health or safety, and O&R, in reviewing and approving such Environmental, Health and Safety Plan, assumes no liability for such Environmental, Health and Safety Plan.

4.06 Milestone Schedule; Monthly Construction Report. Owner shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Exhibit F ("Milestone Schedule") and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet achieved Commercial Operation, or within five (5) days after O&R's request, Owner shall deliver to O&R a monthly progress report, substantially in the form of Exhibit L, describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, and each of the following categories: key issues, safety, quality and environmental incidents log, status of permits, schedule status, construction status, and NYISO registration status ("Construction Report"). Owner shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Permits. In addition, Owner shall advise O&R, as soon as reasonably practicable, of any problems or issues of which Owner is aware that could materially impact its ability to meet the Milestone Schedule.

4.07 Critical Path Milestones. Owner shall achieve each Critical Path Milestone and shall provide O&R with evidence, reasonably satisfactory to O&R, of such achievement on or before the applicable deadline specified below.

Critical Path Milestones	**Deadline to Achieve Critical Path Milestone**
Obtain Site Control	
Execute agreement and pay fee to perform a System Reliability Impact Study ("**SRIS**")	
File for all material Permits for the Project needed to meet the Contract Capacity	
Receive a completed SRIS Study (or equivalent) accepted by NYISO Operating Committee sufficient to meet the Contract Capacity of the Project	
Execute the Facilities Study Agreement and pay fee to join a Class Year Interconnection Facilities Study	
Complete 90% of the front-end engineering and design of the Project	
File Office of Technical Certification and Research ("**OTCR**") permit applications with appropriate state or municipal agencies (e.g., the Fire Department of New York ("**FDNY**") and the New York City Department of Buildings ("**DOB**")), as applicable	
Receive final OTCR approval(s)	

Critical Path Milestones	Deadline to Achieve Critical Path Milestone
Execute the Interconnection Agreement with Transmission Owner to interconnect the Project and ensure deliverability of installed capacity equal to the Contract Capacity	
Execute purchase order for the battery system, inverter(s) and transformer(s) needed to construct the Project at a size sufficient to achieve the Contract Capacity and other performance requirements specified in this Agreement	
Obtain all Permits for the Project needed to achieve Substantial Completion	
Achieve Substantial Completion	
Receive any additional Permits necessary to achieve Commercial Operation, including the final operational permits from DOB and FDNY	
Final Completion	

If Owner fails to achieve a Critical Path Milestone on or before the applicable deadline Owner may cure such failure; *provided*, that

(a) Within ten (10) Business Days after any such failure (other than the failure to achieve Substantial Completion by the Substantial Completion Deadline, which shall be governed by the notice requirements set forth in Section 2.05), Owner shall (i) complete the Critical Path Milestone or (ii) submit to O&R (A) a written description of the reason for the failure, (B) the date Owner expects it will achieve completion of the missed Critical Path Milestone ("CP Milestone Extension Date"), and (C) a written recovery plan for completing the work necessary to complete the missed Critical Path Milestone, the remaining Critical Path Milestones, and Commercial Operation by the Guaranteed Commercial Operation Deadline (the "Recovery Plan"). The Recovery Plan shall also include an updated Milestone Schedule with revised dates for each remaining Critical Path Milestone, which updated Milestone Schedule shall be subject to acceptance by O&R, in its reasonable discretion.

(b) Owner shall commence the work contemplated by the Recovery Plan within five (5) days after submitting such Recovery Plan to O&R.

(c) Owner shall be solely responsible for any costs or expenses incurred by Owner as a result of developing and implementing the Recovery Plan.

(d) If Owner fails in any material respect, as reasonably determined by O&R, to: (i) meet the requirements of the Recovery Plan; (ii) make sufficient progress in effecting the Recovery Plan; or (iii) achieve completion of the missed Critical Path Milestone by the CP Milestone Extension Date, such failure shall constitute a failure to meet a Critical Path Milestone and be subject to the requirements of this Section 4.07.

Nothing in this Section 4.07 shall be construed to: (x) relieve Owner of its obligations under this Agreement; (y) modify the deadlines for achieving the remaining Critical Path Milestones (except for any update to the Milestone Schedule pursuant to this Section 4.07 and the missed Critical Path Milestone that Owner is attempting to cure under this Section 4.07); or (z) relieve Owner of its obligations to achieve Substantial Completion by the Substantial Completion Deadline and Commercial Operation by the Guaranteed Commercial Operation Deadline.

ARTICLE 5
INTERCONNECTION; METERING; TESTING

5.01 Interconnection.

(a) Interconnection Studies. Owner represents and warrants, covenants and agrees that, as of the Effective Date, (i) Owner has submitted and will continue to submit all information requested by NYISO and the Transmission Owner for Interconnection Studies for the Project, and (ii) it has submitted and maintained an application for Energy Resource Interconnection Service and Capacity Resource Interconnection Service sufficiently sized to enable delivery of the Project's output to the Interconnection Point up to the Contract Capacity. Owner covenants that it will comply with all of the interconnection requirements contained in the NYISO Tariff, applicable requirements of the Transmission Owner, and the Interconnection Agreement, including all related communication requirements and protocols required thereunder.

(b) Interconnection Cost Allocation. Owner shall be solely responsible for payment of all Interconnection Costs allocated to Owner under the Interconnection Agreement.

(c) Establishment of Electric Service for Station Use. Owner acknowledges that this Agreement does not provide for the supply of any electric service by O&R to Owner. Owner shall procure, meter separately, and pay for all electrical service required to serve the ancillary electric needs of the Project, including electricity for lighting, security, cooling towers, draft fans, climate control, ventilation mechanisms, control systems, operation and other auxiliary systems necessary for operation, and maintenance of the Project ("Station Use"). Owner shall be responsible for all fees and costs associated with establishing and use of electricity for Station Use, including fees and costs billed to O&R from NYISO, if any, based on meter data from Owner's Station Use.

(d) Separate Obligations Under Interconnection and Electric Service Agreements. Owner acknowledges and agrees that nothing in this Section 5.01 is intended to abrogate, amend or modify the terms of any other agreement between Owner and O&R, including any interconnection agreement or electric service agreement, and that no breach under such other agreement shall excuse Owner's nonperformance under this Agreement.

5.02 Metering, Communications and Telemetry.

(a) Control and Communication System. All communication, metering, telemetry, and associated operation equipment will be centralized into the Project's Distributed Control System. Owner shall configure the Project's Distributed Control

System to allow Owner to monitor real time operations ("Generation Management System"), as necessary to communicate with NYISO using telemetry conforming to NYISO requirements and qualifying for participation as a dispatchable resource in NYISO Markets. Owner shall comply with the communications requirements set forth in Exhibit G. In addition, Owner shall ensure that the access link will provide a monitoring and control interface to provide real-time information to Owner regarding the Project's Stored Energy Level. In addition, Owner shall ensure that the same real-time information used by Owner to monitor the Project is communicated to O&R via an approved O&R communication network, utilizing existing industry standard network protocol, as approved by O&R.

(b) Control Logic. Owner will ensure that the Project's Distributed Control System control logic will be configured to control the Project in multiple configurations. The Project's control logic will incorporate control signals from multiple locations to perform Energy dispatch, charging and Ancillary Services functions. Control logic will perform all coordinated megawatt control and automatic generation control independently.

(c) Station Use Metering Equipment. Owner shall separately meter Station Use with a revenue quality meter or meters, installed in accordance with and conforming to the electrical service requirements, metering and applicable tariffs applicable to the Station Use.

(d) Project Metering Equipment. Owner shall comply with all NYISO metering requirements, including where necessary for revenue quality metering for market settlements.

(e) O&R Access to Interface. Owner shall take all actions and execute all documents reasonably necessary to grant O&R access to the metering, communications, and telemetry systems specified in this Section 5.02.

5.03 Testing.

(a) Initial Commercial Operation Test. At least thirty (30) days before the target Commercial Operation Date, Owner shall schedule and complete an Initial Commercial Operation Test, which test shall be conducted using the procedures set forth in Exhibit C. Owner shall undertake such activities in sufficient time to achieve Commercial Operation of the Project by the Guaranteed Commercial Operation Deadline and O&R will reasonably cooperate with Owner to meet such deadline. The Initial Commercial Operation Test shall verify the Contract Capacity for purposes of calculating the Total Compensation Amount and shall be deemed an Owner Initiated Test.

(b) Performance Testing. During the Contract Term, additional Storage Rating Tests shall be conducted from time to time in accordance with Exhibit C.

ARTICLE 6
OWNER'S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

6.01 Standard Performance, Maintenance and Repair. Owner shall operate, maintain, repair and, if necessary, replace the Project and any portion thereof, in accordance with Good Utility Practice, Applicable Laws, Permit Requirements, and Warranty Requirements as necessary to make the Products available to O&R in accordance with the terms of this Agreement.

6.02 Operating Records. Owner shall maintain complete and accurate records of all information necessary for the proper administration of this Agreement and for Owner to comply with its obligations under this Agreement, consistent with industry standards.

Owner shall maintain a daily operations log, which log shall include information on:

(a) electrical characteristics of the Project and settings or adjustments of the Project's control equipment (including the power conversion system) and protective devices

(b) charging and discharging (including charging and discharging efficiency), Station Use consumption and efficiency, Stored Energy Level, and availability (including availability to charge and discharge and State of Charge).

(c) maintenance performed,

(d) Outages and changes in operating status,

(e) inspections, and

(f) any other significant events related to operation of the Project.

Information maintained pursuant to this Section 6.02 shall be provided to O&R, within fifteen (15) days after O&R's request. In addition, Owner shall deliver to O&R a monthly operations and maintenance report by the tenth (10) day of each month describing operations and maintenance activities for the Project during the previous month.

6.03 Performance Guarantees. All liquidated damages payable to O&R under this Section 6.03, if any, shall be either (1) applied against any amounts due and payable by O&R or (2) invoiced by O&R for payment by Owner pursuant to Section 3.03(e), in O&R's sole discretion.

(a) Availability.

(i) Guaranteed Availability. Owner guarantees the Project will be available for use by O&R for at least ninety-eight percent (98.0%) of the 15-minute intervals in each calendar quarter during the Contract Term ("Guaranteed Availability"). After completion of each calendar quarter, O&R shall calculate the actual availability percentage of the Project ("Actual Availability") during the preceding calendar quarter, which calculation shall be:

$$Actual\ Availability = \frac{\sum_{period=0}^{period=Reference\ Period} MW\ Available}{Contract\ Capacity * Reference\ Period}$$

Where:

"MW Available" means the total MW available during any 15-minute interval measured by the total MWs of inverters communicating to the dispatch system and available to charge or discharge, subject to the Operating Restrictions set forth in Exhibit D as recorded by the Project energy management system, excluding any 15-minute interval that occurred during Performance Testing, a Planned Outage, or a period of unavailability due to Force Majeure; *provided that* any part of a 15-minute interval during which the Project is unavailable shall constitute unavailability for the full 15-minute interval.

"Reference Period" means the total number of 15-minute intervals during the applicable calendar quarter, *minus* the number of 15-minute intervals that occurred during Performance Testing, a Planned Outage or a period of unavailability due to Force Majeure.

(ii) Availability Liquidated Damages. If the Actual Availability calculated during any calendar quarter is less than the Guaranteed Availability, then Owner shall owe O&R liquidated damages equal to the sum of (x) and (y), where:

(x) refers to lost revenue, equal to:

(Guaranteed Availability - Actual Availability per quarter, expressed as a percentage) x Contract Capacity x $966 per MW-day[3] x days in the applicable calendar quarter

For example: (98.0% - 96.5%) x [•] MW x $966 per MW-day x [***92 days***] = $[•]

(y) refers to the sum of buyout costs incurred by O&R, equal to:

if the sum of RTM Unavailability Costs during all Unavailable Periods in the applicable calendar quarter is less than the sum of DAM Unavailability Revenue during all Unavailable Periods in the applicable calendar quarter, $0.00; and

if the sum of RTM Unavailability Costs during all Unavailable Periods in the applicable calendar quarter is greater than the sum of DAM Unavailability Revenue during

[3] *Note*: For 1-hour battery, $242 per MW-day.

all Unavailable Periods in the applicable calendar quarter, the following:

$$\left(\sum_{i=0}^{i=Unavailable\ Periods} RTM\ Unavailability\ Costs_i - DAM\ Unavailability\ Revenue_i\right) * \left(\frac{Guaranteed\ Availability - Actual\ Availability}{100\% - Actual\ Availability}\right)$$

For example, for one interval: ($**[●]** per MWh * **[●]** MWh / 4 - $**[●]** per MWh * **[●]** MWh / 4) * (0.98 – 0.95) / (1.0 – 0.95) = $**[●]**

"RTM Unavailability Cost$_i$" means the applicable LBMP in the RTM during an Unavailable Period, multiplied by the Contract Capacity, and divided by 4.[4]

"DAM Unavailability Revenue$_i$" means the applicable LBMP in the DAM during an Unavailable Period, multiplied by the Contract Capacity, and divided by 4.

"LBMP" for any hour, is the energy price for such hour at the NYISO locational-based marginal pricing node proximate to the Project.

"Unavailable Period" means a 15-minute interval in the applicable calendar quarter in which MW Available is less than Contract Capacity, excluding any 15-minute interval that occurred during Performance Testing, a Planned Outage or a period of unavailability due to Force Majeure.

(b) Capacity.

(i) Guaranteed Capacity. Owner guarantees the Project will maintain Power Capacity not less than the Contract Capacity for the Contract Term, as measured in the Storage Rating Tests described in Exhibit C.

(ii) Capacity Liquidated Damages. If a Storage Rating Test demonstrates the Power Capacity Rating is less than the Contract Capacity, then Owner shall owe O&R liquidated damages equal to:

(Contract Capacity – Power Capacity Rating) x $690 per MW-day[5] x Cure Days

Where:

"Cure Days" means the number of days between the day on which the Storage Rating Test demonstrates a deficient Power Capacity Rating and

[4] *Note*: The applicable LBMP in the DAM for any 15-minute interval will be the hourly DAM price during the 15-minute interval, and the applicable LBMP in the RTM for any 15-minute interval will be calculated as the average of the three RTM 5-minute intervals during the 15-minute interval.

[5] *Note*: For 1-hour battery, $173 per MW-day.

the day on which Owner performs a Storage Rating Test that demonstrates that the Power Capacity Rating is equal to or greater than the Contract Capacity.

(c) Round-Trip Efficiency.

(i) Guaranteed RTE. Owner guarantees the Project will maintain Round-Trip Efficiency not less than eighty percent (80.0%) ("Guaranteed Round-Trip Efficiency") for the Contract Term, as measured in the Storage Rating Tests described in Exhibit C.

(ii) RTE Liquidated Damages. If a Storage Rating Test demonstrates the Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, then Owner shall owe O&R liquidated damages equal to, for each hour of charging during the period commencing from the hour starting 00:00 on the day on which the Storage Rating Test demonstrated the deficiency until the hour starting 23:00 on the day on which Owner performs a Storage Rating Test that demonstrates compliance with the Guaranteed Round-Trip Efficiency:

(Actual Charging Energy – Guaranteed Charging Energy) x LBMP

Where:

"Actual Charging Energy" for any hour, is the Contract Capacity divided by the measured Round-Trip Efficiency.

"Guaranteed Charging Energy" for any hour, is the Contract Capacity divided by the Guaranteed Round-Trip Efficiency.

"LBMP" for any hour, is the energy price for such hour at the NYISO locational-based marginal pricing node proximate to the Project.

(d) Ramp Rate

(i) Guaranteed Ramp Rate. Owner guarantees a minimum Ramp Up Rate and Ramp Down Rate (as such terms are used in Exhibit C) of ten percent (10.0%) of the Project's Contract Capacity per minute (each, a "Guaranteed Ramp Rate"), as measured in the Storage Rating Tests described in Exhibit C.

(ii) Consequences of Ramp Rate Deficiency. If a Storage Rating Test demonstrates the Ramp Up Rate or Ramp Down Rate is less than the Guaranteed Ramp Rate, Owner shall place the Project into an Unplanned Outage immediately, resolve any issues, and may not restore the Project into service until Owner has performed a Storage Rating Test that demonstrates compliance with both Guaranteed Ramp Rates.

6.04 Outages.

(a) Planned Outages.

(i) Owner shall submit to O&R the Project's proposed schedule of Outages planned for maintenance of the Project ("Planned Outage") for the thirty-six (36) month period following the date such schedule is provided ("Outage Schedule") no later than ninety (90) days prior to the Guaranteed Commercial Operation Deadline and no later than May 15th in each calendar year during the Contract Term.

(ii) Owner shall provide the following information for each proposed scheduled Planned Outage:

(A) Description of the work to be performed during the Planned Outage;

(B) Start date and time;

(C) End date and time;

(D) Recall time;

(E) Products available (if any) during the Planned Outage;

(F) MW derate; and

(G) name or single point identifier (PTID) of the asset.

(iii) The duration of Planned Outages for the Project over a calendar year, in the aggregate, shall not exceed the lesser of (a) six (6) hours for each MW of the Project and (b) three hundred sixty-six (366) hours. Owner shall carry out activities during Planned Outages in compliance with Good Utility Practice.

(iv) O&R and NYISO shall be entitled to direct changes to the Outage Schedule by notification to Owner in writing, and Owner shall comply with O&R's or NYISO's direction regarding the timing of any Planned Outages.

(v) Owner shall provide Notice to O&R at least seven (7) days prior to the start of any Planned Outage and shall maintain close coordination as the Planned Outage approaches.

(vi) Owner shall cooperate with O&R to arrange and coordinate all Outage Schedules with NYISO in compliance with the NYISO Tariff.

(vii) If a condition occurs that causes Owner to revise its Planned Outages, Owner shall promptly provide Notice to O&R of such change (including an estimate of the length of such Planned Outage) after the condition causing the

change becomes known to Owner, provided that Owner shall bear any costs incurred by O&R for revisions made less than sixty (60) days before the start date of the Planned Outage before such revision occurs or that results in a Planned Outage being scheduled less than sixty (60) days before the start of the revised Planned Outage.

(b) No Planned Outages During Summer Months or NYISO-Directed Emergency. No Planned Outages shall be scheduled from each May 15 through September 30 in any year during the Contract Term. If Owner has a previously scheduled Planned Outage that becomes coincident with either a NYISO or Transmission Owner local reliability issue or a NYISO-declared system emergency, Owner shall be required to reschedule such Planned Outage.

(c) Notice of Unplanned Outages. Any time period during which the Project is offline other than during a Planned Outage is an "Unplanned Outage." If Owner determines an Unplanned Outage is required, Owner shall coordinate the timing of such Unplanned Outage with O&R and, subject to Owner's obligations under Section 6.01, shall accommodate O&R's preferences for the scheduling of such Unplanned Outage. In the event of an unexpected Unplanned Outage, Owner shall provide notice to O&R by telephone at the telephone number(s) listed in Exhibit G as soon as reasonably practicable and, in all cases, no more than fifteen (15) minutes following the occurrence of such Unplanned Outage. Thereafter, Owner shall, as soon as reasonably practicable, provide O&R with a notice that includes: (i) the event or condition, (ii) the date and time of such event or condition, (iii) the expected end date and time of such event or condition, (iv) the Products available (if any) during such event or condition, (v) MW derate, (vi) name or single point identifier (PTID) of the asset, and (vii) any other information reasonably requested by O&R. Notwithstanding the delivery of a notice of an Unplanned Outage or coordination with O&R to resolve an Unplanned Outage, the Project shall be deemed to be unavailable for the duration of an Unplanned Outage as applicable to the calculation of Guaranteed Availability under Section 6.03.

(d) Restoration of the Project. Owner shall provide as much advance notice as reasonably practicable to O&R of the date and time the Project will be back online, in part or in its entirety, provided that Owner shall provide at least two (2) days' prior notice for restoration from a Planned Outage and at least two (2) hours' notice for restoration from an Unplanned Outage. O&R shall be entitled to rely on such notice for purposes of bidding Products into real-time wholesale electric markets. For purposes of calculating the availability of the Project, the Project shall only be considered available, and only to the extent the Project is available, in the first full hour in which the Project could have been bid into real-time wholesale electric markets.

6.05 Operational Notices.

(a) Unavailability Notice. O&R shall be entitled to assume that the Project will be available and capable of performing at the maximum Contract Capacity, Contract Capacity Energy, Charging Capacity and Discharging Capacity as set forth on Exhibit D during each Settlement Interval of each Operating Day, except as otherwise noted in the

then current Outage Schedule or in an Unavailability Notice delivered to O&R not later than three (3) Business Days before the applicable Operating Day. Owner shall update O&R immediately if the Available Capacity of the Project changes or is likely to change. Owner must follow up all such updates with updates sent via electronic mail to O&R's personnel designated in Exhibit G to receive such communications. Owner shall accommodate O&R's reasonable requests for changes in the time or form of delivery of the Unavailability Notices. If an electronic submittal is not available, or is not possible for reasons beyond Owner's control, Owner may provide Unavailability Notices using a form to be provided by O&R. Delivery of an Unavailability Notice shall be made by (in order of preference unless the Parties agree to a different order) electronic mail, facsimile transmission or, as a last resort, telephonically to O&R's personnel designated in Exhibit G to receive such communications. Regardless of the duration of unavailability set forth in an Unavailability Notice, the Project shall be deemed to be unavailable for the duration of an Unplanned Outage as calculated for Guaranteed Availability under Section 6.03.

(b) Dispatch Notices. During the Contract Term, O&R will have the right to direct Owner to dispatch the Project seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices to Owner electronically (in a form to be provided by O&R), and subject to the requirements and limitations set forth in this Agreement. Such initial Dispatch Notices will be applicable to schedules for the Day-Ahead Market. Subject to Section 6.05(e) (Operating Restrictions), each Dispatch Notice will be effective unless and until O&R modifies such Dispatch Notice by providing Owner with an updated Dispatch Notice. If an electronic submittal is not possible for reasons beyond O&R's control, O&R may provide Dispatch Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Owner's personnel designated in Exhibit G to receive such communications. In addition to any other requirements set forth in this Agreement, all Dispatch Notices will be made in accordance with market notice timelines as specified in the NYISO Tariff. Within the Operating Day, changes to the dispatch schedule shall be provided through the Real-Time Market and shall be communicated through telemetry dispatch signals from NYISO to the Project.

(c) Charging Notice. During the Contract Term, O&R will have the right to charge the Project in the Day-Ahead Market, seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Owner electronically, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice will be effective unless and until O&R modifies such Charging Notice by providing Owner with an updated Charging Notice. If an electronic submittal is not possible for reasons beyond O&R's control, O&R may provide Charging Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, telephonically or by facsimile transmission to Owner's personnel designated in Exhibit G to receive such communications. Within the Operating Day, changes to the charging schedule shall be provided through the Real-Time Market and shall be communicated through telemetry signals from NYISO to the Project.

(d) Communication Protocols. The Parties shall agree to the communication protocols outlined in Exhibit G to facilitate the exchange of information between them.

(e) Operating Restrictions. All Operating Restrictions associated with the Project are specified in Exhibit D. In providing a Dispatch Notice or Charging Notice, O&R shall use reasonable efforts to comply with the Operating Restrictions. If O&R submits a Dispatch Notice or Charging Notice that does not conform with the Operating Restrictions, then Owner shall immediately notify O&R of the non-conformity and provide a proposed modification of a Dispatch Notice or Charging Notice that conforms to the Operating Restrictions. Unless O&R submits a modified Dispatch Notice or Charging Notice, Owner shall, as applicable, dispatch or charge the Project in accordance with the modification proposed by Owner in accordance with the Operating Restrictions.

6.06 Charging Energy Management and Payments.

(a) O&R's Charging Energy Management Responsibilities. Except as set forth in Section 6.06(c) below, O&R shall be responsible for managing, purchasing, and scheduling the Charging Energy Requirements for the Project.

(b) Owner Charging Energy Responsibilities. The facilities required for the delivery of the Charging Energy Requirements for the Project are part of the Project. The maintenance, repair, and replacement of equipment in Owner's possession and control that is used to facilitate delivery of the Charging Energy Requirements shall be the responsibility of Owner and Owner shall take such actions as are necessary to cause the delivery of the Charging Energy Requirements to the Project.

(c) Charging Energy Costs. Supply Charging Energy Costs and Distribution Charging Energy Costs shall be the responsibility of the designated Party under each of the circumstances provided below:

Party	Cost Responsibility
Owner	• Supply Charging Energy Costs incurred before the start of the Interim Period; • Supply Charging Energy Costs arising out of or pertaining to a Non-O&R Dispatch or a Non-O&R Charge; and • Distribution Charging Energy Costs.
O&R	• During the Interim Period, Supply Charging Energy Costs, provided that revenue and costs will be allocated pursuant to Section 3.01; and • Supply Charging Energy Costs during the Contract Term, other than costs arising out of or pertaining to a Non-O&R Dispatch or a Non-O&R Charge.

(d) Non-O&R Charge. After Substantial Completion, Owner shall not charge the Project other than pursuant to a Charging Notice or a dispatch signal from NYISO related to the O&R bid, or in connection with an Owner Initiated Test. If Owner (i) charges the Project to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Project without a Charging Notice (each, a "Non-

O&R Charge"), then (x) Owner shall be responsible for all energy costs associated with such charging, and (y) O&R shall be entitled to discharge such energy without notice and to all of the benefits associated with such discharge, without credit to Owner. Owner shall be responsible and pay for all charges, sanctions, or penalties associated with a Non-O&R Charge, any failure to charge the Project consistent with a Charging Notice, and any deviations from a Charging Notice or charging instruction or award.

ARTICLE 7
CREDIT AND COLLATERAL

7.01 Development Security.

(a) Amount. Owner shall post and thereafter maintain Development Security in an amount not less than $210,000 per MW[6] of the Contract Capacity of the Project.

(b) Posting Requirements. Owner shall post the Development Security in accordance with the following terms and conditions:

(i) Owner shall post the Development Security simultaneously with Owner's execution and delivery of this Agreement;

(ii) The Development Security must be in the form of cash or a Letter of Credit; and

(iii) The Development Security and any interest accrued thereon in accordance with Section 7.03(a) shall be held by O&R as security for Owner's obligations under this Agreement, including achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Deadline.

(c) Return of Development Security. If no Event of Default with respect to Owner has occurred and is continuing, and no Default Termination Date has occurred or been designated as the result of an Event of Default with respect to Owner, then:

(i) As soon as reasonably practicable after the Commercial Operation Date, O&R shall return to Owner the unused portion of the Development Security including any interest accrued thereon pursuant to Section 7.03(a).

(ii) As soon as reasonably practicable after the termination of this Agreement by either Party, O&R shall return to Owner the unused portion of the Development Security, if any.

Owner may, with O&R's consent, authorize O&R to retain cash or Letter(s) of Credit initially posted as Development Security as Performance Assurance posted under Section 7.02.

[6] *Note*: For 1-hour battery, $52,000 per MW.

7.02 Performance Assurance.

(a) Amount. At all times during the Contract Term, Owner shall post on or before the first day of each Contract Year, and thereafter maintain during the Contract Year, Performance Assurance in an amount not less than (i) during the first Contract Year, the Commercial Operation Payment and (ii) during each subsequent Contract Year, the Commercial Operation Payment minus the product of (x) the amount of the Commercial Operation Payment and (y) the number of completed Contract Years, divided by (z) ten (10) years.

(b) Posting Requirements. Owner shall post the Performance Assurance in accordance with the following terms and conditions:

(i) Owner shall post all of the Performance Assurance on or before the Commercial Operation Date;

(ii) Performance Assurance must be in the form of cash or a irrevocable, transferable, standby letter of credit ("Letter of Credit") substantially in the form of Exhibit K (or is otherwise acceptable to O&R, in its sole discretion), provided by Owner from an issuer acceptable to O&R that must meet each of the following criteria: (a) is a U.S. commercial bank or a U.S. branch of a foreign commercial bank, (b) with total assets of at least ten billion U.S. dollars (US$10,000,000,000) and (c) a Credit Rating of at least "A-" from S&P or "A3" from Moody's, and if such bank is rated by more than one Rating Agency and the ratings are at different levels, the lowest rating shall be the Credit Rating for this purpose; and

(iii) The Performance Assurance and any interest accrued thereon in accordance with Section 7.03(a) shall be held by O&R as security for Owner's performance of its obligations under this Agreement during the remainder of the Term.

(c) Return of Performance Assurance. O&R shall return to Owner the unused portion of the Performance Assurance, including any interest accrued thereon pursuant to Section 7.03(a), as soon as reasonably practicable after (i) the Term has ended; and (ii) Owner has satisfied all obligations under this Agreement that survive termination of this Agreement.

7.03 Administration of Project Security.

(a) Cash.

(i) Interest shall accrue at the Interest Rate on any Project Security posted in cash and shall be due and payable by O&R to Owner, concurrently with the return of such collateral to Owner in accordance with the terms of this Agreement.

(ii) O&R shall have the right to sell, pledge, re-hypothecate, assign, invest, use, commingle or otherwise use in its business any cash that it holds as

Project Security hereunder, free from any claim or right of any nature whatsoever of Owner, including any equity or right of redemption by Owner.

(iii) In the event that O&R uses the cash collateral to recover damages payable to O&R from Owner, other than to satisfy a Termination Payment, Owner shall replenish the cash collateral to (or otherwise post a Letter of Credit that, when combined with the cash collateral, equals) the full Project Security amount within three (3) Business Days.

(b) Letters of Credit.

(i) Each Letter of Credit shall be maintained for the benefit of O&R and shall be issued or renewed for a minimum term of one year (which shall be renewed in accordance with Section 7.03(b)(ii) below).

(ii) Owner shall:

(A) renew or cause the renewal of each outstanding Letter of Credit no less than thirty (30) days before its expiration;

(B) if the issuer of an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Project Security no less than thirty (30) days prior to its expiration;

(C) if the issuer of a Letter of Credit fails to honor O&R's properly documented request to draw on an outstanding Letter of Credit, provide substitute Project Security within three (3) Business Days after such refusal; and

(D) replenish a Letter of Credit to the full Project Security amount in the event that O&R draws against the Letter of Credit for any reason other than to satisfy a Termination Payment within three (3) Business Days of such drawdown.

(iii) Upon the occurrence of a Letter of Credit Default, Owner shall provide to O&R alternative Project Security on or before the third (3rd) Business Day after the occurrence thereof and until the posting of such alternative Project Security, O&R may seek assurance by drawing upon any outstanding Letter of Credit in full. The cash proceeds received by O&R from drawing upon the Letter of Credit as permitted herein shall be deemed Project Security for Owner's obligations to O&R and shall be returned to Owner upon the posting of alternative Project Security in accordance with this Section 7.03(b)(iii).

(iv) Upon or at any time after the occurrence and continuation of an Event of Default by Owner, O&R may seek assurance by drawing upon any outstanding Letter of Credit an amount up to the damages O&R reasonably determines it has suffered due to the Event of Default and upon submission to the issuer of such Letter of Credit of one or more certificates specifying that such Event

of Default has occurred and is continuing. In addition, O&R will have the right to draw on the Letter of Credit for any of the reasons set forth in such Letter of Credit (or its accompanying draw certificate).

(v) Cash proceeds received by O&R from drawing upon the Letter of Credit and that are not used to satisfy the damages claimed by O&R shall be deemed Project Security for Owner's obligations to O&R, and O&R shall have the rights and remedies set forth in this Agreement with respect to such cash proceeds.

(vi) In all cases, all costs associated with a Letter of Credit, including the costs and expenses of establishing, renewing, substituting, canceling, and changing the amount of a Letter of Credit, shall be borne by Owner.

(c) Liability Following Application of Collateral. Notwithstanding O&R's use of cash collateral or receipt of cash proceeds of a drawing under the Letter of Credit, Owner shall remain liable for:

(i) any failure to provide or maintain the required Project Security if, following such application, the remaining Project Security is less than the amount required hereunder (including failure to replenish the cash collateral or a Letter of Credit to the full Project Security amount in the event that O&R uses the cash collateral or draws against the Letter of Credit for any reason other than to satisfy a Termination Payment); or

(ii) any amounts owing to O&R that remain unpaid after the application of the amounts drawn by O&R.

7.04 Grant of Security Interest. To secure its performance of its obligations under this Agreement, and until released as provided herein, Owner hereby grants to O&R a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right of setoff against), and assignment of all cash provided as Project Security or as proceeds resulting from Project Security or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of O&R, and Owner agrees to take such action as O&R reasonably requires to perfect O&R's Security Interest in, and lien on (and right of setoff against), such cash collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

7.05 Remedies.

(a) Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or following a Default Termination Date, O&R, if it is the Non-Defaulting Party, may do any one or more of the following:

(i) exercise any of its rights and remedies with respect to the Project Security, including any such rights and remedies under law then in effect;

(ii) exercise any of its rights of setoff against any and all property of Owner in the possession of O&R or its agent;

(iii) draw on any outstanding Letter of Credit issued for its benefit, including to draw in full and hold proceeds as cash collateral if a Letter of Credit Default occurs; and

(iv) liquidate any Project Security then held by or for the benefit of O&R free from any claim or right of any nature whatsoever of Owner, its Lender or any other party, including any equity or right of purchase or redemption by Owner or its Lender.

(b) O&R shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Owner's obligations under this Agreement, subject to O&R's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

(c) O&R shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Owner shall in all events remain liable to O&R for any amount payable by Owner in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

7.06 Credit and Collateral Covenants.

(a) Owner shall, from time to time as requested by O&R, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of O&R with respect to the Security Interest provided for herein and therein.

(b) Owner may not cause or permit the stock or other equity ownership interest in Owner or assets of Owner to be pledged or assigned, as collateral or otherwise, to any party other than Lender under a Collateral Assignment Agreement.

(c) Owner may not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and operation of the Project.

(d) Owner may not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

(e) During any period during which Owner is a Defaulting Party, Owner shall not:

(i) declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Owner; or

(ii) otherwise make any distribution or payment to any Affiliate of Owner.

7.07 Financial Information. Owner shall deliver the following financial statements for the most recent accounting period, prepared in accordance with GAAP:

(a) Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing true and complete copies of its audited, consolidated financial statements (consisting of its income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) (the "Audited Financial Statements") for such fiscal year, setting forth in each case, in comparative form, the figures for the previous year for Owner; and

(b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements (consisting of its income statement, balance sheet, statement of cash flows and statement of retained earnings and all notes accompanying such statements) for such fiscal quarter and the portion of the fiscal year through the end of such quarter (the "Interim Financial Statements"), setting forth in each case, in comparative form, the figures for the previous year.

In each case, the financial statements specified above must be certified in accordance with all Applicable Laws, including all applicable SEC rules and regulations, if Owner is an SEC reporting company, or certified by the chief financial officer, controller, treasurer or any assistant treasurer of Owner as fairly presenting the financial condition as of the respective dates they were prepared and the results of operations for the periods indicated (subject, in the case of the Interim Financial Statements, to normal and recurring year-end audit adjustments, the effect of which would not be materially adverse), and the absence of notes that, if presented, would not differ materially from those presented in the Audited Financial Statements, if Owner is not an SEC reporting company.

ARTICLE 8
FORCE MAJEURE; SAFETY EVENT; CASUALTY EVENT

8.01 Force Majeure Claim. If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure (except any failure to make payments when due for payment obligations that accrue prior to the Force Majeure event) to the extent it is unable to perform due to the Force Majeure; *provided that* the Claiming Party satisfies the following conditions:

(a) the Claiming Party, no more than four (4) days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;

(b) the Claiming Party provides timely evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement and that the Force Majeure prevents the Claiming Party from performing the obligations;

(c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

(d) as soon as the Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

8.02 Excused Performance. The Claiming Party's sole and exclusive remedy on account of Force Majeure shall be the suspension of its obligation to perform under this Agreement. The non-claiming Party shall be excused from its corresponding performance, including its obligation to make payments for payment obligations that accrue after the Force Majeure, and shall not be liable to the Claiming Party for any damages, costs or other expenses arising from or otherwise incurred by the Claiming Party as a result of such Force Majeure for the duration of such Force Majeure.

8.03 Termination for Extended Force Majeure. Notwithstanding the foregoing, after the Commercial Operation Date, a Party shall have the right to terminate this Agreement if a Force Majeure event has delayed or prevented the other Party from performing its obligations hereunder for more than three hundred sixty-five (365) days during the Delivery Period. From and after such termination, neither Party shall have any obligation to the other Party, except for obligations incurred prior to the date of such termination, including Owner's obligation to refund O&R pre-paid amounts as described in the remainder of this paragraph. Owner acknowledges and agrees that the Commercial Operation Payment represents an up-front payment for services to be provided by Owner during the Delivery Period. Accordingly, if a Party elects to terminate the Agreement pursuant to this Section 8.03 after Owner has received the Commercial Operation Payment, then Owner shall promptly refund a pro rata amount equal to (a) the total of the Commercial Operation Payment reflecting the number of months remaining in the Delivery Period after the effective termination date divided by the total number of months in the Delivery Period, less (b) the Annual Post-Commercial Operation Payment for the then-applicable Contract Year reflecting the number of months completed in such Contract Year up to the effective termination date divided by twelve months.

8.04 Safety Event; Investigation and Remedy.

(a) If at any time during the Term (i) any Governmental Authority takes any action with respect to the Project for safety concerns that prevents or restricts the Project from being operated in accordance with the terms of this Agreement or (ii) a manufacturer or vendor for any component of a Project issues a safety notice or recall notice recommending suspension of, or changes to, the operation of the Project that prevents or restricts the Project from being operated in accordance with the terms of this Agreement ("Safety Event"), then (x) Owner shall promptly notify O&R of such circumstances or (y) if O&R becomes aware of such circumstances, O&R may provide notice to Owner of the same.

(b) Once Owner is aware of a Safety Event, Owner shall evaluate the Safety Event, including by engaging an Independent Engineer, if appropriate, and communicating with the manufacturer and/or safety consultants, to determine whether the Safety Event impairs the safe operation of any Project within the System and what actions, if any, may be required to remedy the Safety Event. Owner shall deliver a written report from Owner or, if applicable, an Independent Engineer to O&R with the results of such evaluation and

all remedial actions necessary to resolve the safety concerns identified. If either an Independent Engineer or Owner determines that the Safety Event impairs the safe operation of any Project within the System, then Owner shall take commercially reasonable actions required to address identified safety concerns, including by prosecuting any warranty claims with the applicable manufacturer, and implement any changes required to the Project all in compliance with Applicable Law and Good Utility Practice. If Owner is unable to implement the remediation identified and restore operation of the Project within three (3) months of receipt of O&R's notice (subject to any extension of such period permitted by O&R), then such failure shall constitute an Event of Default under Section 10.01(b).

(c) The obligations of Owner in the preceding Section 8.04(a) and Section 8.04(b) shall apply even if a Safety Event is also a Force Majeure.

8.05 Loss Due to Casualty. If any part of the Project is damaged, destroyed or rendered inoperable, whether by an event of Force Majeure or otherwise ("Casualty Loss"), Owner shall be required to repair, restore or reconstruct the Project, as applicable, within three (3) months of receipt of O&R's notice (subject to any extension of such period permitted by O&R), and failure to do so shall constitute an Event of Default under Section 10.01(b).

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.01 Representations and Warranties of Both Parties. As of the Effective Date, each Party represents and warrants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has all authorizations from Governmental Authorities (including Permits) necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;

(d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;

(f) There is not pending, or to its knowledge, threatened against it or, in the case of Owner, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Agreement;

(g) With respect to the Party making the representation, no Event of Default has occurred or, if an Event of Default has occurred, no Event of Default is continuing;

(h) Entering into this Agreement and performing its obligations hereunder will not result in an Event of Default or a default under any other material agreement to which it is a party or by which its assets are bound;

(i) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(j) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

9.02 Additional Owner Representations and Warranties.

(a) On each day on which Project Security is held by O&R under this Agreement, Owner hereby represents and warrants that:

(i) Owner has good title to and is the sole owner of such Project Security, and the execution, delivery and performance of the covenants and agreements of this Agreement do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including the Project Security, other than the security interests and liens created under this Agreement;

(ii) Upon the posting of Project Security by Owner to O&R, O&R shall have a valid and perfected first priority continuing security interest therein, free and clear of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) Owner is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement, which restricts in any manner the rights of any present or future holder of any of the Project Security with respect hereto.

ARTICLE 10
EVENTS OF DEFAULT; TERMINATION

10.01 Events of Default. An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) With respect to either Party:

(i) Such Party fails to make when due any payment required under this Agreement and the failure is not cured within ten (10) Business Days after Notice of the failure;

(ii) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, provided, if the misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur if the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice from the non-breaching Party;

(iii) Such Party fails to perform any material covenant or obligation set forth in this Agreement, which failure does not constitute a separate Event of Default, if such failure is not remedied within thirty (30) days after Notice of the failure that sets forth in reasonable detail the nature of the failure; *provided*, if the failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure;

(iv) Dissolution or liquidation of such Party; or

(v) such Party becomes Bankrupt.

(b) With respect to Owner:

(i) Owner transfers or assigns the Interconnection Queue Position or the Interconnection Agreement;

(ii) Subject to Owner's right to cure pursuant to Section 4.07, Owner fails to achieve a Critical Path Milestone on or before the deadline to achieve such Critical Path Milestone set forth in this Agreement;

(iii) Owner's Abandonment of construction of the Project;

(iv) Owner fails to achieve Commercial Operation by the Guaranteed Commercial Operation Deadline;

(v) the occurrence of any event for which O&R's consent is required under Section 14.04 without O&R providing prior written consent, including the use of the Project for the benefit of any Person other than O&R;

(vi) Owner fails to satisfy the credit and collateral requirements set forth in ARTICLE 7, including failure to post or maintain Project Security, and such failure is not cured within three (3) Business Days after Notice from O&R;

(vii) Owner, its contractors or agents fail to maintain insurance of the types and in the amounts required under Section 14.07;

(viii) As it concerns performance of the Project, (A) Actual Availability is less than ninety-five percent (95.0%) in any calendar quarter; (B) the aggregate hours of unavailability in any calendar year due to Unplanned Outages exceeds 336 hours; (C) the Power Capacity Rating is less than the Contract Capacity for a period of one hundred eighty (180) or more consecutive days; or (D) the Round-Trip Efficiency demonstrated during any Storage Rating Test is less than the Guaranteed Round-Trip Efficiency by three percent (3.0%) or more;

(ix) Owner delivers or otherwise makes available to O&R a product that is not produced by the Project;

(x) A termination under any agreement necessary for Owner to: (A) interconnect the Project to the Transmission Owner's electric system; (B) be a market participant under the NYISO Tariff; or (C) receive electric service sufficient for all Station Use and Charging Energy Requirements;

(xi) After the Commercial Operation Date, the occurrence and continuation of an event of default of Owner under one or more agreements or instruments relating to indebtedness for borrowed money, in the aggregate amount of **[*dollar amount text*]** dollars ($**[*Number*]**) **[*amount to be determined by O&R*]** or more, that with the giving of notice or passage of time could result in the indebtedness being declared immediately due and payable;

(xii) Owner is unable to resolve a Safety Event, as described in Section 8.04(b);

(xiii) Owner does not repair, restore or reconstruct the Project, as applicable, following a Casualty Loss as required under Section 8.04(c);

(xiv) An uncured default under the NYSERDA Agreement has occurred;

(xv) Owner makes any material misrepresentation or omission in any report, including any status report, or the Milestone Schedule (including the log, records and reports required under Sections 6.02, 6.05(a) and 14.06 and Exhibit C) required to be made or furnished by Owner pursuant to this Agreement and such misrepresentation or omission is not remedied within five (5) Business Days after Notice from O&R; or

(xvi) Owner does not have Site Control in accordance with Section 4.01(a).

10.02 Default Termination Date. Except as otherwise provided in Section 2.08, if an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the "Non-Defaulting Party") shall have the right, by delivery of Notice to the Defaulting Party, to (a) terminate this Agreement as of the date designated in such Notice (such date, a "Default

Termination Date"), which Default Termination Date shall be no earlier than the day such Notice is delivered and no later than twenty (20) days after such Notice is delivered, (b) accelerate all amounts owed by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance pending termination of this Agreement; and (e) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages and, where appropriate, specific performance or injunctive relief), except to the extent that such remedies are limited by the terms of this Agreement.

10.03 Calculation of Termination Payment. If a Default Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment in accordance with this Section 10.03.

(a) Termination Payment Prior to Commercial Operation Date. If the Default Termination Date occurs before the Commercial Operation Date, then the Termination Payment shall be calculated in accordance with this Section 10.03(a).

(i) If Owner is the Defaulting Party, then the Termination Payment shall be owed to O&R and shall equal the Development Security, plus any interest accrued on the Development Security, less any Substantial Completion Delay Liquidated Damages previously paid by Owner as of the Default Termination Date. There will be no amounts owed to Owner.

(ii) If O&R is the Defaulting Party, then the Termination Payment shall be owed to Owner and shall equal the sum of the actual, documented and verifiable costs incurred by Owner between the Effective Date and the Default Termination Date in connection with the Project, less the fair market value (determined in a commercially reasonable manner) of (A) the individual assets acquired by Owner for the Project, or (B) the entire Project, whichever is greater, regardless of whether or not any Owner asset or the entire Project is actually sold or disposed of.

(b) Termination Payment After the Commercial Operation Date. If the Default Termination Date occurs on or after the Commercial Operation Date, then the Termination Payment shall be calculated in accordance with this Section 10.03(b).

(i) If Owner is the Defaulting Party, then the Termination Payment shall be owed to O&R and shall be equal to the product of (1) the Total Compensation Amount and (2) the number of days remaining in the Delivery Period as of the effective date of termination divided by the total number of days in the Delivery Period.

(ii) If O&R is the Defaulting Party, then the Termination Payment, if any, shall be owed to Owner and shall equal the positive difference between the total value of all unpaid Annual Post-Commercial Operation Payments less a reasonable estimate of the net revenue to be derived from use of the Project over the days remaining in the Delivery Period. If the result of such calculation is negative, then Owner shall remit payment to O&R. The Parties may engage an independent third party to estimate anticipated net revenue from sales from the

Project in the NYISO Markets (the costs of which engagement shall be divided evenly between them).

10.04 Notice of Termination Payment. As soon as practicable after a Default Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation. If O&R is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the NYISO, the NYPSC, or any other Governmental Authority, then O&R may estimate the amount of those penalties and fines and include them in the Termination Payment amount. The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days after the Notice is provided.

10.05 Effect of Termination. Termination of this Agreement shall not operate to discharge any liability that has been incurred by either Party prior to the effective date of such termination.

ARTICLE 11
LIMITATIONS OF REMEDIES AND DAMAGES

SUBJECT TO SECTION 12.04 (PROVISIONAL RELIEF), IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, EACH PARTY'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EXCEPT THE FOREGOING LIMITATION SHALL NOT APPLY TO THE TERMINATION PAYMENT, THE SUBSTANTIAL COMPLETION DELAY DAMAGES OR INDEMNIFICATION FOR DAMAGES CLAIMED BY A THIRD PARTY (IN EACH CASE, REGARDLESS OF WHETHER SUCH AMOUNTS OR DAMAGES ARE CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT).

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES OWED IN SUCH CIRCUMSTANCES WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE

APPROXIMATION OF THE HARM OR LOSS TO THE PARTY OWED LIQUIDATED DAMAGES.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT O&R FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PROJECT SECURITY.

ARTICLE 12
DISPUTES

12.01 Dispute Resolution. The Parties shall attempt in good faith to resolve any Dispute arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each, a "Manager"). Either Manager, may, by Notice to the other Party, request a meeting to initiate negotiations to be held within five (5) business days after the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the Dispute is not resolved with ten (10) days after the first meeting between the Managers, then the Managers shall refer the Dispute to the designated senior officers of their respective companies that have authority to settle the Dispute (each, an "Executive"). Either Executive may, by Notice to the other Party, request a meeting to initiate negotiations to be held within five (5) business days after the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically) (the date of such initial meeting, the "Initial Negotiation Start Date"). After the initial meeting between the Executives, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

If the Parties have been unable to resolve a Dispute pursuant to the informal dispute resolution procedures in this Section 12.01 within twenty (20) days following the Initial Negotiation Start Date (the "Initial Negotiation End Date"), then the Parties may submit such Dispute to mediation under the procedures described in Section 12.02 (Mediation) below. If such Dispute is not submitted to mediation by either Party within fifteen (15) days after the Initial Negotiation End Date, or is not resolved through mediation within thirty (30) days after the scheduled date of mediation (subject to any extension of time mutually agreed to by the Parties), then either Party may pursue any remedies available to it under this Agreement or otherwise available at law or in equity in a court of competent jurisdiction with respect to such Dispute.

12.02 Mediation. A Party may initiate mediation in accordance with Section 12.01 by providing Notice to the other Party requesting mediation and setting forth a description of the Dispute and the relief requested. The Parties will cooperate with one another in selecting a mediator with energy sector expertise ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. The Parties will select the Mediator and schedule the time and place of the mediation within thirty (30) days after Notice of the request for mediation. Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than ninety (90) days from the date of Notice of the request for mediation. Each Party will participate in the mediation in good faith, and that will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party). All offers,

promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding between or involving the Parties, or either of them; *provided* that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

12.03 Jurisdiction and Venue. Owner irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester County with regard to any controversy arising out of or relating to this Agreement. Owner agrees that service of process on it may be made, at O&R's option, either by registered or certified mail addressed to Owner at the address shown herein or at the address of any office actually maintained by Owner, or by actual personal delivery to Owner. Such service shall be deemed sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, process may be served as stated above whether or not it may be properly served in a different manner. Owner consents to the selection of the state and the federal courts situated in the City of New York or in Westchester County as the exclusive forums for any legal proceeding arising out of or relating to this Agreement. Owner also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester County.

12.04 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 4.04, 6.02, 10.02 or 14.05 in any court of competent jurisdiction.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with this ARTICLE 12, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

12.05 Consolidation of Matters. The Parties shall make diligent good faith efforts to consolidate any provisional relief, mediation, or other dispute resolution proceedings arising pursuant to this ARTICLE 12 that arise from or relate to the same act, omission or issue.

ARTICLE 13
INDEMNIFICATION; GOVERNMENTAL CHARGES

13.01 Owner's Indemnification Obligations. To the greatest extent permitted by Applicable Laws, Owner releases, and shall indemnify, defend and hold harmless O&R, its Affiliates, and their respective officers, directors, trustees, employees, agents, assigns and

successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct damage, claim, cost, charge, demand, or expense, and attorneys' fees and other costs of litigation or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third party), arising out of or in connection with:

(a) any breach made by Owner of any representation, warranty, covenant or agreement contained herein;

(b) NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority or other Person to assess such NERC Standards Non-Compliance Penalties against O&R in connection with the Project;

(c) injury or death to Persons, including O&R employees, and physical damage to property, including O&R property, where the damage arises out of, is related to, or is in connection with, Owner's design, development, construction, ownership, operation or maintenance of the Project, or obligations or performance under this Agreement;

(d) an infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party resulting from the use of any equipment, software, applications or programs (or any portion of same) in connection with the Project;

(e) any violation of Applicable Laws, failure to obtain and maintain Permits, or failure to perform Permit Requirements related to the Project or Owner's performance, or failure to perform, under this Agreement;

(f) any (i) storage, generation, use, handling, manufacture, processing, transportation, treatment, release or disposal of any Hazardous Material by Owner, or any of Owner's subcontractors; or (ii) alleged, threatened, or actual violation of any Environmental Law by Owner or any of Owner's subcontractors, including, without limitation, any enforcement or compliance proceeding relating to or in connection with any such alleged, threatened or actual violation and any action reasonably necessary to abate, investigate, remediate or prevent any such violation or threatened violation; (iii) presence, release or cleanup of any Hazardous Materials at, from, to, under, or on real property or equipment or to the environment; or (iv) environmental compliance costs, in each case in connection with the Project;

(g) the failure to pay any Governmental Charges or Environmental Costs for which Owner is responsible under Section 13.04 and Section 13.05;

(h) any financial settlement for Products requiring payment by O&R, monetary penalties or fines assessed against O&R by the NYPSC, the NYISO or any other entity having jurisdiction, resulting from:

(i) Owner's failure to dispatch the Project in accordance with a Dispatch Notice, other than due to a Force Majeure;

(ii) Owner's failure to provide notice of the non-availability of any portion of the Contract Quantity for any portion of the Contract Term as required under Section 6.05(a); or

(i) any Non-O&R Dispatch, including all (i) charges, sanctions, and penalties imposed by the NYISO, and (ii) the related Charging Energy Requirements.

To the extent permitted under Applicable Laws, this indemnity applies notwithstanding O&R's active or passive negligence.

13.02 Indemnification Claims. All claims for indemnification by a Person entitled to be indemnified under this Agreement (an "Indemnified Party") will be asserted and resolved as follows:

(a) If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party, the Indemnified Party shall as promptly as practicable give Notice to Owner; *provided*, failure to provide this Notice will relieve Owner only to the extent that the failure actually prejudices Owner.

(b) With respect to claims made by a third party, Owner shall retain counsel reasonably acceptable to the Indemnified Party with respect to any claims or demands for which an Indemnified Party is entitled to be indemnified under this Agreement. Owner will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but cannot admit any liability or enter into any settlement without Indemnified Party's approval.

(c) Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Owner does not assume control of the defense, Owner will bear the expense of this counsel.

13.03 Cooperation to Minimize Tax Liabilities. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is adversely affected in a material way by such efforts.

13.04 Governmental Charges. For the Contract Term, Owner shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project (collectively, "Governmental Charges") on or with respect to the Project or the Products.

For the Contract Term,

(a) Owner shall pay or cause to be paid all Governmental Charges on or with respect to the Product at or before the Energy Delivery Point.

(b) O&R shall pay or cause to be paid all Governmental Charges on or with respect to Product after the Energy Delivery Point.

If O&R is required by Applicable Laws to remit or pay Governmental Charges that are Owner's responsibility hereunder, Owner shall promptly reimburse O&R for such amounts upon O&R's request. If Owner is required by Applicable Laws to remit or pay Governmental Charges that are O&R's responsibility hereunder, O&R shall promptly reimburse Owner for such Governmental Charges upon Owner's request.

13.05 Environmental Costs. Owner is solely responsible for:

(a) all Environmental Costs, and

(b) all taxes, charges or fees imposed on the Project or Owner by a Governmental Authority for greenhouse gas emitted by and attributable to the Project during the Term.

ARTICLE 14
MISCELLANEOUS

14.01 General.

(a) Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

(b) Amendment. This Agreement can only be amended by a writing signed by both Parties.

(c) No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

(d) Waiver. The failure of either Party to insist in any instance upon strict performance of any provision of this Agreement or to exercise any right hereunder shall not be construed as a waiver of any such provision or rights for the future or of any other provision or right and the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

(e) Disclaimer on Inspection. Any review and/or approval by O&R or its consultants of (a) the Project, including its design, construction or refurbishment, testing, operation or maintenance or otherwise, or (b) Owner's subcontractors is at O&R's sole discretion and for the purposes O&R determines. By undertaking such review or electing not to undertake such review, O&R makes no representation and expresses no opinion whatsoever as to the economic and technical feasibility, operational capability, or reliability of the Project or the suitability or competence of Owner's subcontractors, and no such representation shall be implied. Owner's obligations under this Agreement shall not be affected by the grant to, or the exercise or non-exercise by, O&R of rights to inspect, test, review or approve the Project, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by O&R of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed

by Owner shall be construed merely as indicating that at the time of the approval O&R was not aware of any reason for objecting, and no such approval shall release Owner from full responsibility for the accurate and complete performance of this Agreement in accordance with its terms. Owner is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project and the suitability and competence of its subcontractors.

(f) Section Headings; Technical Terms. The headings used in this Agreement are for convenience and reference purposes only. Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.

(g) Successors and Assigns. This Agreement is binding on each Party's successors and permitted assigns.

(h) Payment Date. If a payment due date falls on a day that is not a Business Day, payment shall be made on the next Business Day after such payment due date.

(i) Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(j) Survival. The following provisions of this Agreement shall continue in effect after termination, including early termination: (i) all applicable provisions to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination, (ii) all applicable provisions to the extent necessary to provide for final billings and adjustments related to the period prior to termination and repayment of any money due and owing to either Party pursuant to this Agreement, (iii) the indemnifications specified in this Agreement, in each case subject to any applicable limitations on liability contained in this Agreement, (iv) the license granted by O&R pursuant to Section 1.06, and (v) any such provision necessary for the resolution of any of the above (i) through (iv), including provisions on dispute resolution, notices, governing law, records, insurance, and confidentiality.

(k) No Agency. Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party's agent.

(l) Authorized Representatives. Each Party may designate specific representatives that are authorized ("Authorized Representatives") to represent the Party for the specific purpose indicated by the authorizing Party. Unless expressly permitted by a Party, the Authorized Representative is not authorized to amend or otherwise modify this

Agreement. The lists of Authorized Representatives for each Party are set forth in Exhibit G.

(m) Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, or partnership relationship between the Parties or to impose any partnership obligations or liability on either Party in any way.

(n) Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

(o) Rules of Construction.

(i) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and may not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(ii) The term "including" when used in this Agreement is by way of example only, shall be read as "including, but not limited to," in each instance it occurs, and may not be considered in any way to be in limitation.

(iii) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(iv) Where days are not specifically designated as Business Days, they will be considered as calendar days.

(v) All references to time shall be in Eastern Prevailing Time unless stated otherwise.

(vi) No provision of this Agreement is intended to contradict or supersede any agreement or Applicable Laws covering transmission, distribution, metering, scheduling or interconnection, including the Interconnection Agreement. In the event of an apparent contradiction between this Agreement and any such agreement or Applicable Laws, such agreement or Applicable Laws control. Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

(vii) Whenever this Agreement specifically refers to any Applicable Laws, tariff, government department or agency, regional reliability council, Transmission Owner, accounting standard, or Rating Agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff, standard or organization.

14.02 Notices.

(a) Notices Generally. All notices, requests, invoices, statements or payments must be made as specified in Exhibit I (the "Notices"). Notices must, unless otherwise specified herein, be in writing and may be provided by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile. Notice provided in accordance with this Section 14.02(a) will be deemed given as follows:

(i) Notice by e-mail, facsimile or hand delivery will be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise will be deemed given at the close of business on the next Business Day;

(ii) Notice by overnight United States mail or courier service will be deemed given on the next Business Day after such Notice was sent out;

(iii) Notice by first class United States mail will be deemed given two (2) Business Days after the postmarked date;

(iv) Notice of curtailment will be deemed given on the date and time made by O&R and will be effective immediately.

(b) Notices will be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement. A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith. All Notices, requests, invoices, statements or payments related to this Agreement or the Project must reference the ID# and clearly identify the fact, circumstance, request, issue, dispute or matter to which such Notice relates.

14.03 Governing Law; Waiver of Jury Trial. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

14.04 Assignment; Transfer of Project or Equity Interests in Owner.

(a) Except as otherwise provided in this Section 14.04, Owner shall not (i) assign this Agreement or any of its rights or obligations hereunder, (ii) use the Project for the benefit of any Person other than O&R or (iii) transfer or assign any interest in all or any portion of the Project, in each case without the prior written consent of O&R, which consent may be given or denied at the sole discretion of O&R.

(b) Any Tax Equity Financing or Change of Control of Owner will require the prior written consent of O&R, which consent shall not be unreasonably withheld.

(c) Owner may, with at least thirty (30) days prior notice to O&R, including the names and contact information of the assignees, pledge or assign as security for any debt financing for the Project (i) all or any of its rights under this Agreement or proceeds therefrom, (ii) all or any portion of the Project and (iii) all or any portion of the direct or indirect equity interests in Owner; *provided* that such pledge or assignment terminates by its terms upon receipt by Owner of the Commercial Operation Payment. In connection with any debt financing for the Project by Owner that contemplates any such pledge or assignment, O&R agrees to enter into a consent to collateral assignment ("Collateral Assignment Agreement") in the form of Exhibit J. Requests for a Collateral Assignment Agreement must be received by O&R at least thirty (30) days in advance of the anticipated closing date for the transaction in question. Owner shall also be responsible for O&R's reasonable costs associated with the preparation, review, execution and delivery of a Collateral Assignment Agreement, including attorneys' fees. Except as otherwise provided in a Collateral Assignment Agreement entered into by Owner and a Lender, any further assignment or transfer by a Lender of any of Owner's rights under this Agreement, any interest in all or any portion of the Project or any direct or indirect equity interests in Owner shall be subject to the restrictions in this Section 14.04.

(d) Any requests for consent of O&R under this Section 14.04 shall be provided at least thirty (30) days in advance of the closing date of the proposed transaction. In connection with any consent of O&R requested under this Section 14.04, Owner shall provide certification to O&R as to receipt by Owner of all approvals of Governmental Authorities required in connection with such transaction and such other matters as O&R shall reasonably require.

14.05 Confidentiality.[7]

(a) Confidentiality Obligation. Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 14.05(b) (Permitted Disclosures) and 14.05(c) (Duty to Seek Protection), each receiving Party shall, and shall cause its Representatives to, (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (ii) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided*, a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement (and, in the case of Representatives of Owner engaged wholly or in part in the purchase and sale of electrical power or natural gas, are directly engaged in performing Owner's obligations under this Agreement) if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

[7] Note to Draft: This confidentiality provision may be revised to address critical energy infrastructure information (CEII), if applicable.

(b) Permitted Disclosures.

(i) Notwithstanding anything to the contrary herein, each of the Parties acknowledges and agrees that O&R may be required or requested to file or submit a copy of this Agreement, and certain other documentation and information relating to the Project to the NYPSC. In connection with any such NYPSC required or requested filings or submissions, O&R shall use commercially reasonable efforts to exclude or redact Confidential Information of Owner from the NYPSC required or requested filing or submission, and if the foregoing is not permitted by the NYPSC, O&R (a) shall, upon advice of its counsel, submit only that portion of Owner's Confidential Information that has been required or requested by the NYPSC, (b) to the extent applicable, shall request the NYPSC to grant confidential treatment to Owner's Confidential Information so filed or submitted and (c) shall notify Owner promptly if the NYPSC notifies O&R that Owner's Confidential Information is the subject of a Freedom of Information Law request so that Owner may seek an appropriate protective order or other reliable assurance that its Confidential Information will not be disclosed. The same procedures shall apply if Owner is required or requested by the NYPSC to submit Confidential Information of O&R to the NYPSC. Notwithstanding anything to the contrary set forth in this Agreement, a Party who follows the procedures described immediately above shall not be liable to the other Party if the NYPSC causes or permits the applicable Confidential Information of the disclosing Party to be disclosed or otherwise made available to the public.

(ii) The Parties may disclose Confidential Information to the extent necessary to comply with Applicable Laws, any accounting rule or standard, and any applicable summons, subpoena or order of a Governmental Authority, and any exchange, Control Area or NYISO rule.

(iii) Either Party shall be permitted to disclose the following terms with respect to this Agreement: (A) Party names, (B) technology type, (C) Delivery Period, (D) Project location, (E) Contract Capacity and Contract Capacity Energy, (F) Guaranteed Commercial Operation Deadline, and (G) the Project's expected energy deliveries.

(c) Duty to Seek Protection.

(i) In connection with requests or orders to produce Confidential Information protected by this Agreement and in accordance with a summons, subpoena, order or similar request of a Governmental Authority, or pursuant to any discovery or data request of a party to any proceeding before a Governmental Authority, each Party, to the extent permitted by Applicable Laws, (A) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement, and (B) will, and will cause its Representatives to, cooperate fully with such other Party, to the extent permitted by Applicable Laws, in seeking to limit or prevent

such disclosure of such Confidential Information. Notwithstanding the preceding sentence, the requirements under this Section 14.05(c)(i) do not apply to Section 14.05(b)(i).

(ii) If a Party or its Representatives are compelled to make disclosure in response to a requirement described in Section 14.05(c)(i), the compelled Person may disclose only that portion of the Confidential Information protected by this Agreement which its counsel advises that it is legally required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

(d) Ownership and Return of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Section 14.05.

14.06 Records.

(a) Performance under this Agreement. Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than four (4) years after final payment is made under this Agreement.

(b) Other Regulatory and Governmental Requirements. At O&R's request, Owner shall maintain and deliver to O&R copies of records and supporting documentation with respect to the Project that Owner is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

14.07 Insurance. Throughout the Term (unless otherwise expressly set forth in this Section 14.07) and for such additional periods as may be specified below, Owner and, to the extent not covered by Owner's insurance policies, its contractors and subcontractors shall, at their own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by Applicable Laws, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-, VII. The minimum insurance requirements specified herein do not in any way limit or relieve Owner of any obligation assumed elsewhere in this Agreement, including Owner's defense and indemnity obligations.

(a) Workers' Compensation Insurance. Workers' Compensation Insurance in accordance with the laws and regulations of the State of New York (including the statutory limits required by the State of New York) providing statutory benefits and covering loss resulting from injury, sickness, disability, or death of Owner's employees;

(b) Employer's Liability Insurance. Employer's Liability Insurance with limits of not less than:

(i) Bodily injury by accident – One Million dollars ($1,000,000) each accident

(ii) Bodily injury by disease – One Million dollars ($1,000,000) policy limit

(iii) Bodily injury by disease – One Million dollars ($1,000,000) each employee

(c) Commercial General Liability Insurance. Commercial General Liability Insurance (which, except with the prior written consent of O&R and subject to Sections 14.07(c)(i) and 14.07(c)(ii) below, shall be written on an "occurrence," not a "claims-made" basis), covering all operations by or on behalf of Owner arising out of or connected with this Agreement, including coverage for bodily injury, property damage, personal and advertising injury, and contractual liability. Such insurance shall bear a per occurrence limit of not less than Two Million dollars ($2,000,000), an aggregate combined single limit of not less than Four Million Dollars ($4,000,000), for bodily injury and/or property damage. Such limits may be satisfied by the underlying Commercial General Liability Insurance or in combination with the Umbrella / Excess Liability Insurance. For at least four (4) years after the end of the Term, such insurance shall include products/completion operations insurance with similar but separate and independent per occurrence and aggregate combined single limits. Such insurance shall contain standard cross-liability and severability of interest provisions. Such insurance policy deductibles shall be in an amount pre-approved by O&R in writing (such approval not to be unreasonably withheld).

If Owner elects, with O&R's written concurrence, to use a "claims made" form of Commercial General Liability Insurance, then the following additional requirements apply:

(i) The retroactive date of the policy must be on or prior to the Effective Date; and

(ii) Either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates that is prepaid no later than expiration of the underlying policy.

(d) Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars ($1,000,000) per occurrence for bodily injury or death and property damage. Such insurance shall cover liability arising out of Owner's or any of its subcontractors' use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers, in the performance of this Agreement.

(e) Pollution Liability Insurance. Owner shall provide or require the EPC Contractor to provide Contractor Pollution Liability Insurance from the date Physical Site Work commences through the Commercial Operation Date (which shall be written on an "occurrence" policy form) with limits of not less than Five Million dollars ($5,000,000) per occurrence and in the annual aggregate. Completed operations coverage will have a supplemental extended reporting period of not less than four (4) years after the Commercial Operation Date that is prepaid no later than expiration of the underlying policy.

Commencing from the date that the full notice to proceed under the EPC Contract has been issued and through the remainder of the Term, Owner shall carry Site-Specific Pollution Insurance (which, except with the prior written consent of O&R and subject to Sections 14.07(e)(i) and 14.07(e)(ii) below, may be written on an "occurrence," or a "claims-made" policy form) with limits of not less than Five Million dollars ($5,000,000) per occurrence and in the annual aggregate, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project or under this Agreement or might be required by federal, state, regional, municipal and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

If Owner elects, with O&R's written concurrence, to use a "claims made" form of Site-Specific Pollution Insurance, then the following additional requirements apply:

(i) The retroactive date of the policy must be no later than the date Physical Site Work commences; and

(ii) The policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates that is prepaid no later than expiration of the underlying policy.

(f) Professional Liability Insurance. Owner shall provide Professional Liability Insurance, with a limit of not less than Three Million dollars ($3,000,000) per claim and in the aggregate from the Effective Date through the Commercial Operation Date. The policy must provide for a supplemental extended reporting period of not less than four (4) years after the Commercial Operation Date that is prepaid no later than expiration of the underlying policy.

(g) All Risk Property Insurance. All Risk Property Insurance on a replacement cost basis covering the Project during the course of construction (Builders Risk) and after completion. The insurance will provide coverage against all-risk of loss including loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, earthquake, flood, collapse, sinkhole, subsidence and terrorism and other risks from time to time included under "all risk" or "extended coverage" policies and shall include transit and storage coverage to the extent that Owner has the risk of loss of the Project equipment during transit and storage. Owner and its subcontractors shall be responsible for insuring their own property and equipment. The policy shall contain a

waiver of subrogation in favor of Consolidated Edison, Inc. and Orange and Rockland Utilities, Inc. If at any time, Consolidated Edison, Inc. or Orange and Rockland Utilities, Inc. has an insurable interest in the property, the insurance policy will name the companies as Loss Payee(s).

(h) Cyber/Network Security and Data Privacy Liability Insurance. Cyber/Network Security and Data Privacy Liability Insurance of at least Ten Million dollars ($10,000,000) per claim and in the annual aggregate providing coverage for third party financial losses, claims and expenses resulting from transmission of a computer virus, network security breach or data privacy breach; failure to protect the confidential or proprietary information (personal and commercial information) and intellectual property from unauthorized disclosure or unauthorized access; first party costs for responding to a cyber incident; fines and penalties related to the improper use of personal and confidential information; costs resulting from cyber extortion demands; costs to restore data that has been corrupted or destroyed; and lost revenue/extra expense for a business interruption resulting from a cyber incident (including failure of network systems that are essential to an insured or to third parties or cost resulting from failure to supply power pursuant to a power purchase agreement).

(i) Umbrella/Excess Liability Insurance. Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, Commercial Automobile Liability insurance and Pollution Liability Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Fifteen Million dollars ($15,000,000) per occurrence and in the annual aggregate. The insurance requirements under this Section 14.07 can be provided in part by the combination of Owner's primary commercial general liability and excess liability policies.

If Owner elects, with O&R's written concurrence, to use a "claims made" form of Umbrella/Excess Liability Insurance, then the following additional requirements apply:

(i) The retroactive date of the policy must be prior to the Effective Date; and

(ii) Either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates that is prepaid no later than expiration of the underlying policy.

All policies required by Section 14.07(c), Section 14.07(g) and Section 14.07(i) and the Site-Specific Pollution Insurance and the Contractor Pollution Liability Insurance in Section 14.07(e) shall each be written on a "per project" or "per contract" basis.

(j) O&R as Additional Insured. All insurance policies of Owner and its subcontractors listed above, with the exception of Workers' Compensation and Professional Liability, will name Consolidated Edison, Inc. and Orange and Rockland

Utilities, Inc. as additional insureds. Owner shall and shall cause any subcontractor to, furnish O&R with written notice at least thirty (30) days prior to the effective date of cancellation of the insurance or of any material changes in policy limits or scope of coverage or at least ten (10) days prior to the effective date of cancellation of the insurance if the cancellation is due to Owner's non-payment of insurance premium. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds. For Commercial General Liability Insurance, the following additional insured endorsements shall be required: Additional Insured Endorsements CG 2010 0413 and CG 2037 0413 or, with respect to any Person whose insurer does not issue endorsements on ISO forms, substantially similar or comparable additional insured endorsements which provide the same or better additional insured rights to O&R as is provided in the previously specified additional insured endorsements. All Excess or Umbrella Liability Insurance policies will follow form and include all extensions listed under the primary general liability, automobile liability policies including providing coverage for additional insureds and provide for a waiver of subrogation. In addition, the policy shall be primary to any policy procured or maintained by Consolidated Edison, Inc. or its subsidiary companies.

(k) Proof of Insurance. Within ten (10) Business Days after the Effective Date, and within ten (10) Business Days after coverage is renewed or replaced, Owner shall furnish to O&R the entire policy forms, including endorsements, and certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to O&R. All deductibles and co-insurance retentions applicable to the insurance above shall be paid by Owner. Owner, or its insurance broker or agent, shall provide O&R with at least thirty (30) days' prior written notice in the event of cancellation of coverage or at least ten (10) days prior to the effective date of cancellation of the insurance if the cancellation is due to Owner's non-payment of insurance premium. O&R's receipt of documents that do not comply with the requirements stated herein, or Owner's failure to provide documents that comply with the requirements stated herein, shall not limit or relieve Owner of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 14.07 and shall not constitute a waiver of any of the requirements in this Section 14.07.

(l) Reporting. Owner agrees to report to O&R in writing within ten (10) Business Days following all accidents or occurrences resulting in bodily injury to any person, and to any property where such property damage is greater than One Hundred Thousand Dollars ($100,000).

(m) Failure to Comply. If Owner fails to comply with any of the provisions of this Section 14.07, Owner, among other things and without restricting O&R's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability, Pollution Liability and Commercial Automobile Liability insurance, Owner shall provide a current, full and complete defense to O&R, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response

to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, an alleged violation of the provisions of this Section 14.07 means that Owner has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Owner shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of New York.

14.08 Gift Policy and Unlawful Conduct. Owner is advised that it is a strict O&R policy that neither employees of O&R nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with O&R. Accordingly, Owner, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the services to be performed under this Agreement. Furthermore, Owner is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between O&R and Owner or any services or work performed for or on behalf of O&R, or in any other dealings relating to O&R. Owner represents, warrants, and covenants that Owner, its agents, employees, representatives and subcontractors have not engaged and will not engage in any of the acts prohibited under this Section 14.08. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Section 14.08, Owner shall be in default under this Agreement and all other purchase orders and contracts between O&R and Owner and (a) O&R may, in its sole discretion, terminate for default this Agreement and any other purchase order or contract between O&R and Owner, (b) O&R may, in its sole discretion, remove Owner from O&R's list of qualified bidders, (c) Owner shall have forfeited all rights it has under this Agreement and any other contract between O&R and Owner (including, but not limited to, the right to payments for services performed or goods furnished), and (d) O&R shall have no further obligations to Owner relating to such contracts. In addition, Owner shall be liable to O&R for all damages caused to, and costs incurred by, O&R as a result of any violation of this Section 14.08, including the costs and expenses of internal and external attorneys and investigations. Whenever O&R has a good faith reason to believe that Owner may have violated this Section 14.08, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Owner under this Agreement or any other contract between O&R and Owner during the pendency of such investigation. The remedies set forth in this Section 14.08 are non-exclusive, and O&R expressly reserves all rights and remedies under such purchase orders or contracts, and in law and equity. For the purposes of this Section 14.08, the term "O&R" shall include all of O&R's Affiliates. Owner shall promptly report any alleged violation of this Section 14.08 to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

14.09 Mobile Sierra. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the 'public interest' standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and

clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Effective Date.

[OWNER'S NAME], a **[Owner's jurisdiction of organization and type of organization]**

By: _____
Name: _____
Title: _____

Date: _____

ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT A

DEFINITIONS

"Abandonment" means (i) following commencement of construction of the Project, complete cessation of the work on the Project for thirty (30) consecutive days by Owner and/or Owner's contractors, or (ii) following the Commercial Operation Date of the Project, the relinquishment of possession and control of the Project by Owner, except if caused by or attributable to an Event of Default of, or request by, O&R, or Force Majeure.

"Actual Availability" has the meaning set forth in 6.03.

"Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, Controls, is under the Control of, or is under common Control with such Party.

"Agreement" has the meaning set forth in the preamble.

"Ancillary Services" or "A/S" means services solicited by NYISO in the NYISO Markets to support the transmission of energy from generators to loads, while maintaining reliable operation and shall include any such existing or new service defined by NYISO that the Project is capable of providing, including Scheduling, System Control and Dispatch Service, Reactive Supply and Voltage Support Service, Regulation Service, Energy Imbalance Service, Operating Reserve Services and Black Start Capability, each as defined in the NYISO Tariff, and any other ancillary service defined in the NYISO Tariff during the Term.

"Annual Post-Commercial Operation Payment" means (a) the Total Compensation Amount minus the Commercial Operation Payment divided by (b) ten (10) years.

"Applicable Laws" means the NYISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project or the terms of this Agreement.

"Attachment Facilities" means the facilities and equipment of Owner and the Transmission Owner located between the Project and the Interconnection Point, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Project to the New York Transmission System, and expressly excludes Network Upgrades.

"Audited Financial Statements" has the meaning set forth in Section 7.07(a).

"Authorized Representatives" has the meaning set forth in Section 14.01(l).

"Available Capacity" means, collectively, Available Charging Capacity, Available Discharging Capacity, and Available Storage Capacity.

"Available Charging Capacity" means the amount of Charging Capacity that the Project is capable of providing under this Agreement during any Settlement Interval.

"Available Discharging Capacity" means the amount of Discharging Capacity that the Project is capable of providing under this Agreement during any Settlement Interval.

"Available Storage Capacity" means the Storage Capacity of the Project for the applicable Settlement Interval. For purposes of this definition, the amount of Available Storage Capacity shall be expressed in megawatts according to the following:

Available Storage Capacity = (Storage Capacity / Maximum Storage Level) * Contract Capacity

"Bankrupt" means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. local time and ends at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.

"Capacity" means the capability to generate, transmit and deliver electrical power, or the ability to control demand at the direction of a transmission system operator and shall include (a) all capacity-based products and services the Project is capable of providing and (b) individually or collectively, as applicable, Power Capacity, Charging Capacity, and Discharging Capacity.

"Capacity Resource Interconnection Service" or "CRIS" means the service provided by NYISO to an interconnection customer who wishes its project to be eligible as a supplier of Capacity.

"Casualty Loss" has the meaning set forth in Section 8.04(c)3.

"Change of Control" means (i) a conveyance, transfer or other disposition, directly or indirectly, of equity interests of Owner or voting rights with respect thereto, whether in one transaction or a series of transactions, as a result of which the Controlling Person of Owner shall cease to Control Owner or (ii) a merger or consolidation as a result of which the Controlling Person of Owner immediately prior to such merger or consolidation shall cease to Control Owner.

"Charging Capacity" means the maximum dependable operating capability of the Project, as measured in MW, to charge electric energy into a storage device, and shall include any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and charge energy.

"Charging Energy Requirements" means the electric energy stored in the Project for later discharge, other than energy required for Station Use.

"Charging Notice" means the operating instruction, and any subsequent updates, given by O&R or the NYISO to Owner, directing the Project to charge at a specific rate to a specified Stored Energy Level, provided that any schedule, including self-schedules, submitted by O&R or awarded by the NYISO in order to effectuate an Owner Initiated Test shall not be considered a Charging Notice.

"Claiming Party" has the meaning set forth in Section 8.011.

"Class Year Interconnection Facilities Study" a study conducted by NYISO or a third party consultant for a developer to determine a list of facilities, the cost of those facilities, and the time required to interconnect generation facilities and transmission projects with the New York Transmission System.

"Class Year Start Date" means the deadline for an interconnecting project to enter a Class Year Interconnection Facilities Study.

"Collateral Assignment Agreement" has the meaning set forth in Section 14.04(c).

"Commercial Operation" has the meaning set forth in Section 2.07.

"Commercial Operation Date" has the meaning set forth in Section 2.07.

"Commercial Operation Payment" means an amount equal to seventy percent (70%) of the Total Compensation Amount.

"Confidential Information" means this Agreement, the terms and conditions and other facts with respect to this Agreement, and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, including any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials. Confidential Information does not include information, data, analyses, documents, or materials that (a) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (b) are already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives, provided, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (c) the receiving Party or its Representatives can demonstrate that the information has been independently developed by the receiving Party's personnel acting without use of or reference to the Confidential Information.

"Construction Report" has the meaning set forth in Section 4.06.

"Contract Capacity" has the meaning set forth in Section 1.03.

"Contract Capacity Energy" means the amount of Energy capable of being discharged, expressed in megawatt hours, by the Project from a one hundred percent (100%) State of Charge based on the Contract Capacity.

"Contract Term" means either (i) the Delivery Period or (ii) if the Agreement is terminated before the end of the Delivery Period, the period from the Commercial Operation Date through the effective date of termination.

"Contract Year" means each year during the Delivery Period as measured from the Commercial Operation Date to the day before the next anniversary of the Commercial Operation Date.

"Control" means, with respect to any Person, the possession, directly or indirectly, of the power either to (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (ii) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

"Control Area" means the electric power system (or combination of electric power systems) under the operational control of the NYISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the NYISO.

"Controlling Person of Owner" means any Person (i) that directly or indirectly Controls Owner and (ii) of which no other Person has Control. As of the Effective Date, the Controlling Person of Owner is **[*Insert name of Controlling Person of Owner*]**.

"COVID-19" means the novel coronavirus, SARS CoV-2 or COVID-19 (and all related strains and sequences), including any variants, evolutions, intensification, resurgence or mutations thereof, and related or associated epidemics, pandemics, disease outbreaks and public health emergencies.

"CP Milestone Extension Date" has the meaning set forth in Section 4.07.

"Credit Rating" means with respect to any entity, the rating then assigned by a Rating Agency to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements). If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by any Rating Agency, then "Credit Rating" means the general corporate credit rating or long-term issuer rating assigned to such entity by a Rating Agency. If an entity is rated by more than one Rating Agency and the ratings are at different levels, then "Credit Rating" means the lowest such rating.

"Critical Path Milestone" means any of the milestones set forth in Section 4.07.

"CSI Masterformat Divisions" means an industry standard for organizing categories of specifications for construction as published by Construction Specifications Institute.

"Day-Ahead Market" or "DAM" has the meaning set forth in the NYISO Tariff.

"Default Interest Rate" means the Interest Rate increased by three hundred basis points.

"Default Termination Date" has the meaning set forth in Section 10.02.

"Defaulting Party" has the meaning set forth in Section 10.01.

"Delivery Period" has the meaning set forth in Section 2.02.

"Development Security" means the collateral required under Section 7.01.

"Discharging Capacity" means the maximum dependable operating capability of the Project, as measured in MW, to discharge energy, and shall include any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and discharge energy.

"Dispatch Notice" means the operating instruction, and any subsequent updates, given by O&R to Owner, directing the Project to discharge at a specified megawatt output or pursuant to a dispatch given by the NYISO. Dispatch Notices may be communicated electronically (i.e. through Automated Dispatch System, as defined by the NYISO Tariff, or e-mail), via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both O&R and Owner upon request for settlement purposes. For the avoidance of doubt, any Schedule, including self-schedules, submitted by O&R or awarded by the NYISO in order to allow for an Owner Initiated Test shall not be considered a Dispatch Notice for the period that is the greater of:

(a) the number of hours required to complete the test, or

(b) the minimum amount of time that the Project must stay on-line after being started-up prior to being shutdown, due to physical operating constraints.

"Dispute" means any and all disputes, claims or controversies arising out of or relating to, the terms of this Agreement or either Party's performance or failure to perform hereunder.

"Distributed Control System" or "DCS" means the integrated automation system for monitoring and controlling the critical operation functions of a facility that perform tasks essential to the charge, discharge and storage of electricity.

"Distribution Charging Energy Costs" means distribution system costs associated with delivery of the Charging Energy Requirements pursuant to a utility tariff, including stand-by charges, buyback charges, and wheeling charges.

"Economic Benefit" has the meaning set forth in Section 3.06(a).

"Effective Date" has the meaning set forth in the preamble.

"Energy Resource Interconnection Service" or "ERIS" means the service provided by NYISO to enable Energy and Ancillary Services from its project into NYISO-administered electricity markets.

"Encumbrance" means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

"Energy" means all electrical energy produced, stored or discharged by the Project, measured in kilowatt-hours or multiple units thereof. Energy shall include any energy-based products and services that may be developed by or evolve from the Project from time to time during the Term, including participation in the DAM or RTM.

"Energy Delivery Point" means the point set forth in Section 1.02(c).

"Energy Storage Incentive Legislation" means validly enacted federal or state legislation, whether before or after the Effective Date, that provides tax credits, tax savings, or other monetary incentive payments to owners of facilities that utilize equipment that receives, stores, and delivers electric energy using batteries or other energy storage technologies.

"Environmental Costs" means costs incurred in connection with (1) acquiring and maintaining all environmental Permits for the Project, (2) the Project's compliance with all applicable Environmental Laws, or (3) any liability or obligation arising under Environmental Laws in connection with the Project or the Site, including, in each case:

(i) capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project;

(ii) all operating and maintenance costs for operation of pollution mitigation or control equipment;

(iii) costs of permit maintenance fees and emission fees as applicable; and

(iv) costs associated with the storage, generation, use, handling, manufacture, processing, transportation, treatment, release, disposal and clean-up of Hazardous Materials introduced to the Site by Owner or any of its contractors and subcontractors, disposal of battery cells, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such Hazardous Materials on the Site by Owner or any of its contractors and subcontractors.

(v) costs associated with the proper characterization, storage, generation, handling, transportation, treatment and disposal of all materials excavated or disturbed by Owner for purposes of constructing the Project at the Site, whether or not such materials are considered Hazardous Materials.

"Environmental, Health and Safety Plan" has the meaning set forth in Section 4.05.

"Environmental Laws" means all applicable federal, state, or local laws (including common law) statutes, regulations, ordinances or rules, and orders, judgements, decrees,

injunctions, rulings, restrictions, protocols, and requirements of any Governmental Authority (including actions by regulatory and judicial agencies and tribunals) relating in whole or in part to the protection of the environment (including, without limitation air, surface water, ground water, or soil) or relating to human health and safety and includes those laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, release or disposal of any Hazardous Materials, including the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., the Toxic Substances and Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the New York Environmental Conservation Law, and the New York Navigation Law, each as amended from time to time.

"EPC Contract" means Owner's engineering, procurement and construction contract with the EPC Contractor.

"EPC Contractor" means the entity selected by Owner and approved by O&R to perform the engineering, procurement and construction activities for the Project.

"EPT" or "Eastern Prevailing Time" means the prevailing time in the Eastern Time Zone.

"Equitable Defense" means any bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain equitable remedies may be pending.

"Event of Default" has the meaning set forth in Section 10.01.

"Executive" has the meaning set forth in Section 12.01.

"FERC" means the Federal Energy Regulatory Commission.

"Force Majeure" means any occurrence that:

(a) was not reasonably foreseeable as of the Effective Date;

(b) in whole or in part:

(i) delays a Party's performance under this Agreement;

(ii) causes a Party to be unable to perform its obligations; or

(iii) prevents a Party from complying with or satisfying the conditions of this Agreement;

(c) is not within the reasonable control of that Party;

(d) is not the result of the negligence or fault of that Party or a lack of due diligence, a breach of the Agreement or a failure to comply with Good Utility Practice by that Party; and

(e) the Party has been unable to overcome such occurrence by the exercise of due diligence.

In addition, provided that the criteria set forth in subsections (a)-(e) are met, a Force Majeure includes:

(i) acts of God, including hurricanes, tornadoes, lightning, earthquakes, flood, landslides, unusually severe weather and drought;

(ii) acts of war whether declared or undeclared;

(iii) acts of terrorism;

(iv) civil disturbance, insurrection or riot; revolts or rebellions;

(v) fire, not caused by the Project;

(vi) epidemic, pandemic or plague (except COVID-19 to the extent excluded below);

(vii) delay or accident in shipping or transportation; or perils of the sea;

(viii) any event that gives rise to a Safety Event or a Casualty Event;

(ix) the failure of the Transmission Owner to complete installation of upgrades in accordance with the schedule in the Interconnection Agreement; and

(x) a delay in the completion of the applicable Class Year Interconnection Facilities Study process beyond twenty-four (24) months from the Class Year Start Date.

Notwithstanding anything to the contrary herein, Force Majeure does not include:

(a) Any failure to comply with Applicable Laws;

(b) Any change in Applicable Laws after the execution of the Agreement;

(c) Any inability to obtain sufficient labor, equipment, materials or other resources to construct, own, operate or maintain the Project, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;

(d) Any change in market conditions affecting the cost or availability of labor, equipment, materials or other resources, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;

(e) Reductions in the ability of the Project to store, charge or discharge energy resulting from ordinary wear and tear, deferred maintenance, operator error, or the failure of equipment or parts, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;

(f) Curtailment or reduction in deliveries at the direction of a Transmission Owner or the NYISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Owner or the NYISO is congestion arising in the ordinary course of operations of the Transmission Owner's system or the New York Transmission System, including congestion caused by outages or capacity reductions for maintenance, construction or repair;

(g) Owner's inability to obtain or maintain, or delay in obtaining, any approvals or consents of any Governmental Authority or other third party, including any Permits, for the construction, operation or maintenance of the Project;

(h) Any equipment failure or equipment damage, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;

(i) Any delay in providing, or cancellation of, interconnection service by a Transmission Owner, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;

(j) A failure of performance of any other entity, including Owner's contractors, suppliers or vendors, except to the extent such event is the direct result of an event that would otherwise qualify as a Force Majeure;

(k) Owner's failure to obtain additional funds, including compensation referenced in Section 3.06, whether authorized by a state or the federal government or agencies thereof, to supplement the payments made by O&R under this Agreement;

(l) Owner's failure to obtain or retain any tax credits or incentives with respect to any portion of the Project;

(m) any event, whether directly or indirectly, related to the COVID-19 pandemic (including but not limited to, economic loss, supply chain disruptions, labor restrictions or any other mandate, whether suggested or required by a Governmental Authority), unless such event or circumstance (x) occurs after the Effective Date, (y) could not reasonably have been known or anticipated by a Party given the impacts and effects of the COVID-19 pandemic known or anticipated by a Party as of the Effective Date and (z) otherwise meets all of the requirements of the definition of Force Majeure event set forth above; and

(n) changes in temperature or humidity conditions.

"GAAP" means United States generally accepted accounting principles as in effect from time to time, consistently applied.

"Generation Management System" has the meaning set forth in Section 5.02(a).

"Generator Operator" means the entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services and the other functions of a generator operator as described in NERC's Statement of Compliance Registry Criteria located on the NERC website.

"Generator Owner" means an entity that owns the Project and has registered with NERC as the entity responsible for complying with those NERC Reliability Standards applicable to owners of generating units as set forth in the NERC Reliability Standards.

"Gift" has the meaning set forth in Section 14.08.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

"Governmental Authority" means:

(a) any federal, state, local, municipal or other government;

(b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power;

(c) any court or governmental tribunal; and

(d) for purposes of this definition, NYISO.

"Governmental Charges" has the meaning set forth in Section 13.04.

"Guaranteed Availability" has the meaning set forth in Section 6.03.

"Guaranteed Commercial Operation Deadline" has the meaning set forth in Section 2.06.

"Guaranteed Ramp Rate" has the meaning set forth in Section 6.03(d).

"Guaranteed Round-Trip Efficiency" has the meaning set forth in Section 6.03(c).

"Hazardous Material" means (i) any petroleum, petroleum products or by products and all other hydrocarbons (including, without limitation, petro chemicals and crude oil) or any fraction thereof, coal ash, radon gas, radioactive materials, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, perfluoroalkyl and polyfluoroalkyl substances,

chlorofluorocarbons and other ozone-depleting substances, and (ii) any pollutant, containment, chemical, material, substance, product, waste (including thermal discharges) or electromagnetic emissions that (x) is capable of causing harm to the indoor or outdoor environment, natural resources or human health and safety, (y) is has been, or hereafter shall be listed, regulated, classified or defined as hazardous, toxic, or dangerous under any Environmental Law (including, without limitation 40 C.F.R. 302.4 (or its successor)), or (z) is otherwise prohibited, limited or regulated by or pursuant to, or for which liability may arise under, any Environmental Law.

"Indemnified Party" has the meaning set forth in Section 13.02.

"Independent Engineer" means an engineer engaged by Owner from a nationally recognized engineering firm with battery storage experience, as reasonably acceptable to O&R.

"Initial Commercial Operation Test" means tests performed in accordance with the testing procedures, requirements, and protocols set forth in Exhibit C in advance of Commercial Operation.

"Initial Negotiation Start Date" has the meaning set forth in Section 12.01.

"Initial Negotiation End Date" has the meaning set forth in Section 12.01.

"Interconnection Agreement" means the agreement among Owner, Transmission Owner and NYISO to interconnect the Project with the New York Transmission System.

"Interconnection Cost" means costs to be incurred by the Transmission Owner for Interconnection Facilities and Network Upgrades for which Owner must pay without any right to reimbursement by the Transmission Owner.

"Interconnection Facilities" means all Attachment Facilities, Network Upgrades, and other facilities that NYISO and the Transmission Owner determine are required to connect Owner's Project to the New York Transmission System.

"Interconnection Point" has the meaning set forth in Section 1.02(d).

"Interconnection Queue Position" is the order of Owner's valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.02(a).

"Interconnection Study" means any of the studies defined in any Transmission Owner's tariff that reflect methodology and costs to interconnect the Project to the Transmission Owner's electric grid.

"Interest Rate" means an annual rate of interest equal to fifty basis points above the prime rate of interest effective for the payment due date as published in the Wall Street Journal under "Money Rates". If there is no publication on the payment due date, then the most recent preceding day's publication will be used. The Interest Rate shall not be more than the lawful maximum rate of interest.

"Interim Financial Statements" has the meaning set forth in Section 7.07(b).

"Interim Period" has the meaning set forth in Section 3.01.

"JAMS" has the meaning set forth in Section 12.02.

"Lender" means any financial institutions that provide(s) development, bridge, construction, permanent debt or Tax Equity Financing or refinancing for the Project to Owner.

"Letter of Credit" has the meaning set forth in Section 7.01(b)(ii).

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:

(a) the issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" from S&P or "A3" from Moody's, as required in the definition of "Letter of Credit";

(b) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

(c) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(d) such Letter of Credit expires or terminates, or fails or ceases to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement;

(e) Owner fails to provide an extended or replacement Letter of Credit prior to thirty (30) days before the Letter of Credit expires or terminates; or

(f) the issuer of such Letter of Credit becomes Bankrupt;

provided, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

"Manager" has the meaning set forth in Section 12.01.

"Market-Based Rate Authority" has the meaning set forth in Section 2.04(d).

"Maximum Charge" has the meaning set forth in Exhibit D.

"Maximum Discharge" has the meaning set forth in Exhibit D.

"Maximum Storage Level" means the MWh amount under "Maximum Storage Level" as set forth in Exhibit D.

"Mediator" has the meaning set forth in Section 12.02.

"Milestone Schedule" means Owner's schedule to develop the Project as described in Section 4.06 and as set forth in Exhibit F, including any revisions thereto in accordance with this Agreement.

"Minimum Storage Level" means the MWh amount under "Minimum Storage Level" as set forth in Exhibit D.

"Moody's" means Moody's Investors Service, Inc., or any successor entity.

"MW" means a megawatt of alternating current electric energy, unless expressly stated as direct current electric energy.

"MWh" means megawatt-hour of alternating current electric energy, unless expressly stated as direct current electric energy.

"NERC" means the North American Electric Reliability Corporation.

"NERC Reliability Standards" means those reliability standards applicable to a generating or storage facility, or to the Generator Owner or the Generator Operator with respect to a generating or storage facility, that are adopted by NERC and approved by the applicable regulatory authorities and available on the NERC website.

"NERC Standards Non-Compliance Penalties" means all penalties assessed by FERC, NERC (through NPCC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Owner, as Generator Operator or other applicable category.

"Network Upgrades" means all apparatus, modifications, and additions to the Transmission Owner's electric system, the New York Transmission System or, if applicable, an affected system, that is required at or beyond the Interconnection Point that are required for the Project to connect reliably to the New York Transmission System.

"New York Transmission System" means the distribution facilities operated by the Transmission Owner and the transmission facilities operated by the NYISO, now or hereafter in existence, which provide energy transmission service downstream from the Energy Delivery Point.

"Non-O&R Charge" has the meaning set forth in Section 6.06(d).

"Non-O&R Dispatch" means a dispatch by Owner either (a) pursuant to an Owner Initiated Test or (b) as required by Applicable Laws.

"Non-Defaulting Party" has the meaning set forth in Section 10.02.

"Notice" has the meaning set forth in Section 14.02.

"NYISO" means the New York Independent System Operator, Inc.

"NYISO Markets" means any of the markets administered by the NYISO, including the DAM, RTM, Capacity markets, and Ancillary Services markets.

"NYISO Tariff" means (a) NYISO's Market Administration and Control Area Services Tariff, (b) NYISO's Open Access Transmission Tariff, and (c) all rules, practices, protocols, procedures and standards adopted by NYISO related to each of (a) and (b), as the same may be amended or modified from time to time.

"NYPSC" means the New York State Department of Public Service, including the New York State Public Service Commission and its staff.

"NYSERDA" means the New York State Energy Research and Development Authority.

"NYSERDA Incentive" means the incentive payment for the Project from NYSERDA as part of its 2021 Bulk Storage Incentive Program.

"O&R" has the meaning set forth in the preamble.

"O&R Event of Default" means an Event of Default for which O&R is the Defaulting Party.

"Operating Day" means a day within the Contract Term on which the Project operates.

"Operating Restrictions" means the limitations on O&R's ability to schedule and use Capacity, Ancillary Services, and Energy during the Contract Term that are identified in Exhibit D.

"Outage" means a disconnection, separation or reduction in Capacity, planned or unplanned, of one or more elements of the Project.

"Outage Schedule" has the meaning set forth in Section 6.04(a)(i).

"Owner" has the meaning set forth in the preamble.

"Owner Initiated Test" means (a) a test of the Project during any period in the Contract Term in which Owner has not received a Dispatch Notice or Charging Notice, or such test interferes with the Project's ability to meet a Dispatch Notice or Charging Notice or (b) any test performed before the Commercial Operation Date.

"Party" or "Parties" has the meaning set in the preamble.

"Performance Assurance" means the collateral required under Section 7.02.

"Performance Testing" means testing as described in Exhibit C.

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the NYISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Project, including environmental permits.

"Permit Requirements" means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities, including limitations on any pollutant emissions levels, limitations on fuel combustion or heat

input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint; or any other operational restriction or specification related to compliance with any Applicable Laws.

"Permitted Encumbrances" means (i) Encumbrances for taxes, impositions, assessments, fees, or other governmental charges levied or assessed or imposed not yet delinquent or being contested by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP, (ii) Encumbrances created by O&R, or its successors and assigns, (iii) Encumbrances securing obligations of Owner under commercially reasonable and appropriate construction financing, and (iv) any Encumbrances permitted through prior written consent by O&R.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Physical Site Work" means any physical work occurring at or adjacent to the Site, except for work to conduct preliminary Site surveys or Site-related studies required for Owner or its contractors to complete the Project's design and obtain required Permits.

"Planned Outage" has the meaning set forth in Section 6.04(a).

"Power Capacity" means the maximum dependable operating capability of an energy resource, as measured in MW, to charge or discharge energy.

"Power Capacity Rating" means a rating of Power Capacity established by testing of the Project, as provided in Exhibit C.

"Pre-COD Sales" has the meaning set forth in Section 3.01.

"Prevention Equipment" means all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of hazardous material or other injury or damage at the Site.

"Product" has the meaning set forth in Section 1.01(a).

"Project" has the meaning set forth in Section 1.02.

"Project Security" means Development Security or Performance Assurance.

"Punch List" has the meaning set forth in Section 2.04(k).

"Rating Agency" means either of S&P or of Moody's, and "Rating Agencies" means S&P and Moody's, collectively.

"Real-Time Market" or "RTM" has the meaning set forth in the NYISO Tariff.

"Recovery Plan" has the meaning set forth in Section 4.07.

"Reduction Amount" has the meaning set forth in Section 3.06(a).

"Representatives" means the respective officers, directors, trustees, employees, and agents (including counsel, accountants and advisors) of the Parties and their Affiliates.

"Round-Trip Efficiency" or "RTE" means the ratio of Energy put in to the Storage Unit, measured in MWh, to the Energy delivered from storage to the Energy Delivery Point, expressed as a percentage, which ratio shall be measured as shown in Exhibit C.

"Safety Event" has the meaning set forth in Section 8.04.

"S&P" means Standard & Poor's Financial Services LLC, or any successor entity.

"Schedule," "Scheduled" or "Scheduling" means the action of O&R in submitting bids to the NYISO and receiving all NYISO Markets results from the NYISO.

"SEC" means the Securities and Exchange Commission.

"Security Interest" has the meaning set forth in Section 7.04.

"Settlement Interval" means any one of the six, ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).

"Site" means the real property on which the Project is, or will be located, as further described in Section 1.02(b) and Exhibit B, including any accompanying parcel maps, surveys, or legal descriptions.

"Site Control" means that Owner has control of the Site through:

(a) fee simple ownership of the Site; or

(b) a valid and enforceable lease agreement;

in each case, that is not subject to any restriction or encumbrance prohibiting, restricting or otherwise affecting Owner's ability to construct, install, own, operate and maintain the Project and has a duration of not less than the Term.

"Spinning Reserve" has the meaning set forth in the NYISO Tariff.

"State of Charge" or "SOC" means, at a particular time, the ratio of (a) the Stored Energy Level of the Project, minus the Minimum Storage Level of the Project specified in Exhibit D to (b) the Maximum Storage Level of the Project, expressed as a percentage (e.g., 80% State of Charge).

"Station Use" has the meaning set forth in Section 5.01(c).

"Storage Capacity" means the maximum amount of energy that is capable of being stored in the Project, as measured in MWh, and shall include, without limitation, any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store energy.

"Storage Capacity Rating" means a rating of Storage Capacity established by testing of the Project, as provided in Exhibit C.

"Storage Unit" means the storage unit specified in Exhibit B.

"Stored Energy Level" or "SEL" means, at a particular time, the amount of electric energy in the Project, expressed in MWh.

"Substantial Completion" has the meaning set forth in Section 2.04.

"Substantial Completion Deadline" has the meaning set forth in Section 2.03.

"Substantial Completion Delay Liquidated Damages" has the meaning set forth in Section 2.05(a).

"Supply Charging Energy Costs" means the costs associated with obtaining Charging Energy Requirements from NYISO Markets.

"System Protection Facilities" means the equipment, including necessary protection signal communications equipment, required to protect (1) the New York Transmission System from faults or other electrical disturbances occurring at the Project and (2) the interconnected Project from faults or other electrical system disturbances occurring on the New York Transmission System or on other delivery or generating systems or other generating systems to which the New York Transmission System is directly connected.

"Tax Equity Financing" means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without "leverage")), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a battery storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass-through lease).

"Term" has the meaning set forth in Section 2.01.

"Termination Payment" means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, as calculated under Section 10.03.

"Total Compensation Amount" means the amount equal to the product of $**[*amount*]** per MW multiplied by the Contract Capacity.

"Transmission Owner" means any entity or entities responsible for the interconnection of the Project with a Control Area or transmitting the Energy on behalf of Owner from the Project to the Interconnection Point.

"Unavailability Notice" means the hourly schedule of the Available Capacity (including Energy and Ancillary Services) that the Project is expected not to be available for each hour of an Operating Day.

"Unplanned Outage" has the meaning set forth in Section 6.04(c).

"Usable State of Charge" or "USOC" means, at any time, the ratio (expressed as a percentage, up to 100% maximum (e.g., 95% USOC)) of (i) at such time, the amount of energy stored in the Storage Facility that is capable of being discharged at the Energy Delivery Point, measured as MWh $_{AC}$, in relation to (ii) the Contract Capacity Energy, expressed in MWh $_{AC}$, all as measured by the average of all reporting battery management systems.

"Warranty Requirements" has the meaning set forth in Section 4.01(j).

****** End of EXHIBIT A ******

EXHIBIT B

PROJECT DESCRIPTION

PART I. DESCRIPTION OF PROJECT.

Project Name	
Storage Unit	
Contract Capacity (MW_{AC})	
Contract Capacity Energy (MWh)	
Site Address	[# Street Name, City, CA, zip code]
Storage Unit Technology	
Primary Storage Fuel Type	Electricity
Configuration	
NYISO Resource ID	TBD
Deliverability restrictions	None
Interconnection Queue Number	
Interconnection Voltage (kV)	
Cell manufacturer and Type	
Power Conversion System including Inverter manufacturer and model	

1. Project Description

{O&R Comment: Owner may provide additional written description of the site beyond what is summarized in Part II of this Exhibit B.}

2. Site Plan Drawing

{O&R Comment: Owner must provide a depiction of the Project and where it is located on the Site. Details shall include the Interconnection Point, points of ingress and egress, adjacent roads, labels of the Project components and a legend if necessary}

3. Site Legal Description

{O&R Comment: Owner must provide a legal description of the site, including APN number.}

4. Site Map

{O&R Comment: Owner must provide a map of the area where the project is located. The map should indicate major highways and/or landmarks near the project as well as other roadways important to locate the site. The map should also include a latitude and longitude for the site.}

PART III. ELECTRICAL THREE LINE DIAGRAM.

{O&R Comment: Owner must provide an electrical three line diagram that depicts all of the major electrical equipment that is part of the site. This includes inverters, transformers, meters, breakers, etc. Include ratings when possible. This drawing must also show the Interconnection Point and the Energy Delivery Point.}

****** End of EXHIBIT B ******

EXHIBIT C

STORAGE RATING TESTS

1. **Storage Rating Test**. Owner shall provide advance notice to O&R for, and O&R shall be entitled to be present at, any and all commissioning, permitting and performance tests conducted under this Agreement ("Storage Rating Test") and shall be entitled to have an independent third party witness any such testing at O&R's sole expense. Upon no less than ten (10) Business Days prior notice to O&R, Owner shall schedule and complete a Storage Rating Test in accordance with this Exhibit C as a condition to achieving Commercial Operation. All operations during testing shall be done in accordance with Good Utility Practice, Applicable Laws and Permit Requirements.

2. **Subsequent Storage Rating Tests**. Following the Commercial Operation Date, O&R shall have the right to schedule a Storage Rating Test not more frequently than once per month. If O&R or Owner seeks to conduct a specific Storage Rating Test, the tests must be, at a minimum, grouped accordingly: Power Capacity, Storage Capacity, and RTE; Ramp Rate and Swing; Signal Following independently and Voltage Support Service individually.

3. **Test Results Reporting**.

    a. No later than five (5) business days following any Storage Rating Test, Owner shall submit a testing report detailing results and findings of the test. The report shall include at a minimum:

        i. digital plant log sheets verifying the operating conditions and output of the Project, including the following data at one (1) second resolution:

            1. Time;
            2. Storage system MW output in AC at the Energy Delivery Point;
            3. Storage system ramp rate as measured in MW/min at the Energy Delivery Point;
            4. SOC and Usable SOC;
            5. Storage system MVAR at the Energy Delivery Point;
            6. Power factor at the Energy Delivery Point;
            7. Frequency as measured in Hertz at the Energy Delivery Point;
            8. AC current and voltage at the Energy Delivery Point;
            9. DC current and voltage to be measured at or by the power conversion system; and
            10. Additional variables that O&R, in its sole discretion, deems relevant and request Owner prior to the test to capture and report;

        ii. a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;

        iii. a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;

iv. Owner's statement of either Owner's acceptance of the Test or Owner's rejection of the Test results and reason(s) therefor.

b. Within ten (10) Business Days after receipt of such report, O&R shall notify Owner in writing of either O&R's acceptance of the Test results or O&R's rejection of the Test and reason(s) therefor. If O&R rejects the results of any Test or Retest, O&R may require a retest.

4. **Operating Personnel**. During any Test, the same operating personnel shall operate the Project that Owner contemplates will operate the Project during the Term.

5. **O&R Representative**. O&R shall be entitled to have at least two (2) representatives from O&R and one (1) independent third party witness present to witness each Test and shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. O&R shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives and the third party, if any.

6. **Testing Protocols**.

a. **NYISO Coordination**. All testing shall be coordinated with the NYISO and O&R to ensure grid conditions are available for testing conditions. Unity power factor shall be tested (power factor must be one to conduct the test) unless otherwise specified by NYISO or utility practices.

b. **Storage Rating Test Sequencing**:

i. **Storage Rating Test and Round Trip Efficiency Test**:

STEP 1: Precharging Storage prior to Storage Rating Test. To commence a Storage Rating test the Project must be charged to 100% Usable SOC.

STEP 2: Initiating Storage Rating Test. O&R shall initiate a dispatch instruction for the Project to be continuously discharged at its Maximum Discharge (MW) as defined in Exhibit D per Exhibit B. Owner will report when the Project has reached 0% Usable SOC.

STEP 3a: Calculating Power Capacity Rating. The total amount of discharged energy delivered to the Energy Delivery Point (expressed in MWh AC) during each hour of discharge shall be measured during [four continuous hours] [one hour] of discharge.

The average hourly MWh AC discharged during the [four-hour] [one-hour] test shall determine the Power Capacity Rating, which shall be expressed in MW AC.

STEP 3b: Calculating Storage Capacity Rating. The total amount of discharged energy delivered to the Energy Delivery Point (expressed in MWh AC) during each

hour of discharge shall be measured during [four continuous hours] [one hour] of discharge.

The total hourly MWh AC discharged during the [four-hour] [one-hour] test shall determine the Storage Capacity Rating, which shall be expressed in MW AC.

STEP 4: Recharging after Storage Rating Test. Within two hours of the Project reaching 0% Usable SOC, O&R shall initiate a dispatch instruction for the Project to be continuously charged at its Maximum Charge (MW) as defined in Exhibit D per Exhibit B. Owner will report when the Project has reached 100% Usable SOC.

STEP 5: Calculating Round Trip Efficiency. The total amount of discharged energy delivered to the Energy Delivery Point (expressed in MWh AC) during each hour of continuous discharge as measured in Step 2 shall be summed and divided by the total amount of charged energy (expressed in MWh AC) as measured in Step 4 during each hour of continuous charge.

The resulting ratio shall determine the Round Trip Efficiency.

RTE shall be net of losses due to transformation.

If such transformation is not separately metered and accounted for, prior to COD, O&R, in its sole discretion, shall establish a protocol for netting such electric loads out of the RTE calculation.

ii. **The Storage Ramp Rate Test**

STEP 6: Precharging Storage prior to Storage Ramp Rate Test. To commence a Storage Ramp Rate test the Project must be charged to 50% Usable SOC.

STEP 7: Initiating Storage Ramp Up Rate Test. O&R shall issue dispatch instruction to increase Project output from zero (0) MW to the full rated power per Exhibit D.

STEP 8: Calculating Storage Ramp Up Rate. Each minute following the O&R issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by five (5).

The resulting number shall be recorded as the test Ramp Up Rate.

Ramp Up Rate shall be tested four (4) times within an hour as part of the Storage Ramp Rate Test with the average of the three highest results serving as the recorded Ramp Up Rate for the test. This must conform to Regulation Up Ramp Rate (MW/min) defined in Exhibit D.

STEP 9: Initiating Storage Ramp Down Rate Test. Within one hour of the Ramp Up Test, O&R shall issue dispatch instruction to decrease Project output (charge the energy storage system) from zero (0) MW to the minimum rated power per Exhibit D (Pmin).

STEP 10: Calculating Storage Ramp Down Rate. Each minute following the O&R issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by five (5).

The resulting number shall be recorded as the test Ramp Down Rate and must match the Regulation Down Ramp Rate (MW/min) defined in Exhibit D.

Ramp Down Rate shall be tested four (4) times within an hour as part of the Storage Rating Test with the average of the three lowest results serving as the recorded Ramp Down Rate for the Project.

iii. **Signal Following and Swing Test**

STEP 11: Precharging Storage prior to Storage Signal Following Test. To commence a Storage Signal Following test the Project must be charged to 50% Usable SOC.

STEP 12: Initiating the Storage Signal Following Test. O&R shall issue a dispatch instruction to change Project output from zero (0) MW to a power amount (as represented in MW AC) O&R, in its sole discretion, selects.

The Project shall ramp to the selected power amount and hold that output amount for ten (10) minutes.

O&R, in its sole discretion, may elect to repeat this signal following protocol up to four (4) different times to demonstrate the Project's ability to accurately follow a dispatch instruction.

STEP 13: Calculating performance of the Storage Swing Test. Each minute following the O&R issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point.

After ten (10) minutes, each of the corresponding ten (10) distinct meter readings shall be subtracted from the power amount requested by O&R in the dispatch instruction.

The absolute difference between the ten distinct meter readings and the power amount requested by O&R in the dispatch instruction shall be recorded.

iv. **Storage Voltage Support Service Verification**

Prior to COD, Owner and O&R shall test and certify the Project's ability to both produce and absorb reactive power (collectively, "Voltage Stability Services") as defined in the NYISO tariff. Such testing and verification shall be done in coordination with NYISO and according to the test procedures detailed by NYISO Manual 2 "Ancillary Services" or by successor requirements as determined by NYISO.

At minimum, a Project must verify it can:

1. Produce and absorb Reactive Power within the reactive capability range defined in Exhibit D,
2. Maintain a specific voltage level under both steady-state and post-contingency operating conditions, subject to the limitation of its tested reactive capability,
3. automatically respond to voltage control signals, and
4. Successfully perform a reactive power capability tests in accordance with the NYISO procedures.

c. **Operating Conditions During Testing**. At all times during testing, the Project shall not be operated with abnormal operating conditions such as unstable load conditions, or operation outside of regulatory restrictions. Environmental considerations, such as ambient temperature, humidity, and barometric pressure shall not be considered limiting factors to conducting a Storage Rating Test unless those factors constitute a Force Majeure event. If abnormal operating conditions occur on the day of or during a test, Owner may postpone such test in its reasonable discretion in accordance with the following paragraph.

7. **Communications**. The end-to-end communications will be tested by sending the above signals remotely and confirming the system responds accordingly, including a read receipt upon delivery of a dispatch instruction.

8. **Incomplete or Postponed Tests**. If any test is postponed or otherwise not fully completed in accordance herewith, Owner shall repeat such test on the same date as the incomplete test, or if repeating the test on the same day is not reasonably possible, within no longer than ten (10) days after the date of the incomplete test, upon five (5) days' prior notice to O&R (or any shorter period reasonably acceptable to O&R).

9. **Additional Testing Details**. Only energy discharged and delivered at the Energy Delivery Point during Storage Rating Tests shall be included in all calculations of the Storage Ratings Test. O&R shall cooperate with Owner to coordinate and carry out testing, including by scheduling tests and discharge events.

10. **Supplementary Storage Rating Test Protocol**. No later than sixty (60) days prior to commencing Project construction, Owner shall deliver to O&R for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit C with additional and supplementary details, procedures and requirements applicable to Storage Rating Tests based on the then current design of the Project ("Supplementary

Storage Rating Test Protocol"). Thereafter, from time to time during construction, Owner may deliver to O&R for its review and approval (such approval not to be unreasonably delayed or withheld) any Owner recommended updates to the then current Supplementary Storage Rating Test Protocol. The initial Supplementary Storage Rating Test Protocol (and each update thereto), once approved by O&R, shall be deemed an amendment to this Exhibit C.

****** End of EXHIBIT C ******

EXHIBIT D

PROJECT OPERATING RESTRICTIONS

File Update Date:		**[XX/XX/20XX]**			
Technology:		**[Technology]**			
Storage Unit Name:		**[Unit Name and Number]**			
A. Contract Capacity					
Contract Capacity (MW):	[X]				
B. Total Unit Dispatchable Range Information					
Maximum Storage Level (MWh):	[X]				
Minimum Storage Level (MWh):	[X]				
Maximum Discharge (MW):	[X]				
Maximum Charge (MW):	[X]				
Guaranteed Round Trip Efficiency (%)	[X]				
C. Ancillary Services					
	AS range and capacity				
Mode	**Lower MW**	**Higher MW**	**Ramp Rate (MW/min)**	**A/S Maximum Capacity (MW) [1]**	**A/S Minimum Capacity (MW)**
Regulation Up	[X]	[X]	[X]	[X]	[X]
Regulation Down	[X]	[X]	[X]	[X]	[X]
Spin	[X]	[X]	[X]	[X]	[X]
Voltage Support Service					

[1] As of the Effective Date, NYISO calculates the A/S Maximum Capacity provided by a Storage Unit based on a 10-minute period at the stated Ramp Rate. If NYISO uses a period limitation other than the 10-minute period limitation, the A/S Maximum Capacity for each A/S and region shall be calculated according to (a) NYISO's period limitation while preserving the Ramp Rate stated for each A/S or the (b) range between the minimum A/S capacity and the maximum A/S capacity for such region, whichever is smaller.

****** End of EXHIBIT D ******

EXHIBIT E

MINIMUM WARRANTY REQUIREMENTS

1. The Project and all component parts, including the energy storage modules, power conversion system, communications and control equipment, cooling and climate control equipment, protection equipment, and switchgear shall be new and of good quality and workmanship; free from defects in materials, workmanship, and design; and conform materially to all applicable specifications and contractual requirements in the Agreement.

2. The Project and all component parts shall perform as specified in Exhibit B and Exhibit D.

3. The Project shall be installed and maintained to ensure continued performance and all costs associated with the replacement and repair of the Project or its component parts, if deemed to be non-performing, shall be borne by Owner.

4. Owner shall obtain sufficient warranties and/or service agreements to ensure continued performance of the Project for the duration of the Delivery Period.

5. Any warranties or service agreements entered into by Owner with a manufacturer or service provider must indemnify Owner with respect to damages and losses incurred in connection with the negligence and willful misconduct of such manufacturer or service provider.

6. Any service warranty or service agreement obtained by Owner to service the Project shall cover all system maintenance, including system support, problem diagnosis, on-site repair and preventive maintenance.

7. Owner shall provide O&R with supporting warranty documents from the original equipment manufacturer for energy storage modules, power converter systems, and necessary climate control or key auxiliary equipment that:

    a. covers the entire Delivery Period

    b. articulates standards and methods for establishing that the equipment is not performing to specification and should be repaired or replaced, and

    c. establishes a maximum allowable time for faulty equipment to be repaired or replaced, particularly for long-lead items.

****** End of EXHIBIT E ******

EXHIBIT F

MILESTONE SCHEDULE

[*O&R Note: Exhibit is subject to modification for project specific differences*]

– Project Schedule –

Owner has provided dates for development, construction, commissioning, and testing of the Project, showing all significant elements and milestones, as applicable, such as permitting, procurement, financing, engineering, acceptance testing, the Guaranteed Commercial Operation Deadline, and proposed Delivery Period.

[*O&R Note: Subject to modification based on bid, however, O&R expects the Milestone Schedule submitted with the bid to be substantially similar to the table below.*]

No.	Milestones	Date
1*	Obtain Site Control	
2*	Execute of agreement and pay fee to perform a System Reliability Impact Study ("SRIS")	
3*	File for all material Permits for the Project needed to meet the Contract Capacity	
4*	Receive a completed SRIS Study (or equivalent) accepted by NYISO Operating Committee sufficient to meet the Contract Capacity of the Project	
5*	Execute of Facilities Study Agreement and pay fee to join a Class Year Interconnection Facilities Study	
6*	Complete 90% design of the front-end engineering and design of the Project	
7*	File OTCR permit applications with appropriate state or municipal agencies (e.g., from the Fire Department of New York and the New York City Department of Buildings), as applicable	
8	Execute an Engineering, Procurement and Construction contract	
9	File for all remaining construction permits e.g., excavation, earth work, fill material operations, foundation	
10	Execute Project Financing	
11*	Receive final OTCR approval(s)	
12*	Execute the Interconnection Agreement with Transmission Owner to interconnect the Project and ensure the deliverability of installed capacity equal to the Contract Capacity	
13*	Execute purchase order for the battery system, inverter(s) and transformer(s) needed to construct the Project at a size sufficient to achieve the Contract Capacity and other performance requirements specified in this Agreement	

No.	Milestones	Date
14	Deliver full Notice to Proceed under EPC contract and begins construction of the Project	
15*	Obtain all Permits for the Project needed to achieve Substantial Completion	
16	Battery Delivery onsite	
17*	Achieve Substantial Completion	
18*	Receive any additional Permits necessary to achieve Commercial Operation, including the final operational permits from DOB and FDNY	
19*	Final Completion	

* Indicates a Critical Path Milestone

****** End of EXHIBIT F ******

EXHIBIT G

COMMUNICATIONS PROTOCOLS

Communication Protocols

These Communication Protocols are subject to change and shall be modified by O&R as evolving market conditions and rules may require.

1. Contacts and Authorized Representatives

The "Contact Information" tables set forth those contact functions, phone numbers and e-mail information by which each Party elects to be contacted by the other. Notification provided under this Agreement shall be made to the applicable point of contact as set forth in the Contact Information Table. A Party may update its Contact Information by providing Notice to the other Party.

2. Communication Protocols – General

2.1 Daily Communication: Owner shall communicate via email to O&R's Scheduling Desk the expected status of the Project no later than 10:00 am EPT on the second Business Day prior to the Operating Day. O&R Scheduling Desk shall deliver Owner a Dispatch Notice (Day Ahead Schedule) for each of the NYISO market products via email communication by 1:00 pm EPT on the Business Day prior to the Operating Day.

2.2 Intra-day Communication: Within the Operating Day, Owner shall receive notice of changes to the Day Ahead Schedule associated with charging and discharging via base point signals using six (6) second telemetry as required for NYISO market participation. Owner shall conversely communicate its response to the NYISO via the same telemetry. O&R shall monitor the Project's response via a user interface.

2.3 Unplanned Outage Communications: If Owner deems that an Unplanned Outage is required, Owner shall communicate via email to O&R's Scheduling desk no later than 5:00 pm EPT on the third (3rd) Business Day prior to the Operating Day an Unavailability Notice requesting an Unplanned Outage, noting the length of outage requested, status of the Project, and the reason or cause of the outage. O&R shall submit the Unplanned Outage request to the NYISO for evaluation and approval. Once approved/disapproved, O&R shall notify Owner via email communication.

2.4 Forced Outage Communication: If an unanticipated Unplanned Outage occurs, Owner shall call the O&R Scheduling Desk no later than fifteen (15) minutes after the Project is offline and provide the best available information reporting the cause and the expected duration of the unplanned outage. As soon as reasonably practicable, Owner will follow up with an email communication notifying O&R of Project condition, date and time of event, approximate return time, products available, and any other pertinent information. The Scheduling Desk will inform the NYISO of the assets change in status.

2.5 Return to Service Communications: Expected return from a forced or planned extended outage, shall be communicated to O&R via email as soon as possible but no later than two (2) Business

Days prior to the Operating Day in order to receive a Dispatch Notice for the Operating Day. If returning to service on the same Operating Day as the forced outage Owner shall notify O&R as soon as reasonably possible via a telephone communication no later than two (2) hours prior to the top of the hour that the Project is expected to return to service.

2.6 Communication Failure: In the event of a failure of the primary communication link between Owner and O&R, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.7 System Emergency: O&R and Owner shall communicate as soon as possible all changes to the schedule directed by the NYISO as a result of a system emergency.

2.8 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreement and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.9 Staffing: The Parties will make personnel available to communicate regarding the implementation of these Communication Protocols twenty-four (24) hours a day, seven (7) days a week.

Contact Information Table

Contacts and Authorized Representatives for O&R

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by O&R with timely Notice to Owner.

Contact	Primary Phone	Secondary Phone	Email
Scheduling Desk			
Outage Scheduling			
Settlements			
Contract Administration			

Contacts and Authorized Representatives for Owner

Outlined below is the contact and communication information for the relevant Owner employees. This list may be amended by Owner with timely Notice to O&R.

Desk:	Contact:	Direct Phone:	Secondary Phones:	Email:
Dispatch Desk (Day-Ahead)				
Dispatch Desk (Real Time)				
Outage Desk				
Plant Manager				
Contract Administration				
Settlements				
Operations Manager				
Operations Supervisor				

****** End of EXHIBIT G ******

EXHIBIT H

FEDERAL ACQUISITION REGULATIONS COMPLIANCE REQUIREMENTS

REQUIRED CLAUSES AND CERTIFICATIONS

(In this Exhibit H, all references to "Con Edison" are to O&R and

all references to "Contractor" are to Owner)

Dated: April 2015

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text.

Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability to the Contractor and/or the contract.

1. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (this clause is applicable to contracts exceeding $150,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (SEP 2006)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed $150,000.

2. ANTI KICKBACK PROCEDURES (this clause is applicable to contracts exceeding $150,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (OCT 2010)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed $150,000.

3. CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT
(this clause is applicable to contracts exceeding $30,000)

The Contractor agrees to be bound by an comply with the clause entitled "Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010)" which clause is contained in Section 52.209-6 of the Federal Acquisition Regulation (section 52.209-6 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause in subcontracts under this contract which exceed $30,000 and are not for commercially available off-the-shelf items and the requirement to notify Con Edison if the Contractor or its subcontractors are debarred, suspended, or proposed for debarment by the Federal Government. The Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that is not for a commercially available off-the-shelf item and will exceed $30,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

4. UTILIZATION OF SMALL BUSINESS CONCERNS (this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization of Small Business Concerns (JAN 2011)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

5. SMALL BUSINESS SUBCONTRACTING PLAN (this clause is applicable to contracts in excess of $650,000, except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2011)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government.

6. **EQUAL OPPORTUNITY** (this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (MAR 2007)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor further agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and set forth the Contractor's obligations, including its affirmative action obligations. **Specifically, the Contractor and its subcontractors shall abide by the requirements of Sections 60-1.4(a), 60-300.5(a) and 60-741-5(a) of Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

7. **EQUAL OPPORTUNITY FOR VETERANS** (this clause is applicable to all contracts of or exceeding $100,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity for Veterans (SEP 2010)," which is contained in Section 52.222-35 of the Federal Acquisition Regulation (section 52.222-35 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

8. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (this clause is applicable to all contracts of or exceeding $15,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Affirmative Action for Workers with Disabilities (OCT 2010)," which is contained in Section 52.222-36 of the Federal Acquisition Regulation (section 52.222-36 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued under the Rehabilitation Act of 1973 (29 U.S.C. 793, as amended).

9. EMPLOYMENT REPORTS ON VETERANS (this clause is applicable to all contracts of or exceeding $100,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Employment Reports on Veterans (SEP 2010)," which is contained in Section 52.222-37 of the Federal Acquisition Regulation (section 52.222-37 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts and to comply with the reporting to the Federal Government (including the submission of VETS-100A Report).

10. COMBATING TRAFFICKING IN PERSONS
(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Combating Trafficking in Persons (FEB 2009)," which is contained in Section 52.222-50 of the Federal Acquisition Regulation (section 52.222-50 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

11. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL
(this clause is applicable to all contracts requiring access to a Federal facility)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Personal Identity Verification of Contractor Personnel (JAN 2011)," which is contained in Section 52.204-9 of the Federal Acquisition Regulation (section 52.204-9 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

12. PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS
(this clause is applicable to contracts which incorporate or refer to Section 52.232-27 of the Federal Acquisition Regulation)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Prompt Payment for Construction Contracts (OCT 2008)," which is contained in Section 52.232-27 of the Federal Acquisition Regulation (section 52.232-27 of title 48 of the Code of Federal Regulations), including the requirements set forth in subsection (c) "Subcontract clause requirements".

13. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS
(this clause is applicable to all contracts for goods and services to be used or performed at a Federal facility)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Energy Efficiency in Energy-Consuming Products (DEC 2007)," which is contained in Section 52.223-15 of the Federal Acquisition Regulation (section 52.223-15 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

14. PROHIBITION OF SEGREGATED FACILITIES (this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

15. NOTICE OF EMPLOYEE RIGHTS
(this clause is applicable to all contracts exceeding $10,000 unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 13496, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Notification of Employee Rights under the National Labor Relations Act (DEC 2010)," which is contained in Section 52.222-40 of the Federal Acquisition Regulation (section 52.222-40 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

The Contractor agrees to comply with the requirements of Chapter 471 of Title 29 of the Code of Federal Regulations, which implement Executive Order 13496, including the posting of the notice required by Section 471.2 of Title 29 of the Code of Federal Regulations.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal

Government as a means of enforcing the terms and conditions of the Notice of Employee Rights clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

16. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
(this certification is applicable to contracts exceeding $150,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this contract.

17. SUBCONTRACTS FOR COMMERCIAL ITEMS
(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (DEC 2010)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled " Contractor Code of Business Ethics and Conduct (APR 2010)" contained in Section 52.203-13 of the Federal Acquisition Regulations (section 52.203-13 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010)" contained in Section 52.203-15 of the Federal Acquisition Regulations (section 52.203-15 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Utilization of Small Business Concerns (DEC 2010)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Equal Opportunity (MAR 2007)" contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Equal Opportunity for Veterans (SEP 2010)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (vi) the clause entitled "Affirmative Action for Workers with Disabilities (OCT 2010)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (vii) the clause entitled "Notification of Employee Rights under the National Labor Relations Act (DEC 2010)" contained in Section 52.222-40 of the Federal Acquisition Regulations (section 52.222-40 of title 48 of the Code of Federal Regulations); (viii) the clause entitled "Combatting Trafficking in Persons (FEB 2009)" contained in Section 52.222-50 of the Federal Acquisition Regulations (section 52.222-50 of title 48 of the Code of Federal Regulations); and (ix) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)" contained in Section 52.247-64 of the Federal Acquisition Regulations (section 52.247-64 of title 48 of the Code of Federal Regulations). In addition, Contractor shall be bound by and comply with Section 14, above, Prohibition

of Segregated Facilities, which is applicable to all contracts to which the Equal Opportunity clause (see subsection (iv) above) is applicable. If the contract between Con Edison and the Contractor is for the supply of Commercial Items (as such term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations)), then, to the extent that the clause entitled "Subcontracts For Commercial Items (DEC 2010)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (DEC 2010)" and the clauses referenced in such clause and in this Section 17, (b) include the terms and conditions of "Subcontracts for Commercial Items (DEC 2010)" in all subcontracts, and (c) to make and comply with the provisions of the certifications that are referenced in the clause entitled "Subcontracts For Commercial Items (DEC 2010)" or otherwise required by this Section 17. Additionally, with respect to clause (iv), above, the Contractor agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and set forth the Contractor's obligations, including its affirmative action obligations. **Specifically, the Contractor and its subcontractors shall abide by the requirements of Sections 60-1.4(a), 60-300.5(a) and 60-741-5(a) of Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

****** End of EXHIBIT H ******

EXHIBIT I

Notice Information

[OWNER'S NAME] ("Owner")	**ORANGE AND ROCKLAND UTILITIES, INC.** ("O&R")
All Notices are deemed provided in accordance with Section 14.02 if made to the address and facsimile numbers provided below:	Unless otherwise specified, all Notices are deemed provided in accordance with Section 14.02 if made to O&R at the address or facsimile number provided below:
All Notices: Attn: Street: City: Phone: Facsimile: Email:	**All Notices:** Attn: Street: City: Phone: Facsimile: Email:
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: Federal Tax ID Number:
Contract Administration: Attn: City: Phone: Facsimile: Email:	**Contract Administration:** Attn: City: Phone: Facsimile: Email:
Invoices: Attn: City: Phone: Facsimile: Email:	**Invoices:** Attn: City: Phone: Facsimile: Email:
Payments: Attn: City: Phone: Facsimile: Email:	**Payments:** Attn: City: Phone: Facsimile: Email:
Wire Transfer: BNK: ABA: ACCT: SWIFT Code:	**Wire Transfer:** BNK: ABA: ACCT: SWIFT Code:

[OWNER'S NAME] ("Owner")	**ORANGE AND ROCKLAND UTILITIES, INC.** ("O&R")
Credit and Collections: Attn: City: Phone: Facsimile: Email:	**Credit and Collections:** Attn: City: Phone: Facsimile: Email:
With additional Notices of an Event of Default or Potential Event of Default to: Attn: City: Phone: Facsimile: Email:	**With additional Notices of an Event of Default or Potential Event of Default to:** Attn: City: Phone: Facsimile: Email:

****** End of EXHIBIT I ******

EXHIBIT J

FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

This CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT (this "**Consent**"), entered into as of _____, by and among Orange and Rockland Utilities, Inc., a New York corporation ("**O&R**"), **[*Name of Owner*]**, a **[*legal status of Owner*]** ("**Owner**") and **[*Name of Collateral Agent*]**, a **[*legal status of Collateral Agent*]**, as collateral agent (together with its successors and assigns in such capacity, "**Collateral Agent**") for the Lenders (as defined below). O&R, Owner and Collateral Agent are each sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**". Capitalized terms used and not otherwise defined herein shall have the meanings given in the ESSA (as hereinafter defined).

A. Owner and O&R have entered into that certain Energy Storage Services Agreement, dated as of _____, (as amended, restated, supplemented or otherwise modified from time to time, the "**ESSA**"), pursuant to which Owner will develop, construct, commission, test, own, operate, and maintain the Project and sell to O&R the exclusive rights to schedule, use, and sell all Product from the Project and O&R will purchase and pay for such rights;

B. **[*names of Lender(s)*]** (collectively, "**Lenders**") and Owner have entered into that certain **[*title of loan document*]**, dated as of _____ (as amended, restated, modified or otherwise supplemented from time to time, the "**Financing Agreement**") pursuant to which the Lenders have made commitments to make loans and, as applicable, extend credit to Owner to fund completion of the Project; and

C. As collateral security for Owner's obligations under the Financing Agreement and related agreements (collectively, the "**Financing Documents**"), Owner has assigned all of its right, title and interest in and to the ESSA to Collateral Agent *[describe any other grants of security interests in Owner's assets/pledges of equity]* (collectively, the "**Security Interests**") until such time as such Security Interests are automatically released (as described herein and therein).

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Collateral Agent shall have the right, but not the obligation, upon the occurrence and continuance of an Event of Default under the Financing Agreement (a "**Financing Default**"), in exercise of the Lender's rights and remedies thereunder, to perform any act required to be performed by Owner under the ESSA, and any such act performed by Collateral Agent in accordance with the terms of the ESSA shall be as effective to prevent or cure a default under the ESSA as if performed by Owner itself. Collateral Agent's right under this Section 1 is subject to the condition that Collateral Agent provide prompt written notice to O&R of any such Financing Default (not later than two business days following the occurrence of a Financing Default).

2. Upon the occurrence of a breach, default or event of default by Owner under the ESSA (herein called an "**ESSA Default**"), O&R agrees that it will not terminate or suspend its performance under the ESSA until it notifies Collateral Agent in writing of

such ESSA Default and affords Collateral Agent the same right to cure and the same cure period provided under the ESSA.

Notwithstanding the foregoing, if Collateral Agent notifies O&R in writing of its intention to cure an ESSA Default, describing in reasonable detail the actions to be taken to cure the ESSA Default and the time period in which it will perform such actions, and diligently proceeds to cure the ESSA Default, then Collateral Agent shall have (a) ten (10) Business Days from its receipt of the notice of the ESSA Default from O&R to cure the ESSA Default (if for failure by Owner to pay any amount due and payable under the ESSA) or (b) thirty (30) days from its receipt of such notice with respect to any other ESSA Default. O&R will not terminate or suspend its performance under the ESSA during any such extended cure period so long as Collateral Agent is diligently proceeding to cure, or cause the cure of, the applicable ESSA Default. Collateral Agent shall provide O&R with reports concerning the status of efforts to cure an ESSA Default upon O&R's reasonable request.

3. O&R hereby consents and agrees that during the continuance of a Financing Default, upon not less than thirty (30) days' notice to O&R, Collateral Agent may exercise its rights and remedies pursuant to the Financing Documents in a manner that constitutes a Change of Control so long as such Change of Control results in a Qualified Substitute Owner becoming the Controlling Person of Owner.

O&R hereby consents and agrees that during the continuance of a Financing Default, upon not less than thirty (30) days' notice to O&R, (i) Collateral Agent may sell, assign, transfer or otherwise dispose of the ESSA and all of the assets comprising the Project to a Qualified Substitute Owner (any such entity that is so substituted, the "**Substitute Owner**") and (ii) O&R shall continue to perform its obligations under the ESSA in favor of the Substitute Owner if such Substitute Owner assumes in writing, in form and substance reasonably satisfactory to O&R, the obligations of Owner under the ESSA (including the obligation to cure any then-existing payment defaults under the ESSA and all non-payment defaults under the ESSA which are reasonably susceptible of being cured). "**Qualified Substitute Owner**" means any Person that (i) acquires ownership of all assets comprising the Project, (ii) has the legal capacity and authority to enter into and perform the obligations of Owner under the ESSA, (iii) O&R reasonably determines has (x) financial resources available to it sufficient to enable it to perform the obligations of Owner under the ESSA, and (y) through its own employees or through a contract with an Affiliate, has the technical skills and experience reasonably necessary to permit it to perform the obligations of Owner under the ESSA, and (iv) is otherwise acceptable to O&R.

4. Provided that Collateral Agent has otherwise complied with the requirements hereof to exercise rights hereunder, if the ESSA is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving Owner, and if, within sixty (60) days after such rejection or termination, Collateral Agent shall so request and in connection therewith shall cure or cause to be cured any then-existing payment defaults under the ESSA and all non-payment defaults under the ESSA which are reasonably susceptible of being cured, O&R will promptly enter into a new

agreement with a Qualified Substitute Owner that shall be for the balance of the remaining term under the ESSA (before giving effect to such rejection or termination) and shall contain the same agreements, terms and conditions as the ESSA (a "**Replacement ESSA**"). O&R shall be entitled to assume that Collateral Agent's actions in connection with such bankruptcy or insolvency proceeding are in accordance with the Financing Documents without independent investigation thereof, but shall have the right to require that Collateral Agent provide reasonable evidence demonstrating the same. To the extent O&R is, or was otherwise prior to its termination as described in this Section 4, entitled to suspend performance of its obligations under the ESSA, O&R may suspend performance of its obligations under such Replacement ESSA, unless and until all ESSA Defaults of Owner under the ESSA or Replacement ESSA have been cured.

5. O&R hereby represents and warrants to Collateral Agent that:

(a) O&R is a corporation validly existing and in good standing under the laws of the State of New York.

(b) The execution and delivery by O&R of, and performance by O&R of its obligations under, the ESSA and this Consent (i) have been duly authorized by all necessary corporate action of O&R and (ii) do not violate any federal or state law, rule, regulation, judgment, injunction or similar matter applicable to O&R.

(c) O&R has duly executed and delivered the ESSA and this Consent.

(d) The ESSA and this Consent are in full force and effect, and constitute the legal, valid and binding obligation of O&R, enforceable against O&R in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) O&R is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit Owner to suspend its obligations under, or terminate, the ESSA. To O&R's knowledge, Owner is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit O&R to suspend its obligations under, or terminate, the ESSA.

6. Notwithstanding any other provision of this Consent, Collateral Agent acknowledges that a Financing Default constitutes an Event of Default under the ESSA and, as such, O&R shall be entitled to exercise any and all remedies available to it under the ESSA, at law or in equity, with respect to such event, subject only to its agreement to suspend such exercise or to permit a Change of Control of Owner in strict conformity with the terms of this Consent.

7. Owner hereby represents and warrants to O&R and Collateral Agent that:

(a) Owner is a **[*type of entity*]** duly organized, validly existing and in good standing under the laws of the State of **[*state of formation*]**.

(b) The execution and delivery by Owner of, and performance by Owner of its obligations under, the ESSA and this Consent (i) have been duly authorized by all necessary corporate action of Owner and (ii) do not violate any federal or state law, rule, regulation, judgment, injunction or similar matter applicable to Owner.

(c) Owner has duly executed and delivered the ESSA and this Consent.

(d) The ESSA and this Consent are in full force and effect, and constitute the legal, valid and binding obligation of Owner, enforceable against Owner in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) Owner is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit Owner to suspend its obligations under, or terminate, the ESSA. To Owner's knowledge, O&R is not in breach or default of its obligations under the ESSA, and no circumstances exist that immediately, or with the giving of notice or the passage of time or both, would permit Owner to suspend its obligations under, or terminate, the ESSA.

(f) Owner has not previously assigned or transferred all or any part of its rights or obligations under the ESSA or any interest in any assets that comprise the Project, and no Change of Control of Owner has occurred since the Effective Date.

8. Collateral Agent hereby represents and warrants to O&R and Owner that:

(a) Collateral Agent is a **[*type of entity*]** validly existing and in good standing under the laws of the State of **[*state of formation*]**.

(b) The execution and delivery by Collateral Agent of, and performance by Collateral Agent of its obligations under, this Consent (i) have been duly authorized by all necessary corporate action of Collateral Agent and (ii) do not violate any federal or state law, rule, regulation, judgment, injunction or similar matter applicable to Collateral Agent.

(c) Collateral Agent has duly executed and delivered this Consent.

(d) This Consent is in full force and effect, and constitutes the legal, valid and binding obligation of Collateral Agent, enforceable against Collateral Agent in accordance with its terms, except as may be limited by bankruptcy,

reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) Under the terms of the Financing Documents, the Security Interests automatically terminate upon receipt by Owner of the Commercial Operation Payment, and upon Owner's request, Collateral Agent is obligated to provide to Owner documentation effectuating such release of the Security Interests.

9. All notices to O&R under this Consent shall be made to the address set forth in Exhibit I of the ESSA and all notices to Collateral Agent shall be made to the address set out below (as such address may be changed by written notice to O&R in accordance with this Section 9). To be effective, a notice must be in writing and delivered in person or nationally recognized courier delivery service. Notice delivered in person shall be deemed to have been given when received. Notice by nationally recognized courier delivery service shall be deemed to have been given on the date and time evidenced by the delivery receipt.

[*Collateral Agent name and address*]

10. THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

11. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

12. All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESSA. Subject to the foregoing, each Party irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester County with regard to any controversy arising out of or relating to this Agreement. Each Party agrees that service of process on it may be made, at the election of the serving Party, either by registered or certified mail addressed to the address shown herein for that Party or at the address of any office actually maintained by a Party, or by actual personal delivery of service. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. Nothing herein shall affect the right of any Party to serve

process in any other manner permitted by law. Each Party consents to the selection of the state and the federal courts situated in the City of New York or in Westchester County as the exclusive forums for any legal proceeding arising out of or relating to this Agreement. Each Party agrees that all discovery in any proceeding will take place in the City of New York or in Westchester County.

13. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

14. Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by O&R, Project Owner and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

15. This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

16. This provisions of this Consent supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such prior negotiations or writings, the terms, conditions and provisions of this Consent shall prevail.

17. This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[signature pages follow]

IN WITNESS WHEREOF, the Parties by their duly authorized officers have duly executed this Consent as of the date first set forth above.

ORANGE AND ROCKLAND UTILITIES, INC.

By: _____
Name: _____
Title: _____

[*OWNER SIGNATURE PAGE*]

[*COLLATERAL AGENT SIGNATURE*]

****** End of EXHIBIT J ******

EXHIBIT K

IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE: [insert date]

Re: Credit No. _____

We, _____ (the "Issuing Bank"), hereby establish this Irrevocable Transferable Standby Letter of Credit in favor of Orange and Rockland Utilities, Inc., ("Beneficiary") for the account of **[*insert name of supplier*]** (the "Applicant"), for drawings in the aggregate amount not exceeding _____ United States Dollars ($_____), available to Beneficiary at sight upon demand at our counters at [***Location***] on or before the expiration hereof against presentation to us of any of the following statements, dated and signed by a representative of the Beneficiary:

1. "An Event of Default (as defined in the Energy Storage Services Agreement dated as of [_____], 202[_] between Beneficiary and the Applicant, as the same may have been amended (the "Agreement")) has occurred and is continuing with respect to the Applicant under the Agreement";

2. "This Letter of Credit expires in thirty (30) days or less and Applicant has failed to renew or replace this Letter of Credit";

3. "Beneficiary has received notice from Issuing Bank of its election not to extend the Expiration Date of this Letter of Credit for an additional one-year period" and replacement issuing bank meeting minimum issuing bank criteria has not been provided; or

4. "The senior unsecured credit rating of Issuing Bank has been downgraded to below A- by S&P or A3 by Moody's and Applicant has failed to provide replacement credit support".

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any previous drawings that have been duly honored by the Issuing Bank. Partial and multiple drawings are permitted hereunder.

This Letter of Credit shall expire on [●], 202[__]. However, the expiration date of this Letter of Credit shall automatically be extended without amendment for a period of one year from the present or any future expiration date unless, at least 60 days before any expiration date, the Issuing Bank notifies Beneficiary in writing that the Issuing Bank has elected not to extend this Letter of Credit beyond the current expiration date (such notice is referred to as "Notice of Non-Renewal"). Any such Notice of Non-Renewal shall be sent by registered mail or overnight courier to:

Orange and Rockland Utilities, Inc.
[Address]

with a copy to:

Consllidated Edison Company of New York, Inc.
4 Irving Place, New York, NY 10003
Attention: General Counsel

or to such other address(es) as Beneficiary may from time to time specify in a written notice to the Issuing Bank.

Drawings by facsimile are acceptable and should be faxed to: _____ Attn: [ ]. In the event of facsimile presentation, a telephone confirmation may be made to (but is not required**) [insert name of person or department] at [insert telephone #] or [may insert 2nd telephone #] (**or at such other facsimile or telephone number as may be specified from time to time by the Issuing Bank). Beneficiary's failure to seek such a telephone confirmation does not affect the Issuing Bank's obligation to honor such a presentation. A presentation via facsimile shall be effective upon receipt of the facsimile. The original documents do not need to be forwarded to the Issuing Bank. Such documents presented by facsimile transmission are deemed to be effective as originals and the terms thereof, as so presented, shall prevail in the event of any discrepancy between the terms of thereof and the originals when and if delivered to the Issuing Bank.

If requested by Beneficiary in its demand for payment hereunder, payment under this Letter of Credit shall be made by wire transfer of immediately available funds to Beneficiary's account in a bank on the Federal Reserve wire system in accordance with wire transfer instructions set forth in such demand for payment, provided that the Issuing Bank shall have no liability for any errors in such wire transfer instructions.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified. In addition, our undertaking under this Letter of Credit is in no way contingent upon reimbursement with respect to any drawing hereunder or upon our ability to perfect any security interest or other lien.

This Letter of Credit shall be governed by the International Standby Practices – ISP 98, 1998 Version, International Chamber of Commerce Publication No. 590 (the "ISP"), provided, however, that where the ISP is silent, this Letter of Credit shall be governed by New York law, without reference to its choice of law provisions; and provided further that to the extent that the terms hereof are inconsistent with the provisions of the ISP, including Rules 2.01 and/or 5.01 of the ISP, the terms of this Letter of Credit shall govern.

With respect to the Rules 2.01 and/or 5.01 of the ISP, if a drawing is made by Beneficiary hereunder on a Business Day (as defined in the ISP) before 2:00 P.M. (New York City time), payment shall be made of the amount specified in immediately available funds by the close of business (New York City time) on the second following Business Day; if a drawing is made by Beneficiary hereunder on a Business Day after 2:00 P.M. (New York City time), payment shall be

made of the amount specified in immediately available funds by the close of business (New York City time) on the third following Business Day.

This Letter of Credit is transferable more than one time in whole but not in part in favor of any party ("Transferee") whom Beneficiary certifies has succeeded to Beneficiary's right, title and interest in and to the Agreement and all exhibits thereto. At the time of the transfer, the original Standby Letter of Credit and original amendments, if any, must be surrendered to us, together with our letter of credit transfer instructions in substantially the form of Exhibit A attached hereto, duly completed and executed, at which time we will promptly transfer the Letter of Credit in accordance with your transfer instructions in the form of Exhibit A, attached hereto. IN ANY EVENT, THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON OR ENTITY LISTED IN, OR OTHERWISE SUBJECT TO, ANY SANCTION OR EMBARGO UNDER ANY APPLICABLE LAW OF THE UNITED STATES. The fees with respect to any such transfers shall be for the Applicant's account.

This Letter of Credit may not be amended, changed or modified, or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to, or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, without the express written consent of the Beneficiary, the Issuing Bank and the Applicant.

[BANK SIGNATURE]

By: _____
Name: _____
Title: _____

****** End of EXHIBIT K ******

EXHIBIT L

[*Form to be included in Executed ESSA*]

CONSTRUCTION REPORT

****** End of EXHIBIT L ******

EXHIBIT M

CYBERSECURITY REQUIREMENTS

1. Cyber Security, General Security Requirements.

    a. Defined Terms. For purposes of this Exhibit M, the following terms shall have the following meanings:

"O&R Information" means all information, data, compilations, studies, documents, telemetry, and metadata relating to the Project to which O&R is entitled, whether exchanged pursuant to Exhibit G (Communication Protocols) or otherwise pursuant to the terms of this Agreement or any other agreement to which O&R and Owner are parties.

"Services" means those services provided pursuant to the Agreement.

"Process" "Processing" and "Processed" mean any action or operation that is performed using or upon O&R Information whether it be by physical, automated or electronic means, including without limitation, the use, access, storage, transfer, hosting, collection, recording, organization, maintenance, handling, retrieval, disclosure, sharing, dissemination, copying, processing, erasure, deletion, or destruction.

"Owner Personnel" means Owner, Owner's Affiliates and their respective officers, directors, employees, agents and subcontractors.

    b. Interpretation. For purposes of this Exhibit M, Owner shall cause the applicable Owner Personnel to comply with, and shall be responsible for any breach of, any obligation of Owner Personnel hereunder.

    c. If Owner Personnel connect to the computing systems or networks of O&R, Owner agrees, that: (i) Owner Personnel will not access, and will not permit any other person or entity to access, O&R's computing systems or networks without O&R's authorization and any such actual or attempted access shall be consistent with any such authorization; (ii) all Owner Personnel connectivity to O&R's computing systems and networks and all attempts at same shall be only through O&R's security gateways/firewalls; and (iii) Owner Personnel shall use industry standard virus and malware detection/scanning program prior to any attempt to access O&R's computing systems or networks.

    d. To the extent required by O&R based on the type of work being performed by Owner Personnel or the type of access being granted to Owner Personnel to O&R facilities, systems, or infrastructure, Owner shall, in accordance with all applicable Laws, perform background investigations of Owner Personnel performing work under this Agreement which requires such background investigation, and shall supply O&R with evidence, as requested, that such background checks have been performed and have returned "clear" or otherwise satisfactory results. Owner shall not allow any Owner Personnel to perform

services under this Agreement prior to obtaining "clear" or otherwise satisfactory background check results.

e. Without limiting the foregoing provisions, if O&R gives Owner Personnel access (either on-site or remotely) to the networks or computer systems of O&R, Owner Personnel shall limit its authorized access and use to those computer systems, files, software or services reasonably required to perform the Services.

f. Owner represents that all information provided to O&R in connection with O&R's information technology security assessment evaluation of Owner Personnel and any applicable software (including, without limitation, Owner Personnel responses to O&R's Owner Product/Service Security Assessment Checklist) is true, accurate and complete in all material respects and if there is a change in such information or such information becomes or is discovered to be untrue, then Owner shall notify O&R as soon as practically possible. Owner Personnel shall cooperate with all reasonable information technology security procedures and requirements as may be issued to Owner by O&R from time to time during the Term.

g. Owner Personnel shall comply with any additional access, safety and security requirements and procedures (including cybersecurity requirements and procedures) which O&R provides to Owner in writing.

2. Information Security Matters.

a. Information Security Program.

i. Owner Personnel shall:

1. develop, implement, maintain, and monitor a comprehensive, written information security program that contains administrative, technical and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality or integrity of, the unauthorized or accidental destruction, loss, alteration or use of, and the unauthorized access to, acquisition of or Processing of O&R Information ("Information Security Program"); and

2. conduct a risk assessment to identify and assess reasonably foreseeable internal and external risks to the security, confidentiality and integrity of electronic, paper and other records containing O&R Information and evaluate and improve, where necessary, the effectiveness of its safeguards for limiting those internal and external risks.

ii. Owner Personnel shall review and, as appropriate, revise its Information Security Program: (i) at least annually or whenever there is a material

change in Owner or its Affiliates' business practices that may reasonably affect the security or integrity of O&R Information; (ii) whenever there is a change in Exhibit G (Communication Protocols); (iii) in accordance with prevailing industry practices and Applicable Law; and (iv) as reasonably requested by O&R. If Owner Personnel modifies its Information Security Program following such a review, Owner shall promptly notify O&R of the modifications and shall provide the modifications to O&R in writing upon O&R's request. Owner Personnel may not alter or modify its Information Security Program in such a way that will weaken or compromise the confidentiality, security and integrity of O&R Information.

iii. Owner Personnel shall maintain and enforce its Information Security Program at each location from which Owner provides the Services.

iv. Owner Personnel shall ensure that its Information Security Program covers all networks, systems, servers, computers, notebooks, laptops, mobile phones, and other devices and media that Processes O&R Information or that provides access to O&R networks, systems or information.

v. Owner Personnel shall ensure that its Information Security Program includes industry standard password protections, firewalls and anti-virus and malware protections to protect O&R Information stored on computer systems.

vi. Owner Personnel shall conduct security testing at least once per calendar year using a third party to provide monitoring, penetration and intrusion testing with respect to Owner Personnel's systems at and promptly provide a copy of the results to O&R, provided that Owner may redact IP addresses and other client names and information. To the extent any issues are identified in such testing, Owner shall take commercially reasonable efforts to address such issues as recommended by such third-party provider and shall promptly notify O&R of the steps taken by Owner.

b. Data Access Controls. Owner agrees that: (i) Owner Personnel shall maintain appropriate access controls, including, but not limited to, limiting access to O&R Information to the minimum number of Owner Personnel who require such access in order to provide Services to O&R under this Agreement and (ii) Owner Personnel who will be provided access to, or otherwise come into contact with, O&R Information will be required (including during the term of their employment or retention and thereafter) to protect such O&R Information in accordance with this Section 2, and will have entered into appropriate confidentiality agreements or be bound by appropriate obligations of confidentiality.

****** End of EXHIBIT M ******

ATTACHMENT 1

NYSERDA AGREEMENT

The current version of the agreement is located at: https://www.coned.com/-/media/files/coned/documents/business-partners/business-opportunities/bulk-energy-storage/2021-appendix-f.pdf?la=en