

APPENDIX A-2 – FOR USE WITH STATE AGENCIES

**NEW YORK STATE STANDARDIZED CONTRACT  
FOR INTERCONNECTION OF NEW DISTRIBUTED GENERATION UNITS  
AND/OR ENERGY STORAGE SYSTEMS WITH CAPACITY OF 5 MW OR LESS  
CONNECTED IN PARALLEL WITH UTILITY DISTRIBUTION SYSTEMS**

**Interconnection Customer Information:**

Name:

Address:

Telephone:

Fax:

Email:

Unit Application/File No.:

**Utility Information:**

Name:

Address:

Telephone:

Fax:

Email:

Utility Account Number:

## DEFINITIONS

**Delivery Service** means the services the Utility may provide to deliver capacity or energy generated by the Interconnection Customer to a buyer to a delivery point(s), including related ancillary services.

**Energy Storage System (ESS)** means a commercially available mechanical, electrical, or electro-chemical means to store and release electrical energy, and its associated electrical inversion device and control functions that may be stand-alone or paired with a distributed generator at a point of common coupling.

**Interconnection Customer** means the State Agency that is the owner of the Unit.

**Interconnection Facilities** means the equipment and facilities on the Utility's system necessary to permit operation of the Unit in parallel with the Utility's system.

**Material Modification** means a Modification to a Unit that may have adverse impacts on the Utility's system, Utility customers, other projects, or applications in the interconnection queue.

**Modification** means a change to the ownership, equipment, equipment ratings, equipment configuration, or operating conditions of the Unit.

**Premises** means the real property where the Unit is located.

**SIR** means the New York State Standardized Interconnection Requirements for new distributed generation units with a nameplate capacity of 5 MW or less connected in parallel with the Utility's distribution system.

**State Agency** means any state department, state university of New York, city university of New York, board, bureau, division, commission, committee, council, office, or other governmental entity performing a governmental or proprietary function for the state, or any combination thereof, except any public authority or public benefit corporation, the judiciary, or the state legislature.

**Unit** means the distributed generation, stand-alone ESS, or combined generation and ESS facilities approved by the Utility for operation in parallel with the Utility's system. This Agreement relates only to such Unit, but a new agreement shall not be required if the Interconnection Customer makes physical alterations to the Unit that do not result in an increase in its nameplate generating capacity. The nameplate generating capacity or inverter/converter rating of the Unit shall not exceed 5 MW.

**Utility** means [insert legal name of the interconnecting utility].

## I. TERM AND TERMINATION

**1.1 Term:** This Agreement shall become effective when executed by both Parties and shall continue in effect until terminated.

**1.2 Termination:** This Agreement may be terminated as follows:

- a. The Interconnection Customer may terminate this Agreement at any time, by giving the Utility sixty (60) days' written notice.
- b. Failure by the Interconnection Customer to seek final acceptance by the Utility within twelve (12) months after completion of the utility construction process described in the SIR shall automatically terminate this Agreement.
- c. Either Party may, by giving the other Party at least sixty (60) days' prior written notice, terminate this Agreement in the event that the other Party is in default of any of the material terms and conditions of this Agreement. The terminating Party shall specify in the notice the basis for the termination and shall provide a reasonable opportunity to cure the default.
- d. The Utility may, by giving the Interconnection Customer at least sixty (60) days' prior written notice, terminate this Agreement for cause. The Interconnection Customer's non-compliance with an upgrade to the SIR, unless the Interconnection Customer's installation is "grandfathered," shall constitute good cause.

**1.3 Disconnection and Survival of Obligations:** Upon termination of this Agreement the Unit will be disconnected from the Utility's electric system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

**1.4 Suspension:** This Agreement will be suspended during any period in which the Interconnection Customer is not eligible for Delivery Service from the Utility

## II. SCOPE OF AGREEMENT

**2.1 Scope of Agreement:** This Agreement relates solely to the conditions under which the Utility and the Interconnection Customer agree that the Unit may be interconnected to and operated in parallel with the Utility's system.

**III. Electricity Not Covered:** The Utility shall have no duty under this Agreement to account for, pay for, deliver, or return in kind any electricity produced by the Facility and delivered into the Utility's System unless the system is net metered as described in Public Service Law Section 66-J.

## INSTALLATION, OPERATION AND MAINTENANCE OF UNIT

**3.1 Compliance with SIR:** Subject to the provisions of this Agreement, the Utility shall be required to interconnect the Unit to the Utility's system, for purposes of parallel operation, if the Utility accepts the Unit as in compliance with the SIR. The Interconnection Customer shall have a continuing obligation to maintain and operate the Unit in compliance with the SIR.

**3.2 Observation of the Unit - Construction Phase:** The Utility may, in its discretion and upon reasonable notice, perform reasonable on-site verifications during the construction of the Unit. Whenever the Utility chooses to exercise its right to perform observations herein it shall specify to the Interconnection Customer its reasons for its decision to perform the observation. For purposes of this paragraph and paragraphs 3.3 through 3.5, the term "on-site verification" shall not include testing of the Unit, and verification tests shall not be required except as provided in paragraphs

**3.3 Observation of the Unit - Ten-day Period:** The Utility may perform on-site verifications of the Unit and observe the execution of verification testing within a reasonable period of time, not exceeding ten (10) business days after system installation. The Unit will be allowed to commence parallel operation upon satisfactory completion of the verification test. The Interconnection Customer must have complied with and must continue to comply with all contractual and technical requirements.

**3.4 Observation of the Unit - Post-Ten-day Period:** If the Utility does not perform an on-site verification of the Unit and observe the execution of verification testing within the ten-day period, the Interconnection Customer will send the Utility within five (5) days of the verification testing a written notification certifying that the Unit has been installed and tested in compliance with the SIR, the utility-accepted design and the equipment manufacturer's instructions. The Interconnection Customer may begin to produce energy upon satisfactory completion of the verification test. After receiving the verification test notification, the Utility will either issue to the Interconnection Customer a formal letter of acceptance for interconnection, or may request that the applicant and utility set a date and time to perform an on-site verification of the Unit and make reasonable inquiries of the Interconnection Customer, but only for purposes of determining whether the verification tests were properly performed. The Interconnection Customer shall not be required to perform the verification tests a second time, unless irregularities appear in the verification test report or there are other objective indications that the tests were not properly performed in the first instance.

**3.5 Observation of the Unit - Operations:** The Utility may perform on-site verification of the operations of the Unit after it commences operations if the Utility has a reasonable basis for doing so based on its responsibility to provide continuous and reliable utility service or as authorized by the provisions of the Utility's Retail Electric Tariff relating to the verification of Interconnection Customer installations generally.

**3.6 Costs of Interconnection Facilities:** During the term of this Agreement, the Utility shall design, construct and install the Interconnection Facilities. The Interconnection Customer shall

be responsible for paying the incremental capital cost of such Interconnection Facilities attributable to the Interconnection Customer's Unit. All costs associated with the operation and maintenance of the Dedicated Facilities after the Unit first produces energy shall be the responsibility of the Utility.

**3.7 Modifications to the Unit:** The Interconnection Customer may request a Modification at any time after commencement of parallel operation. The Utility shall evaluate the request and determine whether the proposed change is a Material Modification in accordance with the rules for requesting changes to applications in the SIR. A Material Modification will be studied pursuant to the procedures in the SIR for new applications. In the case of a non-material modification that is accepted by the Utility, the parties will execute an amendment to this Agreement describing the Unit changes that have been approved.

#### IV. DISCONNECTION OF THE UNIT

**41 Emergency Disconnection:** The Utility may disconnect the Unit, without prior notice to the Interconnection Customer (a) to eliminate conditions that constitute a potential hazard to Utility personnel or the general public; (b) if pre-emergency or emergency conditions exist on the Utility system; (c) if a hazardous condition relating to the Unit is observed by a Utility inspection; or (d) if the Interconnection Customer has tampered with any protective device. The Utility shall notify the Interconnection Customer of the emergency if circumstances permit. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an emergency condition that affects the Unit that may reasonably be expected to affect the Utility EPS.

**42 Non-Emergency Disconnection Due to Unit Performance:** The Utility may disconnect the Unit, after notice to the responsible party has been provided and a reasonable time to correct, consistent with the conditions, has elapsed, if (a) the Interconnection Customer has failed to make available records of verification tests and maintenance of his protective devices; (b) the Unit system interferes with Utility equipment or equipment belonging to other customers of the Utility; (c) the Unit adversely affects the quality of service of adjoining customers; (d) the ESS does not operate in compliance with the operating parameters and limits described in Attachment 1 to this Agreement.

**43 Non-Emergency Disconnection for Utility Work:** The Utility may disconnect the Unit after notice to Interconnection Customer when necessary for routine maintenance, construction, and repairs on the Utility EPS. The Interconnection Customer may request to reconnect its service prior to the completion of the Utility's work. The Utility shall accommodate such requests, provided that the Interconnection Customer shall be responsible for the costs of the Utility's review and any system modifications required to reconnect the Unit ahead of schedule.

**44 Disconnection by Interconnection Customer:** The Interconnection Customer may disconnect a Unit with an AC nameplate rating above 300 kW upon 18 hours advance notice to

the Utility if the planned shutdown will last 8 hours or more. For non-emergency forced outages lasting 8 hours or more, the Interconnection Customer shall notify the Utility within 24 hours of the commencement of the shutdown

**45 Utility Obligation to Cure Adverse Effect:** If, after the Interconnection Customer meets all interconnection requirements, the operations of the Utility are adversely affecting the performance of the Unit or the Customer's premises, the Utility shall immediately take appropriate action to eliminate the adverse effect. If the Utility determines that it needs to upgrade or reconfigure its system, the Interconnection Customer will not be responsible for the cost of new or additional equipment beyond the point of common coupling between the Interconnection Customer and the Utility.

## V. ACCESS

**5.1 Access to Premises:** The Utility shall have access to the disconnect switch of the Unit at all times. At reasonable hours and upon reasonable notice consistent with Section III of this Agreement, or at any time without notice in the event of an emergency (as defined in paragraph 4.1), the Utility shall have access to the Premises.

**5.2 Utility and Interconnection Customer Representatives:** The Utility shall designate, and shall provide to the Interconnection Customer, the name and telephone number of a representative or representatives who can be reached at all times to allow the Interconnection Customer to report an emergency and obtain the assistance of the Utility. For the purpose of allowing access to the premises, the Interconnection Customer shall provide the Utility with the name and telephone number of a person who is responsible for providing access to the Premises.

**5.3 Utility Right to Access Utility-Owned Facilities and Equipment:** If necessary for the purposes of this Agreement, the Interconnection Customer shall allow the Utility access to the Utility's equipment and facilities located on the Premises. To the extent that the Interconnection Customer does not own all or any part of the property on which the Utility is required to locate its equipment or facilities to serve the Interconnection Customer under this Agreement, the Interconnection Customer shall secure and provide in favor of the Utility the necessary rights to obtain access to such equipment or facilities, including easements if the circumstances so require.

## VI. DISPUTE RESOLUTION

**6.1 Good Faith Resolution of Disputes:** Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.

**6.2 Mediation:** If a dispute arises under this Agreement, and if it cannot be resolved by the

Parties within ten (10) business days after written notice of the dispute, the parties agree to submit the dispute to mediation by a mutually acceptable mediator, in a mutually convenient location in New York State, in accordance with the then current International Institute for Conflict prevention & Resolution Procedure, or to mediation by a mediator provided by the New York Public Service Commission. The Parties agree to participate in good faith in the mediation for a period of up to 90 days. If the Parties are not successful in resolving their disputes through mediation, then the parties may refer the dispute for resolution to the New York Public Service Commission, which shall maintain continuing jurisdiction over this Agreement.

**6.3 Escrow:** The Interconnection customer shall, within thirty (30) working days of written request from the Utility and subject to the availability of appropriations under §41 of the State Finance Law, provide the Utility with a Letter of Assurance confirming that the Interconnection Customer (a New York State Agency) has adequate funds available under the taxing power and/or full faith and credit of the State of New York to cover the costs in dispute, if it is resolved in the Utility's favor.

## VII. INSURANCE

**7.1. Commercial General Liability:** The Interconnection Customer shall, at its own expense, procure and maintain throughout the period of this Agreement the following minimum insurance coverage:

**7.1.1.** Commercial general liability insurance with limits not less than:

**7.1.1.1.** Five million dollars (\$5,000,000) for each occurrence and in the aggregate if the AC Nameplate rating of the Interconnection Customer's Facility is greater than five (5) MWAC;

**7.1.1.2.** Two million dollars (\$2,000,000) for each occurrence and five million dollars (\$5,000,000) in the aggregate if the AC Nameplate rating of the Interconnection Customer's Facility is greater than one (1) MWAC and less than or equal to five (5) MWAC;

**7.1.1.3.** One million dollars (\$1,000,000) for each occurrence and in the aggregate if the AC Nameplate rating of the Interconnection Customer's Facility is greater than or equal to 300 (kWAC) and less than or equal to one (1) MWAC

**7.1.2.** Any combination of general liability and umbrella/excess liability policy limits can be used to satisfy the limit requirements of Section 7.1.1 (a).

**7.1.3.** The general liability insurance required to be purchased in Section 7.1 (a) may be purchased for the direct benefit of the Utility and shall respond to third party claims asserted against the Utility (hereinafter known as "Owners Protective Liability"). Should this option be chosen, the requirement of Section 7.3(a) will not apply but the Owners Protective Liability policy will be purchased for the direct benefit of the Utility and the Utility will be designated as the primary and

“Named Insured” under the policy.

**7.2. General Commercial Liability Insurance:** The Interconnection Customer is not required to provide general commercial liability insurance for facilities with an AC nameplate rating of 300 kW or less. Due to the risk of incurring damages however, the New York State Public Service Commission (“Commission”) recommends that the Interconnection Customer obtain adequate insurance. The inability of the Utility to require the Interconnection Customer to provide general commercial liability insurance coverage for operation of the Unit is not a waiver of any rights the Utility may have to pursue remedies at law against the Interconnection Customer to recover damages

**7.3. Insurer Requirements and Endorsements:** All required insurance shall be written by reputable insurers authorized to conduct business in New York. In addition, all general liability insurance shall, (a) include the Utility as an additional insured; (b) contain a severability of interest clause or cross-liability clause; (c) provide that the Utility shall not incur liability to the insurance carrier for payment of premium for such insurance; and (d) provide for thirty (30) calendar days’ written notice to the Utility prior to cancellation or termination of such insurance, with the exception of a ten (10) days’ notice in the event of premium non-payment; provided that to the extent the Interconnection Customer is satisfying the requirements of subpart (d) of this paragraph by means of a presently existing insurance policy, the Interconnection Customer shall only be required to make good faith efforts to satisfy that requirement and will assume the responsibility for notifying the Utility as required above.

**7.4. Evidence of Insurance:** Evidence of the insurance required shall state that coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by Interconnecting Customer. Prior to the Utility commencing work on System Modifications, and annually thereafter, the Interconnection Customer shall have its insurer furnish to the Utility certificates of insurance evidencing the insurance coverage required above.

**7.4.1** If coverage is on a claims-made basis, the Interconnection Customer agrees that the policy effective date or retroactive date shall be no later than the effective date of this agreement, be continuously maintained throughout the life of this agreement, and remain in place for a minimum of three (3) years following the termination of this agreement or if policies are terminated will purchase a three-year extended reporting period. Evidence of such coverage will be provided on an annual basis.

**7.4.2** In the event that an Owners Protective Liability policy is provided, the original policy shall be provided to the Utility.

**7.5. Self-Insurance:** If the Interconnection Customer has a self-insurance program established in accordance with commercially acceptable risk management practices or self-retention or funding program established by law or otherwise set by local governmental policy, the Interconnection Customer may comply with the following in lieu of the above requirements as reasonably approved by the Utility:

**7.5.1.** The Interconnection Customer shall provide to the Utility, at least thirty (30)



calendar days prior to the Date of Initial Operation, evidence of such program to self-insure or self-retain to a level of coverage equivalent to that required.

**7.5.2.** If the Interconnection Customer ceases to self-insure or self-retain or fund to the standards required hereunder, or if the Interconnection Customer is unable to provide continuing evidence of the Interconnection Customer's financial ability to self-insure, the Interconnection Customer agrees to promptly obtain the coverage required under Section 7.1.

**7.6. Utility Obligation to Maintain Insurance:** The Utility agrees to maintain general liability insurance or self-insurance consistent with its existing commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.

**7.7. Notification Obligations:** The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

## **VIII. LIMITATION OF LIABILITY**

**8.1** Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever. Nothing herein is meant to limit the liability of a Party to an unaffiliated third-party claimant.

## **IX. INDEMNITY**

**9.1** This provision protects each Party from liability incurred to third parties arising from actions taken pursuant to the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Section 7.

**9.2** The Utility shall at all times indemnify, defend, and hold the Interconnection Customer (State Agency) harmless from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, to the extent arising out of or resulting from the action or failure to meet its obligations under this Agreement, except in cases of negligence, gross negligence or intentional wrongdoing by the Interconnection Customer .

**9.3** Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the Interconnection Customer shall hold Utility harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the Interconnection Customer or its officers or employees when acting

within the course and scope of their employment. Liability incurred to third parties as a result of carrying out the provisions under this Agreement shall be exempt from the general limitations on liability set forth above.<sup>12</sup>

**9.4** If a Party is obligated to indemnify and hold the Indemnified Party harmless under this section, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual loss, as adjudicated by the Indemnifying Party's insurance carrier, net of any insurance or other recovery.

**9.5** Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this section may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any unintentional failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

## **X. CONSEQUENTIAL DAMAGES**

**10.1** Other than as expressly provided for in this Agreement or pursuant to the utility tariff, neither Party shall be liable to the other Party under any provision of this Agreement for any losses, damages, costs, or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

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<sup>12</sup> Certain New York laws (e.g. Section 41 of New York State Finance Law, Article 2 of the Court of Claims Act and Article 17 of the Public Officers Law) define the scope of New York State's indemnification of its contractual counterparties.

## XI. MISCELLANEOUS PROVISIONS

**11.1 Beneficiaries:** This Agreement is intended solely for the benefit of the Parties hereto, and if a Party is an agent, its principal. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any other person.

**11.2 Severability:** If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such portion or provision shall be deemed separate and independent, and the remainder of this Agreement shall remain in full force and effect.

**11.3 Entire Agreement:** This Agreement including standard clauses for a governmental contract (e.g. New York State Appendix A or State University of New York Exhibit A) constitutes the entire Agreement between the Parties and supersedes all prior agreements or understandings, whether verbal or written.

**11.4 Waiver:** No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. In the event that any agreement or covenant herein shall be breached and thereafter waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**11.5 Applicable Law:** This Agreement shall be governed by and construed in accordance with the law of the State of New York.

**11.6 Amendments:** This Agreement shall not be amended unless the amendment is in writing and signed by the Utility and the Customer.

**11.7 Force Majeure:** For purposes of this Agreement, "Force Majeure Event" means any event: (a) that is beyond the reasonable control of the affected Party; and (b) that the affected Party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrection, or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, such Party will promptly notify the other Party in writing, and will keep the other Party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance. The affected Party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected Party will use reasonable efforts to resume its performance as soon as possible.

**11.8 Assignment to Corporate Party:** At any time during the term, the Interconnection Customer may assign this Agreement to a corporation or other entity with limited liability, provided that the Interconnection Customer obtains the consent of the Utility. Such consent will not be withheld unless the Utility can demonstrate that the corporate entity is not reasonably capable of performing the obligations of the assigning Interconnection Customer under this Agreement.

**11.9 Assignment to Individuals:** At any time during the term, the Interconnection Customer may assign this Agreement to another person, other than a corporation or other entity with limited liability, provided that the assignee is the owner, lessee, or is otherwise responsible for the Unit.

**11.10 Permits and Approvals:** Interconnection Customer shall obtain all environmental and other permits lawfully required by governmental authorities prior to the construction and for the operation of the Unit during the term of this Agreement.

**11.11 Limitation of Liability:** Neither by inspection, if any, or non-rejection, nor in any other way, does the Utility give any warranty, express or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances or devices owned, installed or maintained by the Interconnection Customer or leased by the Interconnection Customer from third parties, including without limitation the Unit and any structures, equipment, wires, appliances or devices appurtenant thereto.

**ACCEPTED AND AGREED:**

**Interconnection Customer**

**Signature:**

**Printed Name:**

**Title:**

**Date:**

**Utility Signature:**

**Printed Name:**

**Title:**

**Date:**