

BULK POWER ENERGY STORAGE PROCUREMENT OF SCHEDULING AND DISPATCH RIGHTS – REQUEST FOR PROPOSAL

National Grid

DRAFT July 30, 2019

ENERGY STORAGE SERVICES AGREEMENT - CONCEPTUAL TERM SHEET

This Conceptual Term Sheet is intended for discussion purposes in support of Niagara Mohawk Power Corporation d/b/a National Grid's ("National Grid" or the "Company") Bulk Storage Solicitation. This Conceptual Term Sheet sets forth the principal terms National Grid expects to include in an Energy Storage Services Agreement ("ESSA") that will govern the Company's relationship with the *Bulk Power Energy Storage Scheduling and Dispatch Rights Request for Proposals* (the "RFP") awardee (the "Seller"); it does not create or establish any binding obligation or liability on the part of National Grid or its Affiliates, or any RFP participant or its Affiliates.

This Conceptual Term Sheet does not address terms and conditions for the Marketer RFP. Please see Appendix F for more details.

The terms of the ESSA included in the final RFP may differ from those set forth below.

Seller	The Seller is the winning bidder to the RFP and named entity providing the turnkey energy storage solution pursuant to the ESSA executed by the Seller and the Company.
Company	Niagara Mohawk Power Corporation d/b/a National Grid is a public gas and electric utility that owns and operates energy infrastructure in New York.
Storage	<p>An energy storage system (the "Project") that meets the requirements of the RFP and the ESSA document.</p> <p>Specific details of the Project will be incorporated into the ESSA executed by the Seller and the Company based on the Seller's proposal in response to the RFP and final negotiations among the Parties.</p>
Definitions	<p>"Affected Systems" means an electric system, other than National Grid's Transmission System, that may be affected by the Project interconnection.</p> <p>"Affiliates" means any Person controlling, controlled by, or under common control with, any other Person; where "control" shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such Person.</p> <p>"Ancillary Load" means load power consumed when the Project is not being dispatched (i.e., for cooling, heating, pumps, control power, etc.).</p> <p>"Applicable Laws and Regulations" means all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, and other duly authorized actions of any Governmental Authority.</p>

	<p>“Business Day” means Monday through Friday excluding Federal holidays. “Completion Date” is the date on which the Project is (i) commissioned by obtaining applicable certifications or passing applicable inspections, (ii) operating within agreed parameters, and (iii) otherwise meeting standards of operation and care requirements.</p> <p>“COD” means Commercial Operation Date.</p> <p>“Confidential Information” means any information that is treated as confidential by either party, including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing.</p> <p>“Contract” means all fully executed documents including but not limited to ESSA, Letter of Credit, Final Proposal, Standard Policies and Procedures, Site Control, Offer Form, Interconnection Agreement, Operational Agreement, Permits, Site Control.</p> <p>“Delivery Point” means the point of demarcation between the Seller-owned Project and the National Grid Interconnection Facilities as further defined in the Interconnection Agreement.</p> <p>“Distribution System” means National Grid’s facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among geographic areas.</p> <p>“Distribution Upgrades” means the additions, modifications, and upgrades to National Grid’s Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Project and render the services necessary. Distribution Upgrades do not include network upgrades or Interconnection Facilities.</p> <p>“DoD” means Depth of Discharge.</p> <p>“Energy Services Fee” means the monthly fee constituting payment for the delivery of Energy and Services (as such terms are defined below) associated with the Project.</p> <p>“EMS & SCADA” means National Grid’s Energy Management System and Supervisory Control and Data Acquisition, respectively.</p> <p>“EMS/ADMS” means National Grids Energy Management System or Advanced Distribution Management System.</p>
--	--

“Energy” means a quantity of electricity that is produced, consumed, sold, or transmitted over a period of time, typically measured or calculated in megawatt hours (“MWh”) or kilowatt hours (“kWh”).

“Environmental Laws” means laws or regulations of a Governmental Authority related to the discharge of air pollutants, water pollutants or process waste, or otherwise relating to the environment or Hazardous Materials, as amended from time to time.

“FAT” means Factory Acceptance Tests.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure Event” means an event that removes liability for natural and unavoidable catastrophes that interrupt the expected course of events and restricts the Parties from fulfilling obligations under the ESSA.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility 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 in which the Project is located. Good Utility Practice shall include, but not be limited to, NERC (as defined below) criteria, rules, guidelines and standards, NPCC (as defined below) criteria, rules, guidelines and standards, NYSRC (as defined below) criteria, rules, guidelines and standards, and NYISO (as defined below) criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time including the rules, guidelines and criteria of any successor organization to the foregoing entities. When applied to the Seller, the term “Good Utility Practice” shall also include standards applicable to an energy storage system connecting to the distribution or transmission facilities or system of another utility.

“Governmental Authority” means any federal, state, local, or other governmental regulatory or administrative agency, court, commission, department, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provide, however, that such term does not include the Seller, the Company, or any Affiliate thereof.

“Guaranteed Availability” means availability defined as the number of hours in the period during which the Project is online and capable of providing the Guaranteed Capacity (as defined below) in any rolling 12-month period, divided by the total number of hours in the rolling 12-month period, excluding planned maintenance outages.

“Guaranteed Capacity” means guaranteed active power, reactive power and energy capacities of the Project as validated by the required testing specified in Appendix A - Storage Rating Tests.

“Guaranteed Round-Trip Efficiency” (“RTE”) means the measured rate of efficiency comparing a unit of energy injected into the Project inclusive of ancillary load, and the amount of that unit of energy discharged by the Project.

“Hazardous Substance” means any substance, material, gas or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or as dangerous to public health, public welfare or the natural environment including, without limitation, protection of non-human forms of life, land, groundwater and air, including, but not limited to, any material or substance that is: (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste,” or “restricted hazardous waste” under any provision of local, state or federal law; (ii) petroleum, including any fraction, derivative or additive (iii) asbestos; (iv) polychlorinated biphenyls (“PCBs”); (v) radioactive materials; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 et seq.; (vii) defined as “hazardous waste” pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901 et seq.; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq.; (ix) defined as a “chemical substance” under the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §2601 et seq.; or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §136 et seq.

“Industry Standards” means those standards of care and diligence normally practiced by an experienced contractor for grid-connected storage systems of a similar nature and scope in the United States of America for the electric utility industry and in accordance with good engineering and design practices, applicable permits, applicable standards and good practices for the safety and security of personnel, equipment, materials, work in progress and completed electric generation facilities. Industry Standards are not intended to be limited to the optimum method to the exclusion of all others, but rather to include a spectrum of reasonable and prudent methods.

“Interconnection Facilities” means National Grid’s Interconnection Facilities and the Seller’s Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Delivery Point and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Project to National Grid’s Distribution System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

“Intellectual Property Rights” means a right that is had by a person or by a company to have exclusive rights to use its own plans, ideas, or other intangible assets without the

worry of competition, at least for a specific period of time. These rights can include copyrights, patents, trademarks, and trade secrets.

“Letter of Credit” means an irrevocable, non-transferable, standby letter of credit, issued by a U.S. commercial bank or a U.S. branch of a foreign bank (i) with total assets of at least \$10,000,000,000 and a long-term senior unsecured issuer rating of A- or higher as rated by S&P and A3 or higher as rated by Moody’s and (ii) in a form acceptable to the Company in its sole discretion.

“Letter of Credit Default” means with respect to an outstanding Letter of Credit, the occurrence of any of the following events:

- (a) the issuer of such Letter of Credit shall fail to be a Qualified Institution;
- (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period;
- (c) the issuer of the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or
- (d) the Letter of Credit shall expire or terminate or have a Value of \$0 at any time the Party on whose account that Letter of Credit is issued is required to provide Credit Support hereunder and that Party has not Transferred replacement Credit Support meeting the requirements of the ESSA, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of the ESSA.

“Marketer” means the entity that executed a contract with National Grid to provide trading and optimal dispatch services of the Project procured by the Company under this ESSA.

“Measured Availability” means the amount of measured availability of the Project for full commercial operation during the term of the ESSA.

“Measured Capacity” means the active power, reactive power and energy capacities of the Project as measured over the term of the ESSA.

“Mechanical Completion” means when all mechanical and physical aspects of a project, except for punch list items, have been constructed and installed in accordance with the specifications set out in the construction contract.

“NERC” means the North American Electric Reliability Corporation or any successor organization.

“Network Upgrades” means additions, modifications, and upgrades to National Grid’s Transmission System required at or beyond the point at which the Project interconnects with National Grid’s Distribution System to accommodate the interconnection of the

	<p>Project with National Grid’s Distribution System. Network Upgrades do not include Distribution Upgrades or Interconnection Facilities.</p> <p>“NPCC” means the Northeast Power Coordinating Council, Inc. or any successor organization.</p> <p>“NYPSC” means the New York Public Service Commission.</p> <p>“NYSRC” means the New York State Reliability Council, L.L.C. or any successor organization.</p> <p>“NYISO” means the New York Independent System Operator, Inc., an organization formed in accordance with FERC orders to administer the operation of and, provide equal and open access to, the transmission system of New York State, and to maintain system reliability.</p> <p>“Operating Requirements” means any operating and technical requirements of the Project that may be applicable to the NYISO, control area, or National Grid’s requirements, including those set forth in the Interconnection Agreement.</p> <p>“Operational Agreement” means an agreement that will be executed prior to the Storage Project’s COD by the Parties and the Marketer, that shall define the roles and responsibilities, technical requirements and operating rules of the Project, by and among the Company, the Seller and the Marketer.</p> <p>“Parent Guarantee” means a guarantee that must be issued by an entity with credit ratings of at least BBB- by S&P and Baa3 by Moody’s (“Guarantor”) in a form acceptable to the Company.</p> <p>“Parties” means collectively the Seller and the Company as pursuant to the ESSA.</p> <p>“Party” means individually the Seller or the Company as pursuant to the ESSA.</p> <p>“Person” means any natural person, individual, firm, corporation, company, partnership (general or limited), limited liability company, business trust, joint venture, consortium, government or political subdivision, or any agency, instrumentality, or authority of any government or political subdivision, or other entity or association.</p> <p>“Personal Information” means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.</p> <p>“Point of Interconnection (“POI”) means the point where the Interconnection Facilities connect with National Grid’s Distribution System.</p>
--	---

"Power Conversion System" means the system to convert the stored energy of the Project into electrical energy and vice versa.

"Purchase Order" is a commercial document and first official offer issued by a buyer to a seller indicating types, quantities, and agreed prices for products or service.

"Qualified Institution" means a major U.S. commercial bank or trust company, the U.S. branch office of a foreign bank, or another financial institution, in any case, organized under the laws of the United States or a political subdivision thereof having assets of at least \$10 billion and a credit rating of at least (a) "A3" from Moody's or "A-" from S&P, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both.

"Round Trip Efficiency" means the ratio of energy put in (in MWh) to energy retrieved from the Project (in MWh).

"Services" means the services as provided by the Seller to the Company or any additional services included on a subsequent work order executed by the Parties and made part of the ESSA.

"Site" means the location of the Project and all physical assets included within the Project boundaries.

"SOC" means State of Charge.

"Software" means the Project Management System software.

"Software Update" means a version of Software that may contain standard releases, updates, patches, bug fixes, error corrections, modifications, alterations or deletions, and therefore differs from the version initially provided. Software Updates do not include any replacement software products separately priced, any new software products separately priced, any additional software options separately priced, or any software having substantially new or different functions, including any new or enhanced control modes.

"Storage Management System" means the control and management system of the Storage as provided by the Seller.

"Substantial Completion" means an affidavit has been provided from the engineer of record for the Project attesting that substantially all the equipment on the non-utility side of the Point of Interconnection has been physically constructed and the only remaining requirements to interconnect the equipment depends on the utility.

	<p>“Substantial Completion Date” means the date the Seller shall be required to achieve Substantial Completion for the Project, no later than March 22, 2022.</p> <p>“Final Completion” means the Project is ready for full commercial operation.</p> <p>“Trading & Dispatch Software” means the control and management system as provided by the Marketer.</p> <p>“Transmission System” means the transmission facilities owned, controlled or operated by National Grid and/or Affected Systems.</p>
Contract Elements	<p>At a minimum, the following shall be included in an ESSA:</p> <ul style="list-style-type: none"> (a) a detailed schedule for the delivery of the Project; (b) a detailed description of the Project equipment and installation; (c) an obligation of the Seller to: <ul style="list-style-type: none"> • construct and commence commercial operation (“Commercial Operation”) of the Project meeting the requirements of the RFP and the ESSA; • operate and maintain the Project during the Term; • meet and continue to satisfy all requirements with the NYISO; • obtain, maintain and operate the Project in compliance with all necessary permits and licenses for construction, installation, interconnection, operation, and maintenance of the Project; (d) a delivery schedule and standards of operations; (e) a fee and liquidated damages schedule; (f) security and insurance requirements; (g) an executed Non-Disclosure Agreement and Data Security Agreement by the Parties; (h) warranties from the Seller to cover the Term; and (i) Company standard policies and procedures, which include, but are not limited to background check requirements, safety, supplier code of conduct, ethics standards, and environmental policies; and (j) other terms as described herein. <p>Subject to the terms of the ESSA, the Company shall pay for the use of the Project and shall have exclusive rights to all Products (as defined below) that the Project is capable of providing during the Term.</p> <p>The Seller shall not have the right to (a) substitute any portion of the Product from any other resource or from the market, (b) make use of the Project for any purpose other than as directed by the Company or (c) relocate the Project during the Term.</p>
Products	<p>The term Products is used to describe all the values and benefits the Project can provide to the Company and includes but is not exclusive to the following items:</p> <ul style="list-style-type: none"> • NYISO wholesale market participation.

	<ul style="list-style-type: none"> • Avoided load procurements. • Local grid support (reliability and/or load relief).
Term	<p>The Term commences upon execution of the ESSA and the effective date of the ESSA and ends up to seven (7) years after the Project achieves Commercial Operation, unless earlier terminated as provided in the ESSA. The date the Project is placed into Commercial Operation is the Commercial Operation Date ("COD").</p> <p>Pre-COD Termination. Prior to the Project achieving Commercial Operation, the ESSA is subject to termination by the Company if (a) the Seller has not demonstrated completion of the Interconnection milestone (described in "Seller Construction Milestones / Recovery Plan" below) by March 31, 2022 or (b) the Project fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date ("Guaranteed COD") of December 30, 2022.</p> <p>In the event of a Pre-COD Termination under clause (a) or clause (b) above, or in connection with an Event of Default that occurs pre-COD, the Seller shall pay a termination payment to the Company.</p> <p>Event of Default Termination. The ESSA is subject to termination by the Company before or after the Project achieves Commercial Operation upon the occurrence of an Event of Default. See "Certain Specified Events of Default", below.</p> <p>No Fault Termination. The ESSA is subject to termination without further obligation of either Party and without obligation of either Party to pay a termination payment if terminated:</p> <ul style="list-style-type: none"> (a) by the Company, if a Force Majeure event has delayed or prevented either Party from performing its obligations for more than 120 days (whether or not consecutive) during any twelve (12) month period during the Term; or (b) by either Party before Commercial Operation, if an Interconnection Cost Overage (as defined under "Interconnection" below) occurs. <p>Safety Event Termination. The Company may terminate the ESSA, whether before or after the COD, if (a) the NYPSC or any other governmental authority takes any action with respect to the Project that prevents or restricts the Project from being operated as described in the prior Project definition section, (b) the Company, based on a publicly available, peer-reviewed safety study, has a reasonable public safety concern with respect to the Project, or (c) the occurrence of a fire or other hazard with respect to any energy storage system other than the Project that shares the same manufacturer or substantially similar design as the Project that is reasonably attributable to a defective design or manufacture ("Safety Event Termination"). In the event of a Safety Event Termination, the Company shall provide notice to the Seller at least thirty (30) days before the effective date of termination and shall pay to the Seller an amount equal to three monthly payments, if such termination occurs after the COD.</p>
Interconnection	<p>The Seller shall be responsible for establishing an interconnection queue position with the Company and establishing a permanent interconnection for the Project and shall also be responsible to pay all costs of any Interconnection Facilities and Distribution</p>

	<p>Upgrades associated with the Project, as set forth below. The “Interconnection Agreement” governs the terms and conditions under which the Seller’s Project will interconnect and operate in parallel with the Company’s Distribution System during the time during which the Seller and the Company are parties to an ESSA.</p> <p>An interconnection study and Interconnection Agreement shall be in place before the Project can begin construction, at which time payment must be received by the Company from the Seller to cover the Seller’s interconnection costs as defined in the Company’s completed interconnection study for the Project.</p> <p>If the final interconnection costs are less than the total estimated interconnection study costs paid by the Seller, any unused funds provided by the Seller and held by the Company will be fully reimbursed to the Seller by the Company. Should the final interconnection costs exceed the estimated interconnection costs previously paid by the Seller (“Interconnection Cost Overage”), the Interconnection Cost Overages shall be paid for by the Seller.</p> <p>Interconnection of the Project shall be conducted in accordance with the applicable section of the Company’s Electric System Bulletin No.756, Appendix B, <i>Requirements for Parallel Generation Connected to National Grid Facilities in New York</i> (“ESB 756”), as modified by the Company from time to time.</p>
Payments by the Company to the Seller	<p>At the beginning of each calendar month following the Completion Date, the Company shall pay the Seller a monthly Energy Services Fee upon receipt of an invoice which shall be submitted within ten (10) days after the end of each calendar month.</p> <p>Standard payment terms are “Net 30”. The Company shall pay all invoices not more than thirty (30) days after receipt by the Company of a proper invoice and any required supporting documentation, subject to the Company’s right to contest, in good faith, all or any part of the charges set forth therein. Payment shall not relieve the Seller’s responsibilities or obligations under the ESSA, nor shall the Company’s payment constitute acceptance or a waiver of any claim arising hereunder provided.</p> <p>The Company reserves the right to utilize a variety of payment channels, including but not limited to Virtual Card, Automated Clearing House (“ACH”), Ghost Cards and P-Cards. The Seller agrees that it will not impose a surcharge on the Company’s payment.</p> <p>The Company reserves the right to offset payments to be made to the Seller against any amounts due and payable by the Seller to the Company under the ESSA or any other energy Project services agreement entered into between the Seller (or its Affiliates) and the Company.</p> <p>The Company may withhold payment, in whole or in part, to the extent and for the time reasonably necessary, in the Company’s reasonable judgment and discretion, to protect the Company from loss for which an exclusive remedy is not specified and which is caused by any breach of the ESSA that is not timely cured in accordance with the ESSA.</p>

	<p>The Seller shall use commercially reasonable efforts to obtain additional incentives, benefits, or credits for the Project that become available during the Term. Should the Seller or its lender, parent, or Affiliate realize any economic benefits following execution of the ESSA with respect to the Project that were not available prior to the execution of the ESSA, the Seller shall notify the Company of such benefits and the cumulative ESSA Payments shall be reduced by an amount equal to seventy percent (70%) of the economic benefit realized. Failure to disclose known and applicable economic benefits/incentives shall constitute a material breach under this ESSA.</p>
Construction Milestones / Recovery Plan	<p>The ESSA will include a milestone schedule setting forth various Project -related milestones, scheduled in a manner that will support the Project achieving substantial completion on or before the Substantial Completion Date and Commercial Operation on or before the Guaranteed COD.</p> <p>The Milestone Schedule will include, among other things, specified construction milestones associated with the following:</p> <ul style="list-style-type: none"> • Site control (site acquisition / execution of Site lease) • Material permits and licenses (both application for and receipt thereof) • Interconnection (includes completion of all studies, execution of an Interconnection Agreement and payment of any amounts required for Interconnection Facilities, Distribution Upgrades, and/or Network Upgrades) • Project financing (debt and tax equity) • Project design and engineering, including: <ul style="list-style-type: none"> o Execution of equipment procurement and construction agreement; o Start of construction; o Delivery of all major equipment; o Completion of FERC and NYISO-related agreements/filings for market participation; o Mechanical completion; o Substantial completion (commissioning / testing / grid synchronization; and o Final completion. <p>Within thirty (30) days of the Effective Date, the Seller will provide a full Level 2 Critical Path Method (“CPM”) schedule which aligns with the Milestone Schedule. The Seller will provide monthly reports updating the Company as to the status of all construction milestones and projected timing of completion, and all documentation reasonably requested by the Company to confirm the information contained in such report.</p> <p>Recovery Plan. If the Seller fails to meet any construction milestone identified in the Milestone Schedule as being a “critical path milestone,” then the Seller will be required to provide (i) a description of the reason for missing such milestone, (ii) the date the Seller expects to achieve such missed milestone and (iii) a recovery plan for completing all necessary work to achieve such missed milestone and achieve Commercial Operation in accordance with the Milestone Schedule. The Company shall review and either approve the recovery plan or request changes to the recovery plan to ensure</p>

	<p>Commercial Operation is to occur no later than the Guaranteed COD. Approval by the Company shall not be unreasonably withheld, conditioned, or delayed, and the Company will be deemed to have approved a recovery plan if it has not contacted the Seller to request changes to the recovery plan within ten (10) business days. The Seller shall pursue its submitted recovery plan pending approval or resolution of requested modification of the recovery plan. The Seller shall be solely responsible for all costs and expenses incurred in connection with developing and implementing a recovery plan.</p> <p>The Seller's failure to comply with an approved recovery plan in any material respect, as reasonably determined by the Company, will constitute an Event of Default (as defined in section "Certain Specified Events of Default" below) under the ESSA. The submission, approval, or modification of a recovery plan will not relieve the Seller of its obligation to timely achieve Commercial Operation not later than the Guaranteed COD.</p>
Liquidated Damages	<p>In the event of a delay, the Seller shall be responsible for liquidated damages. Such liquidated damages shall be deemed to be a genuine pre-estimate of the foreseeable damages incurred by the Company due to delay.</p>
NYSERDA Bulk Storage Incentive Program	<p>The Seller will ensure that the applicable New York State Energy Research Development Authority ("NYSERDA") Bulk Storage Incentive Program payment schedule will align with the payment schedule described in the ESSA. The Seller must comply with the terms of the ESSA and the NYSERDA Bulk Storage Incentive Program contract. Further details can be found on the NYSERDA's website at: https://www.nyserda.ny.gov/All-Programs/Programs/Energy-Storage/Developers-Contractors-and-Vendors/Utility-Procurement.</p>
Liens/Bonds and Credit Support	<p>The Seller, for itself and its subcontractors, waives all right to have filed or maintained any mechanics' or other liens or claims for or on account of the services, labor, or materials to be furnished under the ESSA. The Seller shall pay punctually for all labor, equipment, and materials, and all liabilities incurred in the performance of the ESSA, and when requested shall furnish the Company with satisfactory evidence of such payment.</p> <p>The Seller shall, at the Company's option, be required to post, provide the Company with a Letter of Credit and/or a Parent Guarantee covering the payment of, and performance of all the Seller's obligations arising under the ESSA and to keep the Company's property clear of any encumbrances relating to the ESSA. The Company may require additional bonds or Credit Support if the value of the ESSA, in the Company's opinion, is appreciably increased.</p> <p>Any Letter of Credit obtained by the Seller shall: (a) be valid for a period of at least one year from issuance and (b) state that the issuing bank shall renew such letter automatically for successive one-year periods. The Seller shall cause the renewal, extension, or replacement of any Letter of Credit, as applicable, at least thirty (30) Business days before expiration or at least three (3) Business Days following a downgrade of the issuing bank such that it no longer qualifies to issue a Letter of Credit.</p> <p>The Company may draw upon the Letter of Credit provided by the Seller if amounts to be paid by the Seller have not been paid by the date due or in the event the Seller has not caused the renewal, extension, or replacement of a Letter of Credit by the time limit</p>

	<p>provided above. If the Company draws upon the Letter of Credit provided by the Seller, Seller shall be required to replenish the security.</p> <p>The Seller shall not cause or permit any lien or security interest to attach to any real or personal property of the Company.</p> <p>Credit Support: The following items will qualify as "Credit Support" hereunder in the amount noted under "Valuation Percentage:"</p> <table border="1"> <tr> <th></th><th>"Valuation Percentage"</th></tr> <tr> <td>Cash</td><td>100%</td></tr> <tr> <td>Letter of Credit</td><td>100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be 0%.</td></tr> </table>		"Valuation Percentage"	Cash	100%	Letter of Credit	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be 0%.
	"Valuation Percentage"						
Cash	100%						
Letter of Credit	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be 0%.						
Seller Insurance	<p>Throughout the Term and for such additional periods as may be specified, the Seller (and to the extent not covered by the Seller's insurance policies, its contractors and subcontractors) will obtain and maintain, at its (or their) sole cost and expense, the types and amounts of insurance coverages specified below and such additional coverage as may be required by applicable laws. Such coverage will be obtained from insurance companies that (i) are authorized to do business in the State of New York and (ii) have an A.M. Best's Insurance Rating of B+ or better which meet or exceed the requirements listed herein.</p> <p>Workers' Compensation and Employers' Liability Insurance as required by the applicable law. Coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act (if the provision of the Services requires it);</p> <p>Commercial General Liability ("CGL") Insurance, covering all operations to be performed under the ESSA, with minimum limits of:</p> <ul style="list-style-type: none"> • Combined Single Limit \$1,000,000 per occurrence • General Aggregate and Product Aggregate \$2,000,000 <p>This policy shall include Contractual Liability and Products-Completed Operations coverage. If the Products-Completed Operations coverage is written on a claims-made basis, coverage shall be maintained continuously for at least two (2) years after acceptance (by the Company) of work completed.</p> <p>Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the provisions of the Services with minimum limits of:</p> <ul style="list-style-type: none"> • Combined Single Limit \$1,000,000 per occurrence 						

	<p>Watercraft Liability, if the provision of the Services requires the use of watercraft, with the same minimum limits of liability as outlined for CGL insurance.</p> <p>Aircraft Liability, if the provision of the Services requires the use of aircraft, with a limit of liability of not less than \$10,000,000 combined single limit.</p> <p>Professional Liability coverage, if professional services are required, with a limit of liability of the greater of \$1,000,000 or the value of the Purchase Order.</p> <p>Pollution Liability Insurance insuring against liability arising out of activities contemplated under the ESSA or as might be required by federal, state, regional, municipal and local laws, with minimum limits of \$5,000,000 per occurrence, \$5,000,000 aggregate.</p> <p>Cyber/Network Security and Data Privacy Liability Insurance of at least \$5,000,000 per claim and 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).</p> <p>Other insurance as required and as mutually agreed upon by the Company and the Seller.</p> <p>Self-Insurance: Proof of qualification as a qualified self-insurer, if approved in advance in writing by the Company, will be acceptable in lieu of securing and maintaining one or more of the coverages required in the ESSA.</p> <p>National Grid USA and its direct and indirect parents, subsidiaries, and Affiliates shall be named as Additional Insured on the Commercial General Liability and Automobile Liability policies. The Seller shall waive all rights of recovery against the insured Parties for any loss or damage covered under the CGL policy or for any required coverage that may be self-insured by the Seller.</p> <p>Subcontractors. In the event that the Seller uses subcontractors in connection with the provision of the Services, the Seller shall require all such subcontractors provide the same insurance coverages as shown in this section.</p>
--	--

	<p>Certificate(s) of Insurance. Prior to providing the Services, the Seller shall promptly provide the Company with Certificate(s) of Insurance for all coverages required in the Agreement at the following address:</p> <p style="padding-left: 40px;">National Grid USA Attention Risk & Insurance Department 300 Erie Blvd. West Bldg. A-4 Syracuse, NY 13202</p> <p>Policies shall provide that at least thirty (30) days' prior written notice shall be given to the Company in the event of any cancellation or diminution of coverage and certificates shall outline the amounts of deductibles or self-insured retentions which shall be for the account of the Seller. Such deductibles or self-insured retentions shall not exceed \$100,000 unless agreed to by the Company's Risk & Insurance Department.</p> <p>Reservation of Rights. If any policy should be canceled before final payment by the Company to the Seller and the Seller fails immediately to procure other insurance as specified, the Company reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Seller under the ESSA or to invoice the Seller for such cost.</p> <p>Accident Reports. The Seller shall furnish the Company's Risk & Insurance Department with copies of any accident report(s) sent to the Seller's insurance carriers covering accidents, incidents, or events occurring in connection with or as a result of the provision of the Services.</p> <p>Full Policy Limits. The Seller represents that it has full policy limits available and shall notify the Company's Risk & Insurance Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.</p> <p>Indemnification Coordination. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Seller's responsibility for payment of damages resulting from its work under the ESSA, or limiting, diminishing, or waiving the Seller's obligation to indemnify, defend and save harmless the Company.</p> <p>Compliance. These requirements are in addition to any other insurance requirements which may be required elsewhere in the ESSA. The Seller shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.</p>
Confidentiality	<p>The Seller shall enter into a Non-Disclosure Agreement with the Company contemporaneously with the ESSA.</p> <p>To the extent permitted by Applicable Laws and Regulations, each Party shall maintain the confidentiality of information and data transmitted under the ESSA, provided the Company and the Seller may disclose information required to apply for and comply with</p>

	the requirements of the NYSERDA Bulk Storage Incentive Program and any regulatory obligations.
Sale or Lease of the Project	<p>In the event the Project is sold or leased, the Company may, at its sole option:</p> <ul style="list-style-type: none"> (a) Consent to assign all ESSA obligations to the buyer/tenant. Such consent may only be given if the buyer/tenant has similar or better creditworthiness and operating credentials and the buyer/tenant accepts such assignment of the ESSA; <i>or</i> (b) Terminate the ESSA and the Seller shall pay the Company an amount equal to the Termination Payment set forth in the Default Remedy provision below.
Certain Specified Events of Default	<p>“Events of Default” shall include:</p> <ul style="list-style-type: none"> • Material breach by any party of any representation or warranty in the ESSA (or in any other document or report delivered to the Company or NYISO thereunder) or the failure to perform any material covenant in the ESSA; including alterations of the Project without the Company’s approval and such failure continues for a period of fourteen (14) days after written notice by the Company to the Seller; • Providing any false or misleading information to obtain the ESSA; • Bankruptcy of a Party; • The Seller’s failure to obtain and maintain as required any necessary permits; • The Seller’s failure to maintain insurance of the types and amounts required in the ESSA; • The Seller’s change of control or the sale of its assets, or merger or consolidation of the Seller with and into another entity without receiving consent from the Company, as such is described in the ESSA; • The Seller’s failure to provide and maintain a Letter of Credit as required under the ESSA; • The Seller’s failure to pay liquidated damages when due; • The Seller’s failure to achieve a critical milestone on or before date for achieving same (subject to delivery of and compliance with a recovery plan); • The Seller’s failure to achieve Commercial Operation by the Guaranteed COD; and/or • The Seller’s failure to meet the performance thresholds for the applicable periods stated in “Performance Guarantees” following an opportunity to cure.
Engineering Information	<p>The following engineering provisions shall be included in the ESSA at a minimum:</p> <ul style="list-style-type: none"> • One-Line diagrams; • Detailed information of protection schemes (<i>i.e.</i>, three-line diagrams and list of protection relays); and • Detailed information and diagrams for control, monitoring, metering and communications schemes to the Company’s EMS and the Trading & Dispatch Software.
Default Remedies	<p>If an Event of Default by the Seller occurs, the Company shall have the right to remedy such Event of Default by taking one or more of the following actions:</p> <ul style="list-style-type: none"> • Terminate the ESSA for cause; • Suspend performance; • Draw upon credit support provided by the Seller; • Withhold payments to the Seller; and/or

	<ul style="list-style-type: none"> • Pursue any and all remedies available at law or in equity. <p>Termination Payment. If the Company terminates the ESSA following Commercial Operation as a result of the declaration of an Event of Default, the Seller shall be obligated to pay the Company in the amount equal to the total contract value, pro-rated annually for the year in which the termination occurs ("Termination Payment").</p>
Conditions Precedent to Project Commercial Operation	<p>Conditions precedent to the Project achieving Commercial Operation shall include:</p> <p>The Seller shall have satisfied all requirements and agreements with the NYISO to allow the Company to sell the Products, including all metering and telemetry required by the NYISO and the Company.</p> <p>Demonstrated land acquisition or lease and all required permits.</p> <p>Satisfactory completion of all commercial operation testing (<i>i.e.</i>, FAT) and on-site commissioning, as determined by the Company and as described in an appendix to the ESSA, such that the Project meets or exceeds all performance requirements.</p> <p>The Seller shall have obtained and complied in all material respects with all approvals required by any Governmental Authority required to construct and operate the Project.</p> <p>The Project shall not be subject to any encumbrances other than permitted financing-related liens.</p> <p>The Interconnection Agreement shall be in full force and effect, and the Seller shall have complied in all material respects with its obligations thereunder, including having installed all necessary metering to deliver the Products in accordance with this ESSA.</p> <p>A detailed and mutually agreed Operational Agreement that describes the Project roles, responsibilities, and scenarios shall be in place involving all parties; the Company, the Seller, and the Marketer.</p> <p>The Seller shall not be in default of any payment or performance obligation under the ESSA.</p> <p>The Seller shall have provided a Letter of Credit in the amount required by the Company.</p> <p>The Seller shall have obtained and provided a copy to the Company of a certificate from an independent professional engineer licensed to practice in the State of New York stating that the Project has been completed in all material respects, excepting only items that do not adversely affect the ability of the Project to operate in accordance with the ESSA.</p>

	The Seller shall have completed all registrations with the NERC) and its delegate, the NPCC as applicable to the Seller.
Right to Suspend the ESSA	The Company may at its sole discretion interrupt, suspend, or delay execution of all or any part of the Project for any reason whatsoever upon written notice to the Seller specifying the nature and expected duration of the interruption, suspension, or delay.
NYISO Requirements	<p>The Seller shall comply with all FERC and NYISO requirements applicable to a resource maintained for and participating in the NYISO wholesale electric market, including any requirement for the Seller to have market-based rate authority.</p> <p>The Company shall be entitled, subject to appropriate confidentiality obligations, to copies of all data submitted to the NYISO by the Seller (including, without limitation, information pertaining to the Project capital and O&M costs).</p>
Charging Costs	<p>Before the COD, the Seller shall be responsible for all costs and procurement of all energy used to charge the Project.</p> <p>After COD, the Company shall be responsible for managing, directing the scheduling of, purchasing, and transporting all energy used to charge the Project equal and opposite to the amount of discharged energy.</p> <p>The Seller shall be responsible for all Project station ancillary load (cooling, heating, pumps etc.) and Project losses that will be paid for at the SC3A retail rate.</p>
Change Notification	The Seller must receive written authorization from the Company before making any change to the Project that may have a material impact on the safety or reliability of National Grid's Transmission System or Distribution System or Affected Systems. Such authorization shall not be unreasonably withheld. Modifications to the Project must be done in accordance with Good Utility Practice. If the Seller makes modifications to the Project without the Company's prior written authorization, the Company shall have the right to temporarily disconnect the Project.
Right of Access	<p>The Seller shall test and inspect the Project and its Interconnection Facilities prior to any interconnection. The Seller shall notify the Company of such activities no fewer than five (5) Business Days (unless stated otherwise in the Interconnection Agreement or as may be otherwise agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day. The Company may, at its own expense, send qualified personnel to the Site to inspect the interconnection and observe the testing. The Seller shall provide the Company with a written test report when such testing and inspection is completed.</p> <p>Additionally, upon reasonable notice, the Seller shall grant the Company access to the Site at or immediately before the Project commences commercial operation for the purpose of inspecting equipment, witnessing testing, verifying certain conditions, including performance guarantees, or to observe the operation of the Project for a period of te10) Business Days after the COD.</p>

	<p>Following the initial inspection process described above, at reasonable hours, and upon two (2) Business Days' notice to the Seller, or at any time without notice in the event of an emergency or hazardous condition, the Company shall have access to the Site for any reasonable purpose in connection with the performance of the obligations imposed on the Seller by the ESSA including, but not limited to, inspecting the Project and the interconnection between the Project and National Grid's distribution system, or if necessary to meet National Grid's obligations to provide service to its customers.</p> <p>At any time that National Grid personnel are on the Site, such personnel shall observe all safety rules and regulations adopted by the Seller. Each Party shall be liable for its employees arising out of any provision of the Worker's Compensation Law.</p> <p>Each Party shall be responsible for its own costs associated with complying with Site access requirements other than those costs to be borne by the respective Parties as established in the Interconnection Agreement and ESSA.</p>
Metering, Communications, and Telemetry	<p>The Seller must comply with applicable NYISO metering requirements.</p> <p>Metering must facilitate separation of Storage ancillary power and losses from energy charged for later participation in the NYISO markets or avoided load procurement.</p> <p>All metering shall be installed, owned and operated by the Company and the costs to install shall be covered by the Seller.</p> <p>Metering shall be separate and distinct from any non-Project related load.</p> <p>The Seller will need to provide all of the Project real-time data to the Company as specified in the ESSA, including at a minimum: current status, (kW) charging or discharging, and state of charge.</p>
Data and Cybersecurity Requirements	<p>The Company's standard cybersecurity requirements shall apply to the ESSA, and the Seller shall be required to execute a Data Security Agreement with the Company.</p> <p>The Company shall have access to and retain ownership of all operational data applicable to the Project.</p> <p>The Seller and any associated contractors will need to comply with all Applicable Laws and Regulations and to Personal and/or Confidential Information it receives from the Company.</p> <p>The Seller shall ensure that its contractors and/or subcontractors who have access to National Grid's Personal and/or Confidential Information implement and maintain appropriate physical, technical, and administrative security measures for the protection of such Personal Information and/or Confidential Information as required by all Applicable Laws and Regulations, or as required by the Company.</p>

The Seller shall not, directly or indirectly, divulge, disclose or communicate any Personal Information and/or Confidential Information it receives from the Company to any person, firm, or corporation, except with the advance written permission of the Company.

All records pertaining to Personal Information and/or Confidential Information received from National Grid, whether developed by National Grid or others, are and shall remain the property of National Grid.

The Company shall have access to and retain ownership of all operational data applicable to the Project.

The Seller shall adopt, implement and maintain security procedures sufficient to protect Personal Information and/or Confidential Information from improper access, disclosure, use, or premature destruction. Such security procedures shall be reasonably acceptable to the Company and in compliance with all Applicable Laws and Regulations as they are promulgated or amended.

In addition, the following items will likely be required to comply with the Company's Data Privacy and Cyber Security requirements:

- The Seller may need to setup and configure various firewalls to sufficiently protect all Parties.
- The Company will need to conduct a thorough investigation into the associated Storage Management System software architecture and associated controls and may need to conduct "penetration" testing.
- Maintain, and provide for the Company's review, at the Company's request, (a) Written Information Security Program ("WISP"); and (b) other applicable security program documents, including summaries of its incident response policies, encryption standards and/or other computer security protection policies or procedures, that constitute compliance with the Massachusetts security regulations and the Rhode Island security regulations.
- The Seller agrees to apply the standards and requirements of the MA Security Regs and RI Security Regs to all such Personal Information, regardless of the jurisdiction in which the subject of Personal Information resides.
- The Seller shall have a process for managing both minor and major security incidents.
- The Seller shall notify the Company promptly, but in no event later than twenty-four (24) hours, after discovery of a security vulnerability and in no event later than five (5) days after discovery of any unauthorized access, possession, use, destruction or disclosure of Personal Information ("Security Breach").
- The Company's data, including Personal Information, may not be maintained, stored, or transmitted outside of the United States of America.

	<ul style="list-style-type: none"> • The Seller shall permit the Company or its representatives to perform audits of the Seller’s facilities, equipment, books, and records (electronic or otherwise), and operational systems, and such other audits as may be deemed necessary by the Company. • The Seller shall participate in any audits and information disclosure in the event the Company is audited. • An annual written self-certification shall be provided to the Company by the Seller based on an independent third-party audit that scrutinizes and confirms the effectiveness of controls (<i>i.e.</i>, penetration testing). • The Seller shall have an established process for verification of software integrity and authenticity of all software and patches provided by the Seller. • The Seller shall adopt a Secure System Development Life Cycle program (“Secure SDLC”) methodology. • The Seller shall configure each component of the Storage Management System to operate using the principle of least privilege. This includes operating system permissions, file access, user accounts, application-to-application communications, and power supplies. • The Seller shall notify the Company, when remote or onsite access should no longer be granted to authorized representatives of the Seller. • The Seller shall obtain the Company’s prior approval and require all third parties engaged by the Seller to adhere to the applicable Cybersecurity requirements and access termination rights.
Performance Guarantees	<p><u>Guaranteed Capacity:</u></p> <p>The Company will schedule energy and power capacity performance tests in accordance with Appendix A – Storage Rating Tests, attached to this Term Sheet to determine the Guaranteed Capacity.</p> <p>A refund shall be paid when the Measured Capacity is less than the Guaranteed Capacity based on the following calculation:</p> <ul style="list-style-type: none"> • $(\text{Guaranteed Capacity} - \text{Measured Capacity}) \times [\text{lost \\$ value}^1]/\text{MW-day}$ <p>An Event of Default shall be triggered if the Measured Capacity is below the Guaranteed Capacity for a period of six (6) consecutive months.</p> <p><u>Guaranteed Availability:</u></p> <p>Guaranteed Availability of 98% shall be provided.</p> <p>A refund shall be paid when the Measured Availability is less than the Guaranteed Availability based on the following calculation and associated Events of Default:</p> <ul style="list-style-type: none"> • $(\text{Guaranteed Availability} - \text{Measured Availability}) \times \\$[\text{lost \\$ value}^2/\text{MW}] \times \text{Guaranteed Capacity}$

¹ Will be determined in executed ESSA

² Will be determined in final form of ESSA.

	<ul style="list-style-type: none"> • Events of Default are as follows: <ul style="list-style-type: none"> o if the Availability for any 12-month period falls below 95%; and o if the aggregate hours of unavailability caused by Unplanned Outages caused by the Project or any interconnection asset up to the POI during the Term exceeds 336 hours. <p><u>Guaranteed Round-Trip Efficiency ("RTE"):</u></p> <p>Guaranteed RTE of 70% minimum shall be provided.</p> <p>A refund in the amount of [lost \$ value³/MW] for each 1.0% below 70.0%, or a pro rata portion thereof, shall be paid when the Guaranteed RTE is below 70%.</p> <p>An Event of Default shall be triggered if the RTE goes below 67.0%.</p>
Testing	Storage Rating Tests will be conducted by the Seller during FAT, witness testing and during the Term in accordance with Appendix A of this Term Sheet.
SCADA Interface and Network Security	<p>The Seller will collaborate with the Company to define the system parameters such as set-points, range values, and interlocking logic as necessary. The Seller will collaborate with the Company's SCADA engineers to ensure the Seller provides the agreed upon means of remote control and monitoring.</p> <p>Within forty-five (45) days after execution of the ESSA, the Seller will provide the Company with a network security illustration specific to the Project that aligns with the Project Trading & Dispatch portion of the RFP and the associated monitoring, control and data paths between the Storage Management System and the Company's EMS/ADMS and between the Storage Management System and Marketer. In addition, the Seller will consider and collaborate with the Company on other possible network security arrangements including remote access, firewalls, and security protocols.</p>
Operations and Maintenance ("O&M")	<p>The Seller shall, at all times, retain operational control of the Project and be responsible for (a) all other aspects of operation and maintenance of the Project in accordance with Good Utility Practice and Applicable Laws and Regulations; and (b) adhering to all operational data, interconnection, and telemetry requirements.</p> <p>The Seller's O&M obligations shall include the obligation to repair or replace the Project and other related equipment or to install additional equipment, as needed, to maintain compliance with the performance guarantees of the ESSA.</p> <p>The Seller shall also provide:</p> <ul style="list-style-type: none"> • License & Technical Support Services for the software related to the Project; • Engineering Services for testing, problem solving, onsite and offsite support, IT software support, collection of data; and

³ Id.

	<ul style="list-style-type: none"> Project monitoring services including real time, alarms, fire systems, reports, conditions, performance, and dispatch.
Project Outages	<p><u>Planned Outages:</u></p> <p>No less than ninety (90) days prior to the estimated COD and by May 15th each following year of the Term, the Seller will provide the Company with a non-binding schedule of planned maintenance outages for the Project for the following thirty-six (36) month period ("Outage Schedule"). Each Outage Schedule will include: (a) a description of the work to be performed during each scheduled outage; (b) start date and time for each scheduled outage; (c) end date and time for each scheduled outage; and (d) the Products available (if any) during each scheduled outage. Planned maintenance outages shall (a) be limited to the lesser of six (6) hours per year for each MW of the Project, (b) not exceed 336 hours per year, and (c) be approved thirty (30) days in advance by the Company.</p> <p>The Seller shall not conduct any planned maintenance outages of the Project from May 15 through September 30 in any calendar year during the Term. Each Outage Schedule shall comply with Good Utility Practice and applicable Industry Standards regarding maintenance of the Project and shall additionally conform to all rules and requirements of the NYISO regarding outages.</p> <p>The Company has the right to request changes to the Outage Schedule and each Outage Schedule is subject to the prior approval of the Company.</p> <p><u>Unplanned Outages:</u></p> <p>Any outage that is not a planned maintenance outage is an Unplanned Outage.</p> <p>Within fifteen (15) minutes of the commencement of any Unplanned Outage (including any forced outages), the Seller shall notify the Company of the Unplanned Outage via phone and shall follow up with a written notice (via email) of the same as soon as practicably possible. Such written notice will contain information describing (a) the event or condition, (b) the beginning date and time of such event or condition, (c) the expected end date and time of such condition, (d) the Products available (if any) during such event or condition and (e) any other information reasonably requested by the Company.</p> <p><u>Restoration of Storage system:</u></p> <p>If the Project is coming back online from a Planned Outage or Unplanned Outage, the Seller shall provide sufficient advance notice to the Company. For purposes of calculating availability, the Project shall only be considered available in the first full hour in which the Project can be fully dispatched.</p>
Force Majeure	<p><u>Force Majeure:</u></p> <p>The ESSA shall contain a Force Majeure clause. A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to Force Majeure.</p>

	<p>Extended Force Majeure. Company have the right to terminate the ESSA without liability if a Force Majeure event has delayed or prevented either Party from performing its obligations for more than one-hundred and twenty (120) days during any twelve (12)-month rolling period during the Term.</p> <p>The ESSA shall contain additional terms and conditions applicable to timing for delivery of a notice, efforts to be taken by the claiming Party to resolve a Force Majeure and the process for reinstatement of the obligations of the ESSA following the end of a Force Majeure.</p>
Representations and Warranties	<p>The Seller shall make standard representations and warranties regarding, among other things, its valid existence, execution and enforceability of the ESSA, title to the Project (allowing for permitted financing liens) and the absence of bankruptcy, claims, or defaults.</p> <p>The Seller shall covenant and agree, among other things, to:</p> <ol style="list-style-type: none"> Construct, own, maintain, repair, refurbish, and preserve the Project in good working order as required by the ESSA in compliance with all required permits, Applicable Laws and Regulations, and the Interconnection Agreement; Notify the Company upon the Company's request, in writing, that it has obtained all required permits for the Project, and provide to the Company, upon request, all reasonable assurances and that such required permits have been obtained and remain in force; Deliver all of the Products to the Company on an exclusive basis, free and clear of all liens; Apply for any incentives available to the Project (subject to the prior "Payments by the Company to the Seller" section); Provide all information relating to the Project, ESSA, and any incentive programs for which the Seller or the Project is eligible, including data, reports, or other information collected or produced by the Seller; and. Offer training on the EMS/ADMS integration to the Storage Management System to the Company's personnel both in advance of the Project installation and COD, and throughout the Term of the ESSA.
Company Representations and Warranties	<p>The Company shall make standard representations and warranties regarding its valid existence and execution and enforceability of the ESSA.</p>
Taxes	<p>The Contract Price shall include sales, use and similar taxes, unless otherwise specified in this ESSA. The Company shall not be responsible for any taxes imposed on the Seller's income from the Project.</p>
Assignment/Seller Change of Control	<p>The ESSA, and each and every term and condition thereof, shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns. The ESSA may be assigned by either Party with the written consent of the other Party, which consent shall not unreasonably be withheld, conditioned, or denied; provided that:</p> <ul style="list-style-type: none"> Either Party may assign all of its rights and obligations under the ESSA without the consent of the other Party to any affiliate of the assigning Party with an

	<p>equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement.</p> <p>Any (a) assignment or transfer of any interest in all or any portion of the Project, (b) tax equity financing or (c) direct or indirect change of control of the Seller shall require the prior written consent of the Company.</p> <p>In all events, the Seller shall be responsible for obtaining all necessary consents and approvals of Governmental Authorities and shall provide certification to the Company as to such matters and such other matters as it shall reasonably require.</p>
Federal Acquisition Regulations	<p>The Company is a federal contractor and shall require the Seller to comply with the Federal Acquisition Regulations as part of the ESSA.</p>
Compliance with Applicable Laws and Regulations and Other Requirements	<p>The Parties shall perform all obligations of the ESSA in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.</p> <p>The Seller shall be solely responsible and assume all liability for the safety and supervision of its employees and other persons engaged in the Project. The Seller shall comply with all Applicable Laws and Regulations, whether the same are in force upon the execution of the ESSA or may in the future be passed, enacted or directed, including without limitation, compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 ("OSHA").</p> <p>If applicable, the Seller shall require subcontractors and their employees to comply with the Company's safety requirements as they may be amended from time to time and to take all necessary safety and other precautions to protect property and persons from damage or injury arising out of performance on the Project, whether the same are in force at the execution of the ESSA or may in the future be passed, enacted or directed.</p> <p>The Seller shall have a dedicated safety representative and provide that representative's contact information to the Company.</p> <p>The Seller shall, in connection with the Services and the Project, comply with all applicable federal, state and local laws, ordinances, rules, regulations, codes, permits, licenses, authorizations, and orders of any governmental body, agency, authority, or court having jurisdiction over Company or the supply of the Services.</p> <p>Additional compliance requirements shall include, but not be limited to:</p> <ul style="list-style-type: none"> a) compliance with the following standards (as amended from time to time), at a minimum: UL 9540, UL 9540-A, National Fire Protection Association ("NFPA"), 855, National Grid's ESB No. 756, UL 1741-SA, International Fire Code® ("IFC") 2021, New York State Uniform Fire Prevention and Building Code (the "Uniform Code"). b) installation of fire suppression systems, which shall remain operational at all times and be tested regularly by the Seller; and

	connection of the Seller's fire alarms to the Company.
Environmental Compliance	The Seller shall conduct all Services and the Project in such a manner to minimize the impact upon the natural environment and shall comply fully with all Environmental Laws and the terms of any/all special environmental conditions in the ESSA.
Dispute Resolution and Waiver of Damages	Except for claims arising out of: a) gross negligence, intentional misconduct, fraud, breach of law, b) a breach of a Party's confidentiality obligations, c) claims arising out of property damage or bodily injury, or d) a Party's indemnification obligations, the Parties waive any rights to consequential, punitive incidental, exemplary, special, or indirect damages (lost profits or revenue shall not be considered special or indirect damages.)
Guarantee and Warranty	<p>The Seller shall provide, at a minimum, guarantees and associated warranties to cover the following over the Term of the ESSA:</p> <ul style="list-style-type: none"> • Rated storage power and energy capacity will be maintained over the Term (see Appendix A for testing requirements). • Asset and software defects. • Storage availability. • Definition of operational limits (<i>i.e.</i>, number of cycles, Rest of SOC, DoD, etc.). • Operation and Maintenance with no limitations to number of Site visits conducted. • Any changes to the control configurations by either Party shall require at least 48 hours' notice to all affected Parties.
Seller Indemnification	<p>The Seller will indemnify the Company and its Affiliates and their respective directors, trustees, officers, employees, agents, assigns and successors from and against any and all loss, liability, damage, claim, etc. (on an after-tax basis) suffered or incurred by any of them arising out of or in connection with any of the following:</p> <ul style="list-style-type: none"> • Any event, circumstance, act or incident relating to the delivery of Product(s) up to the POI; • The Seller's development, permitting, construction, ownership, operation and maintenance of the Project; • The Seller's failure to comply with Applicable Laws and Regulations; • Any fine, penalty, charge, or other assessment imposed by any Governmental Authority for which the Seller is responsible under the ESSA; • Any act or omission of the Seller in connection with the performance of, or failure to perform, its obligations under the ESSA; • Any breach of any representation or warranty of the Seller made in the ESSA or any such representation or warranty of the Seller being false or misleading when made or deemed repeated; • Any lien, security interest, encumbrance, or other adverse claim against the Products made by, through or under the Seller (or any person for whom the Seller is responsible); • Bodily injury (including death) or property damage arising out of or resulting from the construction, operation or maintenance of the Project, except to the extent caused by the negligence or willful misconduct of the Company;

	<ul style="list-style-type: none"> • Any infringement by the Project or any equipment, software, applications or programs used in connection with the Project of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party; • Any breach of the Seller's confidentiality obligation; and • Any release of a Hazardous Substance or enforcement or compliance proceeding relating to an alleged, threatened or actual violation of any Environmental Law by the Seller (or any of the Seller's contractors or subcontractors) in connection with the Project, or action reasonably necessary to abate, investigate, remediate, or prevent a violation or threatened violation of any Environmental Law by the Seller (or any of the Seller's contractors or subcontractors) in connection with the Project.
Risk of Loss	Risk of loss or damage to the work and materials shall remain with the Seller before and during the Term of the ESSA.
Intellectual Property, Publicity and Communications Notice	<p>The Seller shall retain exclusive ownership of all its know-how, concepts, techniques, methodologies, ideas, templates, software, the contents of all documentation, interfaces, utilities, and tools that existed prior to the effective date of the ESSA , all updates, modifications, improvements, enhancements and derivative works of the same conceived, discovered, developed or reduced to practice, solely or in collaboration with others, during the performance of the ESSA and in each case, all related Intellectual Property Rights. The Seller shall grant to the Company a perpetual, irrevocable royalty-free license of any and all data, know-how, concepts, techniques, methodologies, ideas, templates, software, the contents of all documentation, interfaces, utilities, and tools or other intellectual property rights developed during the performance of the ESSA.</p> <p>The Seller shall not, without the Company's prior written consent, publish or make public any information pertaining to the ESSA, whether during the term of the ESSA or thereafter.</p> <p>The Seller shall immediately notify the Company of all communications from regulatory agencies, the media or the public, including, but not limited to, notices, postings, letters, telephone calls, or visits. If a Notice of Noncompliance or any other official correspondence is received by the Seller from a regulatory agency, a copy of the notice or correspondence shall be provided to the Company within twenty four (24) hours of its receipt by the Seller.</p>
Changes of Scope	All "change orders" for work or Services outside the scope of the ESSA must be presented and approved in writing by the Company before the "out-of-scope" work is performed by the Seller. Any "out-of-scope" work performed by the Seller without the Company's written approval will be at the Seller's sole risk and cost.
Choice of Law	The ESSA and the rights and duties of the Parties 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 laws. Any lawsuits arising under the ESSA shall be instituted in the Federal or State courts of New York and each Party irrevocably submits to <i>in personam</i> jurisdiction of such courts. Each Party waives its respective right to a jury trial with respect to any litigation arising under or in connection with the ESSA.

Audit/Records	The Seller shall maintain records relating to the Project and the ESSA, including any records relating to the employment or hiring of minorities and/or females, until (i) three years after the expiration of the last expiring warranty, or (ii) the expiration of any period for which the Company or its Affiliates are required, by any regulatory agency, to have such records maintained, whichever is later. The Seller agrees to make such records available to the Company or its authorized representative at no cost to the Company or its authorized representative for inspection or audit at any time during such period.
---------------	--

APPENDIX A – STORAGE RATING TESTS

A. Storage Rating Test. The Seller shall provide 30 days advance notice to the Company, and the Company shall be entitled to be present at, any and all commissioning, permitting, and performance tests conducted under the ESSA and the Company shall be further entitled to have an independent third party witness any such testing at the Company's sole expense. Upon no less than ten (10) Business Days prior notice to the Company, the Seller shall schedule and complete a Storage Rating Test in accordance with this "Appendix A – Storage Rating Tests" as a condition to achieving Commercial Operation. The Storage Capacity Rating determined from the initial Storage Rating Test shall be the baseline Capacity for the Project and shall not exceed the expected Project Capacity established in the ESSA.

B. Subsequent Storage Rating Tests. Following the COD, the Company shall have the right to schedule additional Storage Rating Tests to be conducted by the Seller, at an interval of not more than once per calendar quarter.

C. Test Results. No later than five (5) days following any Storage Rating Test, the Seller shall submit a testing report detailing results and findings of the test to the Company. The testing report shall include meter readings and digital plant log sheets verifying the operating conditions and output of the Project at the time of the Storage Rating Test.

D. Testing Protocols.

1. NYISO Coordination. All testing shall be coordinated with the NYISO and the Company to ensure the appropriate grid conditions are available for testing conditions. Unity power factor shall be tested (i.e., power factor must be one (1) to conduct the test).

2. Storage Rating Test Sequencing.

a. Storage Energy Capacity Rating Test, Round Trip Efficiency Test and Station Service Load:

i. Pre-charging Project prior to the Capacity Rating Test: To commence a Storage Capacity Rating test the Project must be charged to 100% SOC.

ii. Initiating Storage Energy Capacity Rating Test: The Company shall initiate a dispatch instruction for the Project to be continuously discharged at its full power at the Delivery Point until the Project has reached the minimum allowable SOC. All measurements will occur at the delivery point in AC power.

iii. Calculating Storage Energy Capacity Rating: The total amount of discharged energy delivered to the delivery point (expressed in MWh AC) during each hour of discharge shall be measured on a continuous discharge basis until the minimal allowable SOC is achieved. The lowest MWh AC discharged in a single hour during the four-hour test shall determine the Storage Energy Capacity Rating, which shall be expressed in MW AC.

iv. Recharging after Storage Energy Capacity Rating Test: Within 15 minutes hours of the Project reaching the minimum allowable SOC, the Company shall initiate a dispatch instruction for the Project to be continuously charged at its full power until the Project has reached SOC of 100%.

v. Calculating RTE: The total amount of discharged energy delivered to the delivery point (expressed in MWh AC) during each hour of continuous discharge shall be summed and divided by the total amount of charged energy as measured at the Delivery Point (expressed in MWh AC) during each hour of continuous charge using the design procedures indicated in Pacific Northwest National Lab / Sandia National Lab's Protocol for Uniformly Measuring and Expressing the Performance of Energy Storage Systems (SAND 2016-3078 R). The resulting ratio shall determine the RTE.

vi. Calculating Ancillary Load: The Project shall be energized and at zero active power charge or discharge and at room temperate (72 degrees F), the amount of active and reactive power consumed from the delivery point shall be measured and recorded. This test shall determine the Ancillary Load

b. The Storage Ramp Rate Test:

i. Shall commence when a dispatch instruction is initiated to increase Project output from zero (0) MW to the full Storage Power Capacity Rating. After five (5) minutes a meter reading of the Project output at the delivery point will be taken with the reading 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 Rating Test with the average of the three highest results serving as the recorded Ramp Up Rate for the Project.

ii. Within one (1) hour of the last dispatch instruction to ramp from zero to full Storage Capacity Rating, the Seller shall decrease Project output from full Storage Capacity Rating to (0) MW. After five (5) minutes a meter reading of the Project output at the delivery point will be taken with the reading then divided by five (5). The resulting number shall be recorded as the test Ramp-Down Rate. 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 (3) lowest results serving as the recorded Ramp-Down Rate for the Project.

c. Inverter Power Factor Capability and VAR Ramp Rate:

i. To determine the Project Inverter four quadrant capability the inverter shall be adjusted to its maximum lagging power factor and maximum leading power factor at zero active power output, similarly a second test shall be conducted with active power at the full rated discharge and at full rated charge. Measured reactive power limits and associated ramp rates shall be recorded and documented.

d. For storage systems providing intentional island support the following tests shall be conducted:

- i. Ability to transition inverter control from current source inverter (grid mode) to voltage source (island mode)
 - ii. Ability to maintain stable frequency and voltage during 25% of the storage power rating load step changes (both added and removed)
 - iii. Ability to support load phase imbalances up to 5% as defined by the ANSI C84.1 standard
- e. During all Storage Rating Tests, the following data shall be captured and digitally reported by the Seller to the Company at one (1) second resolution:
- i. Storage system MW output in AC at the Delivery Point;
 - ii. Storage system ramp rate as measured in MW/min at the Delivery Point;
 - iii. Storage system MVAR at the Delivery Point;
 - iv. Power factor at the Delivery Point;
 - v. Frequency as measured in Hertz at the Delivery Point;
 - vi. AC current and voltage at the Delivery Point;
 - vii. DC current and voltage to be measured at or by the Power Conversion System; and
 - viii. Additional variables that the Seller captures from the system which the Company, in its sole discretion, deems relevant.

3. Operating Conditions. 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, the Seller may postpone such test in its reasonable discretion in accordance with the following paragraph.

4. Incomplete or Postponed Tests. If any test is postponed or otherwise not fully completed in accordance herewith, the Seller 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 ten (10) days or less after the date of the incomplete test, and upon five (5) days' prior notice to the Company (or any shorter period reasonably acceptable to the Company), the Seller shall complete the required test.

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

6. Supplementary Storage Rating Test Protocol. No later than sixty (60) days prior to commencing Project construction, the Seller shall deliver to the Company for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this "Appendix A – Storage Rating Tests" 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, the Seller may deliver to the Company for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller 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 the Company, shall be deemed an amendment to this “Appendix A – Storage Rating Tests”.

DRAFT