

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

National Grid

September 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 Energy Storage Solicitation as directed by the New York State Public Service Commission (“NYPSC”) in its December 13, 2018 *Order Establishing Energy Storage Goal and Deployment Policy* in Case 18-E-1030. 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 Procurement of 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 full ESSA in National Grid’s Contract with the Seller 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 whereby the Seller will construct, own, operate and maintain an energy storage system in National Grid’s service territory, including bulk energy storage scheduling and dispatch rights and all Products (as defined herein) that the energy storage system is capable of producing, pursuant to an ESSA executed by the Seller and the Company.
Company	National Grid is an investor-owned electric and natural gas utility that owns and operates energy infrastructure in upstate New York.
Storage	<p>An energy storage system (the “Project”) that meets the requirements of the RFP and the resulting ESSA is exclusively for the benefit of National Grid during the Term of the ESSA, and consists of the Storage Unit, and the Interconnection Facilities, Prevention Equipment, and System Protection Facilities, together with all materials, equipment systems, structures, features, and improvements necessary to store, charge, and discharge electric energy at the Project, all as more fully described in Exhibit E – Sellers Final Proposal.</p> <p>The Sellers Storage solution will be optimally dispatched by a 3rd party power marketer entity (“Marketer”) who will be responsible for bidding, scheduling, and dispatching the Storage technology into the New York Independent System Operator (“NYISO”) wholesale market while prioritizing local grid support requirements and observing any local grid limits.</p> <p>(a) Project Name. [name] (b) Location of Project. [Project address] (c) Energy Delivery Point. The Energy Delivery Point shall be the Interconnection Point.</p>

	<p>(d) Interconnection Point. The Interconnection Point is [insert name, location and voltage level].</p> <p>(e) Interconnection Queue Position. [number to be inserted]</p>
<p>Definitions</p>	<p>“Actual Availability” has the meaning set forth in the Performance Guarantees section of this Conceptual Term Sheet.</p> <p>“Affected Systems” means an electric system, other than National Grid’s Transmission System, that may be affected by the Project’s 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>i.e.</i>, for cooling, heating, pumps, control power, etc.).</p> <p>“Ancillary Services” or “A/S” means services solicited by the NYISO in the NYISO Markets to support the transmission of energy from generators to loads while maintaining reliable operation and shall include any such existing or new service defined by the NYISO that the Project is capable of providing, including Scheduling, System Control and Dispatch Service, Reactive Supply and Voltage Support Service, Regulation Service, Energy Imbalance Service, Operating Reserve Services, and Black Start Capability, each as defined in the NYISO Tariff, and any other ancillary service defined in the NYISO Tariff during the Term.</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>“Assurance” has the meaning set forth in the Liens/Bonds and Credit Support section of this Conceptual Term Sheet.</p> <p>“Audited Financial Statements” has the meaning set forth in the Liens/Bonds and Credit Support section of this Conceptual Term Sheet.</p> <p>“Available Storage Power Capacity” means the amount in MW’s of electrical power available for charge or discharge at any given time</p> <p>“Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any</p>

such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Business Day” means Monday through Friday excluding Federal holidays.

“Capacity Resource Interconnection Service” or “CRIS” means the service provided by the NYISO to developers of facilities interconnected to the New York Electrical Power System in connection with the NYISO requirements for the Project to be eligible as a supplier of Storage Power Capacity.

“Casualty Loss” has the meaning set forth in the Term section of this Conceptual Term Sheet.

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

“Charging Energy Costs” has the meaning set forth in the Operation and Maintenance Section of this Conceptual Term Sheet.

“Charging Energy Requirements” means electric energy stored in the Project to be discharged at a later time, which term expressly excludes any electric energy required for Station Use.

“Charging Notice” means the operating instruction, and any subsequent updates, given by National Grid, the Marketer, or the NYISO to the Seller, directing the Project to charge at a specific rate to a specified State of Charge, provided that any schedule, including self-schedules, submitted by National Grid, the Marketer or awarded by the NYISO in order to effectuate a Seller Initiated Test shall not be considered a Charging Notice.

“Collateral Assignment Agreement” has the meaning set forth in the Liens/Bonds and Credit Support section of this Conceptual Term Sheet.

“Commercial Operation” has the meaning set forth in the Commercial Operation section of this Conceptual Term Sheet.

“Commercial Operation Date” or “COD” means the date the Project achieves Commercial Operation.

“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.

“Confidential Information” has the meaning set forth in National Grid’s Non-Disclosure Agreement (“NDA”).

“Contract” means all fully executed documents including but not limited to the ESSA, Letter of Credit, Final Proposal, Standard Policies and Procedures, Site Control, Offer Form, Interconnection Agreement, Operational Agreement, and Permits.

“Contract Price” means the total amount to be paid by the Company to the Seller under the ESSA.

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

“Control” has the meaning as set forth at “Affiliates” in the Definition section of this Conceptual Term Sheet.

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

“Controlling Person of the Seller” shall mean any Person (i) that directly or indirectly Controls the Seller and (ii) of which no other Person has Control. As of the Effective Date, the Controlling Person of the Seller is [insert name of Controlling Person of the Seller].

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

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

“Defaulting Party” has the meaning set forth in the Default Remedies section of this Conceptual Term Sheet.

“Delivery Period” has the meaning set forth in the Term section of this Conceptual Term Sheet.

“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.

“Dispatch” means to operate the Project to either charge or discharge at a defined threshold.

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

- (a) the number of hours required to complete the test, or
- (b) the minimum amount of the time that the Project must stay on-line after being started-up prior to shut down, due to physical operating constraints.

“Dispute” means any and all disputes, claims or controversies arising out of, or related to, concerning or pertaining to the terms of the ESSA, or to either Party’s performance or failure of performance under the ESSA.

“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.

“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.

“DoD” means the Depth of Discharge of the Project that is a measure of how deeply depleted the Project is, compared to a state of full discharge when the Project would have discharged all of its energy capacity. When the Project has discharged its full energy capacity, the Depth of Discharge, or DoD, is 100%. When it is anything less than that, the depth of discharge, measured in percent (%), is the ratio of the energy that

would have been discharged by the Project to reach its present state of discharge from a state of full charge, divided by its energy capacity. When the Project is fully charged, its DoD is 0%.

“Early Termination Date” has the meaning set forth in the Certain Specified Events of Default /Termination Payments section of this Conceptual Term Sheet.

“EMS & SCADA” means National Grid’s Energy Management System and Supervisory Control and Data Acquisition, respectively.

“EMS/ADMS” means National Grid’s Energy Management System or Advanced Distribution Management System.

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

“Energy Resource Interconnection Service” or “ERIS” means the service provided by the NYISO to interconnect the Project to the New York Transmission System in connection with the NYISO requirements to enable the New York Transmission System to receive Energy and Ancillary Services from the Project.

“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 Material, as amended from time to time.

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means the entity selected by the Seller and approved by National Grid to perform the engineering, procurement and construction activities for the Project.

“Event of Default has the meaning set forth in the Certain Specified Events of Default /Termination Payments section of this Conceptual Term Sheet.

“FAT” means Factory Acceptance Tests.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” means the Project is ready for full Commercial Operation.

"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.

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

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

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

"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 Storage Power Capacity in any rolling 12-month period, divided by the total number of hours in the rolling 12-month period, excluding planned maintenance outages.

“Guaranteed Storage Power Capacity” means guaranteed Storage Power Capacity of the Project as validated by the required testing specified in Appendix A - Storage Rating Tests of this Conceptual Term Sheet.

“Guaranteed Commercial Operation Date” has the meaning set forth in the Term section of this Conceptual Term Sheet.

“Guaranteed Ramp Rate” has the meaning set forth in the Performance Guarantees section of this Conceptual Term Sheet.

“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 Material” 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.

“Independent Engineer” means an engineer engaged by the Seller from a nationally recognized engineering firm with battery storage experience, as reasonably acceptable to the Company.

“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.

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

“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.

“Interconnection Agreement” means the agreement between the Seller, Transmission and Distribution System Owner, and the NYISO to interconnect the Project with the New York electric power system.

“Interconnection Facilities” means National Grid’s Interconnection Facilities and the Seller’s Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Energy 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.

“Interconnection Point” or Point of Interconnection (“POI”) means the point where the Interconnection Facilities connect with National Grid’s Distribution System.

“Interconnection Queue Position” is the order of the Seller’s valid request for interconnection to the Company’s electric power system relative to all other valid interconnection requests, as specified in the Storage section of the Conceptual Term Sheet.

“Interim Financial Statements” has the meaning set forth in the Liens/Bonds and Credit Support section of this Conceptual Term Sheet.

“Interim Period” has the meaning set forth in the Billing and Project Revenue section of this Conceptual Term Sheet.

“Lender” means any financial institution(s) that provide development, bridge, construction, permanent debt or Tax Equity Financing or refinancing for the Project to the Seller.

“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.

“M&V” means measurement and verification.

“Market-Based Rate Authority” has the meaning set forth in the Seller Duties section of this Conceptual Term Sheet.

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

“Maximum Real Power Discharge Limit” has the meaning set forth in Exhibit A.

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

“Measured Storage Power Capacity” means Storage Power Capacity of the Project as measured over the term of the ESSA via testing conducted per Exhibit M.

“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.

“Milestone Schedule” means the Seller’s schedule to develop the Project as described in the Construction Milestones / Recovery Plan section of this Conceptual Term Sheet and as set forth in Exhibit B, including any revisions thereto in accordance with the ESSA.

“Moody’s” means Moody’s Investors Services, Inc., or any successor entity.

“NDA” Means Non-Disclosure Agreement per Exhibit P.

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

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

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

“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 Project with National Grid’s Distribution System. Network Upgrades do not include Distribution Upgrades or Interconnection Facilities.

“Non-Company Charge” has the meaning set forth in the Operations and Maintenance (O&M) section of this Conceptual Term Sheet.

“Non-Company Dispatch” means a dispatch by the Seller either (a) pursuant to a Seller Initiated Test or (b) as required by Applicable Laws and Regulations.

“Non-Defaulting Party” has the meaning set forth in the Default Remedies section of this Conceptual Term Sheet.

“NPCC” means the Northeast Power Coordinating Council, Inc. or any successor organization.

“NYPSC” means the New York Public Service Commission.

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

“NYSERDA Incentive” means the incentive payment for the Project from NYSERDA as part of the NYSERDA 2019 Bulk Storage Incentive Program.

“NYSRC” means the New York State Reliability Council, L.L.C. or any successor organization.

“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.

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

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

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

“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.

“Operating Restrictions” means the limitations on National Grid’s ability to schedule and use the Products during the Contract Term that are identified in Exhibit A.

“Operational Agreement” means an agreement that will be executed as part of the Contract by the Company, the Seller 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.

“Outage Schedule” has the meaning set forth in the Project Outages section of the Conceptual Term Sheet.

“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.

“Parties” means collectively the Seller and the Company as pursuant to the ESSA.

“Party” means individually the Seller or the Company as pursuant to the ESSA.

“Performance Testing” has the meaning set forth in the Testing section of this Conceptual Term Sheet.

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

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

“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.

“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.

“Planned Outages” has the meaning set forth in the Project Outages section of this Conceptual Term Sheet.

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

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

“Product” means all the values and benefits the Project can provide to the Company and includes but is not exclusive to the following items:

- NYISO wholesale market participation. as defined in the NYISO Tariff
- Avoided load procurements
- Local grid support (reliability and/or load relief)
- VAR support

The Seller shall not substitute or purchase any portion of the Product from any other generating resource, non-generator resource, or storage device or from the market for delivery under the ESSA.

“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.

“Rating Agency” means either of S&P or of Moody’s, and “Rating Agencies” means S&P and Moody’s, collectively.

“Ramp-Up Rate” as defined in Exhibit A.

“Ramp-Down Rate” as defined in Exhibit A.

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

“Recovery Plan” has the meaning set forth in the Construction Milestones / Recovery Plan section of this Conceptual Term Sheet.

“Round Trip Efficiency” or “RTE” means the ratio of energy charged (in MWh) to energy discharged from the Project (in MWh) and is inclusive of station ancillary loads (*i.e.*, storage heating, cooling etc.).

“S&P” means Standard & Poor’s Financial Services LLC, or any successor entity.

“Schedule,” “Scheduled” or “Scheduling” means the action of the Company submitting bids to the NYISO and receiving all NYISO Markets results from the NYISO.

“Security Interest” has the meaning set forth in the Liens/Bonds and Credit Security section of this Conceptual Term Sheet.

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

“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.

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

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

“Site Control” means that the Seller has control of the Site through a) ownership of the Site, (b) a valid and enforceable lease agreement, or (c) a valid right-of-way grant or similar instrument with respect to the Site; in each case, that is not subject to any restriction or encumbrance prohibiting, restricting or otherwise affecting the Seller’s

ability to construct, install, own, operate, and maintain the Project and has a duration of not less than the Term.

“Schedule,” “Scheduled” or “Scheduling” means the action of Company or Marketer submitting bids to the NYISO and receiving all NYISO Markets results from the NYISO.

“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.

“Station Use” has the meaning set forth in the Interconnection Section of this Conceptual Term Sheet.

“Storage Power Capacity” also known as “Total Active Power Capacity” means the maximum amount of power in MWs that is capable of being charged or discharged by the Project.

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

“State of Charge” means, at a particular time, the amount of electric energy in the Project, expressed in megawatt hours (MWh).

“Storage Unit” means the physical storage asset.

“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.

“Substantial Completion Date” means the date the Seller shall be required to achieve Substantial Completion for the Project, no later than March 22, 2022.

“System Protection Facilities” means the equipment, including necessary protection signal communications equipment, required to: (1) protect the New York electric power system from faults or other electrical disturbances occurring at the Project, and (2)

protect the interconnected Project from faults or other electrical system disturbances occurring on the New York electric power system or on other delivery systems or other generating systems to which the New York electric power system is directly connected.

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

“Term” has the meaning set forth in the “Term” section of this Conceptual Term Sheet.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party (as defined in the Default Remedies section of this Conceptual Term Sheet) and to be calculated under the ESSA.

“Total Compensation Amount” means the amount equal to the product of \$[amount] per MW multiplied by the Guaranteed Storage Power Capacity.

“Storage Energy Capacity” also known as “Total Energy Capacity” has the meaning set forth in Exhibit A.

“Trading & Dispatch Software” means the control and management system as provided by the Marketer.

“Transmission and Distribution System Owner” means the utility responsible for the electric power system and interconnections.

“Transmission System” means the transmission facilities owned, controlled or operated by National Grid and/or Affected Systems.

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

“Unplanned Outage” has the meaning set forth in the Project Outages section of this Conceptual Term Sheet.

“Warranty Requirements” has the meaning set forth in the Seller Duties section and Exhibit N of this Conceptual Term Sheet.

<p>Contract Elements</p>	<p>At a minimum, the following shall be included in the 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; • All communication requirements to the Company and 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) the Company’s 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) All Exhibit documents; 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>
<p>Seller Duties</p>	<p>For the avoidance of doubt, the Seller shall, as part of its obligations under the ESSA and at no additional cost to the Company:</p> <ul style="list-style-type: none"> (a) obtain Site Control by the date specified in the schedule and for the duration of the Term; (b) design and construct the Project as required for the Seller to perform its obligations under the ESSA; (c) not modify the Project without obtaining prior written consent from the Company; (d) design, construct, own, operate, and maintain the Project as required under the ESSA, in accordance with Good Utility Practice and in compliance with all Applicable Laws and Regulations, Permits, and Site agreements;

- (e) except as expressly permitted under the Assignment/Change of Control Section, retain exclusive ownership over the entirety of the Project;
- (f) not make any use of the Project other than as directed by the Company;
- (g) timely file all applications or other appropriate requests for, and acquire and maintain, all Permits required for siting, construction, operation and maintenance of the Project during the Term;
- (h) complete all environmental impact assessments, statements, or studies required pursuant to Applicable Laws and Regulations, including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;
- (i) obtain and maintain in full force and effect all agreements necessary for electric service for Station Use and Charging Energy Requirements;
- (j) obtain and maintain without modification, and take no action to invalidate, manufacturer's warranties on the components of the Project, which minimum warranty requirements are identified in Exhibit N ("Warranty Requirements");
- (k) not withdraw the Project from the Interconnection Queue Position without the Company's prior written consent;
- (l) ensure the Interconnection Facilities are sufficient to enable delivery of the Guaranteed Storage Power Capacity of the Project;
- (m) provide to the Company, prior to commencement of any construction activities on the Site, a report from an Independent Engineer certifying that the Seller has a written plan for the safe construction and operation of the Project in accordance with Good Utility Practice;
- (n) comply with any NERC Reliability Standards applicable to the Project, including registration with NERC as the Generator Operator for the Project or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by FERC, NERC, NPCC, the NYISO or other Governmental Authority for compliance with the NERC Reliability Standards;
- (o) if applicable, comply with all requirements of the Interconnection Agreement for proper and safe operation of the Project in parallel with the Company's electric power system;
- (p) provide accurate and complete operating characteristics of the Project in compliance with the NYISO Tariff:
 - (i) at least thirty (30) days before Substantial Completion, and
 - (ii) within ten (10) days after such information changes after Substantial Completion;
- (q) comply with Company's data and cybersecurity requirements as applicable to vendors interconnected with Company's information systems;
- (r) comply with the Federal Acquisition Regulations as set forth in the ESSA;
- (s) maintain and preserve its existence as a [insert applicable entity formation information], formed under the law of the State of [applicable state of formation or incorporation] and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under the ESSA;
- (t) in such time period as the Company may reasonably require, provide to the Company all data and information requested by the Company from time to time, to be

	<p>able to sell Products and to substantiate the costs for the Project, which costs may be part of an inquiry or investigation by the NYISO, or a proceeding before FERC, NYPSC or other Governmental Authority;</p> <p>(u) apply for and diligently pursue any incentives or benefits available to the Project, including any Economic Benefit;</p> <p>(v) obtain and maintain Market-Based Rate Authority from FERC as applied to sales made within the NYISO Markets;</p> <p>(x) take all actions necessary to register and maintain the qualification of the Project under all NYISO tariffs required to sell Products; and</p> <p>(y) comply with all requirements to qualify for and maintain CRIS and ERIS at least equal to Guaranteed Storage Power Capacity pursuant to the NYISO Tariff.</p>
Term	<p>The “Term” of the ESSA shall commence upon the date of the signature of the Party signing the ESSA last in time (“Effective Date”) and shall continue for the Contract Term.</p> <p>Delivery Period. The “Delivery Period” shall commence on the COD and shall continue until midnight on the date that is up to seven (7) years after the COD, unless earlier terminated in accordance with the terms of the ESSA.</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, prior to payment of an Interconnection Cost Overage, if an Interconnection Cost Overage (as defined under “Interconnection” below) would otherwise occur. <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</p>

	<p>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 and an opportunity to cure 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> <p>Loss Due to Casualty. If any part of the Project is damaged, destroyed or rendered inoperable, whether by a Force Majeure Event or otherwise (“Casualty Loss”), Owner shall be required to repair, restore or reconstruct the Project, as applicable. Any failure to do so shall constitute an Event of Default.</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 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. The Seller represents and warrants that, as of the Effective Date, (i) the Seller has submitted and will continue to submit all information requested by the NYISO and the Company for interconnection studies for the Project, and (ii) it has submitted and maintained an application to the NYISO to provide the wholesale-related Products. The Seller covenants that it will comply with all of the interconnection requirements contained in the NYISO Tariff, applicable requirements of the Company, and the Interconnection Agreement.</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.¹</p>

¹ Available at https://www9.nationalgridus.com/non_html/ESB756--0618_v4%20complete.pdf

	<p>If the Project is unable to self-supply during an outage event, the Seller must seek a separate electric supply service interconnection by the Company to the Seller with a separate meter. The Seller acknowledges that the ESSA does not cover the supply of any separate electric service by the Company to the Seller. The Seller shall procure, meter separately, and pay for all electrical service required to serve the ancillary electric needs of the Project, including electricity for lighting, security, cooling towers, draft fans, climate control, ventilation mechanisms, control systems, operation and other auxiliary systems necessary for operation and maintenance of the Project (“Station Use”). The Seller shall be responsible for all fees and costs associated with establishing and use of electricity for Station Use, including fees and costs billed to the Company from the NYISO, if any, based on meter data from the Seller’s Station Use.</p> <p>The Seller acknowledges and agrees that nothing in this Section is intended to abrogate, amend or modify the terms of any other agreement between the Seller and the Company including any interconnection agreement or electric service agreement, and that no breach under such other agreement shall excuse the Seller’s nonperformance under this Agreement.</p>
<p>Payments by the Company to the Seller</p>	<p>The Seller shall invoice the Company for seventy percent (70%) of the total Contract Price within sixty (60) days of the COD. The remaining thirty (30%) of the total Contract Price shall be paid over the last three (3) years of the Term, in accordance with an agreed upon payment schedule and in equal payments.</p> <p>Standard payment terms are “Net 30.” Each Party shall pay all invoices not more than thirty (30) days after receipt by the other of a proper invoice and any required supporting documentation, subject to the such Party’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>In addition to other legal remedies available to the Company under Applicable Laws and Regulations, the Company reserves the right to net any amounts that would otherwise be due to the Seller hereunder against any amount the Seller owes to the Company</p>

	<p>under the ESSA, including any costs associated with the supply and delivery of power for Station Use.</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 the ESSA.</p>
<p>Billing and Project Revenue</p>	<p>Interim Period Payment. From the date that the Company has been designated as the Financially Responsible Party (as defined by the NYISO Tariff) for the Project and the Project has achieved Substantial Completion, but before the Project achieves Commercial Operation (“Interim Period”) the Company shall be entitled to all net positive revenue from the sale of the Products from the Project. To the extent there are no net revenues, the Seller shall be responsible for any net costs. Before the date the Company is designated as the Financially Responsible Party, the Seller shall be entitled to any and all NYISO Markets revenue and any and all costs in connection with the Project.</p> <p>NYSERDA Payment. The Seller acknowledges that NYSERDA is solely responsible for payment of the NYSERDA Incentive, the Company shall have no obligation to pay to the Seller amounts in respect of the NYSERDA Incentive, and any failure by NYSERDA to pay amounts due under the NYSERDA Agreement shall not relieve the Seller of any obligations of the ESSA.</p>
<p>Construction Milestones / Recovery Plan</p>	<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;

	<ul style="list-style-type: none"> o Operational Agreement between the Company, Seller and Marketer o Mechanical Completion; o Substantial Completion (commissioning / testing / grid synchronization; and o Final Completion. <p>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 in alignment with Exhibit B – Construction Plan.</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 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). 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, such as failure to meet Substantial Completion Deadline, Commercial Operation Date, or maintain the Schedule, the Seller shall be responsible for liquidated damages. Such liquidated damages shall be agreed upon between the Parties as set forth in the ESSA and 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 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 and the Seller must enter into a Bulk Storage Incentive Standard Agreement, a copy of which will be attached hereto as an Exhibit O, under which NYSERDA will provide, subject to the terms and conditions therein, certain market acceleration bridge incentive funding to the Seller in support of the Project. The NYSERDA market acceleration bridge incentive funding is incremental to the consideration to be paid by National Grid to the Seller. Further details can be found on the NYSERDA’s website at:</p>

	<p>https://www.nyserda.ny.gov/All-Programs/Programs/Energy-Storage/Developers-Contractors-and-Vendors/Utility-Procurement.</p>
<p>Liens/Bonds and Credit Support</p>	<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 provide the Company with cash, a Letter of Credit and/or a Parent Guarantee (each, an “Assurance”) 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. Such Assurance shall be in an amount to be determined based on multiple factors, including, but not limited to cumulative amount paid by the Company to the Seller to date, and the market value of output from the Project over the remaining Contract Term. Pre-COD Assurance will be equal to at least 100% of the Contract Price. Annual Assurance requirements thereafter will be at least equal to the total sum of payments made to the Seller to date less the straight-line depreciation over the term of the ESSA after the Project achieves Commercial Operation.</p> <p>Upon or at any time after the occurrence and continuation of an Event of Default by the Seller, the Company may seek assurance by drawing upon any outstanding Letter of Credit an amount up to the damages the Company reasonably determines it has suffered due to the Event of Default and upon submission to the issuer of such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing.</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. In all cases, all costs associated with Assurance, including the costs and expenses of establishing, renewing, substituting, canceling, and changing the amount of the Assurance, shall be borne by the Seller.</p> <p>The Company may draw upon the Assurance 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 provided above. If the Company draws upon the Assurance provided by the Seller, the Seller shall be required to replenish the Assurance within three (3) Business Days.</p> <p>Notwithstanding the Company’s use of cash collateral or receipt of cash proceeds of a drawing under the Assurance, the Seller shall remain liable for:</p>

- (i) any failure to provide or maintain the required Assurance, if, following such application, the remaining Assurance, is less than the amount required hereunder (including failure to replenish cash collateral or a Letter of Credit to the full Assurance amount in the event that the Company uses the cash collateral or draws against the Letter of Credit for any reason other than to satisfy a Termination Payment); or
- (ii) any amounts owing to the Company that remain unpaid after the application of the amounts drawn by the Company.

The Seller shall not cause or permit any lien or security interest to attach to any real or personal property of the Company.

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

Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Company, if it is the Non-Defaulting Party, may do any one or more of the following:

- (i) exercise any of its rights and remedies with respect to the Assurance, including any such rights and remedies under law then in effect;
- (ii) exercise any of its rights of setoff against any and all property of the Seller in the possession of the Company or its agent;
- (iii) draw on any outstanding Assurance issued for its benefit; and
- (iv) liquidate any Assurance then held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the Seller, its Lender or any other party, including any equity or right of purchase or redemption by the Seller or its Lender.

The Company shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the ESSA, subject to the Company's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

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

Credit and Collateral Covenants.

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

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

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

The Seller may not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

During any period during which Seller is a Defaulting Party, the Seller shall not:

- (i) declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in the Seller; or
- (ii) otherwise make any distribution or payment to any Affiliate of the Seller.

Credit Support: The following items will qualify as "Credit Support" hereunder in the amount noted under "Valuation Percentage:"

	"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%.

If requested by the Company, the Seller shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP:

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

	<p>(b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements (consisting of its income statement, balance sheet, statement of cash flows, and statement of retained earnings, and all notes accompanying such statements for such fiscal quarter and the portion of the fiscal year through the end of such quarter (the “Interim Financial Statements”)), setting forth in each case, in comparative form, the figures for the previous year.</p> <p>In each case, the financial statements specified above must be certified in accordance with all Applicable Laws and Regulations, including all applicable SEC rules and regulations.</p>
<p>Seller Insurance</p>	<p>The Seller (its subcontractor or their hired third-party performing services under this ESSA) shall effectuate and maintain the following insurance policies, including those required by Applicable Laws and Regulations to meet its obligations under the ESSA. Such policies (except Workers Compensation, Professional Liability and Cyber Liability) shall be primary and non-contributory and name “National Grid USA, its direct and indirect parents, subsidiaries and affiliates” as Additional Insureds and effectuate under all policies a waiver of subrogation rights in favor of the Client. The Service Provider shall maintain such policies in force for the term of the ESSA and for three (3) years after the Termination Date in the case of policies held on a ‘claims made’ basis.</p> <p>Workers’ Compensation and Employers’ Liability Insurance as required by the applicable state law. Minimum limit for Employer’s Liability coverage is \$1,000,000 for bodily injury by accident, \$1,000,000 for each employee for bodily injury by disease, and \$1,000,000 policy limit for bodily injury by disease. 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 Agreement, with minimum limits of:</p> <ul style="list-style-type: none"> • \$1,000,000 - per occurrence • \$2,000,000 – General Aggregate • \$2,000,000 – Products/Completed Operations <p>This policy shall include Contractual Liability and Products-Completed Operations coverage.</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: \$1,000,000 CSL - per occurrence</p> <p>Umbrella Liability or Excess Liability coverage, with a minimum per occurrence limit of \$25,000,000. This coverage shall run concurrent to the CGL required above, and shall apply excess of the required CGL, Automobile and Employer’s Liability coverages required herein. Additional Insured and Waiver of Subrogation shall be required as outlined herein.</p>

Professional Liability Insurance: Providing coverage for negligent acts, errors, and omissions (including Technology errors and omissions), in an amount of \$25,000,000 “per claim” or equal to the value of the ESSA, whichever is greater, to protect the Company from losses arising out of the use of the Seller’s product or failure to render services.

Cyber/E-Commerce Liability Insurance: (required only if scope of work includes capture, maintenance or handling of the Company’s data or computer/software work on behalf of the Company), either purchased separately or endorsed to Professional Liability/Errors & Omissions, covering liability arising from or out of the Services provided under the ESSA at minimum limits of \$25,000,000 per claim.

Coverage shall include, but not be limited to, the following, as applicable - Internet and network liability (providing protection against liability for system attacks; denial of service attacks or loss of service; introduction, implantation, or spread of malicious software code; and unauthorized access and use), infringement of privacy or intellectual property rights, breach mitigation and regulatory coverage, internet advertising and content offenses, defamation, errors or omissions in software and/or systems development, implementation and maintenance.

Crime insurance shall be for an amount of not less than \$25,000,000 per occurrence or series of occurrences arising from any one event.

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

Umbrella Liability or Excess Liability coverage, with a minimum per occurrence limit of \$25,000,000. This coverage shall run concurrent to the CGL required above, and shall apply excess of the required CGL, Automobile, and Employer’s Liability coverages required herein. Additional Insured and Waiver of Subrogation is required as outlined in in this section.

Other insurance shall be as required and as mutually agreed upon by the Company and the Seller.

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.

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.

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.

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 ESSA at the following address:

National Grid USA
Attention Risk & Insurance Department
300 Erie Blvd. West
Bldg. A-4
Syracuse, NY 13202

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.

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.

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.

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.

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>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 (“NDA”) 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 the requirements of the NYSERDA Bulk Storage Incentive Program and any regulatory obligations.</p>
Sale or Lease of the Project	<p>In the event the Project is sold or leased, the Company may, at its sole option:</p> <p>(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></p> <p>(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.</p>
Certain Specified Events of Default /Termination Payments	<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 the 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, dissolution, or liquidation 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 failure to maintain Site Control; • 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. <p>Cure Period: Each Party shall have fourteen (14) days to cure after written notice alerting such Party of an Event of Default.</p>

	<p>Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than thirty (30) days after such Notice is effective, as an “Early Termination Date,” and to terminate the ESSA as of the Early Termination Date, (b) accelerate all amounts owed by the Defaulting Party under the ESSA, (c) withhold any payments due to the Defaulting Party under the ESSA, (d) suspend performance pending termination of the ESSA; and (e) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages and, where appropriate, specific performance or injunctive relief), except to the extent that such remedies are limited by the terms of the ESSA.</p> <p>If the Seller is the Defaulting Party, then the Termination Payment shall be owed to the Company. If the Company is the Defaulting Party, then the Termination Payment shall be owed to the Seller. The Parties’ Termination Payments shall be calculated based on termination pre-Commercial Operation and post-Commercial Operation.</p> <p>As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment.</p> <p>The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation. If the Company is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the NYISO, the NYPSC, or any other Governmental Authority, then the Company may estimate the amount of those penalties and fines and include them in the Termination Payment amount.</p> <p>The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within thirty (30) Business Days after the Notice is provided.</p> <p>Effect of Termination. Termination of the ESSA shall not operate to discharge any liability that has been incurred by either Party prior to the effective date of such termination.</p>
Project Information	<p>In addition to other information required to be provided to the Company in accordance with the ESSA, the Seller shall provide the following information to the Company:</p> <p>(a) Prior to Commercial Operation, the Seller shall provide the Company with the following documents within ten (10) Business Days of the Seller’s receipt (unless otherwise noted below):</p> <ul style="list-style-type: none"> (i) any completed Interconnection Study for the Project; (ii) letters, notices, filings, approvals, and other material correspondence related to Permits for the Project; (iii) executed Interconnection Agreement; (iv) within thirty (30) days of the Effective Date, a Project Summary Schedule (v) any revised 3-line diagrams of the Project; and (vi) the EPC Contract, and any other agreements with subcontractors expected to perform material work on the Project, as related to design, engineering, procurement, or construction services for the Project, including all amendments thereto.

	<p>(vii) Detailed information of protection schemes (<i>i.e.</i>, three-line diagrams and list of protection relays); and</p> <p>(viii) Detailed information and diagrams for control, monitoring, metering and communications schemes to the Company’s EMS and the Trading & Dispatch Software.</p> <p>(b) Following Substantial Completion, the Seller shall provide the Company with copies of the following documents within ten (10) Business Days following the Seller’s receipt:</p> <p>(i) any executed agreements with subcontractors related to the operation and maintenance services for the Project, including all amendments thereto; and</p> <p>(ii) any reports, data or information provided to the NYISO, the NYPSC, NYSERDA or any Governmental Authority relating to the Project.</p> <p>(c) At any time during the Term, the Seller shall promptly, and in any event within ten (10) Business Days, provide the Company with copies of:</p> <p>(i) information, reports and responses requested by the Company for the Company to comply with disclosure requirements of the NYPSC or, as it relates to the NYSERDA Incentive, NYSERDA, which requests for information, reports and responses the Seller shall use commercially reasonable efforts to accommodate, even for requests to verify data provided by the Seller;</p> <p>(ii) any reports, studies, or assessments done for the Seller by an Independent Engineer on the Site or the Project; and</p> <p>(iii) any other information reasonably requested by the Company from the Seller.</p>
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 • 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 and the Marketer to sell the Products, including all metering and telemetry required by the NYISO and the Company.</p> <p>Demonstrated Site Control and acquisition of 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 the 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 and all other documents or instruments as required under the ESSA 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> <p>The Seller shall have completed all registrations with the NERC and its delegate, the NPCC, as applicable to the Seller.</p> <p>Failure to achieve Commercial Operation by the deadline shall constitute an Event of Default by the Seller.</p>
<p>Right to Suspend the ESSA</p>	<p>The Company may at its sole discretion interrupt, suspend, or delay execution of all or any part of the Project, at any time, should execution impact the reliability of the electric grid. Upon no less than thirty (30) days' prior written notice to the Seller, the Company may interrupt, suspended, or delay the project for scheduled, corrective maintenances or any other reason whatsoever in accordance with Good Utility Practices. Any interruption, suspension or delay shall include prior written notice to the Seller specifying the nature and expected duration of the interruption, suspension, or delay.</p>

Market-Based Rate Authority	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.
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, inclusive of Storage Unit losses.</p> <p>The Seller shall be responsible for all Project Ancillary Load (<i>i.e.</i>, cooling, heating, pumps, etc.) energy and delivery charges at the appropriate rate. All charging costs required for maintenance and testing shall be at the Seller's expense.</p> <p>The Company shall be entitled to charge and discharge energy without notice and is entitled to all the benefits associated thereof, without credit to the Seller.</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.
Inspection and Access Rights	<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 ten (10) 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> <p>The Company shall have the right to inspect or audit the Seller’s EPC Contract and its books and records to verify the Seller’s compliance with the Milestone Schedule and other obligations under the ESSA. In addition, the Seller shall cause its subcontractors to, provide the Company with prompt access to the Site and all applicable documents and records to permit the Company to determine whether:</p> <ul style="list-style-type: none"> (a) the Seller has obtained and maintained all Permits, and that such Permits do not contain Permit Requirements that might restrict the Company’s ability to charge or discharge, or store energy in, the Project as provided for in the ESSA; (b) any agreements with subcontractors and suppliers, that have been entered into and have become effective and neither the Seller nor any other party thereto is in default thereunder; (c) all contracts or other arrangements necessary to interconnect the Project have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and the Seller is not in default thereunder; (d) all contracts and other arrangements necessary to support the construction, installation, operation, and maintenance of the Project, including any agreements and other arrangements for the interconnection and procurement of power for Station Use and Charging Energy Requirements and, if necessary, water supply and waste disposal have been entered into and become effective on a timely basis and the Seller is not in default thereunder; and (e) any statement, claim, charge or calculation made by the Seller pursuant to this ESSA is accurate. <p>The Seller shall retain, and the Company shall have the right to request, copies of the aforementioned documents, records, and data for a period of two (2) years following the expiration or earlier termination of the ESSA, unless the documents, records, or data are the subject of or are relevant to an outstanding indemnity or other claim under the ESSA, in which event such documents, records, or data shall be retained until such indemnity or other claim is resolved and is no longer subject to appeal.</p>
<p>Metering, Communications, and Telemetry</p>	<p>The Seller must comply with applicable NYISO metering requirements.</p> <p>A minimum of two revenue grade meters that facilitate the separation of the Storage Unit’s Ancillary Load from energy to charge the Project.</p>

	<p>All metering shall be installed, owned and operated by the Company and the costs of the metering and installation shall be borne by the Seller.</p> <p>Metering shall be separate and distinct from any non-Project related load.</p> <p>All communication, metering, telemetry, and associated operation equipment will be integrated to the Project’s Storage Management System. The Seller shall configure the Project’s Storage Management System to allow the Seller, Marketer, and the Company the ability to monitor real time operations as necessary to communicate with the NYISO using telemetry conforming to NYISO requirements and qualifying for participation as a dispatchable resource in NYISO Markets and to provide all other market Products.</p> <p>During the Contract Term, the Company will have the rights to Dispatch the Project seven (7) days per week and twenty-four (24) hours per day (including holidays) in accordance with Exhibit C and subject to the requirements and Operating Restrictions set forth in the ESSA and Exhibit A. The Company shall use reasonable efforts to comply with the Operating Restrictions. If the Dispatch does not conform with the Operating Restrictions, then the Seller shall immediately notify the Company of the nonconformity where modification will be made to the Dispatch to conform to the Operating Restrictions. Until the Dispatch is modified the Seller shall, as applicable, Dispatch the Project in accordance with the Operating Restrictions and the Project will not be deemed to be unavailable.</p> <p>Any changes to the control configurations by the Seller shall require at least forty-eight (48) hours’ notice to all affected Parties.</p> <p>The Seller shall comply with the communications requirements set forth in Exhibit L and shall provide the following:</p> <ul style="list-style-type: none"> • Real-time monitoring data (<i>i.e.</i>, alarms, status, SoC, real and reactive power flow, etc.); • Device disconnect and re-connection • All alarms • Full storage control and dispatch capability up to ratings specified in Exhibit A and pursuant to the test results in Exhibit L; • Direct integration with EMS/ADMS and provision of communications; • Communications and revenue grade metering to the NYISO for M&V; • Communications between the Storage Management System and the Trading & Dispatch software; • Storage maintenance schedule and notifications; and • Dual control and prioritized remote access authorization (between National Grid and the Marketer).
<p>Data and Cybersecurity Requirements</p>	<p>The following items will be required to comply with National Grid’s Data Privacy and Cyber Security requirements at a minimum:</p> <ul style="list-style-type: none"> • National Grid standard cybersecurity requirements shall apply to the Seller and the Seller shall be required to execute a Data Security Agreement with the Company.

- National Grid shall have access to and retain ownership of all operational data applicable to the Project.
- The Seller and any associated contractors and subcontractors will need to comply with all Applicable Laws and Regulations and to Personal and/or Confidential Information received from National Grid and the storage owner.
- The Seller shall ensure that its contractors and 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 National Grid.
- The Seller shall not, directly or indirectly, divulge, disclose or communicate any Personal Information and/or Confidential Information it receives from National Grid and storage owner to any person, firm, or corporation, except with the advance written permission of National Grid or storage owner.
- 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.
- National Grid shall have access to and retain ownership of all operational data applicable to the storage systems.
- 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.
 - The Seller shall ensure that its Information Security Program covers all networks, systems, servers, computers, notebooks, laptops, mobile phones, and other devices and media that processes Customer Information or that provides access to Customer networks, systems or information.
 - The Seller shall ensure that its Information Security Program includes industry standard password protections, firewalls and anti-virus and malware protections to protect Customer Information stored on computer systems.
 - The Seller shall ensure that all systems, appliances, operating systems, applications, firmware, middleware and any other form of software have the LATEST patches applied.
 - The Seller will ensure that all systems, appliances, operating systems, applications, firmware, middleware and any other form of software & hardware is properly hardened to the latest appropriate benchmarking methodology.
- The Seller will conduct and provide a risk assessment to identify and assess reasonably foreseeable internal and external risks to the security, confidentiality and integrity of electronic, paper and other records containing Customer

	<p>Information and evaluate and improve, where necessary, the effectiveness of its safeguards for limiting those internal and external risks.</p> <ul style="list-style-type: none">• The Seller may need to setup and configure various firewalls to sufficiently protect all Parties.• National Grid 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 National Grid’s review, at National Grid’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 (“MA Security Regs”) and the Rhode Island security regulations (“RI Security Regs”).• 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 National Grid promptly, but in no event later than twenty-four (24) hours, upon 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”).• National Grid’s data, including Personal Information, may not be maintained, stored, or transmitted outside of the United States of America.• The Seller shall permit National Grid 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 National Grid.• The Seller shall participate in any audits and information disclosure in the event the National Grid is audited.• An annual written self-certification shall be provided to National Grid 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 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 Seller software 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 National Grid when remote or onsite access should no longer be granted to authorized representatives of the Seller.
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	<ul style="list-style-type: none"> • The Seller shall obtain National Grid’s prior approval and require all third parties engaged by the Seller to adhere to the applicable Cybersecurity requirements and access termination rights. • For any work that requires access to the Physical Security Perimeter at a current control house as identified by the Company, or is in the process of constructing a new control house environment, the Seller shall require its contractors and subcontractors to: <ul style="list-style-type: none"> ○ Complete the contract document containing National Grid Contractor Requirements for Compliance with NERC Cyber Security Standards ○ Comply with the terms and conditions and obligations of the Seller with respect to NERC CIP. The Seller shall be responsible hereunder for any breach of such terms and conditions and obligations of the Seller with respect to NERC CIP under this Agreement to the extent caused by its subcontractors. • In the event of non-compliance or breach on the part of Seller, its employees, agents or subcontractors with or of any or all of the NERC Cyber Security Standards, the Seller shall be solely liable for any and all resulting costs, losses, penalties, damages and liabilities, including any costs, losses, penalties, damages or liabilities incurred by National Grid, and National Grid may terminate this Seller Contract for cause, pursuant to the termination provisions contained herein.
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<p>Performance Guarantees</p>	<p><u>Guaranteed Availability:</u></p> <p>Guaranteed Availability of 98% shall be provided, excluding planned maintenance outages or due to a Force Majeure Event; provided that any part of an hour during which the Project is unavailable shall constitute unavailability for a full hour. Guaranteed Availability shall be calculated in each calendar quarter during the ESSA Term. For each calendar quarter, the Company shall calculate the actual availability percentage of the Project (“Actual Availability”), which calculation shall be:</p> $\text{Actual Availability} = \frac{\sum_{\text{hour}=0}^{\text{hour}=\text{Reference Hours}} \text{MW Available}}{\text{Contract Capacity} * \text{Reference hours}}$ <p>Where:</p> <p>“MW Available” means the total MW available during the hour, or portion thereof, measured by the Storage Management System, excluding hours of unavailability that are designated for Planned Outages or due to a Force Majeure Event; provided that any part of an hour during which the Project is unavailable shall constitute unavailability for a full hour.</p> <p>“Reference Hours” means the total number of hours during the applicable calendar quarter.</p> <p>A refund shall be paid to the Company when the Measured Availability is less than the Guaranteed Availability based on the following calculation and associated Events of Default:</p>
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- $(\text{Guaranteed Availability} - \text{Measured Availability}) \times \$[\text{lost } \$ \text{ value}^2/\text{MW}] \times \text{Guaranteed Storage Power Capacity}$
- Events of Default are as follows:
 - o if the Availability for any 4-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 6 hours per MW of Guaranteed Storage Power Capacity.

Guaranteed Storage Power Capacity:

The Company will schedule performance tests in accordance with Exhibit M – Storage Rating Tests, attached to this Conceptual Term Sheet to determine the Measured Storage Power Capacity.

The Seller guarantees the Project will maintain Storage Power Capacity not less than the Guaranteed Storage Power Capacity for the ESSA Term.

A refund to the Company shall be paid when the Measured Storage Power Capacity is less than the Guaranteed Storage Power Capacity based on the following calculation:

- $(\text{Guaranteed Storage Power Capacity} - \text{Measured Storage Power Capacity}) \times [\text{lost } \$ \text{ value}^3]/\text{MW-day} \times \text{Cure Days}$

Where:

“Cure Days” means the number of days between the day on which a Storage Rating Test that results in a deficient Guaranteed Storage Power Capacity is performed and the day on which a Measured Storage Power Capacity is equal to or greater than the Guaranteed Storage Power Capacity.

An Event of Default shall be triggered if the Measured Storage Power Capacity is below the Guaranteed Storage Power Capacity for a period of six (6) consecutive months.

Guaranteed Round-Trip Efficiency (“RTE”):

The Company will schedule performance tests in accordance with Exhibit M – Storage Rating Tests, attached to this Conceptual Term Sheet.

The Seller guarantees the Project will maintain Round-Trip Efficiency not less than 70.0 % (“Guaranteed Round-Trip Efficiency”) for the ESSA Term.

If the Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, then the Seller shall owe the Company liquidated damages equal to, for each hour:

² Will be determined in the final ESSA.

³ *Id.*

	<p>(Guaranteed Round-Trip Efficiency – Round-Trip Efficiency) x LBMP at time of charging x Charging Energy</p> <p>Where: “Charging Energy” is the quantity of MWh metered at the Energy Delivery Point to charge the Project for such hour, and “LBMP” is the NYISO locational-based marginal pricing node proximate to the Project.</p> <p>An Event of Default shall be triggered if the RTE goes below 67.0%.</p> <p><u>Ramp Rate</u> The Company will schedule performance tests in accordance with Exhibit M – Storage Rating Tests, attached to this Conceptual Term Sheet.</p> <p>The Seller guarantees a minimum response rate that matches the values specified in Exhibit A of the final ESSA. If the Project is unable to demonstrate the Guaranteed Ramp Rate, the Seller shall place the Project into an Unplanned Outage immediately and resolve any issues so that the Project can achieve the Guaranteed Ramp Rate.</p> <p><u>Power Factor</u> The Company will schedule performance tests in accordance with Exhibit M – Storage Rating Tests, attached to this Conceptual Term Sheet.</p> <p>The Seller guarantees the Power Factor requirements that matches the values specified in Exhibit E of the final ESSA. If the Project is unable to demonstrate the Guaranteed Power Factor, the Seller shall place the Project into an Unplanned Outage immediately and resolve any issues so that the Project can achieve the power factor requirements.</p>
Testing	<p>Storage Rating Tests will be conducted by the Seller during FAT, witness testing, and during the Term in accordance with Exhibit N.</p> <p>The Initial Commercial Operation Test shall be conducted at least thirty (30) days before the target COD. The Seller shall schedule and complete an Initial Commercial Operation Test, which test shall be conducted using the procedures set forth in Exhibit O. The Seller shall undertake such activities in sufficient time to achieve Commercial Operation of the Project by the Guaranteed Commercial Operation Deadline and the Company will reasonably cooperate with the Seller to meet such deadline. The Initial Commercial Operation Test shall verify the Measured Storage Power Capacity for purposes of calculating the Total Compensation Amount and shall be deemed a Seller Initiated Test.</p> <p>Performance Testing. During the Contract Term, additional Storage Rating Test shall be conducted from time to time in accordance with Exhibit M.</p>

<p>SCADA Interface and Network Security</p>	<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>
<p>Operations and Maintenance (“O&M”)</p>	<p>The Seller shall, at all times, be responsible for (a) all aspects of operation and maintenance of the Project to make all Products available to the Company in accordance with the terms of the ESSA, Good Utility Practice, and Applicable Laws and Regulations; and (b) adhering to all operational data, interconnection, and telemetry requirements.</p> <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"> • Performance Guarantees (see Performance Guarantees section). • Asset and software defects. <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 • Project monitoring services including real time, alarms, fire systems, reports, conditions, performance, and dispatch. • Provide operational definitions and limits (<i>i.e.</i>, number of cycles, Rest of SOC, DoD, etc.). • Maintain complete and accurate records of all information necessary for the proper administration of this ESSA • Operation and Maintenance with no limitations to number of Site visits conducted. • Maintain a daily operations log, which log shall include information on: <ul style="list-style-type: none"> ○ (a) electrical characteristics of the Project and settings or adjustments of the Project’s control equipment (including the power conversion system) and protective devices ○ (b) charging and discharging (including charging and discharging efficiency), Station Use consumption and efficiency, State of Charge, and availability (including availability to charge and discharge and State of Charge).

	<ul style="list-style-type: none"> ○ (c) maintenance performed, ○ (d) Outages and changes in operating status, ○ (e) inspections, and ○ (f) any other significant events related to operation of the Project. <p>Information maintained shall be provided to the Company, within fifteen (15) days after the Company’s request. In addition, the Seller shall deliver to the Company a monthly operations and maintenance report by the tenth (10) day of each month describing operations and maintenance activities for the Project during the previous month.</p>
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”).</p> <p>The Seller shall submit the Outage Schedule substantially in the form at Exhibit D, as may be revised from time to time based on NYISO requirements. The Seller shall provide the following information for each proposed scheduled Planned Outage:</p> <ul style="list-style-type: none"> (A) Description of the work to be performed during the Planned Outage; (B) Start date and time; (C) End date and time; (D) Recall time; and (E) Products available (if any) during the Planned Outage. <p>The duration of Planned Outages for the Project over a calendar year, in the aggregate, shall not exceed six (6) hours for each MW of the Project. The Seller shall carry out activities during Planned Outages in compliance with Good Utility Practice.</p> <p>The Company, Marketer and NYISO shall be entitled to direct changes to the Outage Schedule by notification to the Seller in writing, and the Seller shall comply with the Company, Marketer or NYISO’s direction regarding the timing of any Planned Outages.</p> <p>The Seller shall provide Notice to the Company at least seven (7) days prior to the start of any Planned Outage and shall maintain close coordination as the Planned Outage approaches.</p> <p>The Seller shall cooperate with the Company to arrange and coordinate all Outage Schedules with NYISO in compliance with the NYISO Tariff.</p> <p>If a condition occurs that causes the Seller to revise its Planned Outages, the Seller shall promptly provide Notice to the Company of such change (including an estimate of the length of such Planned Outage) after the condition causing the change becomes known to the Seller, provided that the Seller shall bear any costs incurred by the Company for revisions made less than sixty (60) days before the start date of the Planned Outage</p>

before such revision occurs or that results in a Planned Outage being scheduled less than sixty (60) days before the start of the revised Planned Outage.

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

Unplanned Outages:

Any outage that is not a planned maintenance outage is an Unplanned Outage.

If the Seller determines an Unplanned Outage is required, the Seller shall coordinate the timing of such Unplanned Outage with the Company and, subject to and shall accommodate the Company's preferences for the scheduling of such Unplanned Outage.

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 via the contact information in Exhibit C. 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.

Notwithstanding the delivery of a notice of an Unplanned Outage or coordination with the Company to resolve an Unplanned Outage, the Project shall be deemed to be unavailable for the duration of an Unplanned Outage as applicable to the calculation of Guaranteed Availability.

Restoration of Storage system:

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

Unavailability Notice:

The Company shall be entitled to assume that the Project will be available and capable of performing at the Guaranteed Storage Power Capacity as set forth on Exhibit A during each Settlement Interval of each Operating Day, except as otherwise noted in the then

	<p>current Outage Schedule or in an Unavailability Notice delivered to the Company not later than three (3) Business Days before the applicable Operating Day. The Seller shall update the Company immediately if the Available Storage Power Capacity of the Project changes or is likely to change. The Seller must provide Unavailability Notices via telephone and electronic mail and follow up with updates via the same methods to the Company's personnel designated in Exhibit C to receive such communications. The Seller shall accommodate the Company's reasonable requests for changes in the time or form of delivery of the Unavailability Notices. Notwithstanding the delivery of an Unavailability Notice, the Project shall be deemed to be unavailable for the duration of an Unplanned Outage as applicable to the calculation of Guaranteed Availability.</p>
<p>Force Majeure</p>	<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. The 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 Event and the process for reinstatement of the obligations of the ESSA following the end of a Force Majeure Event.</p>
<p>Representations and Warranties</p>	<p>Mutual Representations and Warranties. Each Party represents and warrants to the other Party that as of the Effective Date:</p> <ul style="list-style-type: none"> (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this ESSA; (c) the execution of this ESSA by its representative whose signature is set forth at the end of the ESSA has been duly authorized by all necessary corporate or organizational action of such Party; (d) upon the execution and delivery of the ESSA by such representative, the ESSA shall have been duly executed and delivered by such Party; (e) when executed and delivered by both Parties, the ESSA will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; (f) entering into the ESSA and performance of the obligations hereunder will not result in an Event of Default or a default under another agreement; (g) it is acting for its own account and its decision to enter into the ESSA is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing and understanding, and understands and accepts, the terms, conditions and risks of the ESSA;

	<p>(h) it has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in the ESSA in deciding to enter into the ESSA; and</p> <p>(i) the execution, delivery and performance of the ESSA do not and will not violate the certificate of incorporation, bylaws, or other organizational documents of such Party.</p> <p>The Seller shall covenant and agree, among other things, to:</p> <ul style="list-style-type: none"> a) 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; b) 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; c) Deliver all of the Products to the Company on an exclusive basis, free and clear of all liens; d) Apply for any incentives available to the Project (subject to the prior “Payments by the Company to the Seller” section); e) 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. f) 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	The Company shall make standard representations and warranties regarding its valid existence and execution and enforceability of the ESSA.
Taxes	The contract price shall include sales, use, and similar taxes. The Company shall not be responsible for any taxes imposed on the Seller’s income from the Project.
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 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>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, which shall not be unreasonably conditioned, withheld or delayed.</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>
<p>Federal Acquisition Regulations</p>	<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> <p>EQUAL OPPORTUNITY</p> <p>The Seller shall comply with all applicable federal, state and local anti-discrimination laws, the standards and regulations issued thereunder and the amendments thereto, including Executive Order 11141 relating to age discrimination, Executive Order 11246 relating to equal employment opportunity, Executive Order 11625 relating to minority business enterprise, Executive Order 11701 relating to employment of veterans and Executive Order 11758 relating to handicapped employment. The aforementioned are incorporated herein as if set forth herein verbatim. The Seller agrees to comply with the Human Rights Law of the State of New York (Section 15 of the Executive Law), if applicable.</p> <p>Without limiting the foregoing, the Seller agrees as follows:</p> <p>Seller will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.</p> <p>Seller will in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.</p> <p>Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Seller's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.</p> <p>Seller will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.</p> <p>Seller will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.</p>

	<p>All subcontracts and agreements that the Seller enters into to provide the Work under the terms of the ESSA shall obligate such Subcontractors to comply with the foregoing provisions.</p> <p>UTILIZATION OF SMALL BUSINESS CONCERNS</p> <p>It is the policy of the United States that Small Business Concerns, Veteran-Owned Small Business Concerns, Service-Disabled Veteran-Owned Small Business Concerns, HUBZone Small Business Concerns, Small Disadvantaged Business Concerns, and Women-Owned Small Business Concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with Small Business Concerns, Veteran-Owned Small Business Concerns, Service-Disabled Veteran-Owned Small Business Concerns, HUBZone Small Business Concerns, Small Disadvantaged Business Concerns, and Women-Owned Small Business Concerns.</p> <p>The Seller hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Seller further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Seller’s compliance with this clause.</p> <p>The Seller’s acting in good faith may rely on written representations by their subcontractors regarding their status as a Small Business Concern, a Veteran-Owned Small Business Concern, a Service-Disabled Veterans-Owned Small Business Concern, a HUBZone Small Business Concern, a Small Disadvantaged Business Concern, or a Women-Owned Small Business Concern.</p>
Notices	<p>Except as otherwise set forth in the ESSA, all notices, requests, consents, claims, demands, waivers and other communications under the ESSA required to be in writing shall be addressed to a Party as follows (or to such other address or such other person that such Party may designate from time to time):</p> <p>If to Seller: Address: E-mail: Tel.:</p> <p>If to National Grid: National Grid Department: Address: E-mail: Tel.:</p>

	<p>With a copy (which shall not constitute notice) to:</p> <p>National Grid Office of the General Counsel 40 Sylvan Road Waltham, MA 02451</p> <p>E-mail: keri.sweet-zavaglia@nationalgrid.com</p> <p>Attention: Keri Sweet</p> <p>Notices sent in accordance with this section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by e-mail, with confirmation of transmission, if sent during the addressee’s normal business hours, and on the next Business Day, if sent after the addressee’s normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.</p>
<p>Compliance with Applicable Laws and Regulations and Other Requirements</p>	<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”),”

	<p>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”).</p> <p>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.</p>
Environmental Compliance	<p>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.</p>
Prevention of Corruption and Bribery	<p>The Seller shall conduct itself in an ethical manner and provide services to the highest ethical standards. The Seller shall not be a party to the following: bribery of any kind; collusion with other contractors; regulatory agencies or other third parties; provision of enticements to the Company’s officers, directors, employees, agents, successors, assigns, and servants in any form including, but not limited to, gifts, gratuities or other benefits. Without limiting the foregoing, the Seller represents and warrants to the Company that the Seller, its Subcontractors, its and their Affiliates, employees, officers, agents and shareholders, have not committed and shall not commit any Prohibited Act.</p> <p>If the Seller, any Subcontractor, any of its or their Affiliates, employees, officers, agents or shareholders, commit any Prohibited Act, then the Company shall be entitled to act in accordance with the below.</p> <p>If a Prohibited Act is committed by the Seller, any of its Affiliates, or any of its or their employees, officers, agents or shareholders not acting independently of the Seller and its Affiliates, then the Company shall be entitled to terminate the ESSA for cause, by giving written notice to the Seller, specifying the date on which the ESSA shall terminate.</p> <p>If a Prohibited Act is committed by an employee or agent of the Seller or of any of its Affiliates, acting independently of the Seller and its Affiliates, then the Company may give written notice to the Seller of termination of the ESSA for cause, and the ESSA will terminate ten (10) Business Days after the date of such notice, unless, within such ten (10) Business Day period, the Seller terminates (or arranges for the termination of) such employee’s employment or agent’s engagement and (where applicable) ensures that the performance of such employee’s or agent’s obligations in relation to the ESSA are performed by another person.</p> <p>If a Prohibited Act is committed by a Subcontractor or by an employee or agent of that Subcontractor not acting independently of that Subcontractor, then the Company may give written notice to the Seller of termination of the ESSA for cause, and the ESSA will terminate ten (10) Business Days after the date of such notice, unless, within such ten (10) Business Day period, the Seller terminates the relevant subcontract and ensures that the performance of the Subcontractor’s obligations in relation to the ESSA are performed by another person.</p> <p>If the Prohibited Act is committed by an employee or agent of a Subcontractor acting</p>

independently of that Subcontractor, then the Company may give written notice to the Seller of termination of the ESSA for cause, and the ESSA will terminate ten (10) Business Days after the date of such notice, unless within such ten (10) Business Day period, the Subcontractor terminates the employee's employment or agent's engagement and ensures that the performance of that employee's or agent's obligations in relation to the ESSA are carried out by another person.

If the Prohibited Act is committed by any person not specified in Sections above (or by any person specified in such conditions but acting in a capacity not specified in such conditions) then the Company may give written notice to the Seller of termination of the ESSA for cause, and the ESSA will terminate ten (10) Business Days after the date of such notice, unless, within such ten (10) Business Day period, the Seller (a) arranges for the termination of such person's employment or engagement, and the appointment of their employer or the person who engaged them (where not employed or engaged by the Seller or any relevant Subcontractor) and (b) ensures that the performance of that person's obligations in relation to the ESSA are performed by another person.

The Company shall specify, in any notice of termination under this Section **Error! Reference source not found.** the general nature of the relevant Prohibited Act and the identity of the party whom the Company believes has committed such Prohibited Act.

Without prejudice to the Company's other rights and remedies, the Seller shall indemnify the Indemnified Parties in full and on demand against all losses, liabilities, costs, claims and expenses incurred directly or indirectly by the Company as a result of the performance of any Prohibited Act by the Seller, any Subcontractor, any of its or their Affiliates, employees, officers, agents, or shareholders, or any of the Seller's personnel in connection with the ESSA, its subject matter or any agreements (including any sub-contracts of whatever tier) relating to the ESSA.

Without prejudice to the other provisions of this section, the Seller shall ensure that:

all Seller personnel are fully aware of the Company's policies on anti-bribery, anti-corruption, and anti-slavery notified in writing to the Seller from time to time by or on behalf of the Company and that all Subcontractors and agents (of whatever tier) are engaged upon terms which contain provisions in relation to prevention of bribery, corruption and slavery which are no less onerous than this section and

it has and shall maintain in place throughout the term of the ESSA, its own policies and procedures, (including adequate procedures under the Bribery Act 2010 and the Modern Slavery Act 2015), to ensure compliance with the Company's policies on anti-bribery, anti-corruption, and anti-slavery notified in writing to the Seller from time to time by or on behalf of the Company, and will enforce them where appropriate.

The termination of the ESSA pursuant to this section shall entitle the Company and each of its Affiliates to terminate any other contracts between the Seller and the Company, or

	<p>the Seller and such Affiliate (as appropriate) on written notice to the Seller, under their respective termination-for-cause provisions.</p> <p>Notwithstanding anything contained in the ESSA to the contrary, any Dispute relating to the interpretation of this section or the amount or value of any gift, consideration or commission shall be determined by the Company, and the Company’s decision shall be final and conclusive.</p>
<p>Dispute Resolution and Waiver of Damages</p>	<p>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 revenues shall not be considered special or indirect damages).</p>
<p>Seller Indemnification</p>	<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; • 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 Material 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

	<p>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.</p>
Risk of Loss	<p>Risk of loss or damage to the work and materials shall remain with the Seller before and during the Term of the ESSA.</p>
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 Company shall be entitled, subject to appropriate confidentiality obligations, to copies of all data submitted to the NYISO and Marketer by the Seller (including, without limitation, information pertaining to the Project capital and O&M costs).</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	<p>No additions to, deletions from, or alterations in the scope of the Project and no amendment or repeal of, and no substitution for any terms, conditions, provisions or requirements of the ESSA shall be made unless first authorized in writing by the Company and agreed to by both Parties. No oral changes in the ESSA shall be recognized or effective.</p> <p>The Company may at any time make additions to or deletions from or changes in the Project, including changes to the specification or the schedule. If a Company-directed change will affect the schedule, the Seller shall notify the Company in writing within five Days of receipt of such Company-directed change and provide a written estimate of such schedule modifications and, if the Company approves, the ESSA will be adjusted accordingly.</p> <p>If the Seller desires a change in the work necessary to complete the Project or believes that any order, instruction, request, clarification or interpretation of the Company, or its</p>

	<p>representatives or compliance with any laws, orders or regulations, constitutes a substantial change in the Project, the Seller shall submit, to the Company, prior to performance of any such Work, and within five Days of receipt or discovery thereof, a written claim specifying the nature of the change, and any resulting change in the schedule. Within 30 Days of receipt of such notice, the Company shall determine whether the claim constitutes a change in the Work and if so to what extent the ESSA should be modified. The Company shall then notify the Seller, in writing, of its decision. Any change in the schedule shall be specified in the Company’s notice.</p> <p>The Company may require the Seller to proceed with work that is the subject of a proposed or claimed change in the Work prior to the Company’s consent to any change in the schedule, in which event the Company shall so notify the Seller in writing, and the Seller shall then proceed with the Project and keep an accurate account of such, and the Seller and the Company shall then negotiate in good faith with respect to such change.</p>
Choice of Law	<p>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. To the extent enforceable at such time, each Party waives its respective right to a jury trial with respect to any litigation arising under or in connection with the ESSA.</p>
Mobile-Sierra	<p>(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of the ESSA, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in <i>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</i>, 350 U.S. 332 (1956) and <i>Federal Power Commission v. Sierra Pacific Power Co.</i>, 350 U.S. 348 (1956) and clarified by <i>Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish</i> 554 U.S. (2008) (the “Mobile-Sierra” doctrine).</p> <p>(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of the ESSA specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of the ESSA, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely</p>

	under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).
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.

EXHIBIT A
[Form to be included in the executed ESSA based on Appendix B – Offer Form]
PROJECT INFORMATION

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

EXHIBIT B
[Form Detailed Construction Plan to be included in Final ESSA]
CONSTRUCTION PLAN

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

EXHIBIT C
[Form to be included in Final ESSA]
OPERATIONAL AGREEMENT

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

The following provides examples of the type of information and protocols that will be captured in the Operational Agreement between the Company, Seller and Marketer:

- Contact information
- Real-time Communication
- Daily Communication
- Intra-day Communication
- Unplanned Outage Communications
- Forced Outage Communication
- Return to Service Communications
- Communication Failure
- System Emergency
- Staffing Requirements
- Roles and Responsibilities
- Reporting Requirements

EXHIBIT D
[Form to be included in Final ESSA.]
OUTAGE SCHEDULE REPORT

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

EXHIBIT E
[Form to be included in final ESSA.]
SELLER'S LETTER OF CREDIT

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

EXHIBIT E
[Form to be included in final ESSA.]
SELLER'S FINAL PROPOSAL

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

EXHIBIT F
[Form to be included in final ESSA.]
SELLER'S STANDARD POLICIES AND PROCEDURES

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

EXHIBIT G
[Form to be included in final ESSA.]
SELLER'S SITE CONTROL PLAN

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

EXHIBIT H
[Form to be included in final ESSA.]
SELLER'S SITE PLAN DRAWING

***** End of EXHIBIT H *****

EXHIBIT I
[Form to be included in executed ESSA.]
SELLER'S SITE LEGAL DESCRIPTION

***** End of EXHIBIT I *****

EXHIBIT J
[Form to be included in executed ESSA.]
SITE GEOGRAPHICAL MAP

***** End of EXHIBIT J *****

EXHIBIT K
[Form to be included in executed ESSA.]
ELECTRICAL THREE LINE DIAGRAM

***** End of EXHIBIT K *****

**EXHIBIT L
COMMUNICATION AND CONTROL REQUIREMENTS**

***** End of EXHIBIT L *****

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

Contact information and detailed protocols shall be defined in the Operational Agreement.

Data Items	National Grid EMS/ADMS and the Seller’s Storage Management System
Bi-directional or Uni-directional?	Bi-directional
Types of Information	<ul style="list-style-type: none"> • Real-time status of all Storage project measurements (<i>e.g.</i>, temp, SoC, voltage, active and reactive power, current, frequency, cell status, etc.) • Real-time open/close Storage Unit circuit breaker command • Real-time dispatch of active and reactive power (charging and discharging) • Information for microgrid systems only: <ul style="list-style-type: none"> ○ Black-start commands ○ Island control signals (likely decentralized control) Re-synchronization • Protection coordination (includes microgrid coordination)
Data Protocols	<ul style="list-style-type: none"> • Protection protocols • DNP3 or IEC 61850 for real-time M&C
Communication medium	<ul style="list-style-type: none"> • Cell or internet (<i>i.e.</i>, cloud-based data, email, etc.) for all \geq five (5) minutes latency data requirements • Private fiber or Radio Frequency for all < five (5) minutes latency data requirements • Fiber or other low-latency medium for protection requirements
Latency requirements	<ul style="list-style-type: none"> • milliseconds for protection • 15 ms for real time
Bandwidth/Data sizes	<ul style="list-style-type: none"> • Will be determined once the Seller is selected and data packet sizes are known
Auto or manual⁴	<ul style="list-style-type: none"> • Auto for all protection, real-time and day-ahead data
Software types (<i>e.g.</i>, server, cloud, etc.)	<ul style="list-style-type: none"> • EMS/ADMS – local server • Storage Management System - dependent on the Seller selected

⁴ “Auto” is machine to machine whereas “Manual” is human intervention.

EXHIBIT M STORAGE RATING TESTS

1. **Storage Rating Tests.** The Seller shall provide thirty (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 ("Test") in accordance with this Exhibit M as a condition to achieving Commercial Operation and as validation of the values provided below. All operations during testing shall be done in accordance with Good Utility Practice, Applicable Laws and Regulations, and Permit Requirements.

2. **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 month.

3. **Test Results Reporting.**
 - a. No later than five (5) Business Days following any Storage Rating Test, the Seller shall submit a testing report detailing results and findings of the Test. The report shall include at a minimum:
 - i. Digital log sheets verifying the operating conditions and output of the Project, including the following data at one (1) second resolution:
 1. Time;
 2. Storage system MW output in AC at the Energy Delivery Point;
 3. Storage system ramp rate as measured in MW/min. at the Energy Delivery Point;
 4. SOC and Usable SOC;
 5. Storage system MVAR (Mega Volts Ampere Reactive power) at the Energy Delivery Point;
 6. Power factor at the Energy Delivery Point;
 7. Frequency as measured in Hertz at the Energy Delivery Point;
 8. AC current and voltage at the Energy Delivery Point;
 9. DC current and voltage to be measured at or by the power conversion system;
and
 10. Additional variables that the Company, in its sole discretion, deems relevant and requests of the Seller prior to the test to capture and report;
 - ii. A record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;
 - iii. A record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
 - iv. The Seller's statement of either the Seller's acceptance of the Test or the Seller's rejection of the Test results and reason(s) therefor.
 - b. Within ten (10) Business Days after receipt of such report, the Company shall notify the Seller in writing of either the Company's acceptance of the Test results or the Company's rejection of the

Test and reason(s) therefor. If the Company rejects the results of any Test, the Company may require the Seller to conduct a Retest. Similarly, if the Company rejects the results of any Retest, the Company may require an additional Retest by the Seller.

4. **Operating Personnel.** During any Test, the same operating personnel shall operate the Project that the Seller contemplates will operate the Project during the Term.
5. **Company Representative.** The Company shall be entitled to have at least two (2) representatives from the Company and one (1) independent third-party witness present to witness each Test and Retest, and shall be allowed unrestricted access to the area from where the Project is being controlled (*e.g.*, Project control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. The Company shall be responsible for all costs, expenses, and fees payable or reimbursable to its representatives and the third-party witness, if any.
6. **Testing Protocols.**
 - a. **NYISO Coordination.** All testing shall be coordinated with the NYISO and the Company to ensure grid conditions are available for testing conditions. Unity power factor shall be tested (power factor must be 1.0 to conduct the Test or Retest) with the exception of the Power Factor Test (as defined later in this Exhibit M).
 - b. **Storage Rating Test Sequence:**
 - i. **Calculating Ancillary Load:** The Project shall be energized and at zero active power charge or discharge and at room temperature (72 degrees F), the amount of active and reactive power consumed from the Storage Unit terminals shall be measured and recorded. This test shall determine the Ancillary Load.
 - ii. **Measured Storage Power Capacity Test and Round-Trip Efficiency Test Steps:**
 1. Pre-charging the Project prior to Measured Storage Power Capacity test. To commence a Measured Storage Power Capacity Rating Test, the Project must be charged to 100% Usable SOC.
 2. Initiating Measured Storage Power Capacity Test. The Company shall initiate a dispatch instruction for the Storage Unit to be continuously discharged at its Maximum Real Power Discharge Limit (MW) as defined in Exhibit A. The Seller will report when the Project has reached 0% Usable SOC.
 3. The total amount of discharged energy delivered to the Energy Delivery Point (expressed in MWh AC) during each hour of discharge shall be measured excluding the Storage Unit Ancillary Load. The lowest MWh AC discharged in a single hour during the equivalent time duration specified in the Exhibit A (*i.e.*, 20 MW/40MWh Storage Unit shall be a two- hour duration test) shall be recorded.
 4. Recharging after Measured Storage Power Capacity Rating Test. Within two (2) hours of the Project reaching 0% Usable SOC, the Company shall initiate a dispatch instruction for the Project to be continuously charged at its Maximum Charge (MW) as defined in Exhibit A. The Seller will report when the Project has reached 100% Usable SOC.

5. The total amount of charged energy delivered to the Energy Delivery Point (expressed in MWh AC) during each hour of charge shall be measured excluding the Storage Unit Ancillary Load. The lowest MWh AC charged in a single hour during the equivalent time duration specified in the Exhibit A (i.e., 20 MW/40MWh Storage Unit shall be a 2-hour period) shall be recorded.
6. The lowest MWh value recorded from Steps 4 and 5 shall determine the Storage Measured Power Capacity, which shall be expressed in MW AC
7. Calculating Round-Trip Efficiency. The total amount of discharged energy delivered to the Energy Delivery Point (expressed in MWh AC) during each hour of continuous discharge as measured in Step 2 plus the Ancillary Load shall be summed and divided by the total amount of charged energy (expressed in MWh AC) as measured in Step 4 during each hour of continuous charge plus the Ancillary Load. The resulting ratio shall determine the RTE. RTE shall be net of losses due to transformation. If such transformation is not separately metered and accounted for, prior to COD, the Company, in its sole discretion, shall establish a protocol for netting such electric loads out of the RTE calculation.

iii. The Storage Ramp Rate Test

1. Pre-charging the Project prior to Storage Ramp Rate Test (“Test”). To commence a Storage Ramp Rate Test, the Project must be charged to 50% Usable SOC.
2. Initiating Storage Ramp Up Rate Test. The Company shall issue a dispatch instruction to increase the Project output from zero (0) MW to the full-rated power per Exhibit A.
3. Calculating Storage MW Ramp-Up Rate. Each minute following the Company-issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by five (5). The resulting number shall be recorded as the tested Ramp-Up Rate. The Ramp-Up Rate shall be tested four (4) times within an hour as part of the Storage Ramp Rate Test with the average of the three (3) highest results serving as the recorded Ramp-Up Rate for the Test. This must conform to Regulation Ramp-Up Rate (MW/min) meet or exceed the Regulation Up Ramp Rate active power ramp rates defined in Exhibit A including Normal Response Rate (MW/min) and the Regulation Response Rate (MW/6-sec) defined in Exhibit A.
4. Initiating Storage Ramp-Down Rate Test. Within one hour of the Ramp-Up Test, the Company shall issue a dispatch instruction to decrease the Storage Unit output (i.e., charge the energy storage system) from zero (0) MW to the minimum rated power per Exhibit A (i.e., Pmin).
5. Initiating Storage MVAR Ramp Up Rate Test. The Company shall issue dispatch instruction to increase Project output from zero (0) MW to the full rated reactive power per Exhibit A.
6. Calculating Storage MVAR Ramp Up Rate. Each minute following the Company issued dispatch instruction, a meter reading of power (as measured in MVAR AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by five (5). The resulting number shall be recorded as the test MVAR Ramp Up Rate. MVAR Ramp Up Rate shall be tested four

(4) times within an hour as part of the Storage MVAR Ramp Rate Test with the average of the three highest results serving as the recorded MVAR Ramp Up Rate for the test. This must meet or exceed the reactive power ramp rates defined in Exhibit A.

7. Calculating Storage MW Ramp-Down Rate. Each minute following the Company-issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings shall be summed and then divided by five (5). The resulting number shall be recorded as the test Ramp-Down Rate and must match the Regulation Down-Ramp Rate (MW/min) defined in Exhibit A. Ramp-Down Rate shall be tested four (4) times within one (1) 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. This must meet or exceed the active power ramp rates defined in Exhibit A including Normal Response Rate (MW/min) and the Regulation Response Rate (MW/6-sec).
8. Initiating Storage MVAR Ramp Down Rate Test. Within one hour of the Ramp Up Test, the Company shall issue dispatch instruction to decrease Project output (charge the energy storage system) from zero (0) MW to the minimum rated reactive power per Exhibit A.
9. Calculating Storage MVAR Ramp Down Rate. Each minute following the Company issued dispatch instruction, a meter reading of power (as measured in MVAR AC) shall be taken at the Energy Delivery Point. After five (5) minutes, the corresponding five (5) distinct meter readings will be summed and then divided by five (5). The resulting number shall be recorded as the test MVAR Ramp Down Rate. MVAR Ramp Down Rate shall be tested four (4) times within an hour as part of the Storage MVAR Rating Test with the average of the three lowest results serving as the recorded MVAR Ramp Down Rate for the test. This must meet or exceed the reactive power ramp rates defined in Exhibit A.

iv. Signal Following and Swing Test:

1. Pre-charging Storage prior to Storage Signal Following Test. To commence a Storage Signal Following Test the Storage Unit must be charged to 50% Usable SOC.
2. Initiating the Storage Signal Following Test. The Company shall issue a dispatch instruction to change the Storage Unit output from zero (0) MW to a power amount (as represented in MW AC) that the Company, in its sole discretion, selects. The Storage Unit shall ramp to the selected power amount and hold that output amount for ten (10) minutes. The Company, in its sole discretion, may elect to repeat this signal-following protocol up to four (4) different times to demonstrate the Project's ability to accurately follow a dispatch instruction.
3. Calculating performance of the Storage Swing Test. Each minute following the Company- issued dispatch instruction, a meter reading of power (as measured in MW AC) shall be taken at the Energy Delivery Point. After ten (10) minutes, each of the corresponding ten (10) distinct meter readings shall be subtracted from the power amount requested by the Company in the dispatch instruction. The absolute difference between the ten (10) distinct meter readings and the power amount requested by the Company in the dispatch instruction shall be recorded.
- 4.

v. **Storage Power Factor Test:**

1. Prior to COD, the Seller and the Company shall test and certify the Project's ability to both produce and absorb reactive power.
2. The Seller must verify that the Project an:
 - a. Produce and absorb Reactive Power within the reactive requirements defined in Exhibit A.
 - b. Maintain a specific voltage level under both steady-state and post-contingency operating conditions, subject to the limitation of the tested reactive capability.
 - c. Automatically respond to Power Factor control signals from the Company's utility management system
 - d. The following tests will be conducted to determine the Project's four-quadrant capability:
 - i. The Storage Unit shall be adjusted to its maximum lagging power factor and maximum leading power factor at zero (0) active power output and full reactive power output for the maximum duration of full reactive power injection and withdraw as specified in Exhibit A.
 - ii. Similarly, a second test shall be conducted with active power at the full rated discharge and any remaining power capacity for reactive power output, and at full rated charge and any remaining power capacity for reactive power output per Project's four quadrant capability as specified in Exhibit A
 - iii. Measured reactive power limits and associated ramp rates from the prior steps shall be recorded and documented.

vi. **Storage Wholesale Ancillary Service Test**

1. Prior to COD, Owner and the Company and the Company's designated Power Marketer shall develop and mutually agree on a test plan to qualify the Project as a Regulation Service Supplier and a 10-minute Operating Reserve Supplier to the NYISO.
2. Post COD, Owner and the Company and the Company's designated Power Marketer shall test and certify the Project's ability to pass the required NYISO qualification tests⁵ for the Project to offer ancillary services into the NYISO wholesale market. The Normal Response Rate and Upper Operating Limit recorded as part of the qualification test shall meet or exceed the Normal Response Rate and Ancillary Services Capacity defined in Exhibit A.

vii. **Intentional Island Support (Only applicable to Projects that require intentional island capability):**

1. For a Project providing intentional island support, the following tests shall be conducted by the Seller:
 - a. Ability to transition inverter control from current source inverter (*i.e.*, grid mode) to voltage source (*i.e.*, island mode).

⁵ See NYISO Ancillary Services Manual (Manual 2) for details regarding qualification criteria and tests such as for regulation service and operating reserves.

- b. Ability to maintain stable frequency and voltage during 25% of the storage power rating load step changes (both added and removed load).
 - c. Ability to support load phase imbalances up to 5% as defined by the ANSI C84.1 standard.
 - c. **Operating Conditions during Testing.** At all times during testing, the Project shall not be operated with abnormal operating conditions such as unstable load conditions, or operation outside of regulatory restrictions. Environmental considerations, such as ambient temperature, humidity, and barometric pressure shall not be considered limiting factors to conducting a Storage Rating Test unless those factors constitute a Force Majeure Event. If abnormal operating conditions occur on the day of or during a test, the Seller may postpone such test in its reasonable discretion in accordance with the following paragraph.
7. **Communications.** The end-to-end communications will be tested by sending the above signals remotely and confirming the system responds accordingly, including a read receipt upon delivery of a dispatch instruction.
 8. **Incomplete or Postponed Tests.** If any test is postponed or otherwise not fully completed in accordance herewith, 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 no longer than ten (10) days after the date of the incomplete test, upon five (5) days' prior notice to the Company (or any shorter period reasonably acceptable to the Company).
 9. **Additional Testing Details.** Only energy discharged and delivered at the Energy Delivery Point during Storage Rating Tests shall be included in all calculations of the Storage Ratings Test. The Company shall cooperate with the Seller to coordinate and carry out testing, including by scheduling tests and discharge events.
 10. **Supplementary Storage Rating Test Protocol.** No later than sixty (60) days prior to commencing Project construction, 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 Exhibit M 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 Exhibit M.

EXHIBIT N

MINIMUM WARRANTY REQUIREMENTS

1. The Project and all component parts, including the energy storage modules, power conversion system, communications and control equipment, cooling and climate control equipment, protection equipment, and switchgear shall be new and of good quality and workmanship; free from defects in materials, workmanship, and design; and conform materially to all applicable specifications and contractual requirements in the Agreement.
2. The Project and all component parts shall perform as specified in the Contract.
3. The Project shall be installed and maintained to ensure continued performance and all costs associated with the replacement and repair of the Project or its component parts, if deemed to be non-performing, shall be borne by the Seller.
4. Seller shall obtain sufficient warranties and/or service agreements to ensure continued performance of the Project for the duration of the Delivery Period.
5. Any warranties or service agreements entered into by Seller with a manufacturer or service provider must indemnify Seller with respect to damages and losses incurred in connection with the negligence and willful misconduct of such manufacturer or service provider.
6. Any service warranty or service agreement obtained by Seller to service the Project shall cover all system maintenance, including system support, problem diagnosis, on-site repair and preventive maintenance.
7. Seller shall provide the Company with supporting warranty documents from the original equipment manufacturer for energy storage modules, power converter systems, and necessary climate control or key auxiliary equipment that:
 - a. covers the entire Term of the Contract
 - a. articulates standards and methods for establishing that the equipment is not performing to specification and should be repaired or replaced, and
 - b. establishes a maximum allowable time for faulty equipment to be repaired or replaced, particularly for long-lead items.

EXHIBIT O

[Form to be included in executed ESSA.]

NYSERDA BULK STORAGE SAMPLE AGREEMENT FOR UTILITY DISPATCH PROJECTS

EXHIBIT P
[Form to be included in executed ESSA.]
Non-Disclosure Agreement