

## DER – Data Security Agreement Recitals

WHEREAS, Third Party desires to have access to certain utility customer information, either customer-specific or aggregated customer information, or the New York State Public Commission (“Commission”) has ordered Utility to provide to Third Party aggregated customer information; and

WHEREAS, Third Party has obtained consent from all customers from whom the Third Party intends to obtain information from Utility; and

WHEREAS, Utility and Third Party also desire to enter into this Agreement to establish, among other things, the full scope of Third Party’s obligations of confidentiality with respect to the Confidential Utility Information in a manner consistent with the rules and regulations of the Commission and requirements of Utility; and

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

### **1. Definitions.**

- a. “Confidential Utility Information” means, collectively, aggregated and customer-specific information that Utility is: (A) required by the Commission to provide to Third Party and (B) any other Utility-specific, aggregated, Personal Data, Sensitive Data, or Utility Data, or customer-specific data provided to Third Party by Utility.
- b. “Data Protection Requirements” means, collectively, (A) all national, state, and local laws, regulations, or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to Third Party or its Representative’s Processing of Confidential Utility Information; (B) the Utility’s internal requirements and procedures relating to the protection of information that identifies or can be used to identify an individual that apply with respect to Third Party or its Representative’s Processing of Confidential Utility Information; and (C) the Commission rules, regulations, and guidelines relating to confidential data, including the Commission-approved Uniform Business Practices (“UBPs”).
- c. “Data Security Incident” means a situation when Third Party reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Utility Information; (B) the inadvertent, unauthorized and/or unlawful Processing, corruption, modification, transfer, sale or rental of Confidential Utility Information; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Utility Information or (D) any breach of any Data Protection Requirements in relation to the Processing of Confidential Utility Information by Third Party or any current or former Representatives.
- d. “Destroy” means (A) shredding; (B) permanently erasing and deleting; (C) degaussing; or (D) otherwise modifying Confidential Utility Information in paper, electronic, or other means

so as to make it unreadable, unreconstructible, and indecipherable. All Confidential Utility Information as may be specifically requested by Utility must be disposed of in a manner described in (A) through (D) herein.

- e. "Third Party" shall have the meaning set forth in the Recitals.
- f. "Personal Data" means any information that can be used to identify, locate, or contact an individual, including an employee, customer, or potential customer of Utility, including, without limitation: (A) first and last name; (B) home or other physical address; (C) telephone number; (D) email address or online identifier associated with an individual; (E) "Sensitive Data" as defined below; (F) ZIP codes; (G) employment, financial, or health information; or (H) any other information relating to an individual, including cookie information and usage and traffic data or profiles, that is combined with any of the foregoing.
- g. "PSC" or "Commission" shall have the meaning attributed to it in the Recitals.
- h. "Processing" (including its cognate, "process") means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Personal Data or Utility Data, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.
- i. "Sensitive Data" is that subset of Personal Data, including Social Security number, passport number, driver's license number, Utility customer account number, Municipal Identification (NYCID), or similar identifier.
- j. "Third-Party Representatives" or "Representatives" mean those agents of Third Party that are contractors or subcontractors.
- k. "Utility Data" means data held by Utility, whether produced in the normal course of business or at the request of Third Party or a third party and whether or not it is provided to Third Party.

**2. Scope of the Agreement.** This Agreement shall govern and apply to all Confidential Utility Information disclosed to Third Party or to which Third Party is given access by Utility, including all archival or back-up copies of the Confidential Utility Information held or maintained by Third Party (or its Representatives). All Confidential Utility Information, in whatever form, media, or medium provided or held, and all extracts, compilations, studies, or other documents based on, derived from, or containing Confidential Utility Information, all data electronically exchanged between the Parties, and all correspondence between or among the Parties or their respective Representatives pertaining to the same shall constitute Confidential Utility Information hereunder. No financial information will be provided pursuant to this Agreement. If any information is inadvertently sent to Third Party, Third Party will immediately notify the Utility and Destroy any such information in the appropriate manner.

**3. Third Party Compliance with all Applicable Commission Uniform Business Practices.**

\_\_\_\_\_Third Party is an Energy Services Company (“ESCO”) and expressly agrees to comply with the Commission’s ESCO Uniform Business Practices (“UBPs”), as they may be amended from time to time.

\_\_\_\_\_Third Party is a Distributed Energy Resource Supplier (“DERS”) and expressly agrees to comply with the Commission’s DERS UBPs, as they may be amended from time to time.

\_\_\_\_\_Third Party is a vendor, agent or other entity providing services to an ESCO or DER.

**4. Customer Consent.** Third Party warrants that it has obtained informed consent from all customers about whom Third Party requests data and that it will retain such consent for a period of at least six years. Third Party agrees to provide proof of customer consent at the request of Utility and Utility reserves its right to audit Third Party for compliance with consent requirements herein. Third Party agrees that upon a customer revocation of consent, Third Party warrants that it will no longer access said customer’s information and that it will Destroy any of said customer’s information in its or its Representative’s possession.

**5. Provision of Information.** Utility agrees to provide to Third Party or its Representatives, certain Confidential Utility Information, as requested, provided that (A) Third Party and its Representatives are in compliance with the terms of this Agreement; (B) if required by Utility, Third Party has provided and has caused its Representatives to provide, to the satisfaction of Utility any Vendor Product/Service Security Assessments, attached hereto as Exhibit A or such other risk assessment forms as Utility may require from time to time (“Assessment”) and Third Party will comply with the Utility Assessment requirements; (C) Third Party (and its Representatives, as applicable) shall have and maintain throughout the term, systems and processes in place and as detailed in the Assessment acceptable to Utility to protect Confidential Utility Information; and (D) Third Party complies and shall cause its Third-Party Representatives to comply with Utility’s data protection programs. Provided the foregoing prerequisites have been satisfied, Third Party shall be permitted access to Confidential Utility Information and/or Utility shall provide such Confidential Utility Information to Third Party.

**6. Confidentiality.** Third Party shall: (A) hold all Confidential Utility Information in strict confidence; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential Utility Information to any other person or entity (including but not limited to subcontractors, affiliates, or members of Third Party); (C) not Process Confidential Utility Information outside of the United States; (D) not Process Confidential Utility Information other than for the Services defined in the Recitals as authorized by this Agreement; (E) limit reproduction of Confidential Utility Information; (F) store Confidential Utility Information in a secure fashion at a secure location in the United States that is not accessible to any person or entity not authorized to receive the Confidential Utility Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Utility Information as Third Party employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (H) to the extent required by the Utility, each person with a need to know the Confidential Information

shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement. At all times, Utility shall have the right to request further assurances that the foregoing restrictions and protections concerning Confidential Utility Information are being observed and Third Party shall be obligated to promptly provide Utility with the requested assurances. Data and/or Confidential Information will at all times remain the sole property of the Party collecting the data and/or Confidential Information. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or Confidential Information of the other Party

## **7. Exceptions Allowing Third Party to Disclose Confidential Utility Information.**

- a. Disclosure to Representatives.** Notwithstanding the provisions of Section 6 herein, Third Party may disclose Confidential Utility Information to its contractors or subcontractors who have a legitimate need to know or use such Confidential Utility Information for the sole and limited purposes of providing Services, provided that each such Representative first (A) is advised by Third Party of the sensitive and confidential nature of such Confidential Utility Information; (B) agrees to comply with the provisions of this Agreement, provided that with respect to Representatives and this subsection (B), such Representatives must agree in writing to be bound by and observe the provisions of this Agreement as though such Representatives were Third Party; and (C) signs the Representative Agreement. All such written agreements with Representatives shall include direct liability for the Representatives towards Utility for breach thereof by the Representatives, and a copy of such agreement and each Representative Agreement and Third-Party agreement shall be made available to Utility upon request. Notwithstanding the foregoing, Third Party shall be liable to Utility for any act or omission of a Representative, including without limitation, Representatives that would constitute a breach of this Agreement if committed by Third Party.
- b. Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that Third Party or any of its Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Utility Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), Third Party shall, except to the extent prohibited by law, within 24 hours notify Utility, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, Utility shall have the right to consult with Third Party and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Utility Information that must be disclosed. Utility shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Utility Information that must be disclosed. In any event, Third Party and its Representatives shall disclose only such Confidential Utility Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by Utility) and Third Party and its

Representatives shall use all reasonable efforts to ensure that all Confidential Utility Information that is so disclosed will be accorded confidential treatment.

- 8. Return/Destruction of Information.** Within ten (10) days after Utility's written demand, Third Party shall (and shall cause its Representatives to) cease to access and Process Confidential Utility Information and shall at the Utility's option: (A) return such Confidential Utility Information to Utility in such manner, format, and timeframe as reasonably requested by Utility or, if not so directed by Utility, (B) Destroy all copies of all Confidential Utility Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Utility Information) that has come into Third Party's or its Representatives' possession, including destroying Confidential Utility Information from all systems, records, archives, and backups of Third Party and its Representatives, and all subsequent access, use, and Processing of the Confidential Utility Information by Third Party and its Representatives shall cease. Notwithstanding the foregoing, Third Party and its Representatives shall not be obligated to erase Confidential Utility Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that Third Party and its Representatives shall (1) not have experienced a Data Security Incident, (2) not permit access to or recovery of Confidential Utility Information from such computer backup system and (3) keep all such Confidential Utility Information confidential in accordance with this Agreement. Third Party shall, upon request, certify to Utility that the destruction by Third Party and its Representatives required by this Section has occurred by (A) having a duly authorized officer of Third Party complete, execute, and deliver to Utility a certification and (B) obtaining substantially similar certifications from its Representatives and maintaining them on file. Compliance with this Section 8 shall not relieve Third Party from compliance with the other provisions of this Agreement. The obligations under this Section shall survive any expiration of termination of this Agreement.
- 9. Audit.** Upon reasonable notice to Third Party, Third Party shall, and shall require its Representatives to permit Utility, its auditors, designated audit representatives, and regulators to audit and inspect, at Utility's sole expense (except as otherwise provided in this Agreement), and no more often than once per year (unless otherwise required by Utility's regulators): (A) the facilities of Third Party and Third Party's Representatives where Confidential Utility Information is Processed by or on behalf of Third Party; (B) any computerized or paper systems used to Process Confidential Utility Information; and (C) Third Party's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Utility Information. Such audit and inspection rights shall be, at a minimum, for the purpose of verifying Third Party's compliance with this Agreement, including all applicable Data Protection Requirements. Notwithstanding anything herein, in the event of a Data Security Incident, Third Party shall and shall cause its Representatives to permit an audit hereunder more frequently than once per year, as may be requested by Utility. Third Party shall immediately correct any deficiencies identified by Utility.
- 10. Investigation.** Upon notice to Third Party, Third Party shall assist and support Utility in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Utility Information Processed by Third Party on behalf of

Utility. Such assistance shall be at Utility's sole expense, except where such investigation was required due to the acts or omissions of Third Party or its Representatives, in which case such assistance shall be at Third Party's sole expense.

- 11. Data Security Incidents.** Third Party is responsible for any and all Data Security Incidents involving Confidential Utility Information that is Processed by, or on behalf of, Third Party. Third Party shall notify Utility in writing immediately (and in any event within twenty-four (24) hours) whenever Third Party reasonably believes that there has been a Data Security Incident. After providing such notice, Third Party will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Utility Information and keep Utility advised of the status of such Data Security Incident and all matters related thereto. Third Party further agrees to provide, at Third Party's sole cost, reasonable assistance and cooperation requested by Utility and/or Utility's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident and/or the mitigation of any damage, including any notification required by law or that Utility may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident, and/or the provision of any credit reporting service required by law or that Utility deems appropriate to provide to such individuals. Unless required by law, Third Party shall not notify any individual or any third party other than law enforcement of any potential Data Security Incident involving Confidential Utility Information without first consulting with, and obtaining the permission of, Utility. In addition, within 30 days of identifying or being informed of a Data Security Incident, Third Party shall develop and execute a plan, subject to Utility's approval, that reduces the likelihood of a recurrence of such Data Security Incident. Third Party agrees that Utility may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs.
- 12. Cybersecurity Insurance Required.** Third Party shall carry and maintain Cybersecurity insurance in an amount of no less than ten million dollars (\$10,000,000) per incident and Utility shall be included by endorsement as an additional insured on Third Party's Cybersecurity insurance. Third Party agrees to cause its Contractors to carry and maintain cybersecurity insurance in the amount shown above.
- 13. No Intellectual Property Rights Granted.** Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Utility, and Third Party shall acquire no ownership interest in the Confidential Utility Information (which, as between Third Party and Utility, shall be and remain the proprietary and confidential information of Utility). No rights or obligations other than those expressly stated herein shall be implied from this Agreement.
- 14. Additional Obligations.**

  - a. Third Party shall not create or maintain data which are derivative of Confidential Utility Information except for the purpose of performing its obligations under this Agreement or as authorized by Utility. Data collected by Third Party from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with Third Party or its partners shall not be considered Confidential

Utility Information or a derivative of Confidential Utility Information for the purpose of this Agreement.

- b. Third Party shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Utility in violation of any privacy or security law known by Third Party to be applicable to Utility.
- c. Third Party shall have in place appropriate and reasonable processes and systems, including an Information Security Program to protect the security of Confidential Utility Information and prevent a Data Security Incident, including, without limitation, a breach resulting from or arising out of Third Party's internal use, Processing, or other transmission of Confidential Utility Information, whether between or among Third Party's Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of Third Party, including without limitation Representatives.
- d. Third Party shall safely secure or encrypt all Confidential Utility Information during storage or transmission.
- e. Third Party shall establish policies and procedures to provide reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Utility Information Processed by Third Party to the extent such request, complaint or other communication relates to Third Party's Processing of such individual's Confidential Utility Information.
- f. Third Party shall establish policies and procedures to provide all reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Utility Information, data theft, or other unauthorized release of Confidential Utility Information, disclosure of Confidential Utility Information, or misuse of Confidential Utility Information to the extent such request, complaint or other communication relates to Third Party's accessing or Processing of such Confidential Utility Information.

**15. Payment.** In consideration of Utility's agreement to provide Confidential Utility Information in accordance with Section 2, Third Party shall pay to Utility fees pursuant to its tariffs.

**16. Specific Performance.** The Parties acknowledge that disclosure or misuse of Confidential Utility Information in violation of this Agreement may result in irreparable harm to Utility, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Utility shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Utility's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Utility Information hereunder. Third Party agrees to waive any requirement for the securing or posting of any bond or other security in connection with Utility obtaining any

such injunctive or other equitable relief and hereby authorizes, to the extent lawfully possible, any court of competent jurisdiction to dispense with any requirement for such bond or other security which might otherwise be judicially imposed.

- 17. Indemnification.** To the fullest extent permitted by law, Third Party shall indemnify and hold Utility, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by Third Party or any of its Representatives.
- 18. Notices.** With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to Third Party, to:

Third Party Name:  
Name of Contact:  
Address:  
Phone:  
Email:

If to Utility, to:

National Grid  
Customer Choice Department  
175 East Old Country Road  
Hicksville, NY 11801  
Att: NiMO DSA

With a copy to:  
National Grid Legal Department  
NY Regulatory Group  
300 Erie Blvd West  
Syracuse, NY 13202

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

- 19. Term.** This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated by Utility upon not less than 10 days' prior written notice specifying the effective date of termination;; provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination; and provided, further, that Utility may terminate this Agreement immediately upon notice to Third Party in the event of a material breach hereof by Third Party or its Representatives. For the purpose of clarity, a breach of Sections 3-4, 6-11, 13, 16, and 24 shall be a material breach hereof. Upon the expiration or termination hereof, neither Third Party nor its Representatives shall have any further right to Process Confidential Utility Information and shall immediately comply with its obligations under Section 8.
- 20. Consent to Jurisdiction; Selection of Forum.** Third Party irrevocably submits to the jurisdiction of the courts located within the State of New York with regard to any dispute or controversy arising out of or relating to this Agreement. Third Party agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to Third Party at the address for Third Party pursuant to Section 11 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. Third Party agrees that service of process on it may also be made in any manner permitted by law. Third Party consents to the selection of the New York State and United States courts within New York or Kings County, New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.
- 21. Governing Law.** This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the State of New York, without recourse to such state's choice of law rules.
- 22. Survival.** The obligations of Third Party under this Agreement shall continue for so long as Third Party and/or Third Party's Representatives continue to have access to, are in possession of or acquire Confidential Utility Information even if all agreements between Third Party and Utility have expired or been terminated.
- 23. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.
- 24. Amendments; Waivers.** This Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.
- 25. Assignment.** This Agreement (and Aggregator's obligations hereunder) may not be assigned by Third Party or Representatives without the prior written consent of Utility, and any purported assignment without such consent shall be void.

- 26. Severability.** Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- 27. Entire Agreement.** This Agreement (including any Exhibits hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written agreements or understandings with respect to such subject matter are merged herein. This Agreement may not be amended without the written agreement of the Parties.
- 28. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.
- 29. Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence.
- 30. Relationship of the Parties.** Utility and Third Party expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.
- 31. Construction.** This Agreement shall be construed as to its fair meaning and not strictly for or against any party.
- 32. Binding Effect.** No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.