

Non-Disclosure Agreement

This Non-Disclosure Agreement (“Non-Disclosure Agreement”) dated as of _____, 20__ (the “*Effective Date*”), between [_____] (“*Seller*”), a [_____] [corporation][limited liability company][limited liability partnership] having offices at [_____] and Niagara Mohawk Power Corporation d/b/a National Grid (“*National Grid*”), a corporation having offices at 300 Erie Blvd. West, Syracuse, NY 13202 (each, individually, a “*Party*” and, collectively, the “*Parties*”).

RECITALS

WHEREAS, the Parties and their respective Affiliates (as such term is defined below) possess certain confidential and proprietary Information (as such term is defined below); and

WHEREAS, each Party may elect, in its sole discretion, to disclose Information to the other Party or its Representatives (as such term is defined below) in connection with the provision of Flexibility Services (the “*Purpose*”), subject to the terms and conditions of this Non-Disclosure Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. *Certain Definitions.*

1.1 The term “*Information*” means

- 1.1.1. all financial, technical and other non-public or proprietary information which is furnished or disclosed orally, in writing, electronically or in other form or media by Disclosing Party and/or its Representatives to Recipient and/or its Representatives in connection with the Purpose and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed;
- 1.1.2. all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from the information described in Section 1.1.1, above;
- 1.1.3. all Critical Energy/Electric Infrastructure Information (“*CEII*”) (as such term is defined below and only if *CEII* is exchanged under this Non-Disclosure Agreement);
- 1.1.4. all Personal Information (as defined in the PISA Exhibit and only if Personal Information is exchanged under this Non-Disclosure Agreement); and

- 1.1.5. all Customer Information (as such term in is defined below and only if Customer Information is exchanged under this Non-Disclosure Agreement).
- 1.2 The term “*Recipient*” means a Party to whom the other Party or its Representatives discloses Information.
- 1.3 The term “*Disclosing Party*” means the Party disclosing Information in its possession, or on whose behalf Information is disclosed, to a Recipient.
- 1.4 The term “*Representative(s)*” means the Affiliates of a Party and the officers, directors, members, managers, employees, contractors, legal advisors, financial advisors and representatives of such Party.
- 1.5 The term “*Affiliate*” means any Person controlling, controlled by, or under common control with, any other Person; “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.
- 1.6 The term “*Customer Information*” includes, but is not limited to, one or more National Grid customers’ names, addresses, account numbers, billing information, load information, and usage information.
- 1.7 The term “*Person*” includes 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.
2. ***Permitted Disclosure, Personal Information and Critical Energy/Electric Infrastructure Information.***
- 2.1 Recipient shall receive all Information in strict confidence, shall exercise reasonable care to maintain the confidentiality and secrecy of the Information, and, except to the extent expressly permitted by this Non-Disclosure Agreement, shall not divulge Information to any third party without the prior written consent of Disclosing Party. The foregoing notwithstanding, Recipient may disclose Information to its Representatives to the extent each such Representative has a need to know such Information for the Purpose contemplated by this Non-Disclosure Agreement and agrees to observe and comply with the obligations of Recipient under this Non-Disclosure Agreement with regard to such Information. Recipient shall immediately notify Disclosing Party regarding, and shall be responsible hereunder for, any breach of the terms of this Non-Disclosure Agreement to the extent caused by its Representatives.
- 2.2 The Parties acknowledge that Information and/or data disclosed under this Non-Disclosure Agreement may include Personal Information (as such term is defined in the PISA Exhibit attached hereto). To the extent Personal Information is disclosed under this Non-Disclosure Agreement, the Parties obligations shall be

governed by the Information Security Addendum (attached hereto as the PISA Exhibit) which is hereby incorporated by reference and explicitly made a part of this Non-Disclosure Agreement.

2.3 The Parties acknowledge that Information and/or data disclosed under this Non-Disclosure Agreement may include “Critical Energy / Electric Infrastructure Information” (“CEII”) as defined and designated by Disclosing Party, consistent with applicable Federal Energy Regulatory Commission (“FERC”) and North American Electric Reliability Corporation (“NERC”) regulations. Only if such Information contains CEII, Recipient shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC rules, regulations, orders and policies) applicable to any such CEII that is disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party’s or Disclosing Party’s Affiliates’ facilities. Recipient shall not divulge, and shall cause its Representatives not to divulge, any such CEII to any Person or entity, directly or indirectly, unless permitted to do so by applicable law and unless Recipient has first obtained, in each case, the express specific written consent of Disclosing Party and any affected Affiliate of Disclosing Party. In any event, to the extent that Recipient or any of its Representatives seeks or is ordered to submit any such CEII to FERC, a state regulatory agency, a court or other governmental body, whether in connection with the Purpose or otherwise, Recipient shall (and, to the extent applicable, shall cause its Representatives to), in addition to obtaining Disclosing Party’s and its Affiliate’s (as applicable) prior written consent, seek a protective order or other procedural protections to ensure that such information is accorded CEII protected status and is otherwise treated as confidential. With respect to CEII, in the event of any conflict or inconsistency between this Section and any other term or provision of this Non-Disclosure Agreement, this Section shall govern in connection with such CEII.

3. *Exclusions from Application.*

3.1 This Non-Disclosure Agreement shall not apply to Information that,

- 3.1.1.** at the time of disclosure by or on behalf of Disclosing Party hereunder, is in the public domain, or thereafter enters the public domain without any breach of this Non-Disclosure Agreement by Recipient or any of its Representatives,
- 3.1.2.** is rightfully in the possession or knowledge of Recipient or its Representatives prior to its disclosure by or on behalf of Disclosing Party hereunder,
- 3.1.3.** is rightfully acquired by Recipient or its Representative(s) from a third party who is not under any obligation of confidence with respect to such Information, or

- 3.1.4.** is developed by Recipient or its Representatives independently of the Information disclosed hereunder by or on behalf of Disclosing Party (as evidenced by written documentation).
- 3.2** Recipient is hereby notified that, as set forth in 18 U.S.C. §1833(b), individuals do not have criminal or civil liability under U.S. trade secret law for the following disclosures of a trade secret:
- 3.2.1.** disclosure in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, provided the disclosure is for the sole purpose of reporting or investigating a suspected violation of law;
- 3.2.2.** disclosure in a complaint or other document filed in a lawsuit or other proceeding if such filing is made under seal; and/or
- 3.2.3.** under those circumstances where Recipient files a lawsuit for retaliation against Disclosing Party for reporting a suspected violation of law, Recipient may disclose Disclosing Party's trade secret information to its attorney and may use the trade secret information in the court proceeding if Recipient files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.
- 3.3** Nothing herein or in any other agreement between the Parties is intended to conflict with 18 U.S.C. § 1833(b) or create any liability for disclosures of trade secrets that are expressly allowed by such section.
- 4. *Production of Information.*** Recipient agrees that if it or any of its Representatives are required by law, by a court or by other governmental or regulatory authorities (including, without limitation, by oral question, interrogatory, request for information or documents, subpoena, civil or criminal investigative demand or other process) to disclose any of Disclosing Party's Information, Recipient shall provide Disclosing Party with prompt notice of any such request or requirement, to the extent permitted to do so by applicable law, so that Disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Non-Disclosure Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, Recipient (or any Representative of Recipient) is, in the opinion of its counsel, legally compelled to disclose such Information, Recipient may disclose, and may permit such Representative to disclose, such portion of the Information that its counsel advises must be disclosed and such disclosure shall not be deemed a breach of any term of this Non-Disclosure Agreement. In any event, Recipient shall use (and, to the extent applicable, shall cause its Representatives to use) reasonable efforts to seek confidential treatment for Information so disclosed if requested to do so by Disclosing Party, and shall not oppose any action by, and shall reasonably cooperate with, Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Information.
- 5. *Scope of Use.*** Recipient and each of its Representatives shall use Information disclosed by or on behalf of Disclosing Party solely in connection with the Purpose and shall not use,

directly or indirectly, any Information for any other purpose without Disclosing Party's prior written consent.

6. ***No Representations; No Rights Conferred.*** Disclosing Party makes no representations or warranties, express or implied, with respect to any Information disclosed hereunder, including, without limitation, any representations or warranties as to the quality, accuracy, completeness or reliability of any such Information; all such representations and warranties are hereby expressly disclaimed. Neither Disclosing Party nor its Representatives shall have any liability whatsoever with respect to the use of, or reliance upon, the Information by Recipient or its Representatives. Neither Recipient nor its Representatives shall acquire any rights in Information by virtue of its disclosure hereunder. No license to Recipient or its Representatives, under any trademark, patent, or other intellectual property right, is either granted or implied by the disclosure of Information under this Non-Disclosure Agreement.
7. ***Return or Destruction of Information.*** Recipient shall return and deliver, or cause to be returned and delivered, to Disclosing Party, or destroy or cause to be destroyed (with certification of destruction delivered to Disclosing Party), all tangible Information, including copies and abstracts thereof, within thirty (30) days of a written request by Disclosing Party (a "Request"). The foregoing notwithstanding, Recipient may retain one (1) copy of such Information for archival purposes only and subject to compliance with the terms of this Non-Disclosure Agreement. Notwithstanding the foregoing, each Party agrees that Recipient shall not be required to return to Disclosing Party, or destroy, copies of Disclosing Party's Information that (A) reside on Recipient's or its Representatives' backup, disaster recovery or business continuity systems, or (B) that Recipient or its Representatives are obligated by applicable law and/or governmental regulations to retain. Recipient agrees that, following its receipt of the Request, it shall neither retrieve nor use Disclosing Party's Information for any purpose other than that specified in clause (B) above.
8. ***No Partnership, Etc.*** Nothing contained herein shall bind, require, or otherwise commit a Party (or any Affiliate thereof) to proceed with any project, sale, acquisition, or other transaction of or with the other Party or any other entity. No agency, partnership, joint venture, or other joint relationship is created by this Non-Disclosure Agreement. Neither this Non-Disclosure Agreement nor any discussions or disclosures hereunder shall prevent either Party from conducting similar discussions with other parties or performing work, so long as such discussions or work do not result in the disclosure or use of Information in violation of the terms of this Non-Disclosure Agreement. The terms of this Non-Disclosure Agreement shall not be construed to limit either Party's right to independently engage in any transaction, or independently develop any information, without use of the other Party's Information.
9. ***Term and Termination.*** Except with respect to any Information that is Customer Information, CEII or Personal Information, Recipient's obligations and duties under this Non-Disclosure Agreement shall have a term of five (5) years from the Effective Date (the "Term"), but in no event will the confidentiality obligations herein terminate less than one (1) year from the date of the last disclosure. In the case of any Information that is Customer

Information, CEII or Personal Information, Recipient's obligations and duties under this Non-Disclosure Agreement shall survive for (i) the Term, or (ii) so long as such Customer Information, CEII or Personal Information, as applicable, is required to be kept confidential under applicable law, whichever period is longer (the "*Special Information Term*"). Either Party may terminate this Non-Disclosure Agreement by written notice to the other Party. Notwithstanding any such termination, all rights and obligations hereunder shall survive (i) for the Special Information Term for all Customer Information, CEII or Personal Information disclosed prior to such termination, and (ii) for the Term for all other Information disclosed prior to such termination.

10. ***Injunctive Relief.*** The Parties acknowledge that a breach of this Non-Disclosure Agreement by Recipient or its Representatives may cause irreparable harm to Disclosing Party for which money damages would be inadequate and would entitle Disclosing Party to injunctive relief and to such other remedies as may be provided by law.
11. ***Governing Law; Consent to Jurisdiction.*** This Non-Disclosure Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to the principles of the conflict of laws contained therein. Each Party hereby submits to the personal and subject matter jurisdiction of the courts of the State of New York for the purpose of interpretation and enforcement of this Non-Disclosure Agreement.
12. ***Amendments.*** This Non-Disclosure Agreement may be amended or modified only by an instrument in writing signed by authorized representatives of all Parties.
13. ***Assignment.*** This Non-Disclosure Agreement may not be assigned without the express written consent of all Parties hereto; provided, however, that National Grid may assign this Non-Disclosure Agreement to an Affiliate of National Grid without the consent of any other Party.
14. ***Severability.*** Whenever possible, each provision of this Non-Disclosure Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Non-Disclosure Agreement. All obligations and rights of the Parties expressed herein shall be in addition to, and not in limitation of, those provided by applicable law.
15. ***Entire Agreement.*** This Non-Disclosure Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and any and all previous representations or agreements with respect to such subject matter, either oral or written, are hereby annulled and superseded.
16. ***Consents and Waivers.*** Any consent or waiver of compliance with any provision of this Non-Disclosure Agreement shall be effective only if in writing and signed by an authorized representative of the Party purported to be bound thereby, and then such consent or waiver shall be effective only in the specific instance and for the specific purpose for which it is given. No failure or delay by any Party in exercising any right, power or privilege under

this Non-Disclosure Agreement shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other exercise of any other right, power or privilege hereunder.

17. **No Publicity.** No Party shall issue (and each Party shall ensure that its Representatives and Affiliates do not issue) any press release or make any other public announcement regarding the existence of this Non-Disclosure Agreement or any discussions among the Parties regarding the Purpose without the prior written consent of all Parties.
18. **Notices.** Where written notice is required by this Non-Disclosure Agreement, such notice shall be deemed to be given when delivered personally, mailed by certified mail, postage prepaid and return receipt requested, or by facsimile or electronic mail, as follows:

To National Grid:

National Grid USA

Attn: _____ [include title]

_____ [insert address]

_____ [insert address]

Email:

Phone:

To [insert "Seller"]:

Attn: _____

_____ [insert address]

_____ [insert address]

Email:

Phone:

19. **Counterparts.** This Non-Disclosure Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Non-Disclosure Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Non-Disclosure Agreement and of signature pages by facsimile or in electronic form (".pdf" or ".tif") shall constitute effective execution and delivery of this Non-Disclosure Agreement as to the Parties and may be used in lieu of the original Non-Disclosure Agreement for all purposes. Signatures of the Parties transmitted by facsimile or in electronic format shall be deemed to be their original signatures for all purposes. In proving this Non-Disclosure Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

IN WITNESS WHEREOF, this Non-Disclosure Agreement has been executed by duly authorized representatives of the Parties as of the date first above written.

National Grid USA

[insert legal name of Seller]

By: _____

Name:

Title:

[insert legal name of Seller]

By: _____

Name:

Title:

DRAFT

PISA Exhibit

Personal Information Security Addendum

The following terms and conditions shall apply with regard to Personal Information as defined in this Personal Information Security Addendum (“Addendum”). In the case of any inconsistency, conflict, or any other difference with respect to Personal Information between the Non-Disclosure Agreement and any of the terms in this Addendum, the terms of this Addendum shall in all cases be controlling. To the extent any capitalized terms are not defined in this Addendum, such shall have the same definition as have been provided in the preceding Non-Disclosure Agreement. The obligations of Seller under this Addendum shall be deemed to apply to and bind Seller’s Representative to the extent such Representative or Affiliate receives or has access to any Personal Information; provided, however, that Seller shall remain solely liable for any noncompliance with the terms of this Addendum caused by its Representatives.

All covenants, agreements, and obligations of the Seller as set forth in the National Grid US 3rd Party Minimum Security Requirements Part 1, Part 2, and Part 3 Schedules (“Minimum Security Requirements Schedules”) shall be expressly incorporated by reference herein as if made directly herein and shall survive termination of this Addendum and any other applicable Agreement. Any default and/or breach of the Minimum Security Requirements Schedules shall be considered a breach and/or default of this Addendum and any other applicable Agreement.

Some or all of the Personal Information to be collected by and/or disclosed to Seller by National Grid is required by applicable Law (as that term is defined below) to be collected, accessed, protected, used, disclosed, and deleted in accordance with applicable Law; and certain applicable Law affords certain individuals whose Personal Information has been collected by the Parties for Business Purposes, certain rights in relation to that Personal Information.

1. DEFINITIONS

- 1.1 “Business Purpose” has the same meaning as set forth under the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et. seq., and its implementing regulations and as amended by the California Privacy Rights Act, effective January 1, 2023 (collectively, the “CCPA”).
- 1.2 “Personal Information” means information defined as “personal information or “personal data” under applicable Law. Without limiting the foregoing, Personal Information includes information that identifies or could be used to re-identify a specific person, including but not limited to first name and last name or first initial and last name in combination with any one or more of the following data elements: addresses; residential and/or mobile telephone numbers; e-mail addresses; social security numbers; medical insurance numbers; state issued identification card number (including tribal identification numbers); driver’s license numbers or other driver identification data; personnel records; financial account information; credit related information, including any information relating to credit checks or background checks; credit or debit card numbers and personal identification numbers such as access codes, security codes or passwords that would permit

access to an individual's financial account; and medical or health information. Personal Information also includes sensitive personal information ("Sensitive Personal Information") as set forth in Cal. Civ. Code § 1798.140, (ae) of the CPRA. Sensitive Personal Information pursuant to CPRA includes: (i) a social security, driver's license, state identification card, or passport number; (ii) an account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account; (iii) a precise geolocation; (iv) racial or ethnic origin, religious or philosophical beliefs, or union membership; (v) the contents of mail, email, and text messages unless the business is the intended recipient of the communication; (vi) a genetic data. Sensitive Personal Information also includes: (a) the processing of biometric information for the purpose of uniquely identifying an individual; (b) personal information collected and analyzed concerning an individual's health; (c) personal information collected and analyzed concerning an individual's sex life or sexual orientation. Without limiting the foregoing, Personal Information includes all private data of National Grid and its affiliates' employees, officers, directors, subcontractors, agents, and customers, that Seller receives from National Grid, and as may be defined by applicable state and/or federal statutes and regulations.

- 1.3 "Law" means, with respect to this Addendum, any foreign, federal, state or local law or regulation, promulgated or amended from time to time during the term of this Non-Disclosure Agreement, applicable to Personal Information received by Seller from National Grid. Law includes state laws applicable to Personal Information Seller receives from National Grid, including but not limited, to the Massachusetts Data Security Regulations, 201 CMR 17.00, (the "MA Security Regs") the Rhode Island Identity Theft Protection Act, R.I.G.L. § 11-49.3-1, (the "RI Security Regs"), California data security regulations, Cal. Civ. Code § 1798.81.5, (the "CA Security Regs"), the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et. seq., and its implementing regulations, and as amended by the California Privacy Rights Act, effective January 1, 2023, and the New York SHIELD Act, N.Y. Gen. Bus. Law § 899-bb (the "NY Security Regs") and any other applicable state privacy laws.
- 1.4 "Minimum Security Requirements Schedules" include the security controls, safeguards, and requirements that must be met by Company's vendors, contractors, sub-contractors, and supply-chain during the delivery of products and services for National Grid as set forth in the National Grid US 3rd Party Minimum Security Requirements Part 1, Part 2, and Part 3 Schedules

2. PROTECTION OF PERSONAL INFORMATION

- 2.1 Seller hereby agrees to comply with all Laws applicable to Personal Information it receives from National Grid during the term of the Non-Disclosure Agreement and ensure that all subcontractors or vendors who have access to National Grid's Personal Information comply with all Laws.

- 2.2 Seller agrees to, and agrees to ensure that its subcontractors and/or vendors who have access to National Grid's Personal Information will, implement and maintain appropriate physical, technical and administrative security measures for the protection of Personal Information as required by any Law or as required by National Grid, including compliance with the Minimum Security Requirements Schedules. Such requirements include, but are not limited to: (i) encrypting all transmitted records and files containing Personal Information that will travel across public networks, and encryption of all data containing Personal Information to be transmitted wirelessly; (ii) prohibiting the transfer of Personal Information to any portable device unless such transfer has been approved in advance; (iii) retaining Personal Information for a period no longer than is reasonably required to provide the services requested, and in no event, to exceed one hundred eighty (180) days to meet the purpose for which it was collected, or in accordance with a written retention policy or as may be required by Law; and (iv) encrypting any Personal Information to be transferred to a portable device.
- 2.3 Seller shall develop, document and implement quality assurance measures and internal controls, including implementing tools and methodologies, so that the Services outlined in the agreements between the Parties are performed in an accurate and timely manner, in accordance with such agreement and applicable Law.
- 2.4 Seller shall: (i) maintain a strong control environment in day-to-day operations; (ii) document the processes and procedures for quality assurance and internal controls; (iii) develop and execute a process to ensure regular internal control self-assessments are performed with respect to the Services; and (iv) maintain an internal audit function sufficient to monitor the processes and systems used to provide the Services.
- 2.5 Seller shall not, directly or indirectly, divulge, disclose or communicate any Personal Information it receives from National Grid to any Person, firm, or corporation, except with the written permission of National Grid.
- 2.6 All records pertaining to Personal Information received from National Grid, whether developed by National Grid or others, are and shall remain the property of National Grid.
- 2.7 In addition to the above requirements, Seller shall adopt, implement and maintain security procedures sufficient to protect Personal Information from improper access, disclosure, use, or premature destruction. Such security procedures shall be reasonably acceptable to National Grid and in compliance with all applicable Laws as they are promulgated or amended. Seller shall maintain or adopt a written information security program ("WISP") or its equivalent consistent with the *MA Security Regs*, *NY Security Regs*, and the *RI Security Regs*, and any other applicable Laws that govern the protection of Personal Information received from National Grid or maintained on behalf of National Grid. Seller agrees to apply the standards and requirements of the *MA Security Regs*, *NY Security Regs*, and *RI Security Regs*

to all such Personal Information, regardless of the jurisdiction in which the subject of Personal Information resides. During the term of the Non-Disclosure Agreement and for a period of four (4) years thereafter, Seller shall maintain, and provide for National Grid's review, at National Grid's request, (i) Seller's WISP; and (ii) 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 applicable Laws.

- 2.8 Seller agrees to ensure that any subcontractor or vendor to which it provides National Grid's Information, including Personal Information received from National Grid, or to which it provides National Grid's Information and/or Personal Information created or received by Seller on behalf of National Grid, agrees to the same restrictions and conditions set forth herein and the Minimum Security Requirements Schedules through a written contractual agreement.
- 2.9 Seller agrees that National Grid's data, including Personal Information, may not be maintained, stored, or transmitted outside of the United States of America, except for entities that are legally affiliated with Seller or are wholly owned subsidiaries of Seller.
- 2.10 Seller agrees that it shall be responsible for any and all acts of any subcontractors or vendors to which it allows access to National Grid Information and/or Personal Information.
- 2.11 Seller understands the extremely sensitive nature of the Information, including Personal Information it receives from National Grid, and acknowledges that National Grid would suffer irreparable harm, for which damages would not be an adequate remedy, if National Grid's Personal Information were improperly disclosed. Seller therefore agrees that National Grid shall be entitled to seek and obtain equitable relief in addition to all other remedies at law to protect its Personal Information.
- 2.12 Seller agrees that, to the fullest extent permitted by law, it shall be and remain strictly liable for the security of all Personal Information when in Seller's possession and when being transmitted from Seller or received by Seller. Without limiting any other obligations under any agreement entered into between the Parties, Seller agrees that it shall defend, indemnify and hold harmless National Grid and its Affiliates and their officers, directors, employees, agents, servants, successors and assigns, from and against any and all claims, losses, demands, liabilities, costs and other expenses (including but not limited to, reasonable attorneys' fees and costs, administrative penalties and fines, costs expended to notify individuals and/or to prevent or remedy possible identity theft, financial harm or any other claims of harm related to a breach) incurred as a result of, or arising directly out of or in connection with any acts or omissions of Seller or any party under its control, including, but not limited to, negligent or intentional acts or omissions, resulting from a Security Breach or encryption failure in the transmission of such Personal Information, except to the extent such act or omission

is caused by the sole negligence of National Grid. This provision shall survive termination of this Addendum, the Non-Disclosure Agreement and any other agreement between the Parties relevant to the Purpose.

- 2.13 Seller shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Seller and its employees, agents, Representatives and subcontractors against any and all claims or claims for damages arising under this Addendum and the Non-Disclosure Agreement and such insurance coverage shall apply to all services provided by Seller or its Representatives, agents or subcontractors.
- 2.14 When required by law, by a court or by other governmental or regulatory authorities (including, without limitation, an employment tribunal), Seller shall provide, and formally document, a method that ensures that it can secure, preserve, and transfer digital evidence and artifacts to National Grid in a format that shall comply with such law or be admissible by such court or authority. Deviations from the documented method, either ad-hoc or permanent (e.g., due to new case law or technological advancements), must be agreed upon by the Parties in advance and must still adhere to the aforementioned format and documentation requirements.
- 2.15 In the event that Seller fails to fulfill the above obligations or in the event that such failure appears to be an imminent possibility, National Grid shall be entitled to all legal and equitable remedies afforded it by law as a result thereof and may, in addition to any and all other forms of relief, recover from the undersigned all reasonable costs and attorneys' fees encountered by it in seeking any such remedy.
- 2.16 Seller agrees that, to the fullest extent permitted by law, it shall be and remain strictly liable for the security of all Personal Information when in Seller's possession and when being transmitted from Seller or received by Seller. Without limiting any other obligations under any agreement entered into between the Parties, Seller agrees that it shall defend, indemnify and hold harmless National Grid and its Affiliates and their officers, directors, employees, agents, servants, successors and assigns, from and against any and all claims, losses, demands, liabilities, costs and other expenses (including but not limited to, reasonable attorneys' fees and costs, administrative penalties and fines, costs expended to notify individuals and/or to prevent or remedy possible identity theft, financial harm or any other claims of harm related to a breach) incurred as a result of, or arising directly out of or in connection with any acts or omissions of Seller or any party under its control, including, but not limited to, negligent or intentional acts or omissions, resulting from a Security Breach or encryption failure in the transmission of such Personal Information, except to the extent such act or omission is caused by the sole negligence of National Grid. This provision shall survive termination of this Addendum, the Non-Disclosure Agreement and any other agreement between the Parties relevant to the Purpose.
- 2.17 Seller shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Seller and its employees, agents, Representatives and

subcontractors against any and all claims or claims for damages arising under this Addendum and the Non-Disclosure Agreement and such insurance coverage shall apply to all services provided by Seller or its Representatives, agents or subcontractors.

- 2.18 When required by law, by a court or by other governmental or regulatory authorities (including, without limitation, an employment tribunal), Seller shall provide, and formally document, a method that ensures that it can secure, preserve, and transfer digital evidence and artifacts to National Grid in a format that shall comply with such law or be admissible by such court or authority. Deviations from the documented method, either ad-hoc or permanent (e.g. due to new case law or technological advancements), must be agreed upon by the Parties in advance and must still adhere to the aforementioned format and documentation requirements.

3. RIGHTS RELATED TO PERSONAL INFORMATION UNDER THE CCPA AND OTHER APPLICABLE LAW

- 3.1 Seller shall not collect, use, disclose, or retain Personal Information received from National Grid outside of providing services to National Grid or for any purpose other than the specific Purpose specified in the Non-Disclosure Agreement including retaining, using or disclosing Personal Information for a commercial purpose other than the business purposes specified in the Agreement, or as otherwise permitted by applicable Laws.
- 3.2 Seller shall not sell or share, as those terms are defined by applicable Laws, any Personal Information it collects, accesses, or receives from National Grid and/or on behalf of National Grid, except as permitted by applicable Laws.
- 3.3 Seller agrees and represents that it shall comply with applicable Laws in regard to any Personal Information that it receives, collects, maintains, uses, or discloses that is furnished or disclosed orally, in writing, electronically or in other form or media by National Grid.
- 3.4 Seller may not access, combine, use, retain, or disclose Personal Information received from one or more entities to which it provides services, except as necessary to detect data security incidents, or to protect against fraudulent or illegal activity, or to comply with a valid legal request pursuant to applicable Laws.
- 3.5 If Seller receives a request to know or a request to delete, as set forth under applicable Laws, directly from a consumer regarding Personal Information that Seller receives, collects, maintains on behalf of National Grid, or is furnished or disclosed orally, in writing, electronically or in other form or media by National Grid or its Representatives, it shall notify National Grid of such request. If Seller does not comply with the request, it shall explain the basis for the denial to National Grid and to the consumer. Seller may act on behalf of National Grid pursuant to National Grid's written request and/or pursuant to the underlying Agreement

between the Parties or inform the consumer that the request cannot be acted upon because the request has been sent to a service provider.

- 3.6 If a subcontractor of Seller receives, accesses, collects, maintains, or uses National Grid Personal Information, or Personal Information is furnished or disclosed orally, in writing, electronically or in other form or media by National Grid or its Representatives, or Seller discloses National Grid's Personal Information to a subcontractor, Seller shall require such subcontractor(s) to agree to the same or similar restrictions and conditions that apply to Seller under this Addendum with respect to Personal Information, or as required by Law, through a written contractual agreement. Seller shall also require its subcontractor(s) to require the same of its third-party vendors if those vendors receive, have access to, collect or maintain National Grid data received from Seller or where Seller discloses such data to those vendors.
- 3.7 National Grid will monitor Seller's compliance with this Addendum by ongoing manual reviews and automated scans and regular assessments, audits, or other technical and operational testing at least once every twelve (12) months or as specified in the Minimum Security Requirements Schedules.
- 3.8 National Grid will, upon notice to Seller, at its sole discretion, take reasonable and appropriate steps to stop and remediate unauthorized access, use or disclosure of Personal Information, if such access, use or disclosure is reported to National Grid pursuant to the Addendum and/or the Minimum Security Requirements Schedules, including, but not limited to, termination of the Agreement.
- 3.9 If National Grid instructs Seller to limit the use of consumer(s) Personal Information pursuant to a request under applicable Laws, Seller agrees to adhere to such instructions as required by applicable Laws.
- 3.10 Seller certifies that it understands this Addendum and the CCPA's restrictions and prohibitions on selling Personal Information and the prohibitions on collecting, retaining, using, or disclosing Personal Information. Seller agrees that it will comply with these restrictions and prohibitions and that it will not collect, sell, retain, use, or disclose Personal Information in violation of this Addendum, the CCPA, or any other applicable Laws. Seller agrees to notify National Grid in writing if Seller makes a determination that it can no longer meet its obligations under this Addendum.

4. DATA SCRUBBING VERIFICATION

- 4.1 Upon termination of all agreements between the Parties relevant to and in connection with the Purpose, Seller shall return to National Grid all Personal Information or destroy such Personal Information beyond recovery and certify such destruction in writing to National Grid. Without limiting the foregoing, upon termination of all agreements between the Parties relevant to and in connection with the Purpose, Seller shall use the best possible means to scrub, or otherwise destroy

beyond recovery all electronic Personal Information in its possession, certifying such destruction in writing to National Grid's procurement agent, and providing National Grid with a written explanation of the method used for data disposal/destruction, along with a written certification that such method meets or exceeds the National Grid's data handling standards and industry best practices for the disposal/destruction of sensitive data.

- 4.2 If such return or destruction is not feasible, Seller shall provide to National Grid notification of the conditions that make return or destruction infeasible. Upon National Grid's written agreement that return or destruction of Personal Information is infeasible, Seller shall extend the protections of this Addendum to such Personal Information and limit further uses and disclosures of such Personal Information to those purposes that make the return or destruction infeasible, for so long as Seller maintains such Personal Information.

5. AUDIT

- 5.1 Seller shall, from time to time during the term of the Non-Disclosure Agreement and for a period of four (4) years thereafter, during regular business hours and upon reasonable notice, permit National Grid or its representatives to perform audits of Seller's facilities, equipment, books and records (electronic or otherwise), operational systems and such other audits as may be necessary to ensure: (i) Seller's compliance with this Addendum, (ii) Seller's compliance with all applicable Law, and (iii) Seller's financial and operational viability, including but not limited to Seller's internal controls, security policies, business resumption, continuity, recovery, and contingency plans.
- 5.2 In addition to the above, National Grid may also request Seller to participate in an audit and information disclosure as set forth in the Minimum Security Requirements Schedules.

6. MISCELLANEOUS

- 6.1 Where applicable, if, and only with National Grid's prior consent, Seller processes Personal Information received from National Grid from the "European Economic Area" or "EEA" (as defined below) in a jurisdiction that is not an approved jurisdiction under the EEA, Seller shall ensure that it has a legally approved mechanism in place to allow for the international data transfer prior to the transfer of any such Personal Information and Seller will abide by the obligations under Regulation (EU) 2016/679, the General Data Protection Regulation, fair and lawful use requirements, together with any additional implementing legislation, rules or regulations that are issued by applicable supervisory authorities with respect to such Personal Information. The "EEA" means those countries that are members of European Free Trade Association (EFTA), and the then-current, post-accession member states of the European Union.

- 6.2 Seller agrees to cooperate fully with National Grid and to execute such further instruments, documents and agreements, and to give such further written assurances as may be reasonably requested by National Grid, to better evidence and reflect the transactions described in and contemplated by this Addendum, and to carry into effect the intents and purposes of this Addendum.
- 6.3 The terms of this Addendum shall survive the termination of all agreements between the Parties related to or in connection with the Purpose for any reason.

DRAFT

Flexibility Services Standard Agreement

THIS FLEXIBILITY SERVICES STANDARD AGREEMENT (“AGREEMENT”) IS DATED AS OF THE ____ DAY OF 20__ BY AND BETWEEN NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID, A NEW YORK CORPORATION WITH ITS PRINCIPAL OFFICES AT 300 ERIE BLVD W, SYRACUSE, NY 13202 (“BUYER”) AND _____, A _____ [ENTITY TYPE] WITH PRINCIPAL OFFICES AT _____ (“SELLER”), WHICH MAY EACH ALSO BE REFERRED TO AS “PARTY” OR COLLECTIVELY AS “PARTIES.” THIS AGREEMENT SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH THE SELLER WILL SELL, AND BUYER WILL PURCHASE, FLEXIBILITY SERVICES.

RECITALS

Whereas the Buyer, as owner and operator of the local distribution system (“Distribution System”), requires the provision of Flexibility Services (as hereinafter defined) to maximize system reliability for its customers. Therefore, Buyer wishes to contract with owners and/or operators of suitable assets for the provision of such Flexibility Services.

Whereas Seller is the owner and/or operator of Asset(s), or has entered into arrangements for rights in respect of third-party-owned Asset(s), that have the capability to provide Flexibility Services, in either case as more specifically described in applicable Flexibility Service Form hereto, and wishes to make each such Asset available for the provision of such Flexibility Services (also referred to as “Available Assets”), whether through aggregated or individual assets, as the case may be.

Whereas Seller agrees to sell, and the Buyer agrees to buy, such Flexibility Services, subject to the terms and conditions contained herein.

Now, therefore, for and in consideration of the foregoing, the covenants herein contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Definitions and Certain Interpretative Matters

- 1.1 These Definitions and Rules of Interpretation shall apply to any document published or to be published by the Buyer which states (howsoever expressed) that it is governed by or subject to these Definitions and Rules of Interpretation (see definition of Associated Document).
- 1.2 Each capitalized term used in the Definitions and Rules of Interpretation shall have the meaning given to it (if any) in the Definitions and Service Definitions as applicable.
- 1.3 The Buyer may update any of the Definitions and Rules of Interpretation, General Terms and Conditions, Service Definitions, Service Terms, Appendices, Forms, and other Associated Documents from time to time by publication of an updated version of the relevant document on its website, and each such updated version

shall be effective from the date shown on its front cover; provided always that, except with the consent of the Seller in writing (which shall include by approved electronic means to the extent permitted by the Service Terms), any updated version shall not apply to any Agreement already in force at the time of publication.

1.4 Definitions

In the Agreement, unless superseded by additional terms placed within APPENDIX B (Service Terms) or other Appendices or the context otherwise requires, the following expressions shall have the meaning set out below:

“Affiliate”	means any Person controlling, controlled by, or under common control with, any other Person; “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;
“Account Number”	means the account number provided to the Seller by National Grid;
“Agreement”	means the General Terms and Conditions, Definitions, Service Terms and Service Definitions, Forms and Associated Documents;
“Appendix” or “Appendices”	means the appendices to the General Terms and Conditions;
“Apparatus”	means all equipment in which electrical conductors are used, supported or of which they may form a part;
“Applicable Law”	means all federal, state, and local laws, rules, regulations, orders, ordinances, permit conditions and other governmental actions;
“Associated Document”	means any document published or to be published by the Buyer which states (howsoever expressed) that it is governed by or subject to these Definitions and Rules of Interpretation above, which includes but is not limited to the Appendices;
“Asset” or “Assets”	means a DER or portfolio of DERs from which Flexibility Services will be provided;
“Availability” or “Available”	means the Flexibility Services, in accordance with the Service Requirements and the Dispatch Instruction, as applicable, are available to be delivered to the Buyer during the Dispatch Event;
“Available Asset”	means a DER available to deliver Flexibility Services in response to Dispatch Instructions;
“Business Day”	means any day except a Saturday, Sunday, the Friday immediately following the U.S. Thanksgiving holiday, or a Federal Reserve Bank holiday;
“Business Hours”	means between 9:00 am and 5:00 pm EST on a Business Day;
“Change in Control”	means (i) a conveyance, transfer, or other disposition, directly or indirectly, of equity interests of 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 Seller shall cease to Control Seller or (ii) a merger or consolidation as a result of which the Controlling Person of Seller immediately prior to such merger or consolidation shall cease to Control Seller;
“Committed MW/MVAR”	means the MW or MVAR committed by Seller in accordance with the Service Terms and applicable Flexibility Service Form;
“Committed MWH”	means the MWH or MVAR hour committed by the Seller in accordance with the Service Terms and applicable Flexibility Service Form;
“Confidential Information”	means any information, however, it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“Constraint Management Zone” or “Zone”	means the zone where the Distribution System is unable to transmit power to the location of demand, due to congestion at one or more parts of the Distribution System, and to which the Flexibility Services will be delivered;
“Contract Data”	means all data other than Performance Data associated with the Agreement;
“Contract Price”	means the total price of Flexibility Services provided, including (as applicable) payments for availability, dispatch, and Discretionary Flexibility Services.
“Contract Value”	means the value of the contract for the year based on forecasted amount of dispatches and Contract Price provided in executed Flex Secure Service Form;
“Contract Year”	means the year that Flexibility Services are provided for a specific Delivery Season;
“Control,” “Controlled by” and “Controlling”	means, when used with respect to any particular person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise;
“Day”	means a calendar day;
“Defaulting Party”	has the meaning given in Section 8.4 of the General Terms and Conditions;
“Defect”	means an issue that may arise with the DER equipment, metering or the communication interface between the Buyer and Seller which results or may result in non-delivery of

	Flexibility Services or a misinformed delivery of Flexibility Services;
“Delivery Season End Date”	means the date the Delivery Season for Flexibility Services ends;
“Delivery Season”	means the months that the Asset will be Available to provide Flexibility Services, commencing with the Delivery Start Season Date and ending with the Delivery Season End Date;
“Delivery Season Start Date”	means the date the Delivery Season for Flexibility Services begins;
“Development Plan”	means the defined schedule of design, build and commissioning of a Facility in development;
“Discretionary Flexibility Services”	means the additional Flexibility Services requested by the Buyer outside of or in addition to the Service Requirements detailed within the Service Terms and applicable Flexibility Service Form;
“Dispatch Instruction”	means an instruction by the Buyer to the Seller to deliver Flexibility Services;
“Distributed Energy Resources” or “DER”	means the electricity generators, electricity storage or electrical loads, and other Site equipment, machinery, Apparatus, materials, and other items used for the provision of the Flexibility Services as described in the Service Terms and applicable Flexibility Service Form;
“Distribution Tariff”	means the retail energy sales and distribution services tariff of the Buyer as approved and in effect and as made effective from time to time by the applicable public service commission;
“Distribution Franchise”	means the Buyer’s franchised territory as approved and in effect and as made from time to time by the applicable public service commission;
“Distribution System”	means a distribution network owned and/or operated by the holder of a Distribution Franchise;
“Environmental Laws”	means all applicable Environmental Laws and regulations, whether or not having the force of law, including, but not limited to the Resource Conservation and Recovery Act, the Hazardous Materials and Transportation Act, the New York Environmental Conservation Law, regulations of the Environmental Protection Agency, the Department of Transportation, and the New York State Department of Environmental Conservation (when applicable for the jurisdiction) issued pursuant thereto, in each case as amended;
“Facility”	means the generation, conversion, or storage facility, including the location of the projects thereof, from which the Flexibility Service will be provided;
“Federal Energy Regulatory Commission” or “FERC”	means the Federal Energy Regulatory Commission or its predecessor agency, the Federal Power Commission, or any successor agency;

“Federal Power Act” or “FPA”	means the Federal Power Act, as may be amended from time-to-time (<i>See</i> 16 U.S.C. § 796 <i>et seq.</i>);
“Financing Party”	means a third-party providing capital for a new-build Facility or Seller where applicable;
“Flexibility Services”	means, and more particularly described in the Service Terms and applicable Flexibility Service Form, the services to be provided by the Seller to the Buyer under and in accordance with this Agreement which give the Buyer the ability to manage the load at a Constraint Management Zone at certain points in time;
“Flexibility Service Form”	means the forms for detailing Flex Secure Services (APPENDIX C) or Flex Sustain Services (APPENDIX D) provided by Seller;
“Flex Secure Services”	means providing services from a DER that is able to respond to real-time dispatches from the Buyer and the dispatch signal is dependent on real time conditions;
“Flex Sustain Services”	means providing services from a single or aggregation of DERs that can operate at a flat level dispatch when called upon a day ahead by the Buyer, based on pre-agreed output and over fixed time window and a minimum run time defined for the DER and its bid;
“Force Majeure Event”	as defined in Section 7.1 of the General Terms and Conditions.
“Forms”	means where applicable, the relevant forms associated with the onboarding, procurement, contract award or operation of Flexibility Services;
“General Terms and Conditions”	means the general terms and conditions applicable to the provision of Flexibility Services to be provided under the Agreement;
“Good Utility Practice”	means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry for similarly situated facilities in the same State or region 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 or should have been 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 is intended to include a range of acceptable practices, methods, and acts generally accepted in the industry;
“Governmental Authority”	means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under

	any Applicable Law and includes any department, commission, bureau, board, administrative agency or regulatory body of any government;
“Interconnection Agreement”	means the interconnection agreement(s) entered into with the Buyer, which authorizes the interconnection of the Facility to the Buyer’s Distribution System (as the case may be);
“Insolvency Event”	means any pre-insolvency, creditor protection, or insolvency related actions, events, processes or proceedings, whether in or out of court, including the following (and any proceedings or steps leading to or in preparation of any of the following, whether actual or potential): any form of bankruptcy, liquidation, administration, receivership, voluntary arrangement, scheme of arrangement, restructuring plan or other compromise or arrangement or scheme with creditors, moratorium, stay or limitation of creditors’ rights, interim or provisional supervision by a court or court appointee, winding up or striking off, or any distress, execution, commercial rent arrears recovery or other process levied or exercised; or any similar actions, events, processes or proceedings in any relevant jurisdiction;
“Intellectual Property Rights”	means all intellectual property, including patents, trademarks, service marks, domain names, business and trading names, styles, logos and get-ups, rights in goodwill, database rights and rights in data, rights in designs, copyrights and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, rights in know-how, trade secrets and Confidential Information lists and other proprietary knowledge and information and all rights under licenses and consents in relation to any such rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world for their full term, including any renewals and extensions;
“Interconnection Point” or “Point of Interconnection”	means the point at which the Buyer takes delivery of Flexibility Service from each Facility, as set forth in the Interconnection Agreement;
“Losses”	means any and all direct, indirect, consequential damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs, expenses (including reasonable attorneys’ fees and court costs) and disbursements;
“New York Independent System Operator” or “NYISO”	means the organization responsible for managing New York’s electric grid and its competitive wholesale electric marketplace

“Non-Defaulting Party”	has the meaning given in Section 8.4 of the General Terms and Conditions;
“NERC”	means the North American Electric Reliability Corporation;
“Occupational Safety Laws”	means all occupational and safety laws and regulations, including, but not limited to the Occupational Safety and Health Act of 1970 (“OSHA”);
“Performance Data”	means such data relating to the performance of the Asset as may be notified by the Buyer to the Seller or by the Seller to the Buyer from time to time;
“Person”	means any individual, corporation, partnership (including, without limitation, association), joint stock company, trust, unincorporated organization or government or political subdivision thereof;
Public Utility Holding Buyer Act or “PUHCA”	means the Public Utility Holding Buyer Act of 2005, 42 U.S.C. §§ 16451 et seq. (2018) and the regulations of FERC thereunder at 18 C.F.R. §§ 366.1, et seq.;
“Rules of Interpretation”	means the rules of interpretation detailed in Section 16;
“Service Definitions”	means any definitional terms within the Service Terms (APPENDIX B) as applicable to Flexibility Services;
“Service Failure”	has the meaning given in Section 12 of the Service Terms (APPENDIX B);
“Service Requirements” or “Service Parameters”	means the specification that the Flexibility Services must be capable of meeting, as defined in the Service Terms (APPENDIX B) and applicable Flexibility Service Form;
“Service Period”	means the period within a Service Window during the Delivery Season where the Asset is expected to be available to provide Flexibility Services up to the Committed MW/MVAR;
“Service Terms”	means the service terms in APPENDIX B applicable to the provision of Flexibility Services which form part of the Agreement;
“Service Window”	means the day and time during the Delivery Season during which the Seller agrees to make Asset Available, and provide the Flexibility Services to the Buyer, as defined in the Service Terms and applicable Flexibility Service Form;
“Site”	means the real property on which the Facility is or will be located;
“Statutory and Tariff Requirements”	means the requirements placed on the Buyer and/or the Seller or affecting or governing the provision and/or use of the Flexibility Services by Applicable Law and/or the applicable Distribution Franchise or Distribution Tariff and/or a regulator and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety, and environmental matters;
“Term”	means the duration of the Agreement specified in the applicable Flexibility Service Form;

“Termination Notice”	has the meaning given in Section 8.4 of the General Terms and Conditions;
“Unavailability” (or “Unavailable”)	means the Flexibility Services, in accordance with the Service Requirements, are not Available to be delivered to the Buyer;

DRAFT

General Terms and Conditions

TABLE OF CONTENTS

	Page
1. Introduction.....	28
2. Commencement Date and Term	28
3. Flexibility Services Conditions and Obligations of Seller.....	28
4. Records and Audits	29
5. Service Failure	30
6. Contract Price, Costs, and Payments	31
7. Force Majeure	32
8. Events of Default	36
9. Liability, Indemnity, and Insurance	41
10. Representations and Warranties.....	44
11. Dispute Resolution.....	45
12. Prevention of Corruption, Bribery, and Slavery	46
13. Assignments.....	47
14. Governing Law and Jurisdiction.....	48
15. Change of Law	48
16. Rules of Interpretation	48
17. Press Releases, Marketing, and Confidentiality	48
18. Regulatory Filings.....	49
19. Severability	49
20. Amendment and Waiver	49
21. Entire Agreement	49
22. No Joint Venture or Partnership	49
23. Data Sharing.....	49
24. Counterparts	50
25. Intellectual Property Rights	50
26. Notices	50
27. Signature Authority.....	51
Appendix A: Insurance	53
Appendix B: Service Terms	57
Appendix C: Flex Secure Service Form.....	66

Appendix D: Flex Sustain Service Form73
Appendix E: Customer Base Load Baseline Verification Methodologies.....80
Appendix F: Facility Requirements85
Appendix G: Description of New-Build Facility.....101
Appendix H: Non-Performance Liquidated Damages.....105
Appendix I: Form of Letter of Credit.....108
Appendix J: Summary of Maintenance and Inspection Performed in Prior Calendar Year113
Appendix K: Reporting Milestones114
Appendix L: Project Milestones.....115
Appendix M: Form of Monthly Progress Report117
Appendix N: National Grid Contractor Background Check Program.....127
Appendix O: National Grid Safety Procedures N1401 and N1402.....129

DRAFT

1. Introduction

- 1.1 General Terms and Conditions.** Unless otherwise specifically agreed, these General Terms and Conditions shall apply to the provision of Flexibility Services by the Seller to the Buyer.
- 1.2** References to the “Agreement” in these General Terms and Conditions mean these General Terms and Conditions, the Definitions, the Service Terms and Service Definitions, the Forms, and the Appendices.

2. Commencement Date and Term

- 2.1 Commencement Date.** This Agreement shall commence on the Effective Date of the applicable Flexibility Service Form (APPENDIX C or D).
- 2.2 Term.** This Agreement shall terminate on the date provided in the applicable Flexibility Service Form, unless otherwise terminated pursuant to Section 8.4 (Rights of the Non-defaulting Party; Forward Contract) of these General Terms and Conditions or renewed at the Buyer’s sole discretion. Notice of renewal will be provided one (1) year in advance of the Delivery Season Start Date for the following year.

3. Flexibility Services Conditions and Obligations of Seller

- 3.1 Compliance with General Terms and Conditions.** The Flexibility Services shall be performed in accordance with these General Terms and Conditions, the Service Terms, the Appendices, the Forms, and any other applicable Associated Documents.
- 3.2 Compliance with Applicable Laws, Rules, Regulations, Tariffs and Good Utility Practice.** The Seller will ensure or procure the Availability of Assets and perform the Flexibility Services in compliance with the terms of the Agreement, Good Utility Practice, Buyer’s Distribution Tariff and all applicable laws, including, but not limited to the FPA and PUHCA, and all applicable rules and regulations, including, but limited to those of the Federal Energy Regulatory Commission (“FERC”) and North American Electric Reliability Corporation (“NERC”).
- 3.3 Protection of Safety and the Environment.** In connection with the Flexibility Services, Seller shall conduct all operations in a manner to ensure the safety of all personnel, the general public, and the protection of the environment and so as to avoid the risk of injury, death, loss, theft, or damage by accident, vandalism, sabotage, or any other means. In cases where one or more conflicting standards may be applicable, the Seller shall comply with the most stringent applicable standard. Seller shall impose the requirements of this provision upon its subcontractors and suppliers, if applicable.

- 3.4 Good Faith Dealing and Accuracy of Paperwork.** The Seller shall act diligently and in good faith in all of its dealings with the Buyer. The Seller shall ensure that all paperwork issued by or on behalf of the Seller to the Buyer (including, without limitation, invoices, and correspondence), is complete, accurate and clearly references any other appropriate and necessary information.
- 3.5 Availability of Seller.** The Seller must ensure that it is available on reasonable notice to provide such assistance or information as Buyer may reasonably require in connection with the provision of the contracted Flexibility Services.
- 3.6 Disclosure of Agreements that Impact Asset(s) Availability.** Seller has not entered into any agreement or arrangement with any other person to restrain that other person from entering into an agreement for provision of Flexibility Services with the Buyer and Seller agrees to disclose the existence of any agreement or arrangement the Seller may have in respect of the Asset(s) that provides Flexibility Services under the Agreement that could reasonably impact Availability of the Asset(s) or the ability of the Seller to perform its obligations under the Agreement.
- 3.7 Project Development Plan.** Where applicable, for each Facility in development, the Seller has (or has procured), and, if requested, will promptly provide to the Buyer a copy of the Development Plan for each Facility. Seller shall take all reasonable steps to achieve, or procure, the commissioning of each Facility on time and in accordance with the relevant Development Plan.
- 3.8 Seller Permits.** Seller has obtained and maintains in force for the Term all licenses, permissions, authorizations, consents, and permits needed for its Assets to supply the Flexibility Services in accordance with the terms of the Agreement.
- 3.9 Service Commencement Testing.** As discussed in more detail below in Section 6.4 of these General Terms and Conditions and in APPENDIX B (Service Terms), Seller and Buyer will agree to a reasonable period for testing Seller's ability to perform its obligations to provide Flexibility Services under this Agreement prior to the Delivery Season Start Date, including the Seller's ability to respond to Dispatch Instructions.
- 3.10 Free of Encumbrances.** Flexibility Service shall be delivered to Buyer free and clear of all liens, security interests, claims and encumbrances or any other interest therein or thereto by any person.

4. Records and Audits

- 4.1 Records.** The Seller shall keep proper and accurate records of all matters relating to the performance of its obligations under the Agreement.
- 4.2** The records shall be maintained in a form suitable for audit purposes and shall be retained for any period required by any Applicable Law, and in any event, for the Term of the Agreement and for a period of no less than:

4.2.1 seven (7) years after expiration or termination of the Agreement where such records contain or relate to financial data and/or Contract Data; or

4.2.2 unless specified otherwise in the Appendices, four (4) years after expiration or termination of the Agreement where such records relate to Performance Data.

4.3 Audits. The Buyer, or a reputable independent third-party auditor nominated by it, may, on reasonable notice, and in any event on not less than five (5) Business Days' notice (or such other period as may be specified in the Service Terms), to the Seller and during normal working hours, inspect and review the records for the purposes of verifying the Seller's compliance with its obligations under the Agreement and/or to meet any other audit or information requirement that may be required by Applicable Law and/or any regulatory body, judicial authority, or other Governmental Authority. The Seller shall cooperate fully and promptly with any such audit and/or inspection conducted by the Buyer and provide such reasonable assistance, at its own cost and expense, as may be required by the Buyer in relation to any audit.

5. Service Failure

5.1 In the event of a Service Failure by the Seller, the Buyer may require the Seller to, all at Seller's cost and expense:

5.1.1 provide the Buyer with a reasonably detailed written explanation as to the cause of the failure of service delivery;

5.1.2 implement a rectification plan approved by Buyer for improving performance and/or reducing the number of occurrences of Unavailability, including, at the Buyer's discretion, repeating performance tests to confirm Asset is capable of providing Flexibility Services and performance has improved;

5.1.3 propose a variation to the Service Requirements, and compensation if applicable, as specified in the Service Terms (APPENDIX B) or applicable Flexibility Service Form (APPENDIX C or D); or

5.1.4 take any other action that may be reasonably required by the Buyer in order to alleviate a Service Failure (as reasonably required in the circumstances).

5.2 Failure to Rectify Service Failure. In the event that: (a) the Seller fails to comply with the terms of Section 5.1 above; (b) the Seller's proposals are not accepted by the Buyer; (c) the Parties fail to reach agreement on any rectification actions; (d) the Buyer's performance tests do not show improved performance by Seller within ten (10) Days of the date of the notice; or (e) the Seller has had three (3) or more Service Failures over a period of three hundred sixty-five (365) consecutive days, then such failure will be deemed an Event of Default by Seller for the purposes of Section 8.1

of these General Terms and Conditions and Section 8.4 (Rights of the Non-defaulting Party; Forward Contract) shall apply.

6. Contract Price, Costs, and Payments

- 6.1 Contract Price.** The Seller shall provide Flexibility Service at the Constraint Management Zone on Buyer's Distribution System, and Buyer shall pay Seller the Contract Price as set forth in the applicable Flexibility Service Form (APPENDIX C or D).
- 6.2 Costs.** Seller shall be responsible for any costs incurred in meeting its obligations under this Agreement. Except for costs related to the interconnection of the Facility, Buyer shall be responsible for any costs imposed on or associated with the receipt of the Flexibility Service at and from the Constraint Management Zone.
- 6.3 Seller Obligations regarding Contract Price.** Seller has neither fixed nor adjusted any Contract Price under or in accordance with any agreement or arrangement with any other person, and that it has neither communicated to a person (other than its professional advisers) the amount or approximate amount of any Contract Price in connection with the Agreement (other than in confidence in order to obtain quotations necessary for insurance purposes).
- 6.4 Payment.** The Contract Price, any costs and other sums payable under the Agreement shall be paid in accordance with the Agreement.
- 6.4.1 Taxes.** The price(s) paid to the Seller for the Flexibility Services and calculations thereof which are set forth in the Service Terms (APPENDIX B) and applicable Flexibility Service Form (APPENDIX C or D) include all taxes and fees. Buyer will not reimburse Seller for any taxes or fees imposed on Seller.
- 6.4.2 Test Energy.** In accordance with Article 6 of the Service Terms (APPENDIX B), the Buyer may test the output of the applicable Available Assets. Buyer shall not be obligated to pay for any test energy accepted prior to the Delivery Season Start Date of the Term or Commercial Operations Date. Seller shall not be obligated to pay for any test energy accepted prior to the first Delivery Season Start Date of the Term.
- 6.4.3 Meter Readings for Billing.** Seller acknowledges that in order to bill on a timely basis, the measurement of the Flexibility Services shall be based upon Buyer's meter readings at the Asset(s) Meter where applicable. The Seller and Buyer will agree to the appropriate Account Number for metering the Assets(s).
- 6.4.4 Billing Period.** Buyer will supply Seller an invoice, or where applicable, a confirmation of acceptance against an invoice issued by Buyer for the Flexibility Services provided in the Delivery Season within sixty (60) Business Days of the end of the month to which such invoice refers. Seller

shall invoice Buyer for the Flexibility Services provided within the Delivery Season on a yearly basis no earlier than the applicable Delivery Season End Date and no later than March 31 of the following calendar year.

6.4.5 Invoice Timing. Standard payment terms are “2% 10, Net 60.” Buyer’s Accounts Payables Department shall provide a proper invoice and any required supporting documentation, subject to the Buyer’s right to contest, in good faith, all or any part of the charges set forth therein. Payment shall not relieve Seller from any responsibilities or obligations under the Agreement, nor shall Buyer’s payment constitute acceptance or a waiver of any claim arising hereunder. All payments shall be subject to correction or adjustment in subsequent payments. Buyer may withhold payment, in whole or in part, to the extent and for the time reasonably necessary to protect Buyer from loss caused by Seller or its subcontractors.

6.5 Reduction of payment. See applicable Article 13 (Performance) and Article 14 (Payment) of the Service Terms (APPENDIX B).

6.6 Withholding and recovery of payments. See Section 8.4 (Rights of the Non-Defaulting Party; Forward Contract) and applicable Service Agreement terms.

7. Force Majeure

7.1 Definition of Force Majeure. The term “Force Majeure”, as used in this Agreement, means any occurrence that:

7.1.1 in whole or in part delays or prevents a Party’s performance under this Agreement;

7.1.2 is not the direct or indirect result of the fault or negligence of that Party;

7.1.3 is not within the control of that Party notwithstanding such Party having taken all reasonable precautions and measures in order to prevent or avoid such event; and

7.1.4 the Party has been unable to overcome by the exercise of due diligence.

7.2 Events That Could Qualify as Force Majeure. Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

7.2.1 acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

7.2.2 war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation, or confiscation; or

7.2.3 except as set forth in Section 7.3.10, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

7.3 Exclusions From Force Majeure. Force Majeure does not include:

7.3.1 any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure;

7.3.2 any full or partial reduction in the availability of the Asset that is caused by or arises from (i) a mechanical or equipment breakdown or (ii) other mishap or events or conditions attributable to normal wear and tear or defects, unless such mishap is caused by Force Majeure;

7.3.3 changes in market conditions that affect the Seller's costs, or that affect demand or price for any of Seller's products, or that otherwise render this Agreement uneconomic or unprofitable for Seller;

7.3.4 Seller's inability to obtain Governmental Approvals or other necessary approvals, such as land rights, for the construction, ownership, operation, maintenance, or control of any Available Asset or the Buyer-Owned Interconnection Facilities, or Seller's loss of any such Governmental Approvals or other approvals once obtained;

7.3.5 the lack of wind, sun, or any other resource of an inherently intermittent nature;

7.3.6 Seller's inability to obtain sufficient fuel, power, or materials to operate any Available Asset, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;

7.3.7 Seller's failure to obtain additional funds, tax credits, or attributes, including funds, tax credits or attributes authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

7.3.8 a forced outage except where such forced outage is caused by an event of Force Majeure;

7.3.9 If applicable, litigation or administrative or judicial action pertaining to the Agreement, the acquisition, maintenance or renewal of financing or any Governmental Approvals, or the design, siting, construction, ownership, operation, maintenance, or control of any Available Asset, the Buyer-Owned Interconnection Facilities or the Buyer System;

- 7.3.10** a strike, work stoppage or labor dispute limited only to any one or more of the Indemnified Seller Parties or any other third party employed by Seller to work on the Facility;
- 7.3.11** the ongoing COVID-19 pandemic as it is a known and no longer unforeseeable event; or
- 7.3.12** any full or partial reduction in the availability of any Available Asset to deliver applicable product as and when required under this Agreement which is caused by any third party including, without limitation, any vendor or supplier of Seller or Buyer, except to the extent due to Force Majeure.
- 7.4** **Satisfaction of Certain Conditions.** Section 7.6 (Termination for Force Majeure) and Section 7.7 (Effect of Force Majeure), and Section 3.1 (Guaranteed Project Milestones Including Commercial Operation) of APPENDIX F (Facility Requirements), defer or limit certain liabilities of a Party for delay and/or failure in performance to the extent such delay or failure is the result of conditions or events of Force Majeure; provided, however, that a Non-performing Party is only entitled to such limitations or deferrals of liabilities as and to the extent the following conditions are satisfied:
- 7.4.1** the Non-performing Party gives the other Party, within five (5) Days after the Non-performing Party becomes aware or should have become aware of the Force Majeure condition or event, but in any event no later than thirty (30) Days after the Force Majeure condition or event begins, written notice (the “Force Majeure Notice”) stating that the Non-performing Party considers such condition or event to constitute Force Majeure and describing the particulars of such Force Majeure condition or event, including the date the Force Majeure commenced;
- 7.4.2** the Non-performing Party gives the other Party, within fourteen (14) Days Force Majeure Notice was or should have been provided, a written explanation of the Force Majeure condition or event and its effect on the Non-performing Party’s performance, which explanation shall include evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure;
- 7.4.3** the suspension of performance is of no greater scope and of no longer duration than is required by the condition or event of Force Majeure;
- 7.4.4** the Non-performing Party exercises commercially reasonable efforts to remedy its inability to perform and provides written weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- 7.4.5** when the condition or event of Force Majeure ends and the Non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

- 7.5 Guaranteed Project Milestones Including Commercial Operations.** The Parties shall have the rights and obligations set forth in Section 3.1 (Guaranteed Project Milestones Including Commercial Operation) of APPENDIX F (Facility Requirements) in the event a condition or event of Force Majeure affects the achievement of a Guaranteed Project Milestone Date, including the Guaranteed Commercial Operations Date.
- 7.6 Termination for Force Majeure.** If Force Majeure delays or prevents Non-performing Party's performance for more than one hundred fifty (150) days from the occurrence or inception of the Force Majeure, as stated in the Force Majeure Notice, and such delay or failure of performance would have otherwise constituted an Event of Default under Article 8 (Event of Default), the Other Party shall have the right to terminate this Agreement by written notice. Such notice shall designate the date such termination is to be effective, which date shall be no later than thirty (30) Days after such notice is deemed to be received by Non-performing Party whose performance has been delayed or prevented. In the event of termination pursuant to this Section 7.6 (Termination for Force Majeure), neither Party shall be liable for any damages nor have any obligations to the other, except as provided in Section 8.8 (Survival of Obligations).
- 7.7 Effect of Force Majeure.** Other than as provided in Section 7.6 (Termination for Force Majeure) and Section 3.1 (Guaranteed Project Milestones Including Commercial Operation) of APPENDIX F (Facility Requirements), neither Party shall be responsible or liable for any delays or failures in its performance under this Agreement as and to the extent such delays or failures are substantially caused by conditions or events of Force Majeure.
- 7.8 No Relief of Other Obligations.** Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (excluding payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.
- 7.9 No Extension of the Term.** In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.
- 7.10 Casualty Events.** Upon the occurrence of a casualty event, which destroys all or a substantial portion of a Facility needed to provide Flexibility Services ("Casualty Event"):
- 7.10.1** Seller shall promptly notify Buyer in writing of such Casualty Event ("Casualty Notice").
- 7.10.2** Within ninety (90) Business Days after providing Buyer a Casualty Notice, Seller shall notify Buyer in writing whether it will restore the Facility such that it may resume Flexibility Service ("Restoration Notice").

7.10.3 In the event Seller notifies Buyer of its election to restore the Facility in its Restoration Notice, Seller shall complete such restoration and resume the Flexibility Service in no more than the one hundred fifty (150) days from the date of the Casualty Event (“Restoration Period”). Other than amounts due and owing for the Flexibility Service provided up and until the Casualty Event, Buyer shall not be required to make payments during the Restoration Period. Further, the term of this Agreement shall be extended by an amount equal to the number of days between the date on which the Casualty Event occurred and the end of the Restoration Period.

7.10.4 In the event Seller notifies Buyer of its election not to restore the Facility in its Restoration Notice, this Agreement shall terminate. In the event of such a termination of this Agreement with respect to the Facility, the Parties shall not be released from any previously incurred payment or other previously incurred obligation arising under this Agreement for Flexibility Services actually provided.

8. Events of Default

8.1 Events of Default by Seller. In addition to the events of default articulated elsewhere herein, the occurrence of any of the following shall constitute an Event of Default by Seller:

8.1.1 if at any time during the Term, Seller delivers or attempts to deliver Flexibility Services that were not provided by Asset(s);

8.1.2 if applicable, after commencement of installation of the Facility, Seller abandons installation of the Facility for reasons other than a Force Majeure Event and such unexcused absence exceeds thirty (30) consecutive days and Seller fails to resume installation within twenty (20) days after receipt of notice from Buyer stating that, in Buyer’s reasonable determination, Seller has abandoned installation of the Facility beyond such period.

8.1.3 if applicable, if at any time subsequent to the Commercial Operations Date of Facility, the Facility is unavailable to provide the Committed MW/MVAR as and when required under this Agreement for a period of three hundred sixty-five (365) or more consecutive days;

8.1.4 if applicable, if at any time during the Term, Seller fails to satisfy the requirements of Article 9 (Credit Assurance and Security) of APPENDIX F (Facility Requirements);

8.1.5 if at any time subsequent to the Commencement Date, Seller does not respond to a Dispatch Instruction received in accordance herewith because Seller purposefully and intentionally used Assets to capture another revenue opportunity (“Alternative Opportunity Intentional Dispatch Failure”).

- 8.1.6** at any time during the Term, Seller attempts to assign or sell Asset(s) without Buyer's prior written consent.
- 8.1.7** if applicable, if at any time, Seller defaults under the Interconnection Agreement or the Interconnection Agreement is terminated; or
- 8.1.8** if applicable, if at any time subsequent to the Commercial Operations Date, Seller fails to install, operate, maintain, or repair the Facility in accordance with Good Utility Practice if such failure is not cured within thirty (30) days after written notice of such failure from Buyer unless such failure cannot be cured with-in said thirty (30) day period and Seller is making commercially reasonable efforts to cure such failure, in which case Seller shall have a cure period of three hundred sixty-five (365) days after Buyer's written notice of such failure.
- 8.2 Events of Default by a Party.** The occurrence of any of the following during the Term of the Agreement shall constitute an Event of Default by the Party responsible for the failure, action, or breach in question:

 - 8.2.1** The failure to make any payment required pursuant to this Agreement when due if such failure is not cured within ten (10) Business Days after written notice is received by the Party failing to make such payment.
 - 8.2.2** Any representation, warranty or certification made by such Party herein or in any Associated Document is false and misleading in any material respect when made.
 - 8.2.3** Such Party becomes insolvent, or makes an assignment for the benefit of creditors (other than an assignment to a Financing Party pursuant to financing documents) or fails generally to pay its debts as they become due; such Party has an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted entered against it, or commences a voluntary case under the bankruptcy laws as now or hereafter constituted, or files any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law or regulation, or files any answer admitting the material allegations of any petition filed against it in such proceeding; or such Party seeks or consents to or acquiesces in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets; or such Party takes action looking to its dissolution or liquidation; if within sixty (60) Business Days after commencement of any proceedings against such Party seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings have not been dismissed; or within sixty (60) Business Days after the appointment of, or taking possession by, any custodian, trustee, receiver or

liquidator of any or of all or a substantial part of the properties or assets of such Party, without the consent or acquiescence of such Party, any such appointment or possession has not been vacated or terminated.

8.2.4 A Party, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Agreement, if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from the other Party; provided, however, that if it is objectively impossible to cure the breach or default in question within said thirty (30) Day period (i.e., if the breach or default in question is one that could not be cured within said thirty (30) Day period by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure within said thirty (30) Day period), then, for so long as the Non-performing Party is making the same effort to cure such breach or default as would be expected of an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure, the Non-performing Party shall have a cure period equal to the shorter of (i) the duration of the period within which a cure could reasonably be expected to be achieved by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure and (ii) a period of one hundred twenty (120) days beginning on the date that written notice of such breach or default is received by the Non-defaulting Party, as such term is defined in Section 8.4.

8.3 Cure/Grace Periods. Before becoming an Event of Default, the occurrences set forth in Section 8.1 (Events of Default by Seller) and Section 8.2 (Events of Default by a Party) are subject to the following cure/grace periods:

8.3.1 If the occurrence is not the result of Force Majeure, the Non-performing Party shall be entitled to a cure period to the limited extent expressly set forth in the applicable provision of Section 8.1 (Events of Default by Seller) or Section 8.2 (Events of Default by a Party); or

8.3.2 If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in Section 7.4 (Satisfaction of Certain Conditions) are satisfied, the Non-performing Party shall be entitled to a grace period as provided in Section 7.6 (Termination for Force Majeure), which shall apply in lieu of any cure periods provided in Section 8.1 (Events of Default by Seller) and Section 8.2 (Events of Default by a Party).

8.4 Rights of the Non-defaulting Party; Forward Contract. If an Event of Default shall have occurred and be continuing, the Party who is not the defaulting Party (“Non-defaulting Party”) shall have the right (i) to terminate this Agreement by sending written notice to the defaulting Party (“Defaulting Party”) as provided in this Section 8.4 (Rights of the Non-defaulting Party; Forward Contract); (ii) to

withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) exercise any other right or remedy available at law or in equity to the extent permitted under this Agreement. A notice terminating this Agreement (a “Termination Notice”) pursuant to this Section 8.4 (Rights of the Non-defaulting Party; Forward Contract) shall designate the Business Day such termination is to be effective which Business Day shall be no later than thirty (30) Days after such notice is deemed to be received by the Defaulting Party and not earlier than the first to occur of the Business Day such notice is deemed to be received by the Defaulting Party or the Business Day following the expiration of any period afforded the Defaulting Party under Section 8.1 (Events of Default by Seller) or Section 8.2 (Events of Default by a Party) to cure the default in question. Where the Defaulting Party fails to respond to a Termination Notice in accordance with this Section 8.4, the Defaulting Party shall be deemed to have accepted the Termination Notice. Without limitation to the generality of the foregoing provisions of this Section 8.4 (Rights of the Non-Defaulting Party; Forward Contract), the Parties agree that, under 11 U.S.C. §362(b)(6), this Agreement is a “forward contract” and the Buyer is a “forward contract merchant” such that upon the occurrence of an Event of Default by Seller under Section 8.1 (Events of Default by a Seller) or Section 8.2 (Events of Default by a Party), this Agreement may be terminated by Buyer as provided in this Agreement notwithstanding any bankruptcy petition affecting Seller.

- 8.5 Force Majeure.** To the extent a Non-performing Party is entitled to defer certain liabilities pursuant to Article 7 (Force Majeure) of these General Terms and Conditions, the permitted period of deferral shall be governed by Section 7.6 (Termination for Force Majeure) in lieu of this Article 8 (Events of Default).
- 8.6 Guaranteed Project Milestones Including Guaranteed Commercial Operations Date.** If applicable, notwithstanding any other provision of this Article 8 (Events of Default) to the contrary, any failure of Seller to achieve any of the Guaranteed Project Milestones by the applicable Guaranteed Project Milestone Date, including Commercial Operations by the Guaranteed Commercial Operations Date, shall be governed by Section 3.1 (Guaranteed Project Milestones Including Commercial Operation) of APPENDIX F (Facility Requirements) in lieu of this Article 8 (Events of Default).
- 8.7 Equitable Remedies.** Seller acknowledges that Buyer is a public utility and is relying upon Seller’s performance of its obligations under this Agreement, and that Buyer and/or its customers may suffer irreparable injury as a result of the failure of Seller to perform any of such obligations, whether or not such failure constitutes an Event of Default or otherwise gives rise to one or more of the remedies set forth in Section 8.4 (Rights of the Non-defaulting Party; Forward Contract). Accordingly, the remedies set forth in Section 8.4 (Rights of the Non-defaulting Party; Forward Contract) shall not limit or otherwise affect Buyer’s right to seek specific performance injunctions or other available equitable remedies for Seller’s failure to perform any of its obligations under this Agreement, irrespective of whether such failure constitutes an Event of Default. Nothing herein shall limit or otherwise

affect Seller's right to seek equitable remedies for Buyer's failure to perform any of its obligations under this Agreement, irrespective of whether such failure constitutes an Event of Default.

8.8 Survival of Obligations. The rights and obligations that are intended to survive a termination of this Agreement are all of those that arise from Seller's or Buyer's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:

8.8.1 Article 4 (Records and Audit);

8.8.2 Article 5 (Service Failure);

8.8.3 Article 6 (Contract Price, Costs, and Payments);

8.8.4 Article 7 (Events of Default);

8.8.5 Article 9 (Liability, Indemnity, and Insurance);

8.8.6 Article 11 (Dispute Resolution);

8.8.7 Article 14 (Governing Law and Jurisdiction);

8.8.8 Article 20 (Amendment and Waiver);

8.8.9 Section Definitions; and

8.8.10 any other provision of the Agreement that expressly or by implication is intended to come into, or continue in force, on or after termination of the Agreement.

8.9 Accrued Liabilities. On termination, the rights and liabilities of the Parties that have accrued before termination shall subsist.

8.10 Consequences of Termination or Expiration.

8.10.1 Return of Confidential Information. Where requested by the other Party, on termination or expiration of the Agreement each Party shall destroy or return Confidential Information provided by the other Party for the purpose of the Agreement.

8.10.2 Final Invoice. Following termination or expiration of the Agreement, the Seller shall promptly at the Seller's cost (a) deliver to the Buyer for approval a final invoice detailing all monies due to it under the Agreement; and (b) submit to the Buyer within thirty (30) Days all invoices with supporting documents for payment of all outstanding sums in connection with the provision of the Flexibility Services.

8.10.3 Recovery of Losses as Result of Event of Default. Where the Buyer terminates the Agreement as a result of Event of Default by Seller pursuant to Section 8.1 (Events of Default by Seller), the Buyer may recover from the Seller any and all costs, losses and expenses reasonably incurred by the Buyer as a result of such termination, including where relevant such costs, losses and expenses associated with appointing a replacement Seller. Such costs, losses and expenses shall be payable by the Seller to the Buyer provided that the liability of the Seller in respect of this Section 8.10.3 shall not exceed the Maximum Liability of the Seller provided in Section 9.1.2.

9. Liability, Indemnity, and Insurance

9.1 Limitation of Remedies and Liability

9.1.1 EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION 9.1 SHALL LIMIT ANY OF (I) THE THIRD PARTY INDEMNIFICATION OBLIGATIONS OF EITHER PARTY UNDER SECTION 9.2 OF THESE GENERAL TERMS AND CONDITIONS; (II) THE LIABILITY OF EITHER PARTY FOR LIQUIDATED OR DELAY DAMAGES UNDER THIS AGREEMENT; (III) THE LIABILITY OF EITHER PARTY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; (IV) THE LIABILITY OF EITHER PARTY FOR PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH); OR (V) SELLER'S LIABILITY FOR FINES AND PENALTIES IMPOSED BY GOVERNMENTAL AUTHORITIES ON BUYER RELATED TO SELLER'S ACTS OR OMISSIONS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY,

WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9.1.2 Maximum Liability of Seller. THE TOTAL AGGREGATE LIABILITY OF SELLER IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE GREATER OF (A) TWO TIMES THE AMOUNT PAID OR PAYABLE BY BUYER TO SELLER IN THE ONE YEAR PRECEDING THE CLAIM OR (B) TWO TIMES THE AMOUNT PAYABLE BY BUYER TO SELLER IN THE YEAR THE CLAIM OCCURED. THE AMOUNT PAYABLE IS DETERMINED BY THE CONTRACT PRICE. THE FOREGOING LIMITATION ON MAXIMUM LIABILITY DOES NOT APPLY TO AMOUNTS (I) RESULTING FROM SELLER'S FRAUD, WILLFUL MISCONDUCT, OR GROSSLY NEGLIGENT ACTS OR OMISSIONS; (II) SELLER'S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 9.2 OF THIS AGREEMENT; (III) SELLER'S LIABILITY FOR LIQUIDATED OR DELAY DAMAGES UNDER THIS AGREEMENT; OR (IV) SELLER'S LIABILITY FOR PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH).

9.1.3 Maximum Liability of Buyer. THE TOTAL AGGREGATE LIABILITY OF BUYER IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE GREATER OF (A) THE AMOUNT PAID OR PAYABLE BY BUYER TO SELLER IN THE ONE YEAR PRECEDING THE CLAIM OR (B) THE AMOUNT PAYABLE BY BUYER TO SELLER IN THE YEAR THE CLAIM OCCURS. THE AMOUNT PAYABLE IS DETERMINED BY THE CONTRACT PRICE. THE FOREGOING LIMITATION ON MAXIMUM LIABILITY DOES NOT APPLY TO AMOUNTS (I) RESULTING FROM BUYER'S FRAUD, WILLFUL MISCONDUCT, OR GROSSLY NEGLIGENT ACTS OR OMISSIONS; OR (II) BUYER'S LIABILITY FOR PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH).

9.2 Indemnification

9.2.1 Seller Indemnification. Subject to the limitations set forth in this Agreement, Seller shall indemnify, defend and hold Buyer, its Affiliates and their directors, officers, employees, agents, contractors, subcontractors, customers, and invitees ("Buyer's Indemnified Parties"), harmless from and against all Losses incurred by the Buyer's Indemnified Parties relating to

the Flexibility Services or Seller's breach of this Agreement, to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any person or loss or damage to property to the extent arising out of Seller's (or its contractor's) acts or omissions; (ii) Seller's violation of Applicable Law or Governmental Approval; (iii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Asset; or (iv) fines and/or penalties imposed by Governmental Authorities on Buyer related to Seller's acts or omissions. If applicable, such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Asset shall not extend to incidents occurring on Buyer's side of the Point of Interconnection except to the extent caused by incidents on Seller's side of the Point of Interconnection. Seller shall not be obligated to indemnify Buyer or any Buyer Indemnified Party for any Loss to the extent such Loss is finally determined to have been directly caused by the negligence or willful misconduct of Buyer or any Buyer Indemnified Party.

9.2.2 Buyer Indemnification. Buyer shall indemnify, defend, and hold Seller, its, directors, officers, employees, and agents, ("Seller's Indemnified Parties"), harmless from and against all Losses incurred by the Seller's Indemnified Parties to the extent such arise from or out of (i) any claim for injury to or death of any person or loss or damage to property arising out of Buyer's acts or omissions; or (ii) Buyer's violation of Applicable Law. Buyer shall not be obligated to indemnify Seller or any Seller Indemnified Parties for any Loss if such Loss is due to the negligence, contractual breach or willful misconduct of Seller or any Seller Indemnified Party.

9.2.3 Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify the facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

9.2.4 Defense of Claims. The Indemnifying Party shall assume the defense or the matter for which indemnification is sought hereunder. The Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld).

9.2.5 Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

9.3 Insurance Term. Seller shall maintain for the duration of the Term the insurance set forth in APPENDIX A.

10. Representations and Warranties

10.1 Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:

10.1.1 General. Other than those warranties and guaranties expressly set forth in the terms of this Agreement, neither Party makes any warranties and guaranties of any kind whatsoever, express, implied, oral, written, or otherwise.

10.1.2 Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation; is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations under this Agreement; and has the power and authority to enter into this Agreement and each other Associated Document and to perform its obligations hereunder and thereunder.

10.1.3 No Conflict. The execution of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; or (3) any law or regulation.

10.1.4 Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

10.1.5 No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any Governmental Authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

10.1.6 Ability to Carry On Business. It has all of the necessary corporate power and authority to own, lease and operate its assets and to carry on its business

as presently conducted and as it will be conducted pursuant to this Agreement.

10.1.7 Complete and Accurate Information. All information it provides to the other Party will be complete and accurate except to the extent disclosed to the other Party.

10.1.8 No Bankruptcy or Insolvency. It is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in being or becoming bankrupt or insolvent.

11. Dispute Resolution

11.1 Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a “Dispute”) within fifteen (15) Days after the date that a Party gives written notice of such Dispute to the other Party.

11.2 Executive Management Negotiations. If such representatives of the Parties are unable to resolve a Dispute within such fifteen (15) Day period, either Party may refer the matter to the designated senior officers of their respective companies (“Executive(s)”), who shall have authority to settle the dispute. Within five (5) Business Days of such referral, each Party shall provide the other Party written notice confirming the referral and identifying the name and title of the Executive who will represent such Party. Within five (5) Business Days after the referral date the Executives shall establish a mutually acceptable location and date to meet (either in person or by telephone) as soon as reasonably possible (and in all events within twenty (20) Days thereafter). After the initial meeting, the Executives shall meet as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. All communications and writings exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties (i.e., shall be without prejudice). If the matter is not resolved within thirty-five (35) Days after the start of negotiations, or if either Party refuses or fails to meet and negotiate, either Party may initiate mediation of the Dispute pursuant to Section 11.3 (Mediation) below.

11.3 Mediation. If, after such negotiation in accordance with Section 11.2 (Executive Management Negotiations), the Dispute remains unresolved, either Party may require that a non-binding mediation take place in New York, New York or such other location that is mutually agreeable to the Parties. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request an impartial a mediator. The mediator’s fee and expenses shall be paid one-half by each Party. The Parties

shall endeavor to hold the mediation within ten (10) Days after the end of the negotiation period set forth in Section 11.2 (Executive Management Negotiations).

12. Prevention of Corruption, Bribery, and Slavery

12.1 Duty to Act in Ethical Manner. 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 sellers, regulatory agencies or other third parties; provision of enticements to the Buyer'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 Buyer that to Seller's reasonable knowledge at the time of execution of this Agreement, its subcontractors, its and their Affiliates, employees, officers, agents, and shareholders, have not committed and will not commit any Prohibited Act. If the Seller, any subcontractor, any of its or their Affiliates, employees, officers, agents, or shareholders, commit any Prohibited Act, then the Buyer shall be entitled to act in accordance with Sections 12.23 through 12.6 (inclusive) below.

12.2 Default and Termination Due to Prohibited Acts Not Independent of Seller/Subcontractor. 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 Seller shall be in default and Buyer may terminate this Agreement pursuant to Section 8.4 (Rights of the Non-defaulting Party; Forward Contract) 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 Seller shall be in default and Buyer may terminate this Agreement pursuant to Section 8.4 (Rights of the Non-defaulting Party; Forward Contract), unless the Seller terminates the relevant subcontract and ensures that the performance of the subcontractor's obligations in relation to the Agreement are performed by another person.

12.3 Default and Termination Due to Prohibited Acts Independent of Seller/Subcontractor. 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 Seller shall be in default and Buyer may terminate this Agreement pursuant to Section 8.4 (Rights of the Non-defaulting Party; Forward Contract), unless 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 Agreement are performed by another person. If the Prohibited Act is committed by an employee or agent of a subcontractor acting independently of that subcontractor, then Seller shall be in default and Buyer may terminate this Agreement pursuant to Section 8.4 (Rights of the Non-defaulting Party; Forward Contract), unless 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 Agreement are carried out by another person.

12.4 Notice of Termination. The Buyer shall specify, in any notice of termination under this Article 12 (Prevention of Corruption, Bribery and Slavery) the general nature of the relevant Prohibited Act and the identity of the person whom the Buyer believes has committed such Prohibited Act.

12.5 Seller's Duty to Inform Personnel and Subcontractors and Seller's Policies and Procedures. Without prejudice to the other provisions of this Article 12 (Prevention of Corruption, Bribery and Slavery), the Seller shall ensure that:

12.5.1 all Seller personnel are fully aware of the Buyer'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 Buyer 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 Article 12 (Prevention of Corruption, Bribery and Slavery); and

12.5.2 it has, and shall maintain in place throughout the term of the Agreement, its own policies and procedures, (including adequate procedures under the Bribery Act 2010 and the Modern Slavery Act 2015), to ensure compliance with the Buyer'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 Buyer and will enforce them where appropriate.

12.6 Effect of Termination The termination of the Agreement pursuant to this Article 12 (Prevention of Corruption, Bribery and Slavery) shall entitle the Buyer and each of its Affiliates to terminate any other contracts between the Seller and the Buyer, or the Seller and such Affiliate (as appropriate) on written notice to the Seller, under their respective termination-for-cause provisions.

13. Assignments

13.1 Binding Upon Successors and Assigns. This Agreement, 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.

13.2 Prior Written Consent of Buyer. Except as otherwise provided in this Section 13.2, Seller shall not (i) assign this Agreement or any of its rights or obligations hereunder, or (ii) if applicable, transfer or assign any direct interest in all or any portion of the Asset, in each case without the prior written consent of Buyer. Notwithstanding the foregoing, to the extent Seller makes a request of Buyer to transfer or assign any interest in all or any portion of the Asset to an Affiliate of the Seller, Buyer's consent shall not be unreasonably withheld, conditioned or delayed; furthermore, Buyer may assign all of its rights and obligations under this Agreement without the consent of Seller to any Affiliate of the Buyer with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement. Seller may also collaterally assign the Agreement for

financing purposes, with reasonable advance notice, but without the consent of Buyer. Prior to any Change of Control of Seller, Seller will request the prior written consent of Buyer, such consent not to be unreasonably withheld, conditioned or delayed. Assignments not permitted by this Section 13.2 shall be void and of no effect.

- 13.3 Timing of Requests for Consent.** Any requests for consent of Buyer under Section 13.2 (Prior Written Consent of Buyer) shall be provided at least thirty (30) Business Days in advance of the closing date of the proposed transaction. In connection with any consent of Buyer requested under Section 13.2, Seller shall provide certification to Buyer as to receipt by Seller of all approvals of Governmental Authorities required in connection with such transaction and such other matters as Buyer shall reasonably require.
- 13.4 Buyer's Right to Terminate Agreement after Change in Ownership.** The Buyer reserves the right to terminate the Agreement in accordance with Section 8.4 (Rights of the Non-defaulting Party; Forward Contract) if a change in ownership of the Seller occurs and the new owner of the Seller fails to meet any of the Buyer's reasonable due diligence checks as notified to the Seller.
- 14. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of New York, including principles of good faith and fair dealing that apply to all dealings under this Agreement. Only the courts of New York, shall have jurisdiction over the Agreement and any controversies arising out of the Agreement; any controversies arising out of the Agreement shall be submitted only to the courts of New York.
- 15. Change of Law.** In the event of a change of law or regulation that conflicts with the terms and conditions of this Agreement, renders provision of Flexibility Services impossible, or renders the provision of Flexibility Services uneconomic, Buyer shall work in good faith with the Seller to amend this Agreement and seek any necessary approvals to maintain the original spirit of the division of economic value and maximized value creation.
- 16. Rules of Interpretation.** Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words "hereto", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "including" shall be deemed to be followed by the words "without limitation". In the event of any conflict between the text of this Agreement and the contents of an Appendix hereto, the text of this Agreement shall govern.
- 17. Press Releases, Marketing, and Confidentiality**
- 17.1 Press Releases.** The Parties acknowledge that they may each desire to publicize information about this Agreement and the Asset and may collaborate on such. However, the Parties agree that each may not disclose or make independent press releases about entering into this Agreement, the size and location of the Asset, or

the identity of the other Party, without the written approval of the other Party in advance of a press release.

- 17.2 Marketing.** Buyer acknowledges the right of the Seller to publicize the Asset and, upon the prior written approval from Buyer, the existence of this Agreement (though the terms of this Agreement are considered Confidential Information, though may be disclosed to applicable Government Authorities) insofar as Confidential Information is not breached or disclosed.
- 17.3 Limits on Disclosure of Confidential Information.** The Parties shall be bound by the executed Non-Disclosure Agreement until termination or expiration of this Agreement or the Non-Disclosure Agreement, whichever occurs later.
- 18. Regulatory Filings.** It is understood and agreed that the Agreement or parts thereof may be required to be filed with a state regulatory agency having jurisdiction over the Buyer or one of its Affiliates prior to acceptance in order for it to become fully effective and binding, or after execution as part of Buyer's obligations to its regulators.
- 19. Severability.** If any non-material provision of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party's benefits, the matter shall be resolved under Article 11 (Dispute Resolution) in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.
- 20. Amendment and Waiver.** This Agreement may only be amended by a document signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a document signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.
- 21. Entire Agreement.** This Agreement together with all Appendices, Forms, and Associated Documents attached constitutes the entire agreement between the Parties and supersedes any previous oral or written service agreements which shall cease to have any further effect.
- 22. No Joint Venture or Partnership.** This Agreement does not create a joint venture, partnership, or other form of business association between the Parties. Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf, including but not limited to the making of any representations or warranty and the exercise of any right or power.
- 23. Data Sharing.** Where applicable, Parties shall provide such Asset SCADA System (or similar) data, forecasts, and other production, resource, and component information which is reasonably requested by the other Party and shall generally collaborate on data sharing

as is commercially reasonable and in good faith. All data sharing shall be done in accordance with any associated Interconnection Agreement and Buyer's data security requirements.

24. Counterparts

24.1 Agreement May be Executed in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

24.2 Effectiveness Upon Delivery. Where executed in counterparts: (a) the Agreement shall not take effect until all of the counterparts have been delivered; and (b) delivery will take place when the date of delivery is agreed between the Parties after execution of the Agreement as evidenced by the date at the top of the Agreement.

24.3 Effectiveness Upon Execution. Where not executed in counterparts, the Agreement shall take effect after its execution upon the date agreed between the Parties as evidenced by the date at the top of the Agreement.

25. Intellectual Property Rights. The Agreement does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiration, belong to or be licensed to the Party providing that intellectual property and neither Party shall make any use of the other Party's intellectual property other than to the extent reasonably necessary in performing its obligations pursuant to the Agreement, provided that nothing in this Article 25 shall operate so as to exclude any non-excludable rights of either Party.

26. Notices

26.1 Addresses. Unless otherwise specified in the Service Terms, all notices shall be submitted in accordance with the processes, and to the relevant addresses, set out in the Appendices and Forms.

26.2 Written Notices and Delivery Requirements. All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be (i) delivered by hand; (ii) delivered by certified mail or a recognized overnight delivery service; or (iii) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement).

26.3 Receipt of Notice. A notice shall be deemed to have been received:

26.3.1 if delivered by hand or recorded delivery service within Business Hours at the time of delivery or, if delivered by hand outside Business Hours, at the next start of Business Hours.

26.3.2 If delivered by email, the Day when acknowledged by the recipient, or where outside of Business Hours on the first Business Day thereafter.

26.4 Verification of Notice. In verifying service of a notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and mailed.

26.5 Notice of Legal Proceedings. This Article 26.5 does not apply to the service of any legal proceedings, or other documents in any legal action or other method of dispute resolution.

27. Signature Authority. The Parties have carefully read and understand this Agreement and acknowledge receipt of a copy thereof. Each individual signing below warrants and represents that he or she has the authority to enter into this Agreement on behalf of the person, firm or corporation listed on the signature page.

-SIGNATURE PAGE TO FOLLOW-

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties hereto have caused this Agreement to be duly executed by their respective duly authorized officers as of the date and year first above written.

BUYER

By: _____

Name: _____

Title: _____

SELLER

By: _____

Name: _____

Title: _____

DRAFT

APPENDIX A: Insurance

Seller Insurance: From the commencement of this Agreement, through final expiration or longer where specified below, the Seller shall provide and maintain at its own expense, insurance policies that are meant to be primary and non-contributory and issued by reputable insurance companies acceptable to the Buyer with an A.M. Best rating of A- or better which meet or exceed the requirements listed herein. Such policies, where required below shall include National Grid (US) Holdings Ltd., its direct and indirect parents, subsidiaries, affiliates, successors and assigns (aka Insured Entities) as Additional Insureds for ongoing and completed operations. Waiver of Subrogation, where required below shall be in favor of such Additional Insureds/Insured Entities for any loss or damage covered under those policies referenced in this Insurance Section, or for any required coverage that may be self-insured by Seller.

1. **Statutory Workers' Compensation and Employer's Liability Insurance**, in the state in which the operations, work and/or provision of services will be performed under this Agreement. The employer's liability limit shall be at least \$1,000,000 per occurrence for bodily injury, per employee for bodily injury by disease and by bodily injury by disease policy limit.

Waiver of Subrogation required from this policy for the Insured Entities outlined above.

2. **Commercial General Liability Insurance ("CGL")**, covering all operations, work and/or provision of services performed by or on behalf of Seller under or in connection with this Agreement, at **minimum** limits of:

\$2,000,000 limit "per occurrence" – Bodily Injury/Property Damage
\$2,000,000 limit – Product/Completed Operations
\$4,000,000 limit - General Aggregate "per project"

Required limits above can be a combination of primary CGL and Umbrella/Excess.

Policy shall include coverage for contractual liability (with this Agreement being included under the definition of "Insured Contract"), products/completed operations, and explosion, collapse and underground (XC&U) coverages. Policy shall not contain a cross-liability or a separation of insureds exclusion.

Seller shall maintain Completed Operations coverage for a period of three (3) years beyond final expiration of this Agreement or applicable state statute of repose. The Buyer may or may not request continued evidence of this insurance after expiration of Agreement, however, any failure of the Buyer to request such evidence does not relieve the Seller of this obligation. Should coverage for Products/Completed Operations be written on a claims-made form, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least three (3) years after final expiration of this Agreement. ***Additional Insured and Waiver of Subrogation required from this policy for the Insured Entities outlined above.***

3. **Automobile Liability Insurance** - Covering owned, non-owned and hired vehicles used in connection with all operations, work and/or provision of services performed by or on behalf of Seller under or in connection with this Agreement, at **minimum** limits of:

\$1,000,000 combined single limit “each accident”

Coverage for non-owned/hired vehicles evidenced through a Commercial General Liability policy would be acceptable upon Buyer’s review and approval. ***Additional Insured and Waiver of Subrogation required from this policy for the Insured Entities outlined above.***

4. **Umbrella Liability or Excess Liability Insurance**, providing broad “follow form” excess insurance with terms similar to the Commercial General Liability, Automobile Liability and Employers Liability coverages outlined within this Agreement at **minimum** limits of:

\$5,000,000 limit – Per Occurrence/Aggregate

Seller shall maintain completed operations coverage for a period of three (3) years beyond final expiration of this Agreement. The Buyer may or may not request continued evidence of this insurance after expiration of Agreement., however, any failure of the Buyer to request such evidence does not relieve the Seller of this obligation. ***Additional Insured and Waiver of Subrogation required from this policy for the Insured Entities outlined above.***

5. **Contractor’s Pollution Liability (“CPL”) Insurance:** Seller and any and all subcontractor(s) shall maintain such policy to cover any sudden and gradual pollution incidents that may arise out of, under, or in connection with this Agreement including any and all Work and/or Services to be performed by or on behalf of Seller, including but not limited to: (a) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (b) property damage including physical injury or destruction of tangible property including resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not be physically injured or destroyed; and (c) defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages. There should be no exclusions for asbestos, lead paint, silica or mold/fungus/legionella. This coverage shall carry a minimum limit of:

\$5,000,000 limit - “Per Incident/Aggregate”

Additional Insured and Waiver of Subrogation required from this policy for the Insured Entities outlined above.

Should coverage(s) be written on a claims-made form, the retroactive date shall not be later than the effective date of this Agreement and Seller and/or its subcontractors shall maintain coverage continuously for the duration of this Agreement and for at least three (3) years after final expiration of this Agreement.

6. **Professional Liability Insurance**, (*if applicable*), providing coverage for negligent acts, errors, and omissions (including, when applicable, Technology Errors and Omissions), in

an amount of \$5,000,000 “per claim” or equal to the value of the contract, whichever is greater, to protect Buyer from losses arising out of the use of Seller’s or its subcontractor(s) product or failure to render services.

Should coverage be written on a claims-made form, Seller or its subcontractors shall maintain such coverage for a period of not less than three (3) years after final expiration of this Agreement with the retroactive date in place prior to and held constant with the date of this contract. ***Waiver of Subrogation required from this policy for the Insured Entities outlined above.***

7. **Cyber Liability Insurance**, *(if applicable)* either purchased separately or endorsed to Professional Liability/Errors & Omissions, covering liability arising from or out of the Services provided under this Agreement at minimum limits of \$5,000,000 “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. ***Waiver of Subrogation required from this policy for the Insured Entities outlined above.***

8. **Third (3rd) Party Crime Insurance**, *(if applicable)*, covering theft of Buyer’s property by electronic means and for any dishonest acts that may be committed by a Seller’s employee(s) against Buyer, in an amount no less than \$5,000,000 “per occurrence”. ***Loss Payee status required from this policy for the Insured Entities outlined above.***

9. **Unmanned Aerial Systems/Vehicles (UAS/UAV)/Drone Insurance**: *(if equipment will be used in course of work)*, covering third-party liability for bodily injury and property damage arising out of the use of Unmanned Aerial Systems (UAS)/Vehicles (UAV) aka drones, at minimum limits of \$10,000,000 “per occurrence”. Such requirement could also be met outlining the same terms under an endorsed Aircraft Liability policy. ***Additional Insured and Waiver of Subrogation required from this policy for the Insured Entities outlined above.***

10. **Self-Insurance**: If approved in advance by Insured Buyer’s representative, proof as a qualified self-insurer will be acceptable in lieu of securing or maintaining one or more of the coverages required in this Appendix. Such proof shall come in the form of a signed self-insurance letter on Seller’s letterhead.

With respect to Workers’ Compensation, such evidence shall consist of a current self-insured certification form approved by the State in which the terms of this Agreement will be executed.

- 11. Subcontractors.** In the event that the Seller uses a Subcontractor(s) in connection with providing any Work and or Services as outlined under this Agreement, the Seller shall require all such Subcontractor(s) to provide the same insurance coverages and protections as outlined within and as applicable to their portion of Work. The Seller shall remain liable for the performance of each Subcontractor, and such contract relationship shall not relieve the Seller of its obligations under this Agreement. In addition, each Subcontractor shall be required provide a Waiver of Subrogation and to name the Insured Entities outlined within and Seller as Additional Insureds where required. If requested, Seller will provide Buyer with a certificate of insurance from its Subcontractor evidencing such coverages.
- 12. Certificate(s) of Insurance.** Prior to providing the services, Seller shall promptly issue to Buyer Certificate(s) of Insurance and any requested endorsements (including any renewal thereof) evidencing all coverages and required protections (Additional Insured and Waiver of Subrogation where applicable) utilizing the address outlined by Buyer in this Agreement, with digital copies only being emailed to Buyer's Risk and Insurance Department at: RiskandInsurance@nationalgrid.com. Failure to furnish the required Certificate(s) of Insurance and endorsements would not relieve the Seller from any Liability obligations outlined under this Agreement.

Policies shall be endorsed, and certificate(s) of insurance shall clearly outline that at least thirty (30) calendar days prior written notice will be provided to the Buyer in the event of any cancellation, non-renewal or material change in coverage(s). Certificates shall declare applicable 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 Buyer's Risk & Insurance Department.
- 13. Reservation of Rights.** Should any policy(ies) be canceled before final payment by the Buyer to the Seller and the Seller fails immediately to procure other insurance as specified, the Buyer reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Seller under the Agreement or to invoice the Seller.
- 14. Accident Reports.** The Seller shall furnish the Buyer'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.
- 15. Full Policy Limits.** The Seller represents that it has full policy limits available and shall notify the Buyer's Risk & Insurance Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.
- 16. No Limitation.** Nothing contained in these insurance requirements is to be construed as limiting the extent of the Seller's responsibility for payment of damages or from its indemnification obligations under this Agreement.

APPENDIX B: Service Terms

1. Introduction.

These Service Terms relate to the Buyer's procurement of Flexibility Services on its Distribution System.

2. Service Terms Definitions.

These additional terms placed within the Service Terms are applicable to all Associated Documents and shall supersede terms within the General Terms and Conditions and Definitions. The following expressions shall have the meaning set out below:

“Accepted End Time”	means the date and time (to the nearest minute) at which the Seller agreed to end delivery of Discretionary Flexibility Service;
“Accepted MW/MVAR”	means the MW/MVAR of Discretionary Flexibility Service Seller agreed to provide Buyer following Discretionary Dispatch Request;
“Accepted Start Time”	means the date and time (to the nearest minute) at which the Seller agreed to start delivery of Discretionary Flexibility Service;
“Aggregation”	refers to refers to the portfolio of eligible customers collectively enrolled by an Aggregator;
“Aggregator”	refers to a party other than the Buyer that represents and aggregates the load of eligible customers and is responsible for the actions of the customers it represents, including performance and, as applicable, performance adjustments, penalties, and repayments to the Buyer;
“Availability Payment”	means the fee payable in consideration for the Seller making the DER Available and calculated in accordance with the provisions of the Service Terms;
“Availability Status”	means whether the Asset is Available or Unavailable;
“Average Season Performance Factor”	Means the average of all Adjusted Performance Factors for Flex Sustain Service provided by Buyer, as calculated under Article 13 (Performance) of the Service Terms, for the Asset during that Delivery Season;
“Buyer EPS”	means the electric power system owned, controlled, or operated by the Buyer and used to provide distribution services to its customers;
“CBL”	means the customer baseline load as calculated under the Buyer's Customer Baseline Load methodology in APPENDIX E;

“CBL Verification Methodology”	means the methodology used by the Buyer to verify the actual load reduction provided (kW and kWh) during each hour of each designated Dispatch Event and Test Event. Actual load levels are compared to the customer baseline loads to verify whether the Seller provided the Committed MW/MVAR; provided, however, that the Buyer may estimate the data pursuant to the Buyer’s operating procedure if data is not available for all intervals. When the weather adjusted CBL methodology is used and the calculated weather adjustment falls outside of Buyer defined ranges (i.e., the Buyer deems the weather to be atypical on the day of a Dispatch Event or Test Event when compared to the baseline period), the Buyer may review and revise a participant’s baseline based on the customer’s historical load data. When the weather adjusted CBL methodology is used, or an approved alternate CBL methodology, the Buyer, at its own discretion, may select alternate hours for the adjustment period to calculate the weather adjustment factor in order to accurately reflect the customer’s typical usage.
“Demand Response	as defined in the New York Independent System Operator’s Tariff;
“DERMS”	means Buyer’s Distributed Energy Resource Management System;
“Discretionary Flexibility Services”	means the additional Flexibility Services requested by the Buyer outside of or in addition to the Service Requirements detailed within the Service Terms and applicable Flexibility Service Form;
“Discretionary Dispatch Payment”	means the payment for providing Discretionary Flexibility Services as specified in the applicable Flexibility Service Form;
“Discretionary Dispatch Request”	means a request for Discretionary Flexibility Services from the Buyer;
“Dispatch Event”	means the event for which the Buyer requests Flexibility Services;
“Dispatch Event Start Time”	refers to the start time of the Dispatch Event for Flexibility Services;
“Dispatch Interval”	means each five (5) minute period during a Buyer Dispatch in minute ending :05, :10, :15, :20, :25, :30, :35, :40, :45, :50, :55, and :00l;
“Electric Generating Equipment”	is the: (a) electric generating equipment, including technologies that can be exported, at the premises of an eligible customer used to provide generation output or load reduction to provide Flexibility Services; or (b) emergency electric generating equipment that is interconnected and operated in compliance

	with the Buyer’s Standard Interconnection Requirements and used to provide generation output or load reduction;
“Flex Sustain Performance Factor”	is the ratio of Committed MW/MVAR specified in the Flex Sustain Service Form to the actual MW provided;
“Generation”	means the electrical output (in MW) of a Facility is the total quantity of electric energy produced by the Facility over a given time period and delivered to the Point of Interconnection, as measured by the revenue meter;
“Incentive Rate”	refers to the rate proposed by the Seller in the applicable Flexibility Service Form;
“Portfolio Quantity”	means the total amount of MW Seller commits to providing during Service Windows as set forth in the applicable Flexibility Service Form;
“Service Agreement”	refers to the specific terms and conditions that apply to Sellers based on signed contracts associated with their Vintage Year;
“Stop Instruction”	means an instruction from Buyer to the Seller, instructing Seller to cease delivery of Flexibility Services;
“Requested MW/MVAR”	means the amount of MW Buyer requests in its Dispatch Event notification be provided by generation output or load reduction;
“Requested Start Time”	refers to the start time of the Dispatch Event for Flexibility Services;
“Requested End Time”	refers to the end time of the Discretionary Flexibility Services requested by Buyer in the Discretionary Dispatch Event notification;
“Run Time”	refers to the period within the Service Window during which the Seller contracts to provide generation output or load reduction whenever the Company designates a Dispatch Event;
“Test Event”	means the Buyer’s request for Sellers to provide Flexibility Services to test Sellers’ response to a request for Dispatch;
“Vintage Year”	refers to the first year Seller is contractually obligated to participate in;

3. Flexibility Service Requirements.

3.1 Flexibility Services shall be provided from one or more Assets which can be delivered reliably and in full for the duration of the Service Period and must be within the conditions of each Interconnection Agreement as applicable.

3.2 Assets, as described in the applicable Flexibility Service Form and where applicable, APPENDIX G (Description of New Facility), shall be connected and

capable of exporting to or importing from the Constraint Management Zone during intact and under first circuit outage of that System asset(s).

- 3.3** Assets shall be able to deliver on Dispatch Instruction a reduction or increase in import or export, from or onto Buyer's Distribution System at the Constraint Management Zone.
- 3.4** Seller agrees to make Asset available over the Delivery Season and during the Service Window in accordance with these Service Terms and applicable Flexibility Service Form.
- 3.5** Assets using existing or new-build Facilities to provide Flexibility Services via generation output shall comply with the applicable Facility Requirements in APPENDIX F.
- 3.6** Seller can run Asset for other purposes over the Delivery Season during the Service Window, subject to it maintaining its ability to meet any service requirements as stipulated in this Agreement. It is the responsibility of the Seller to ensure that they can deliver up to the Committed MW/MVAR of Flexibility Services on instruction. In the event that Seller does not respond to Buyer's Dispatch Instructions received in accordance with Article 11 of these Service Terms because Seller purposely and intentionally used Asset to capture another opportunity, Buyer shall have the right, but not the obligation, to terminate the Agreement.
- 4. Seller Acknowledgement.** Seller hereby acknowledges that this Agreement does not guarantee that any Flexibility Services will be required by Buyer or commit Buyer to requiring any, or any particular level of, such Flexibility Services.
- 5. Telemetry Requirements.**

 - 5.1** Seller must provide utility meter hourly data to Buyer. Where applicable, Seller must comply with additional requirements in the executed Flexibility Service Form.
 - 5.2** A Facility shall be designed and constructed with: (a) equipment and software necessary to receive, accept and react to a signal from Buyer's SCADA system; and (b) communication circuits from the Facility to Buyer for the purpose of telemetering, supervisory control/data acquisition, and voice communications.
- 6. Testing.**

 - 6.1** Buyer reserves the right to conduct communication tests of Assets ("Test Events") one (1) or more times during the Contract Year. One Test Event will be required prior to commissioning, and if Seller fails the first Test Event, additional tests may be required.
 - 6.2** Follow dispatching protocol for that particular service as provided in Section 10.3 of these Service Terms, Buyer will provide at least twenty-four (24) hours advanced notice to the Seller of a Test Event. Advance notification of a Test Event will be

provided via email or an alternative delivery means, if otherwise mutually agreed upon between Buyer and Seller. If a Test Event is called, Dispatch will be requested within the Service Window provided in the applicable Flexibility Service Form. Test Events will consist of four-hour time periods.

7. Metering.

7.1 A Seller shall have Buyer's interval metering in place at Seller's Asset prior to the Delivery Season Start Date. Additional metering data may be required in the Service Terms and applicable Flexibility Service Form. All performance will be measured using Buyer's interval Meter Data. Interval Meter Data will also be used as part of Buyer's Customer Baseline Load ("CBL") verification methodology. A Seller that does not have Buyer's interval metering in place at the Seller's Asset may submit a request to Buyer requesting the installation of a new meter. The Seller is responsible for ensuring new meter installation requests are submitted sufficiently in advance of the Delivery Season Start Date. The Buyer is not responsible for any delays in installing a new meter..

7.2 Access to Metering and Communications Equipment. If applicable, the Seller agrees upon reasonable notice and within Business Hours, to provide access to metering equipment to Buyer employees and to inspect and test the Asset, or to install, maintain, replace, or remove communication equipment belonging to the Buyer in relation to the provision of Flexibility Services.

8. Service Variations.

8.1 Unless otherwise provided, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

8.2 Variation to Service Requirements. Buyer may, with prior written agreement from Seller, make single or marginal variations to individual Service Windows or power injection requirements within the following boundaries: (a) the contracted Run-Time may change by up to one (1) hour inclusive of extension, early instruction or delayed instruction; (b) a Committed MW/MVAR (demand reduction, power injection or other) may be increased or lowered no more than ten percent (10%) of the contracted requirement; and (c) Buyer may seek to make service variations of this nature on no more than two (2) occasions in any contractual year, and no more than four (4) times in any contractual term. Applicable pricing terms may require adjustment commensurate with variation to service requirements. Changes greater than those in this Section 8.2 must be the subject of either a Discretionary Flexibility Service or procurement of a new service.

8.3 Variation to Asset. Seller may, with prior approval of the Buyer (in its sole discretion), change the Asset providing the service(s) by providing a minimum of thirty (30) days notice of the change and specifying that the Asset meets the technical, functional and non-functional requirements of the specified service.

9. Unavailability.

- 9.1** If, at any time, Seller becomes aware that Asset will be Unavailable for any time during a Service Window, then it shall as soon as reasonably practicable, submit to Buyer's Senior Representative as provided in the executed Flexibility Service Form with: (i) Seller Name, (ii) Zone, (iii) Asset Name, (iv) Date/Time Unavailable from; (v) Date/Time Unavailable to; (vi) Reason for Unavailability; (vii) Name of Seller contact providing Unavailability notification, and (viii) Date of Notification. If a Facility is Unavailable because of a Planned Outage, the Seller must follow process set forth in APPENDIX H (Non-Performance Liquidated Damages).
- 9.2** Notwithstanding any Seller notification as provided Article 10 (Dispatch Instructions and Communications) that Asset is Available for dispatch:
- 9.2.1.** Buyer may determine that, based on any Asset monitoring data and information available to it (including where no data or information is available as a result of a failure of the control or communications systems), and taking into account any Asset operational capabilities agreed between the Parties from time to time, the Flexibility Service is Unavailable for dispatch for any period during any Service Window and/or other period of time which has not been declared or deemed to be Unavailable;
- 9.2.2.** if no Service is provided for a period of time after Seller having confirmed Availability of Asset in response to Buyer's Dispatch Instruction in accordance with Section 10.3, then Asset shall be deemed to be Unavailable for the period of failure to provide any Service during that Service Window and/or other period of time. As soon as reasonably practicable thereafter, Buyer shall notify Seller that Asset is deemed Unavailable and Seller shall investigate and provide a report to Buyer setting out the reasons why Flexibility Service was not provided following a Dispatch Instruction.

10. Dispatch Instructions and Communications.

- 10.1** Buyer's DERMS and/or designated Buyer operational personnel will be responsible for monitoring forecasted and real-time system conditions associated with the Constraint Management Zone and issue the appropriate notifications and Dispatch Instructions to Sellers regardless of the market product. Buyer will support coordination of all market products and Sellers responding to the same needs at a Constraint Management Zone to effectuate the needed response to maintain operational protocols.
- 10.2** When Buyer identifies a forecasted load level to reach a specific threshold within Buyer's discretion, Buyer will issue Dispatch Event notifications to Sellers providing Dispatch Instructions. Dispatch Event notifications will be provided via email or an alternative delivery means, if otherwise mutually agreed upon between Buyer and Seller. An automated system within National Grid will send notifications to Seller. In the case of Aggregations, only the Seller aggregating resources will be

notified. Seller is responsible for notifying resources within its respective Aggregation(s). Seller must provide in the applicable Flexibility Service Form at least two operational contacts for the purpose of notification during the events.

10.3 The event notifications will provide no less than twenty-four (24) hours advance notice to Seller. Seller must confirm the Asset is Available no more than twelve (12) hours after notification issued via email or an alternative delivery means mutually agreed upon between Buyer and Seller.

10.4 Dispatch Instructions will specify: (i) the Constraint Management Zone to which the Dispatch Instruction relates; (ii) the Dispatch Event Start Time; (iii) the Run-Time; and (iv) the Requested MW/MVAR.

10.5 Dispatch Event Commencement and Duration

10.5.1. For Flex Secure Services, unless otherwise specified, the Dispatch Event is active on the day which it has been notified for the duration of the Service Window specified in the Flex Secure Service Form. During the duration of the event, the Seller is obligated to meet the amount requested by Buyer through generation or load reduction based on a dynamic real-time dispatch signal (unless otherwise mutually agreed upon between Seller and Buyer) up to the amount guaranteed by the Seller in the Flex Secure Service Form.

10.5.2. For Flex Sustain Services, a Dispatch Event will commence at the time specified by the Dispatch Instructions and for the maximum duration committed by the Seller in the Flex Sustain Service Form. The start and end time of the event is not to exceed the Service Window and Run-Time as provided in the executed Flexibility Sustain Services Form. For the duration of the event, the Seller is obligated to provide its Committed MW/MVAR as stated in the Flex Sustain Service Form.

10.5.3. Sellers are expected to respond to consecutive event days up to the maximum as agreed to in applicable Flexibility Services Form. If none are specified, then it shall be assumed that Seller can respond to any number of consecutive event days.

10.6 In the event Buyer's DERMS and/or Buyer's designated operational personnel loses communication with Seller, Buyer may issue Seller a Stop Instruction.

10.7 Over- and Under-Delivery

10.7.1. Sellers shall not export energy that exceeds its Interconnection Agreement.

10.7.2. Buyer will not compensate Seller for any generation output or load reduction that exceeds Buyer's Requested MW/MVAR.

11. Discretionary Flexibility Services

- 11.1** From time to time, Buyer may at its discretion request from Seller, and subject to Seller's Availability Status, Discretionary Flexibility Services.
- 11.2** Buyer may request Discretionary Flexibility Services from Seller by sending a Discretionary Dispatch Request in accordance with Section 10.2 of these Service Terms.
- 11.3** Buyer may (a) withdraw any Discretionary Dispatch Request at any time before Seller has provided a response under and in accordance with Section 10.3 of these Service Terms; and/or (b) issue a Stop Instruction to the Seller in accordance with this Section 10.6 of this Appendix.
- 11.4** Seller may accept the Discretionary Dispatch Request in accordance with the provisions set out in Section 11.5 of these Service Terms. Seller's acceptance shall be final and binding.
- 11.5** In performing the Discretionary Flexibility Services pursuant to this Agreement, Seller must comply with the technical requirements set out in these Service Terms and the applicable Flexibility Service Form.
- 11.6** If Seller fails to respond in accordance with paragraph Section 11.5, Seller will be deemed to have declined the request.
- 11.7** No Discretionary Dispatch Payment shall be due to Seller by Buyer for any Discretionary Flexibility Services delivered in excess of the Accepted MW/MVAR.

- 12. Service Failure.** Service Failure will occur if Asset fails to perform at a level equal or greater than 95% of the Requested MW/MVAR and Requested MWh during three (3) consecutive Dispatch Events in response to Buyer properly issuing a Dispatch Instruction in accordance with Article 10 (Dispatch Instructions and Communications) in these Service Terms. For Assets providing Flex Secure Service, Buyer will use SCADA system data to measure performance. For Flex Sustain Service, Buyer will measure performance using one of two CBL methodologies as set forth in APPENDIX E and selected by the Seller.

13. Performance.

- 13.1** For Flex Secure Services, Buyer will measure performance using the methodology in APPENDIX H (Non-Performance Liquidated Damages).
- 13.2** For Flex Sustain Services, Buyer will calculate a Flex Sustain Performance Factor using the following methodology:
 - 13.2.1.** The Committed MW/MVAR shall be the Portfolio Quantity associated with an Asset. Any Asset co-located with customer load shall utilize CBL to measure response. Performance for all other Assets will be based on direct

measurements (via SCADA devices or interval meters) to measure response.

13.2.2. Flex Sustain Performance Factor is the ratio of: (i) the average hourly MW of generation output or load reduction provided during the Dispatch Event up to the MW of Committed MW/MVAR to (ii) the MW/MVAR of Committed MW/MVAR. The Event Performance Factor is rounded to two decimal places and has an upper limit of 1.00 and a lower limit of 0.00.

13.2.3. Flex Sustain Performance Factors will be adjusted. The Adjusted Performance Factor for each Dispatch Event is equal to (1) the Performance Factor when greater than or equal to 0.90 and (2) when below 0.90, the difference of the Performance Factor and the difference of 0.90 and the Performance Factor. For example, a Performance Factor of 0.70 would yield an Adjusted Performance Factor of $0.70 - (0.90 - 0.70) = 0.50$.

14. Contract Price.

14.1 Buyer will pay Seller the Contract Price which will consist of an Availability Payment and/or Dispatch Payment.

14.2 For Flex Secure Services, the Flex Secure Service Form will set forth the Availability Payment and/or Dispatch Payment. The Contract Price for the Contract Year may be reduced for non-performance as described in APPENDIX H (Non-Performance Liquidated Damages).

14.3 For Flex Sustain Services, where applicable, the Availability Payment is equal to the applicable Incentive Rate per MW per Delivery Season multiplied by Seller's Portfolio Quantity multiplied by the Seller's Aggregated Average Season Performance Factor. The Dispatch Payment, where applicable, is set forth in the Flex Sustain Service Form.

14.4 Sellers with new-build Facilities are required to post and maintain Development Period Security and Operating Period Security based on the requirements of this Article 9 (Credit Assurance and Security) in APPENDIX F.

APPENDIX C: Flex Secure Service Form

This Form for Flex Secure Services is entered into as of the following date: _____ (“Effective Date”), and is pursuant to the Flexibility Services Standard Agreement (including without limitation any amendments, or appendices which are provided for and incorporated into the Flexibility Services Standard Agreement). The Parties to this Flexibility Secure Service Form are the following:

Name: Niagara Mohawk Power Corporation d/b/a National Grid, a corporation having offices at 300 Erie Blvd. West, Syracuse, NY 13202 (“Buyer”)		Name: _____, a _____ with principal offices at _____ (“Seller”)	
Date of the Flexibility Service Standard Agreement between Buyer and Seller:		_____	
Effective Date of Flex Secure Service Form:		_____ (the “Flex Secure Service Form Effective Date”)	
		<i>If the Parties do not specify a Flex Secure Service Form Effective Date, the Flex Secure Service Form Effective Date shall be the Date of the Flexibility Services Standard Agreement.</i>	
Notices:		Notices	
Street:		Street:	
City, State, Zip:		City, State, Zip:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Seller Invoices:		Buyer Invoices:	
Street:		Street:	
City, State, Zip:		City, State, Zip:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	

Seller Contact for Dispatch Event Notifications			
Street:			
City, State, Zip:			
Attn:			
Phone:			
Facsimile:			
Email:			
Seller Contact for Dispatch Event Notifications			
Street:			
City, State, Zip:			
Attn:			
Phone:			
Facsimile:			
Email:			
Seller's Senior Representatives for Communications		Buyer's Senior Representatives for Communications	
<i>Escalation Level 1</i>		<i>Escalation Level 1</i>	
Street:		Street:	
City, State, Zip:		City, State, Zip:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
<i>Escalation Level 2</i>		<i>Escalation Level 2</i>	
Name:		Name:	
Street:		Street:	
City, State, Zip:		City, State, Zip:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	

<input type="checkbox"/> Wire Transfer - or - <input type="checkbox"/> ACH (check one box):	<input type="checkbox"/> Wire Transfer - or - <input type="checkbox"/> ACH (check one box):
Bank:	Bank:
ABA:	ABA:
Account:	Account:
Other Details:	Other Details:

1. SERVICE PARAMETERS

Criteria	Contracted Service Detail
	The Parties have agreed to the following parameters:
<i>Type of Service</i>	Flex Secure
<i>Zone</i>	New Krunkill Flexibility Zone, inclusive of Feeder X, Feeder Y
<i>Account Numbers</i>	
<i>Agreement Start Date</i>	
<i>Agreement End Date</i>	The Parties have agreed that the Agreement End Date is subject to Buyer's right to renew provided in Section 2.2 (Commencement and Term) of the General Terms and Conditions.
<i>Asset Type</i>	<input type="checkbox"/> Load Reduction Asset. <input type="checkbox"/> Generation Facility Asset.* <input type="checkbox"/> Energy Storage Facility Asset.* <input type="checkbox"/> Coupled Generation and Storage Facility Asset.* *These Asset Types should not have any co-located retail load.
<i>Committed MW/MVAR</i>	
<i>CBL Methodology</i>	<input type="checkbox"/> Average Day CBL. <input type="checkbox"/> Weather Adjusted CBL.
<i>Interconnection Voltage</i>	13.2/4.16 kV

Criteria	Contracted Service Detail
<i>Delivery Season</i>	
<i>Delivery Season Start Date</i>	June 1
<i>Delivery Season End Date</i>	October 31
<i>Service Windows</i>	Mon-Sun 13:00-19:00
<i>Contracted Response Time</i>	Up to 12 hours after Dispatch Event Notification issued
<i>Service Minimum Run-Time</i>	30 mins
<i>Maximum Utilizations (per Service Window)</i>	2
<i>Consecutive Days</i>	Up to 3 consecutive days
<i>Number of Dispatch Events per Year</i>	10

2. INFORMATION:

Telemetry Latency and Resolution	
Communications Protocol	<p>The Parties will put in place a communications protocol such that Buyer may monitor the performance of the Facility in real-time starting at Dispatch Event Start Time through the Dispatch Event. Seller to provide Buyer with monitoring points of each site comprising the Facilities including but not limited to:</p> <ul style="list-style-type: none"> • Main Disconnect Status • Dispatch Control Status • Available Power Capacity • Available Discharge Energy • State of Charge • Real Power Output (presented at 1 minute resolution) • Reactive Power Output (presented at 1 minute resolution) • Apparent Power Output (presented at 1 minute resolution) • Alarms • De-rates

7. CONTRACT PRICE:

The Parties have agreed that the Contract Price is subject to adjustment based on Non-Performance Liquidated Damages in APPENDIX H.

Payment Type	The Parties have agreed to the following prices for the Flexibility Services
<i>Availability Payment (per MW/MVAR)</i>	\$ <input type="checkbox"/> Not Applicable.
<i>Dispatch Payment (per MW/MVAR)</i>	\$ <input type="checkbox"/> Not Applicable.
<i>Discretionary Flexibility Services</i>	\$

8. SECURITY FOR NEW BUILD FACILITY:

Security Type	
<i>New-Build Security</i>	<input type="checkbox"/> Applicable. <input type="checkbox"/> Not Applicable.
<i>Development Period Security</i>	\$
<i>Operating Period Security</i>	\$ As provided in Section of APPENDIX F (Facility Requirements), parties agree Operational Security is the Contract Value for the given year with assumed forecasted amount of dispatches and Contract Price provided in executed Flex Secure Service Form.

9. ASSET INFORMATION:

Seller to provide the information below for each Generation, Conversion and Storage Facility. Buyer reserves the right to request additional information as needed. If there is more than one (1) Facility providing Flexibility services, Seller is to attach the information as provided in the format

below to the executed document. For each new-build Facility, Seller must also fill out APPENDIX G (Description of New-Build Facility).

[Asset Name]	Type (Solar, Hydro, Battery Storage, DSR, etc)	
	Location (address of interconnection to EPS)	
	Business Contact details for Site (Name, number, email address)	
	Operations (24/7) Contact details for Site (Name, number, email address)	
	Nameplate Capacity (MW/MVAR/MWh)	
	Capacity Committed to Other Uses(MW/MVAR/MWh)	
	Interconnected Voltage	
	Planned Maintenance Periods	
	Notice Period Required for Access	
	Account Number or Meter ID	
	In-Service Date (Actual or Anticipated)	

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Flex Secure Service Form be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the date specified as the Flex Secure Service Form Effective Date. The Parties expressly acknowledge the validity of counterparts of the executed Flex Secure Service Form, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

BUYER

SELLER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DRAFT

APPENDIX D: Flex Sustain Service Form

This Form for Flex Sustain Services is entered into as of the following date: _____ (“Effective Date”), and is pursuant to the Flexibility Services Standard Agreement (including without limitation any amendments, or appendices which are provided for and incorporated into the Flexibility Services Standard Agreement). The Parties to this Flex Sustain Service Form are the following:

Name: Niagara Mohawk Power Corporation d/b/a National Grid, a corporation having offices at 300 Erie Blvd. West, Syracuse, NY 13202 (“Buyer”)		Name: _____, a _____ with principal offices at _____ (“Seller”)	
Date of the Flexibility Service Standard Agreement between Buyer and Seller:		_____	
Effective Date of Flex Sustain Service Form:		_____ (the “Flex Sustain Service Form Effective Date”)	
		<i>If the Parties do not specify a Flex Sustain Service Form Effective Date, the Flex Sustain Form Effective Date shall be the Date of the Flexibility Services Standard Agreement.</i>	
Notices:		Notices	
Street:		Street:	
City, State, Zip:		City, State, Zip:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Seller Invoices:		Buyer Invoices:	
Street:		Street:	
City, State, Zip:		City, State, Zip:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	

Seller Contact for Dispatch Event Notifications	
Street:	
City, State, Zip:	
Attn:	
Phone:	
Facsimile:	
Email:	
Seller Contact for Dispatch Event Notifications	
Street:	
City, State, Zip:	
Attn:	
Phone:	
Facsimile:	
Email:	
Seller's Senior Representatives for Communications	Buyer's Senior Representatives for Communications
<i>Escalation Level 1</i>	<i>Escalation Level 1</i>
Street:	Street:
City, State, Zip:	City, State, Zip:
Attn:	Attn:
Phone:	Phone:
Facsimile:	Facsimile:
Email:	Email:
<i>Escalation Level 2</i>	<i>Escalation Level 2</i>
Name:	Name:
Street:	Street:
City, State, Zip:	City, State, Zip:
Phone:	Phone:
Facsimile:	Facsimile:
Email:	Email:

<input type="checkbox"/> Wire Transfer - or - <input type="checkbox"/> ACH (check one box):	<input type="checkbox"/> Wire Transfer - or - <input type="checkbox"/> ACH (check one box):
Bank:	Bank:
ABA:	ABA:
Account:	Account:
Other Details:	Other Details:

1. SERVICE PARAMETERS:

Criteria	Contracted Service Detail
	The Parties have agreed to the following parameters:
<i>Type of Service</i>	Flex Sustain
<i>Zone</i>	New Krunkill Flexibility Zone, inclusive of Feeder X, Feeder Y
<i>Account Number(s)</i>	
<i>Agreement Start Date</i>	
<i>Agreement End Date</i>	The Parties have agreed that the Agreement End Date is subject to Buyer's right to renew provided in Section 2.2 (Commencement and Term) of the General Terms and Conditions.
<i>Asset Type</i>	<input type="checkbox"/> Load Reduction Asset. <input type="checkbox"/> Generation Facility Asset.* <input type="checkbox"/> Energy Storage Facility Asset.* <input type="checkbox"/> Coupled Generation and Storage Facility Asset.* * These Asset Types should not have any co-located retail load.
<i>Committed MW/MVAR</i>	
<i>CBL Methodology</i>	<input type="checkbox"/> Average Day CBL. <input type="checkbox"/> Weather Adjusted CBL.
<i>Interconnection Voltage</i>	13.2/4.16 kV

Criteria	Contracted Service Detail
<i>Delivery Season</i>	
<i>Delivery Season Start Date</i>	June 1
<i>Delivery Season End Date</i>	October 31
<i>Contracted Service Windows</i>	Mon-Sun 13:00-19:00
<i>Contracted Response Time</i>	Up to 12 hours after Dispatch Notification issued
<i>Service Minimum Run-Time</i>	30 mins
<i>Maximum Utilizations (per Service Window)</i>	2
<i>Consecutive Days</i>	Up to 3 consecutive days
<i>Number of Dispatch Events per Year</i>	10

2. CONTRACT PRICE:

The Parties have agreed to the following prices for the Flexibility Services.

Payment/Rate Type	The Parties have agreed to the following prices for the Flexibility Services
<i>Availability Payment</i>	The Parties have agreed that the Availability Payment is subject to adjustment based on Adjusted Performance Factor methodology in Section 13 of the Service Terms (APPENDIX B).
<i>Incentive Rate (per MW/MVAR)</i>	\$ <input type="checkbox"/> Not Applicable.
<i>Dispatch Payment (per MW/MVAR)</i>	\$ <input type="checkbox"/> Not Applicable.

3. SECURITY FOR NEW BUILD FACILITY:

Security Type	
<i>New-Build Security</i>	<input type="checkbox"/> Applicable.

	<input type="checkbox"/> Not Applicable.
<i>Development Period Security</i>	\$
<i>Operating Period Security</i>	\$ As provided in Section of APPENDIX F (Facility Requirements), parties agree Operational Security is the Contract Value for the given year with assumed forecasted amount of dispatches and Contract Price provided in executed Flex Sustain Service Form.

4. ASSET INFORMATION:

Seller to provide the information below for each Asset. Buyer reserves the right to request additional information as needed. If there is more than one (1) Asset providing Flexibility Services, Seller is to attach the information as provided in the format below to the executed document. For each new-build Facility, Seller must also fill out APPENDIX G (Description of New-Build Facility).

[Asset Name]	Type (Solar, Hydro, Battery Storage, DSR, etc)	
	Location (address of interconnection to EPS)	
	Business Contact details for Site (Name, number, email address)	
	Operations (24/7) Contact details for Site (Name, number, email address)	
	Nameplate Capacity (MW/MVAR/MWh)	
	Capacity Committed to Other Uses (MW/MVAR/MWh)	
	Interconnected Voltage	
	Planned Maintenance Periods	
	Notice Period Required for Access	

	Account Number or Meter ID	
	In-Service Date (Actual or Anticipated)	

[SIGNATURE PAGE FOLLOWS]

DRAFT

IN WITNESS WHEREOF, the Parties have caused this Flex Sustain Service Form be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the date specified as the Flex Sustain Service Form Effective Date. The Parties expressly acknowledge the validity of counterparts of the executed Flex Sustain Service Form, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

BUYER

SELLER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DRAFT

APPENDIX E: Customer Base Load Baseline Verification Methodologies

Introduction

This document is based on the NYISO (New York Independent System Operator) Emergency Demand Response Program Manual (12/02/2010 version 6.2 Section 5.2). It is intended to specify the methodology that National Grid will use to calculate a Customer Baseline Load (“CBL”) for Sellers providing Flexibility Services via load reduction to Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or “Company”).

Definitions

Customer Base Load (CBL) – Average hourly energy consumption as calculated in Section 5, used to determine the level of load curtailment provided.

Select a CBL method

1. Seller selects the CBL formula when it executes Agreement . The choice of CBL becomes effective when National Grid accepts the enrollment.
2. In the applicable Flexibility Service Form, Sellers may elect either the Average Day CBL or the Weather Adjusted CBL formula.
3. Sellers can make a change in the CBL formula up until or after a Delivery Season.

The Average Day CBL

Average Day CBLs for Weekdays

Step 1. Establish the CBL Window. Establish a set of days that will serve as representative of participant’s typical usage.

- a. Determine Seller’s peak hourly load during the event window over the past thirty (30) days or the period covered by the load data file, whichever is lower. This value becomes the initial seed value for the average event period usage level.
- b. Beginning with the weekday that is two days prior to the event:
 - i. Eliminate any holidays as specified by National Grid.
 - ii. Eliminate any days when National Grid declared a Demand Response event for which the participant was eligible for payment for a curtailment.
 - iii. Eliminate any days when NYISO declared a Special Case Resource (“SCR”) or Emergency Demand Response Program (“EDRP”) event for which the participant was eligible for payment for a curtailment.

- iv. Eliminate the day prior to any day when National Grid declared a Demand Response event for which the participant was eligible for payment for a curtailment.
- v. Create the average daily event period usage for that day, defined as the simple average of the participant’s actual usage over the hours that define the event for which the CBL is being developed.
- vi. Eliminate low usage days. If the average daily event period usage is less than 25% of the average event period usage level, eliminate that day.
- vii. vii. If the day has not been eliminated, update the average event period usage level by including the average daily event period usage for this day. If this is the first day added to the CBL Window, replace the average event period usage level (which was the initial seed value) with the average daily event period usage. Add this day to the CBL Window.
- viii. Move back one day and loop to step 1.b. i.
- ix. Final Weekday CBL Window must contain ten (10) weekdays.

Figure 1 below shows CBL window selection for a single weekday event. The calendar view illustrates the reverse order selection of the ten (10) days of the CBL window. The table view shows the dates of the CBL window for the event.

SUN	MON	TUE	WED	THU	FRI	SAT					
JUN 15	JUN 16	JUN 17	JUN 18	JUN 19	JUN 20	JUN 21					
JUN 22	JUN 23 <i>CBL DAY 10 FOR 7/9</i>	JUN 24 <i>CBL DAY 9 FOR 7/9</i>	JUN 25 <i>CBL DAY 8 FOR 7/9</i>	JUN 26 <i>CBL DAY 7 FOR 7/9</i>	JUN 27 <i>CBL DAY 6 FOR 7/9</i>	JUN 28					
JUN 29	JUN 30 <i>CBL DAY 5 FOR 7/9</i>	JUL 1 <i>CBL DAY 4 FOR 7/9</i>	JUL 2 <i>CBL DAY 3 FOR 7/9</i>	JUL 3 <i>CBL DAY 2 FOR 7/9</i>	JUL 4 HOLIDAY	JUL 5					
JUL 6	JUL 7 <i>CBL DAY 1 FOR 7/9</i>	JUL 8 INELIGIBLE DAY (DAY BEFORE)	JUL 9 DLRP/CSRP EVENT	JUL 10	JUL 11	JUL 12					
CBL WINDOW FOR SINGLE WEEKDAY EVENT EXAMPLE											
EVENT DATE	PROGRAM	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7	DAY 8	DAY 9	DAY 10
9-Jul	FLEX SERVICES	7-Jul	3-Jul	2-Jul	1-Jul	30-Jun	27-Jun	26-Jun	25-Jun	24-Jun	23-Jun

Figure 1 Example of CBL Window Selection - Single Weekday Event

- Figure 2 below shows the CBL windows when multiple weekday events occur. The calendar view illustrates the reverse order selection of the ten (10) days of the CBL window for each event. For example, June 27 will be used as: Day 1 for the June 30th event and
- Day 2 for the July 3rd event.

SUN	MON	TUE	WED	THU	FRI	SAT
JUN 15	JUN 16 <i>CBL DAY 10 FOR 6/30</i>	JUN 17 <i>CBL DAY 9 FOR 6/30 CBL DAY 10 FOR 7/3</i>	JUN 18 <i>CBL DAY 8 FOR 6/30 CBL DAY 9 FOR 7/3</i>	JUN 19 <i>CBL DAY 7 FOR 6/30 CBL DAY 8 FOR 7/3</i>	JUN 20 <i>CBL DAY 6 FOR 6/30 CBL DAY 7 FOR 7/3</i>	JUN 21
JUN 22	JUN 23 <i>CBL DAY 5 FOR 6/30 CBL DAY 6 FOR 7/3</i>	JUN 24 <i>CBL DAY 4 FOR 6/30 CBL DAY 5 FOR 7/3</i>	JUN 25 <i>CBL DAY 3 FOR 6/30 CBL DAY 4 FOR 7/3</i>	JUN 26 <i>CBL DAY 2 FOR 6/30 CBL DAY 3 FOR 7/3</i>	JUN 27 <i>CBL DAY 1 FOR 6/30 CBL DAY 2 FOR 7/3</i>	JUN 28
JUN 29	JUN 30 SCR/EDRP EVENT	JUL 1 <i>CBL DAY 1 FOR 7/3</i>	JUL 2 INELIGIBLE DAY (DAY BEFORE)	JUL 3 DLRP/CSRP EVENT	JUL 4 HOLIDAY	JUL 5

CBL WINDOW FOR MULTIPLE WEEKDAY EVENT EXAMPLES

EVENT DATE	PROGRAM	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7	DAY 8	DAY 9	DAY 10
30-Jun	FLEX SERVICES	27-Jun	26-Jun	25-Jun	24-Jun	23-Jun	20-Jun	19-Jun	18-Jun	17-Jun	16-Jun
3-Jul	FLEX SERVICES	1-Jul	27-Jun	26-Jun	25-Jun	24-Jun	23-Jun	20-Jun	19-Jun	18-Jun	17-Jun

Figure 2 Example of CBL Window Selection – Multiple Weekday Events

Step 2. Establish the CBL Basis. Identify the five (5) days from the 10-day CBL Window to be used to develop CBL values for each hour of the event.

- a. Order the ten (10) days in the CBL Window according to their average daily event period usage level and eliminate the five days with the lowest average daily event period usage.
- b. The remaining five days constitute the CBL Basis.

Step 3. Calculate Average Day CBL values for the event.

- a. For each hour of the event, the CBL is the average of the usage in that hour in the five (5) days that comprise the CBL basis.

SUN	MON	TUE	WED	THU	FRI	SAT
JUN 29	JUN 30	JUL 1	JUL 2	JUL 3	JUL 4 HOLIDAY	JUL 5 <i>CBL DAY 3 FOR 7/26</i>
JUL 6	JUL 7	JUL 8	JUL 9	JUL 10	JUL 11	JUL 12 <i>CBL DAY 2 FOR 7/26</i>
JUL 13	JUL 14	JUL 15	JUL 16	JUL 17	JUL 18	JUL 19 <i>CBL DAY 1 FOR 7/26</i>
JUL 20	JUL 21	JUL 22	JUL 23	JUL 24	JUL 25	JUL 26 DLRP/CSRP EVENT

Figure 3 Example of CBL Window Selection – Weekend Event

CBL WINDOW FOR WEEKEND EVENT EXAMPLE											
EVENT DATE	PROGRAM	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7	DAY 8	DAY 9	DAY 10
26-Jul	FLEX SERVICES	19-Jul	12-Jul	5-Jul	<i>Weekend CBL Window uses only 3 weekend days of same day type</i>						

Average Day CBL for Weekends

Step 1. Establish the CBL Window

- a. The CBL Window is comprised of the most recent three (3) like (Saturday or Sunday) weekend days. There are no exclusions for Holidays or event days.

Step 2. Establish the CBL Basis.

- a. Calculate the average daily event period usage value for each of the three (3) days in the CBL Window.
- b. Order the three (3) days according to their average daily event period usage level.
- c. Eliminate the day with the lowest average value
- d. The Weekend CBL Basis contains two (2) days.

Step 3. Calculate Weekend Average Day CBL values for the event.

- a. For each hour of the event, the CBL value is average of usage in that hour in the two days that comprise the CBL basis.

Weather -Sensitive CBL

Elective Weather-Sensitive CBL Formulation

Step 1. Calculate the Average Day CBL values for each hour of the event period described in (5.0) above.

Step 2. Calculate the Event Final Adjustment Factor. This factor is applied to each of the individual hourly values of the Average Day CBL.

- a. Calculate the Adjustment Basis Average CBL
 - i. Establish the adjustment period, the two-hour period beginning with the start of the hour that is four hours prior to the commencement of the event through the end of the hour, three hours prior to the event.

- b. Calculate the Adjustment Basis Average CBL.
 - i. Apply the Average Day CBL formula as described in 5.0 The Average Day CBL, to the adjustment period hours as though it were an event period two hours in duration but using the five days selected for use in the Average CBL Basis (i.e., average the ten hours).
- c. Calculate the average of the two usage values derived in (b,i), which is the Adjustment Basis Average CBL.
- d. Calculate the Adjustment Basis Average Usage
 - i. The adjustment basis average usage is the simple average of the participant's usage over the two-hour adjustment period on the event day.
- e. Calculate the gross adjustment factor
 - i. The gross adjustment factor is equal to the Adjustment Basis Average Usage divided by the Adjustment Basis Average CBL
- f. Determine the Final adjustment factor. The final adjustment factor is as follows:
 - i. If the gross adjustment factor is greater than 1.00, then the final adjustment factor is the smaller of the gross adjustment factor or 1.20
 - ii. If the gross adjustment factor is less than 1.00, the final adjustment factors are the greater of the gross adjustment factor or 0.80.

APPENDIX F: Facility Requirements

1. **Applicability and Limitations.** These Facility Requirements apply to Sellers with existing or new-build Facility-based Assets. Nothing in this Appendix is intended to affect any other agreement between Buyer and Seller, except as otherwise expressly provided herein.
2. **Seller Representations.** Seller hereby represents and warrants to Buyer, as of date hereof, that:
 - 2.1 **Interconnection.** During Term the Seller shall execute and maintain an “Interconnection Agreement” with the appropriate Utility entity, whereby the Seller shall pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable Buyer, FERC, and NERC requirements, including applicable interconnection and metering requirements. The Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. The Seller also shall arrange and pay independently for any and all necessary costs under the Interconnection Agreement with the Buyer.
 - 2.2 **Governmental Approvals.** Seller shall use its best efforts to obtain, at the time legally required (i) all Governmental Approvals or Permits for the construction, ownership, operation and maintenance of the Buyer-Owned Interconnection Facilities, in accordance with the Interconnection Agreement; and (ii) all Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facilities, including appropriate zoning and building, environmental, construction, and interconnection permits. Buyer shall use commercially reasonable efforts, in its discretion, to assist Seller in obtaining necessary permits or approvals. Seller shall pay for all Governmental Approvals necessary for the construction and operation of the Facility.
 - 2.3 **Facility Ownership.** Seller is and shall be the legal and beneficial owner of the Facility at all times. The Facility shall at all times retain the legal status of personal property by all applicable statutes. Buyer may not encumber or place any lien or security interest on the Facility.
 - 2.4 **Cobalt.** After performing due diligence and providing such due diligence information to Buyer, which diligence may include a statement from Seller’s supplier that components are not produced using child labor, to the extent of Seller’s reasonable knowledge, the Facilities and all battery components (including cobalt), including those materials sourced from third party subcontractors, were not produced using prohibited child labor.

3. New Build Facilities: Pre-Operational Requirements.

3.1 Guaranteed Project Milestones Including Commercial Operation.

3.1.1. Time is of the Essence. Time is of the essence of this Agreement, and Seller's ability to achieve the Construction Milestones is critically important.

3.1.2. Failure to Meet Reporting Milestones. If Seller does not meet a Reporting Milestone, in each case as set forth in APPENDIX K (Reporting Milestones), Seller shall submit to Buyer, within ten (10) Business Days of any such missed Reporting Milestone, a remedial action plan which shall provide a detailed description of Seller's course of action and plan to achieve (i) the missed Reporting Milestone date within ninety (90) Days of the missed Reporting Milestone and (ii) all subsequent Construction Milestones, provided that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent Construction Milestones.

3.1.3. Guaranteed Project and Reporting Milestone Dates. Seller shall achieve each Guaranteed Project Milestone Date or Reporting Milestone Date, subject (to the extent applicable) to the following extension:

- (a) If the failure to achieve a Construction Milestone by the applicable Guaranteed Project Milestone Date or Reporting Milestone Date is the result of Force Majeure, and if and so long as the conditions set forth in Section 7.4 (Satisfaction of Certain Conditions) of the General Terms and Conditions are satisfied, such Guaranteed Project Milestone Date or Reporting Milestone Date shall be extended by a period equal to the lesser of three hundred sixty-five (365) Days or the duration of the delay caused by the Force Majeure.
- (b) If the failure to achieve a Reporting Milestone Date in APPENDIX K or Project Milestone Date in APPENDIX L is the direct result of action or omission by Buyer, including, for the avoidance of doubt, any Buyer-caused delays in the interconnection process, and if and so long as the conditions set forth in Section 7.4 (Satisfaction of Certain Conditions) of the General Terms and Conditions are satisfied, and so long as Seller was not negligent and played no role in such delay, such Reporting Milestone Date or Project Milestone Date shall be extended by a period equal to the lesser of three hundred sixty-five (365) days or the duration of the delay caused by Buyer's action or omission.
- (c) In the case of a delay in achievement of a Reporting Milestone Date in APPENDIX K or Project Milestone Date in APPENDIX L as a result of (i) delay in or non-delivery by a vendor; (ii) delay in a

Governmental Authority issuing a Governmental Approval; (iii) delay in obtaining necessary easements; or (iv) delay in obtaining financing, incentives, or other revenues necessary for Seller to finance the Facilities, and such delays are beyond the reasonable control of Seller, Seller having used commercially reasonable best efforts to achieve such milestone, and such delay being not attributable to any act or omission on the part of Seller, such Reporting Milestone Date or Project Milestone Date shall be extended by Buyer after Buyer's review of Seller's compliance with the terms of this Agreement, information provided pursuant to Seller's reporting requirements described in APPENDIX M (Monthly Progress Report), and responses to any request for relevant information regarding such delays as may be requested by Buyer within five (5) days of Seller's request for such extension. If Buyer has not communicated its agreement to the extension requested by Seller pursuant to this Section within thirty (30) days of Seller's request, and Seller has otherwise complied with the requirements of this Section, then such extension shall be granted.

3.2 Monthly Progress Reports. Commencing upon the Execution Date of this Agreement, Seller shall submit to Buyer, on the tenth (10th) Business Day of each calendar month until the Commercial Operations Date is achieved, a progress report for the prior month in a form set forth on APPENDIX M (Form of Monthly Progress Report) (the "Monthly Progress Report"). These progress reports shall notify Buyer of the current status of each Construction Milestone. Seller shall include in such report a list of all letters, notices, applications, filings and Governmental Approvals sent to or received from any Governmental Authority and shall provide any such documents as may be reasonably requested by Buyer. In addition, Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Construction Milestones. Seller shall provide Buyer with any requested documentation to support the achievement of Construction Milestones within ten (10) Business Days of receipt of such request from Buyer. Upon the occurrence of a Force Majeure, Seller shall also comply with the requirements of Section 7.4 (Satisfaction of Certain Conditions) of the General Terms and Conditions to the extent such requirements provide for communications to Buyer beyond those required under this Section 3.2 (Monthly Progress Reports).

4. New-Build Facilities: Delay Damages and Termination.

4.1 Daily Delay Damages for New-Build Facility Failure to Meet Guaranteed Project Milestone.

4.1.1. If a Guaranteed Project Milestone (other than Commercial Operations) has not been achieved by the applicable Guaranteed Project Milestone Date as extended as provided in Section 3.1.3 (Guaranteed Project and Reporting Milestone Dates), Buyer shall collect and Seller shall pay liquidated

damages in the amount of the daily contract value if the Asset were to be dispatched (“Daily Delay Damages”) following the applicable Guaranteed Project Milestone Date, as extended in accordance with Section 3.1.3 (Guaranteed Project and Reporting Milestone Dates); provided, however, that the number of Days for which Buyer shall collect and Seller shall pay Daily Delay Damages for a failure to achieve a Guaranteed Project Milestone by the Guaranteed Project Milestone Date shall not exceed sixty (60) Days for each such missed Guaranteed Project Milestone Date (the “Construction Delay LD Period”).

4.1.2. If the Commercial Operations Date has not been achieved by the Guaranteed Commercial Operations Date as extended as provided in Section 3.1.3 (Guaranteed Project and Reporting Milestone Dates), in addition to any Daily Delay Damages collected pursuant to Section 4.1.1, Buyer shall collect and Seller shall pay Daily Delay Damages following the Guaranteed Commercial Operations Date, as such date may be extended in accordance with Section 3.1.3 (Guaranteed Project and Reporting Milestone Dates), provided that the number of Days for which Buyer shall collect and Seller shall pay Daily Delay Damages for failing to achieve the Guaranteed Commercial Operations Date shall not exceed one hundred eighty (180) Days (the “COD Delay LD Period”).

4.2 Payment of Daily Delay Damages. Buyer shall draw upon the Development Period Security on a monthly basis for payment of the total Daily Delay Damages incurred by Seller during the preceding calendar month. If the Development Period Security is at any time insufficient to pay the amount of the draw to which Buyer is then entitled, Seller shall pay any such deficiency to Buyer promptly upon demand.

4.3 Termination and Termination Damages for New-Build Facility Failure to Achieve a Guaranteed Project Milestone Date. If, upon the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable, Seller has not achieved the applicable Guaranteed Project Milestone, Buyer shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller designating the Day such termination is to be effective, provided that Buyer shall issue such notice no later than thirty (30) Days following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. The effective date of such termination shall be not later than the date that is thirty (30) Days after such notice is deemed to be received by Seller, and not earlier than the later to occur of the Day such notice is deemed to be received by Seller or the Day following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. If the Agreement is terminated by Buyer pursuant to Article 4 (New-Build Facilities: Delay Damages and Termination), Buyer shall have the right to collect Termination Damages, which shall be calculated in accordance with Section 4.4 (Damages in the Event of Termination by Buyer) of this Appendix.

4.4 Damages in the Event of a Termination by Buyer

4.4.1. Termination Due to Failure to Meet a Guaranteed Project Milestone Date. If the Agreement is terminated by Buyer pursuant to Section 4.3, Buyer shall be entitled to Termination Damages equal to the Development Security.

4.4.2. Termination Due to an Event of Default. If the Agreement is terminated by Buyer in accordance with this Agreement after the Commercial Operations Date due to an Event of Default where Seller is the Defaulting Party, Buyer shall be entitled to Termination Damages equal to the remainder of the Contract Total.

4.5 Liquidated Damages Appropriate. Seller's inability to achieve Commercial Operations by the Guaranteed Commercial Operations Date may cause Buyer to not meet applicable regulatory requirements and require Buyer to devote substantial additional resources for administration and oversight activities. As such, Buyer may incur financial consequences for failure to meet such requirements. Consequently, each Party agrees and acknowledges that (i) the damages that Buyer would incur due to delay in achieving Commercial Operations by the Guaranteed Commercial Operations Date (subject to the extensions provided in Section 3.1.3 (Guaranteed Project and Reporting Milestone Dates)) would be difficult or impossible to calculate with certainty, (ii) the Daily Delay Damages set forth in Article 4 (New Build Facilities: Delay Damages and Termination) are an appropriate approximation of such damages and (iii) the Daily Delay Damages are the sole and exclusive remedies for Seller's failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date.

5. Seller's Ongoing Responsibilities.

5.1 Operation and Maintenance Records.

5.1.1. Seller's Logs. Seller shall maintain and deliver, at least daily, throughout the Term, a log in which it shall record all pertinent data that will indicate whether the Facility is being operated in accordance with Good Utility Practice. Assets, other than those located behind the meter, shall record all pertinent system operational data at no less than five (5) second resolution. All Assets shall record maintenance data hourly. These data logs shall include, but not be limited to, all maintenance and inspection work performed at the Facility or deferred to a future scheduled plant outage, circuit breaker trip operations, relay operations including target indications, megavar and megawatt recording charts (and/or equivalent computer records), all unusual conditions experienced or observed and any reduced capability and the reasons therefor and duration thereof. For each inverter, the data reported shall include planned derated hours, unplanned derated hours, average derated kW during the derated hours, scheduled maintenance

hours, average derated kW during scheduled maintenance hours, hours on-control and hours on-line.

5.1.2. Buyer Access to Seller's Logs. Buyer shall have the right, upon reasonable notice and during regular Business Day hours to review and copy such data logs; provided, that if such logs reveal any inconsistency with Buyer's records, Buyer may request and review Seller's supporting records, correspondence, memoranda and other documents or electronically recorded data associated with such logs related to the operation and maintenance of the Facility in order to resolve such inconsistency. Supporting records shall include correspondence between Seller and its insurer(s) for the Facility equipment pertaining to Seller's maintenance practices and Seller's procedures and scheduling (including deferral) of maintenance at the Facility.

5.1.3. Seller's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Seller shall submit to Buyer for inspection at the Site, a summary in a format similar to the example provided in APPENDIX J (Summary of Maintenance and Inspection Performed in Prior Calendar Year) of all maintenance and inspection work performed in the prior calendar year, and of all conditions experienced or observed during such calendar year that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility in accordance with the operational parameters set forth in APPENDIX B (Service Terms) and the applicable Flexibility Service Form. The summary shall present the requested data shall include one (1) second resolution and specific end points and be presented in a meaningful and informative manner consistent with the cooperative exchange of information between the Parties. If available and practicable, such summary shall be provided in electronic format (MS Excel format) with sufficient software so that Buyer can group activities for specific process areas of the Facility and be able to view the maintenance history of a specific equipment item. Such summary shall also include Seller's proposals for correcting or preventing recurrences of identified equipment problems, for performing such other maintenance and inspection work as is required by Good Utility Practice and detail any anticipated problems for the upcoming calendar year.

5.1.4. Time Period for Maintaining Records. Any and all records, correspondence, memoranda and other documents or electronically recorded data related to the operation and maintenance of the Facility shall be maintained by Seller for a period of not less than seven (7) years after termination or expiration of the Agreement.

5.2 Buyer's Written Recommendations. Seller shall operate and maintain the Facilities in accordance with the operational parameters set forth in APPENDIX B (Service Terms) and the applicable Flexibility Service Form. At any point during the Term, including after any reasonable inspection desired by Buyer of the Facility

and consultation with Seller, in the event there are issues identified that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement, for purposes of addressing such issues, Buyer may provide written recommendations for specific operation or maintenance actions or for changes in the operation or maintenance program of the Facility. Buyer's making or failing to make such recommendations shall not be construed as endorsing the operation and maintenance thereof or as any warranty of the safety, durability or reliability of the Facility nor as a waiver of any Buyer right. If Seller agrees with Buyer, Seller shall, within a reasonable time after Buyer makes such recommendations, not to exceed ninety (90) calendar days (or such longer period as reasonably agreed to by the Parties), implement Buyer's recommendations. If Seller disagrees with Buyer, it shall within ten (10) Days inform Buyer of alternatives it will take to accomplish the same intent or provide Buyer with a reasonable explanation as to why no action is required by Good Utility Practice. If Buyer disagrees with Seller's position, then Seller shall commission a study by a third-party consultant ("Qualified Independent Consultant"), and the Qualified Independent Consultant will make recommendations to remedy the situation. Seller shall implement the Qualified Independent Consultant's recommendations contained in such study. Both Parties shall equally share in the cost of the Qualified Independent Consultant as well as all costs associated with implementing the recommendations contained in the Independent Consultant's report. Notwithstanding the foregoing, Seller shall not be required to comply with any recommendations that, in Seller's reasonable judgment, will violate or void any warranties of equipment that are a part of, or are used in connection with, the Facilities or violate any long-term service agreement, or conflict with any written requirements, specifications or operating parameters of the manufacturer, with respect to such equipment, in which case Seller shall notify Buyer thereof within twenty (20) days of receipt of such recommendation, and Seller and Buyer shall endeavor to reach a mutually satisfactory resolution of the matter in question.

5.3 Seller's Maintenance Schedule and Notification.

5.3.1. Annual Maintenance Schedule. Prior to the Commercial Operation Date, Seller shall submit to Buyer a written plan for scheduled maintenance outages which will reduce the capability of the Facility to provide Flexibility Service at any point during next two-year period. After the Commercial Operation Date, such plan shall be provided by Buyer each year by June 30. The schedule shall state the proposed dates and durations of scheduled maintenance, including the scope of work for the maintenance requiring shutdown or reduction in output of the Facility and the estimated MW that is anticipated to be offline for each projected maintenance event. Buyer shall review the maintenance schedule for the two-year period and inform Seller in writing no later than December 1 of the same year of Buyer's concurrence or requested revisions; provided, however, that Seller shall not be required to agree to any proposed revisions that, in Seller's judgment, will void or violate any warranties of equipment that is part of,

or used in connection with, the Facility or violate any long-term service agreement with respect to such equipment, in which case Seller shall promptly notify Buyer thereof, and Seller and Buyer shall endeavor to reach a mutually satisfactory resolution of the matter in question. With respect to such agreed upon revisions, Seller shall revise its schedule for timing and duration of scheduled shutdowns and scheduled reductions of output of the Facility to accommodate Buyer's revisions, unless such revisions would not be consistent with Good Utility Practice and make all commercially reasonable efforts, consistent with Good Utility Practice to accommodate any subsequent changes in such schedule reasonably requested by Buyer. Neither Seller's inclusion of a maintenance event in its two-year schedule, nor the Buyer's concurrence in or requested revisions to such schedule, shall excuse any failure to satisfy the Guaranteed Output during such maintenance event.

5.3.2. Seller's Quarterly Maintenance Schedule. If changes are required to the Seller's Annual Maintenance Schedule after concurrence by Buyer in accordance with Section 5.3.1, Seller shall provide to Buyer in writing a projection of maintenance outages and reductions in capacity for the next calendar quarter in which such change in the Seller's Annual Maintenance Schedule shall occur, including the estimated MW that is anticipated to be off-line for each projected maintenance event. If required, Seller's Quarterly Maintenance Schedule shall be provided to Buyer by March 1st, June 1st, September 1st or December 1st, as applicable. Seller's inclusion of a maintenance event in its quarterly maintenance schedule shall not excuse any failure to satisfy the Committed MW/MVAR during such maintenance event, except that Seller shall be excused from any failure to satisfy the Committed MW/MVAR if Buyer fails to raise a concern regarding the occurrence of a maintenance event upon thirty (30) Business Days prior written notice to Seller. During any scheduled maintenance event, Seller shall provide updates to Buyer's operating personnel in the event there are any delays or changes to the proposed schedule, and shall promptly respond to any requests from Buyer for updates regarding the status of such maintenance event.

5.3.3. Maintenance Outage Notifications. When Seller learns that any of its equipment will be removed from or returned to service, and any such removal or return may affect the ability of the Facility to deliver Flexibility Services to Buyer, Seller shall notify Buyer as soon as practicable. Any unit shutdown shall be coordinated with Buyer in advance to the extent practicable to allow a reasonable amount of time for Buyer to make generation adjustments required by the loss of availability from a unit shutdown. A Seller notification under this Section 5.3.3 (Maintenance Outage Notification) shall not excuse any failure to satisfy the Committed MW/MVAR during the maintenance period.

- 5.4 Operating and Maintenance Manuals.** Not later than the Commercial Operation Date, Seller shall provide Buyer with (i) any and all manufacturer's equipment manuals and recommendations for maintenance and with any updates or supplements thereto within three (3) Business Days after Seller's receipt of same and (ii) a copy of the operating and maintenance manual and shall thereafter provide Buyer with any amendments thereto within three (3) Business Days after such amendment is adopted.
- 5.5 Operations and Maintenance Services.** At no additional cost to Buyer, Seller shall (a) operate and maintain the Facility in a safe manner in accordance with its existing applicable interconnection agreements, the Interconnection Agreement as entered into between Buyer and Seller, manufacturer's guidelines and recommendations, warranty requirements, Good Utility Practice, industry norms (including standards of the National Electrical Code, Institute of Electrical and Electronic Engineers, American National Standards Institute, and the Underwriters Laboratories, and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code, as such laws and code norms may be amended from time to time; (b) obtain any governmental authorizations and permits required for the construction and operation thereof. The Seller shall make any necessary and commercially reasonable repairs with the intent of optimizing the availability of electricity to the Buyer. The Seller shall reimburse the Buyer for any and all losses, damages, claims, penalties, or liability that the Buyer incurs as a result of the Seller's failure to obtain or maintain any governmental authorizations and permits required for the construction and operation of the Facility throughout the Term. Seller will use qualified personnel to perform such services in accordance with industry best practices. In accordance with APPENDIX H, Buyer must pre-approve all Planned Outages.
- 6. Seller Personnel.** Seller will engage only qualified Seller personnel and be liable for all acts and omissions of such Seller personnel, including responsibility for such Seller personnel compliance with safety standards and Applicable Laws and Regulations, and compliance with Buyer's Level 2 background check requirements as set forth in APPENDIX N (National Grid Contractor Background Check Program). Any illegal acts, including but not limited to terrorism affecting property and/or personnel of the Buyer or its Affiliates, the Seller or third parties shall be considered grounds for finding Seller in default and terminating the Agreement for default in accordance with Section 8.4 (Rights of the Non-defaulting Party; Forward Contract) of the General Terms and Conditions, in addition to all other rights and remedies available to the Buyer and its Affiliates under Applicable Law.
- 7. Security, Safety and Subcontractors.**
- 7.1 Seller's Duty to Maintain Security.** Seller will maintain the security of the Facility at all times. Seller shall be solely responsible and assume all liability for the safety and supervision of the Facility, its employees and other persons at the Facility. The Seller shall establish and effectively and continuously implement a "Safety Program" that includes both occupational and process safety as applicable. This

Safety Program must be no less onerous than the safety procedures outlined by Buyer in APPENDIX O (National Grid Safety Procedures) hereto. This Safety Program must include empowerment of all Seller Personnel to call a stop to the work at any time to address a safety issue. The Seller shall and shall require its subcontractors and their employees to comply with all applicable Laws, whether the same are in force upon the execution of the Agreement 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”), as amended from time to time. The Seller shall continually inspect the Facility and supervise all Seller Personnel to determine and enforce compliance with the above pro-visions.

- 7.2 Safety Rules Compliance.** The Seller shall and shall require its subcontractors and their employees to comply with all established Facility safety rules 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 Facility, whether the same are in force at the execution of this Agreement or may in the future be passed, enacted or directed.
- 7.3 Adequate Safeguards and Protective Equipment.** The Seller shall provide adequate safeguards, safety devices and protective equipment and enforce their use and take any other needed actions to protect the life, health and safety of the public and to protect property in connection with its performance on the Facility.
- 7.4 Fire Protection.** The Seller shall be responsible for providing adequate fire protection, shall take all necessary measures to prevent fire from occurring at the Site, and shall be responsible for all fires associated with or affecting the Facility. The Seller shall comply with the good practices recommended in National Fire Prevention Association Standard 241 and 855 and other national consensus standards for fire safety on construction projects.
- 7.5 First Aid Facilities.** The Seller shall at its sole expense provide adequate first aid facilities and shall make those facilities available for the treatment of persons who may be injured or become ill at the Site or while engaged in the Facility.
- 7.6 Suspension and Corrective Action.** In the event that the Seller breaches or violates (a) the requirements of Article 7, (b) the requirements in the Seller’s Safety Program, or (c) any applicable Federal, state or local safety directives, requirements, rules, regulations, laws or ordinances, including without limitation, compliance with the safety regulations and standards adopted under the OSHA (collectively, the “Safety Requirements”), Buyer may, in its sole discretion (a) interrupt, suspend or delay the Facility without penalty; and/or, (b) require the Seller to implement a corrective action plan pursuant to the Seller Safety Requirements; or (c) terminate the Agreement for default.
- 7.7 Notice of Government Finding of Safety Concern.** If at any time during the Term (i) any Governmental Authority takes any action with respect to the Facility for

safety concerns that prevents or restricts the Facility from being operated in accordance with the terms of this Agreement or (ii) a fire or other adverse event occurs with respect to any energy storage system (other than the Facility) that shares the same manufacturer or substantially similar design as the Facility and that is reasonably attributable to defective design or manufacture, Buyer shall have the right to provide a notice to Seller to address concerns with the Facility.

- 7.8 Seller Duty to Place Facility in Unplanned Outage and Remediation of Safety Concerns.** Following receipt of a notice from Buyer as provided in Section 7.7 (Notice of Government Finding of Safety Concern), Seller shall place the Facility in an unplanned Outage and engage an Independent Engineer to evaluate whether remediation with respect to the Facility is necessary to address safety concerns. Seller shall deliver a written report from the Independent Engineer to Buyer with the results of such evaluation and all remedial actions necessary to resolve the safety concerns identified. If Seller is unable to implement the remediation identified by the Independent Engineer within three (3) months of receipt of Buyer's notice, then such failure shall constitute an Event of Default under Section 8.1 (Events of Default) of the General Terms and Conditions.
- 7.9 Buyer's Right to Terminate Due to Safety Event.** Buyer may terminate this Agreement, whether before or after the Commercial Operation Date if (a) any Governmental Authority takes any action with respect to the Facility that prevents or restricts the Facility from being operated as described herein, (b) Buyer, based on a publicly available, peer-reviewed safety study, has a reasonable public safety concern with respect to the Facility, or (c) the occurrence of a fire or other hazard with respect to any energy storage system other than the Facility that shares the same manufacturer or substantially similar design as the Facility that is reasonably attributable to a defective design or manufacture ("Safety Event Termination"). In the event of a Safety Event Termination, Buyer 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 Commercial Operation Date.
- 7.10 Buyer Personnel and Distribution System Safety.** Notwithstanding any other provisions of this Agreement, if at any time Buyer reasonably determines that the Facility may endanger Buyer's personnel, and/or the continued operation of the Facility may endanger the integrity of the Buyer System or have an adverse effect on Buyer's other customers' electric service, Buyer shall have the right to disconnect the Facility from the Buyer System, as determined in the sole discretion of the Buyer System Operator. The Facility shall immediately comply with the instruction of the Buyer System Operator, which may be initiated through remote control, and shall remain disconnected (and in Seller-Attributable Delivery Limitation status if so determined), until such time as Buyer is satisfied that the condition(s) referred to above have been corrected.
- 8. Liens.** Seller, for itself, its subcontractors and all other persons performing under the Agreement hereby waives, to the full extent permitted by law, 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 Agreement. Seller shall pay punctually for all labor, equipment and materials and all liabilities incurred by it in performance of the Agreement, and when requested shall furnish the Buyer with satisfactory evidence of such payment. Seller shall to the fullest extent permitted by law, keep Buyer's real and personal property free and clear of all liens, claims, and encumbrances arising from the performance of the Agreement by Seller and its subcontractors. Seller shall not cause or permit any lien or security interest to attach to any real or personal property of Buyer.

9. New-Build Facility: Credit Assurance and Security. As pertains to Flexibility Services that require a New Build Facility, Seller is required to post and maintain Development Period Security and Operating Period Security based on the requirements of this Article 9 (Credit Assurance and Security).

9.1 Development Period Security. To guarantee undertaking the performance of Seller's obligations under the Agreement for the period prior to the Commercial Operation Date (including but not limited to Seller's obligation to meet the Guaranteed Commercial Operation Date), Seller shall provide 100% of the Development Period Security to Buyer within ten (10) Business Days of the Execution Date of the Agreement.

9.2 Return of Development Period Security. The Development Period Security shall be returned to Seller, subject to Buyer's right to draw from the Development Period Security as set forth in Section 9.6 (Buyer's Right to Draw from Security Funds) following Buyer's receipt of Operating Period Security pursuant to Section 9.3 (Operating Period Security) of this Agreement.

9.3 Operating Period Security. To guarantee the performance of Seller's obligations under the Agreement for the period starting from the Commercial Operation Date to the expiration or termination of this Agreement, Seller shall post on or before the first day of each Contract Year for the first two (2) Contract Years, Operating Period Security in an amount equal to the Contract Value for the given year with assumed forecasted amount of dispatches and contract prices from the applicable Flexibility Service Form (the "Operating Period Security"). Seller shall provide such Operating Period Security to Buyer within five (5) Business Days after the Commercial Operation Date. Following the second Contract Year, Buyer may withhold or prorate the Contract Price due and owing to Seller in the event of Seller's underperformance. Such withholding or prorating shall be equal to the downward adjustment as calculated in accordance with APPENDIX H. Any such withholding or prorating of the Contract Price shall serve as Operating Period Security for the remainder of the Term.

9.4 Form of Security. Seller shall supply the Development Period and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement substantially in the form attached to this Agreement as APPENDIX I (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard

& Poor's) of the bank issuing the standby letter of credit falls below A-, Buyer may require Seller to replace, within thirty (30) Business Days' notice by Buyer, the standby letter of credit with a standby letter of credit from another bank chartered in the United States with a credit rating of "A-" or better. Such letter of credit shall be issued for a minimum term of one (1) year. Further, at the end of the year, the security shall be renewed, for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Business Days' advance notice to Buyer and Seller of any expiration or earlier termination of the letter of credit so as to allow Buyer sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller. In the event Buyer receives notice from the issuing bank that a letter of credit for the Development Period Security or Operating Period Security will be cancelled or is set to expire and will not be extended, Buyer shall endeavor, but shall not be obligated, to provide Seller with notice of such cancellation or termination. Buyer shall not be responsible for any lack of notice to Seller of such letter of credit's cancellation or termination and the events resulting therefrom, provided, however, that if Buyer draws upon the then full amount remaining under the letter of credit, the provisions of Section 9.7 (Failure to Renew or Extend Letter of Credit) and Section 9.8 (L/C Proceeds Escrow) shall apply. In the event the letter of credit for the Development Period Security or Operating Period Security ever expires or is terminated without Buyer drawing on such full amount remaining under the letter of credit prior to its expiration, and Seller has not been afforded the opportunity to replace the letter of credit prior to its expiration or termination because of lack of notice, Seller shall be provided a grace period of five (5) Business Days from any notice of such expiration or termination of the letter of credit to obtain and provide to Buyer a substitute letter of credit meeting the requirements of this Article 9 (Credit Assurance and Security).

- 9.5 Security Funds.** The Development Period Security and Operating Period Security, including L/C Proceeds therefrom, as such term is defined in Section 9.8 (collectively referred to as the "Security Funds") established, funded, and maintained by Seller pursuant to the provisions of this Article 9 (Credit Assurance and Security) shall provide security for the performance of Seller's obligations under this Agreement and shall be available to be drawn on by Buyer as provided in Section 9.6 (Buyer's Right to Draw from Security Funds). Seller shall maintain the Security Funds at the contractually-required level throughout the term set forth in Article 9. Seller shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by Buyer or any reduction in the value of Security Funds below the required level for any other reason. Notwithstanding the foregoing, Seller's obligation to replenish the Development Period Security shall not exceed in total three (3) times the original amount of the Development Period Security required under Section 9.1 (Development Period Security) of this Agreement.

- 9.6 Buyer's Right to Draw from Security Funds.** In addition to any other remedy available to it, Buyer may, before or after termination of this Agreement, draw from the Security Funds such amounts as are necessary to recover amounts Buyer is owed pursuant to this Agreement, including, without limitation, any damages due Buyer, and any amounts for which Buyer is entitled to indemnification under this Agreement. Buyer may draw all or any part of such amounts due Buyer from any of the Security Funds to the extent available pursuant to this Article 9 (Credit Assurance and Security), and from all such forms, and in any sequence Buyer may select. Any failure to draw upon the Security Funds or other security for any damages or other amounts due Buyer shall not prejudice Buyer's rights to recover such damages or amounts in any other manner permitted by law.
- 9.7 Failure to Renew or Extend Letter of Credit.** If the letter of credit is not renewed or extended at least thirty (30) Business Days prior to its expiration or earlier termination, and if such renewal or extension is required to maintain the required Development Security or Operating Period Security pursuant to Sections 9.1 and 9.3, Buyer shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "L/C Proceeds"), at Seller's cost, in an escrow account in accordance with Section 9.8 (L/C Proceeds Escrow), until and unless Seller provides a substitute letter of credit meeting the requirements of this Article 9 (Credit Assurance and Security).
- 9.8 L/C Proceeds Escrow.** If Buyer draws on the letter of credit pursuant to Section 9.7 (Failure to Renew or Extend Letter of Credit), and so long as any required substitute letter of credit meeting the requirements of this Article 9 (Credit Assurance and Security) is not obtained and provided to Buyer prior to the expiration or termination of the letter of credit, Buyer shall, in order to avoid comingling the L/C Proceeds, have the right, but not the obligation, to place the L/C Proceeds in an escrow account as provided in this Section 9.8 (L/C Proceeds Escrow) with a reputable escrow agent acceptable to Buyer ("Escrow Agent"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." The documentation governing such escrow account shall be in form and content satisfactory to Buyer and shall give Buyer the sole authority to draw from the account. Seller shall not be a party to such documentation and shall have no rights to the L/C Proceeds. Upon full satisfaction of Seller's obligations under this Agreement, including recovery by Buyer of amounts owed to it under this Agreement in accordance with Section 9.6, Buyer shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the L/C Proceeds the remaining balance (if any) of the L/C Proceeds. If there is more than one escrow account with L/C Proceeds, Buyer may, in accordance with this Agreement, draw on such accounts in any sequence Buyer may select. If a substitute letter of credit satisfying the requirements of this Article 9 (Credit Assurance and Security) is obtained and provided to Buyer, the net L/C Proceeds remaining as of the date that such substitute letter of credit is provided, shall be returned to Seller, or as Seller directs in writing.

9.9 Release of Security Funds. Promptly following the end of the Initial Term, and the complete performance of all of Seller's obligations under this Agreement, including but not limited to the obligation to pay any and all amounts owed by Seller to Buyer under this Agreement, Buyer shall release the Security Funds to Seller.

10. Signature Authority. The Parties have carefully read and understand this Agreement and acknowledge receipt of a copy thereof. Each individual signing below warrants and represents that he or she has the authority to enter into this Agreement on behalf of the person, firm or corporation listed on the signature page.

-SIGNATURE PAGE TO FOLLOW-

DRAFT

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties hereto have caused this Agreement to be duly executed by their respective duly authorized officers as of the date and year first above written.

BUYER

By: _____

Name: _____

Title: _____

SELLER

By: _____

Name: _____

Title: _____

DRAFT

APPENDIX G: Description of New-Build Facility

1. Name of Facility (duplicate and complete for each Facility):

1.1 Location:

1.2 Telephone number (for system emergencies):

1.3 E-mail Address:

2. Operator:

3. Name of person to whom payments are to be made:

3.1 Mailing address:

4. Equipment:

4.1 Type of facility and conversion equipment:

4.2 Design and capacity:

Total Facility Capacity ("Contract Capacity"):

_____ kW
_____ kWh

Total Number of Generators:

**[number and size of each generator, e.g., one (1) Brand X, 200 kW;
one (1) Brand Y, 300 kW]**

Description of Equipment:

**[For example: Describe the type of energy conversion equipment,
capacity, and any special features.]**

Individual Unit: **[if more than one generator, list information for each
generator]**

	kW	kVAR Consumed	kVAR Produced
<u>Full load</u>			
<u>Startup</u>			

Generator:

Type _____

Rated Power _____ kW

Voltage __ V, _ phase

Frequency __ Hz

Class of Protection

Number of Poles

Rated Speed __ rpm

Rated Current __ A

Rated Power Factor See Exhibit XX

Batteries

Total Number of Energy Storage Units:

[number and size of each storage unit, e.g., one (1) Brand X, 200 kW/400 kWh; one (1) Brand Y, 300 kW/600 kWh]

Capacity: _____ MW

Storage: _____ MWh

Other Description(s):

4.3 Single or 3 phase:

4.4 Point of Interconnection:

4.5 Name of manufacturer:

4.6 Model:

4.7 Description of Facility SCADA and control system(s)

4.8 The “Allowed Capacity” of this Agreement shall not exceed the capacity as set forth in the Interconnection Agreement and equal to _____MW.

4.9 Seller may propose revisions to this Article 4 (Equipment) of APPENDIX G (Description of New-Build Facility) (“Article 4”) for Buyer’s approval prior to commencement of construction, provided, however, that (i) no such revision to this Section 4 shall change the type of Facility or conversion equipment deployed at the Facility from a solar energy conversion facility using photovoltaic equipment; (ii) Seller shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the Interconnection Agreement. Any revision to this Section 4 complying with items (i) through (iii) above shall be

subject to Buyer's prior approval, which approval shall not be unreasonably withheld. If Seller's proposed revision(s) to this Section 4 otherwise satisfies items (i) and (ii) above but not item (iii) such that Buyer, in its reasonable discretion, determines that a re-study or revision to all or any part of the Interconnection Agreement is required to accommodate Seller's proposed revision(s), Buyer may, in its sole and absolute discretion, conditionally approve such revision(s) subject to a satisfactory re-study or revision to the Interconnection Agreement and Seller's payment and continued obligation to be liable and responsible for all costs and expenses of re-studying or revising such portions of the Interconnection Agreement and for modifying and paying for all costs and expenses of modification to the Facility, the Buyer-Owned Interconnection Facilities based on the results of the re-studies or revisions to the Interconnection Agreement. Any changes made to this APPENDIX G (Description of New-Build Facility) or the Agreement as a result of this Section 4.9 of APPENDIX G (Description of New-Build Facility) shall be reflected in a written amendment to the Agreement.

Seller understands and acknowledges that Buyer's review and approval of Seller's proposed revisions to this Section 4 and any necessary re-studies or revisions to the Interconnection Agreement shall be subject to Buyer's then-existing time and personnel constraints. Buyer agrees to use commercially reasonable efforts, under such time and personnel constraints, to complete any necessary reviews, approvals and/or re-studies or revisions to the Interconnection Agreement.

Any delay in completing, or failure by Seller to meet, any subsequent Seller milestones under Section 3.1 (Guaranteed Project Milestones Including Commercial Operation) of APPENDIX F as a result of any revision pursuant to this Section 4 by Seller (whether requiring a re-study or revision to the Interconnection Agreement or not) shall be borne entirely by Seller and Buyer shall not be responsible or liable for any delay or failure to meet any such milestones by Seller.

5. Insurance carrier(s):

[SELLER TO PROVIDE INFORMATION]

6. If Seller is not the operator, Seller shall provide a copy of the agreement between Seller and the operator which requires the operator to operate the Facility and which establishes the scope of operations by the operator and the respective rights of Seller and the operator with respect to the sale of electric energy from Facility no later than the Commercial Operations Date. In addition, Seller shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability Buyer in good standing with the New York Department of State, Division of Corporations, State Records and UCC no later than the Commercial Operations Date.
7. Seller, owner and operator shall provide Buyer a certificate and/or description of their ownership structures which shall be attached hereto as Exhibit G-1 (Ownership Structure).

8. In the event of a change in ownership or identity of Seller, owner or operator, such entity shall provide within thirty (30) Days thereof, a certified copy of a new certificate and a revised ownership structure.

DRAFT

APPENDIX H: Non-Performance Liquidated Damages

- 1. Liquidated Damages for Non-Performance During Term (“Non-Performance LDs”):** The Flex Secure Service will be available within the contractual performance constraints of the Asset as defined in the Flex Secure Service Form (APPENDIX C) and APPENDIX G (Description of New-Build Facility) where applicable. Non-Performance LDs shall be assessed as a reduction of yearly contract payments and be calculated as follows:

1.1 Commitment: Seller will perform at a level equal to, at least, 95% of the MWs and MWh three (3) consecutive Dispatch Events in response to a proper Dispatch (as defined in Article 11 (Dispatch Instructions and Communications) in the Service Terms (APPENDIX B) by Buyer during the Service Window as specified in the executed Flex Secure Service Form. The mechanics of the communication between Buyer’s and Seller’s SCADA systems for such dispatch are set forth in the Flex Secure Form.

1.2 Non-Performance Measure: During each Dispatch Interval, the Facility Meter shall measure the amount of Energy delivered to the Interconnection Points. Each Dispatch Interval shall be assigned a Dispatch Interval Performance Score (“DIPS”) which is defined as follows:

$$DIPS = \frac{\text{Energy delivered to the Facility Meter or load reduced during the Dispatch Interval}}{\text{Energy requested and registered at the RTU per the Buyer Dispatch Protocol}}$$

If Seller fails to deliver at least a DIPS of 95% during three (3) consecutive Dispatch Intervals during a Buyer Dispatch, such period will be considered an “Underperformance Period,” provided, however, that each Dispatch Interval may not be included in more than one Underperformance Period.

If 75% or more of the dispatch intervals fall below the DIPS of 95% within a given service window, such occurrence shall be a “Full Event Failure.”

1.3 Calculation: Non-Performance LDs will be calculated by the Buyer, and if incurred shall be levied for the Contract Year being invoiced by Seller to the Buyer. Seller may independently audit Buyer’s calculation of the Non-Performance LDs, and such audit will serve as the calculation of record for billing unless and until Buyer and Seller can mutually agree upon the correct calculation. Non-Performance LDs may be increased upon the occurrence of specific amounts of Full Event Failures during a Contract Year (with a “Contract Year” being the continuous twelve (12) month period beginning with the Effective Date) as set forth below.

1.4 Underperformance Period Non-Performance LD Amount: The Underperformance Period Non-Performance LD (UP N-P LD) amount shall be defined as follows per Underperformance Period:

$$UP\ N - P\ LD = \frac{\text{Availability Payment per MW/MVAR} + \text{Dispatch Payment per MW/MVAR}}{\text{Number of Dispatch Events per Year} * \text{Contracted Response Time}}$$

; provided, however, that if such Underperformance Period occurs during the first through the fifth Full Event Failure in a Contract Year, the maximum Non-Performance LD amount shall not exceed \$5,500 per MW for each Full Event Failure.

1.5 Multiple Full Event Failure Non- Performance LD Enhancement:

1.5.1. After the occurrence of six (6) to ten (10) Full Event Failures in a Contract Year, the Non-Performance LD amount per Underperformance Period will increase to \$6,000 per MW.

1.5.2. After the occurrence of eleven (11) or more Full Event Failures in a Contract Year, Non-Performance LD amount per Underperformance Period will increase to \$6,500 per MW.

1.6 Lemon Law: Upon the occurrence of twenty-one (21) or more Full Event Failures in each of three (3) consecutive Contract Years, the Parties will, in good faith, endeavor to resolve the issues surrounding the Full Event Failures in accordance with the dispute resolution provisions of this Agreement (Article 11 (Dispute Resolution) of the General Terms and Conditions). If, after engaging in the resolution process set forth in Article 11 of the General Terms and Conditions, the Parties are unable to resolve the issues, then Seller shall be in default and Buyer may terminate this Agreement pursuant to Section 8.4 (Rights of the Non-defaulting Party; Forward Contract).

1.7 Proper Dispatch: In order for a Buyer Dispatch request to be considered a “Proper Dispatch” for which Non-Performance LDs are applicable: (i) Buyer must submit the dispatch request at least twenty-four (24) hours prior to the requested dispatch, in accordance with the methodology set forth in Article 11 of APPENDIX B (Service Terms), (ii) the Buyer Dispatch notification must be for a dispatch in a Service Window. In the event a Buyer Dispatch request is received or is changed less than 12 hours prior to the requested dispatch, the notification is for Discretionary Flexibility Services, or a Buyer Dispatch request otherwise does not conform to the above requirements, Seller shall make commercially reasonable efforts to dispatch in accordance with such request, but such request shall not be considered a Proper Dispatch and Non-Performance LDs shall not apply.

2. Planned Outage Definition: A Planned Outage shall be in force per the following:

2.1 Seller submits a Planned Outage request in a proper manner and to an identified Buyer point of contact at least ten (10) Business Days before the requested Planned Outage.

2.2 Buyer has five (5) Businesses Day to respond either in the affirmative or negative to the request, permitting Seller to maintain the Facility in accordance with Good Utility Practice.

- 2.3** If Buyer does not timely respond, Buyer will be deemed to have approved of the Planned Outage request.
- 2.4** Buyer may override a previously approved Planned Outage with three (3) full Business Days' notice to Seller.
- 2.5** No Planned Outages shall be scheduled from June 1 through September 30 ("Peak Season") in any year during the term or subsequent extensions.

DRAFT

APPENDIX I: Form of Letter of Credit

IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT FORMAT

BANK ADDRESS:
DATE OF ISSUANCE:
AMOUNT U.S. \$ _____

Our Number: _____

Beneficiary:

Applicant:

NIAGARA MOHAWK POWER CORPORATION

ATTN: _____

Ref: _____

LADIES AND GENTLEMEN:

WE HEREBY ESTABLISH THIS IRREVOCABLE, AND UNCONDITIONAL, EXCEPT AS STATED HEREIN, STANDBY LETTER OF CREDIT NUMBER [_____] (LETTER OF CREDIT), BY ORDER OF, FOR THE ACCOUNT OF, AND ON BEHALF OF [CUSTOMER NAME] (ACCOUNT PARTY) IN FAVOR OF XXXXXXXXX D/BA NATIONAL GRID (BENEFICIARY) FOR DRAWINGS, IN ONE OR MORE DRAFTS, UP TO AN AGGREGATE AMOUNT NOT EXCEEDING U.S. \$[_____] EFFECTIVE IMMEDIATELY. THE TERM 'BENEFICIARY' INCLUDES ANY SUCCESSOR OF THE NAMED BENEFICIARY.

THIS LETTER OF CREDIT CANNOT BE AMENDED, MODIFIED OR REVOKED WITHOUT THE PRIOR WRITTEN CONSENT OF BOTH THE BANK AND THE BENEFICIARY. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS AN OFFICER OR AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY SHALL HAVE SIGNED A WRITTEN WAIVER EXPRESSLY REFERENCING THE RIGHT TO BE WAIVED. NO SUCH WAIVER SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, OR WITH RESPECT TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.

WE HEREBY UNDERTAKE TO PROMPTLY HONOR YOUR DRAFT(S) DRAWN ON US, INDICATING OUR LETTER OF CREDIT NUMBER [_____] , FOR ALL OR ANY PART OF THIS LETTER OF CREDIT. THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE, AND PAYABLE AND WE GUARANTY TO THE DRAWERS, ENDORSERS, AND BONE FIDE HOLDERS OF THIS LETTER OF CREDIT, THAT DRAFTS

UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED. THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED OR ASSIGNED BY US OR BY BENEFICIARY, PROVIDED, HOWEVER, THAT BENEFICIARY MAY ASSIGN THIS LETTER OF CREDIT TO ANY ENTITY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH BENEFICIARY; 'CONTROL' OF AN ENTITY SHALL MEAN THE OWNERSHIP OF, WITH RIGHT TO VOTE, FIFTY PERCENT OR MORE OF THE OUTSTANDING VOTING SECURITIES, EQUITY, MEMBERSHIP INTERESTS OR EQUIVALENT OF SUCH ENTITY. PARTIAL DRAWINGS ARE PERMITTED.

SUBJECT TO THE EXPRESS TERMS AND CONDITIONS HEREIN, FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU BY PRESENTATION AT OUR OFFICES LOCATED AT [_____] OF BENEFICIARY'S DRAWING CERTIFICATE ISSUED SUBSTANTIALLY IN THE FORM OF ANNEX 1 ATTACHED HERETO AND WHICH FORMS AN INTEGRAL PART HEREOF, DULY COMPLETED AND PURPORTEDLY BEARING THE ORIGINAL SIGNATURE OF AN OFFICER OR AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY. PRESENTATION OF ANY DRAWING CERTIFICATE UNDER THIS LETTER OF CREDIT MAY BE MADE IN PERSON TO US OR MAY BE SENT TO US BY OVERNIGHT COURIER OR BY FACSIMILE TRANSMISSION TO FACSIMILE TELEPHONE NUMBER [_____]. BENEFICIARY MAY MAKE PRESENTATION UNDER THIS LETTER OF CREDIT ENTIRELY BY FACSIMILE TRANSMISSION. SUCH FACSIMILE TRANSMISSION SHALL BE ADDRESSED TO US ATTENTION: [_____]. NO MAIL CONFIRMATION IS NECESSARY AND THE FACSIMILE TRANSMISSION WILL CONSTITUTE THE OPERATIVE DRAWING DOCUMENTS.

ALL COMMISSIONS AND CHARGES WILL BE BORNE BY THE ACCOUNT PARTY. IF DOCUMENTS, IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT, ARE RECEIVED BEFORE 12:00 PM (EASTERN TIME) ON A BANKING DAY (AS SUCH TERM IS DEFINED IN THE UNIFORM CUSTOMS DEFINED BELOW), PAYMENT WILL BE EFFECTED ON OR BEFORE 5:00 PM (EASTERN TIME) ON THE NEXT BANKING DAY. IF DOCUMENTS, IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT ARE RECEIVED AFTER 12:00 PM ON A BANKING DAY, PAYMENT WILL BE EFFECTED ON OR BEFORE 5:00 PM ON THE SECOND BANKING DAY FOLLOWING SUCH DATE OF RECEIPT.

IN THE EVENT THAT A DRAWING CERTIFICATE FAILS TO COMPLY WITH THE TERMS OF THIS LETTER OF CREDIT, WE SHALL PROVIDE THE BENEFICIARY PROMPT NOTICE THEREOF STATING THE REASONS THAT THE CERTIFICATE WAS DETERMINED TO BE NON-COMPLIANT AND SHALL UPON BENEFICIARY'S INSTRUCTIONS HOLD ANY NON-CONFORMING DRAWING CERTIFICATE AND OTHER RELATED DOCUMENTS AT BENEFICIARY'S DISPOSAL OR RETURN ANY NON-CONFORMING DRAWING CERTIFICATE AND OTHER RELATED DOCUMENTS TO THE BENEFICIARY BY DELIVERY IN PERSON OR FACSIMILE TRANSMISSION (WITH ORIGINALS THEREOF SENT BY OVERNIGHT COURIER). UPON BEING NOTIFIED THAT THE DRAWING WAS NOT EFFECTED IN COMPLIANCE WITH THIS LETTER OF CREDIT, THE BENEFICIARY MAY ATTEMPT TO CORRECT SUCH NON-

CONFORMING DRAWING CERTIFICATE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENT, CONDITION OR QUALIFICATION. THIS LETTER OF CREDIT DOES NOT INCORPORATE, AND SHALL NOT BE DEEMED MODIFIED OR AMENDED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT (A) THAT IS REFERRED TO HEREIN (EXCEPT FOR THE UNIFORM CUSTOMS, AS DEFINED BELOW), OR (B) IN WHICH THIS LETTER OF CREDIT IS REFERRED TO OR TO WHICH THIS LETTER OF CREDIT RELATES.

OUR OBLIGATION UNDER THIS LETTER OF CREDIT SHALL BE OUR INDIVIDUAL OBLIGATION AND IS IN NO WAY CONTINGENT UPON THE REIMBURSEMENT WITH RESPECT THERETO, OR UPON OUR ABILITY TO PERFECT ANY LIEN, SECURITY INTEREST OR ANY OTHER REIMBURSEMENT.

THIS LETTER OF CREDIT EXPIRES WITH OUR CLOSE OF BUSINESS ON [365 *days from effective date*]; HOWEVER, IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR 365 DAYS FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST SIXTY (60) DAYS BEFORE ANY SUCH EXPIRATION DATE WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER ADDRESSED TO: [address of beneficiary, ATTN: _____] THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 (UNIFORM CUSTOMS), PROVIDED, HOWEVER, THAT: (A) WE SPECIFICALLY AGREE THAT A "REASONABLE TIME" WITHIN THE MEANING OF ARTICLE 14(b) OF THE UNIFORM CUSTOMS SHALL NOT EXCEED THREE (3) BANKING DAYS FOLLOWING THE DAY OF RECEIPT OF THE RELEVANT DOCUMENTS, AND (B) IF THIS LETTER OF CREDIT EXPIRES DURING THE INTERRUPTION OF BUSINESS AS DESCRIBED IN ARTICLE 36 OF THE UNIFORM CUSTOMS THEN THE EXPIRATION DATE OF THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT TO A DATE THIRTY (30) CALENDAR DAYS AFTER THE RESUMPTION OF BUSINESS AND WE HEREBY SPECIFICALLY AGREE TO EFFECT PAYMENT IF THE LETTER OF CREDIT IS DRAWN AGAINST WITHIN THIRTY (30) DAYS AFTER THE RESUMPTION OF BUSINESS.

VERY TRULY YOURS,

[BANK NAME]

BY _____
AUTHORIZED SIGNATORY

**ANNEX 1 TO [BANK NAME]
IRREVOCABLE STANDBY LETTER OF CREDIT NO. [_____]**

[INSERT DATE]

[BANK NAME]
[ATTENTION]
[BANK ADDRESS1]
[BANK ADDRESS2]

LADIES AND GENTLEMEN:

THE UNDERSIGNED [_____], A DULY APPOINTED AND ACTING OFFICER OR AUTHORIZED REPRESENTATIVE OF XXXXXXXXXXXXXXXX D/B/A NATIONAL GRID (THE "BENEFICIARY"), HEREBY CERTIFIES TO [INSERT BANK NAME] (THE "BANK"), WITH REFERENCE TO IRREVOCABLE STANDBY LETTER OF CREDIT NO. [_____] DATED [_____], ISSUED BY THE BANK IN FAVOR OF THE BENEFICIARY (THE "LETTER OF CREDIT"), AS FOLLOWS AS OF THE DATE HEREOF:

1. THE BENEFICIARY IS A PARTY TO THAT CERTAIN FLEXIBILITY SERVICES STANDARD AGREEMENT, EFFECTIVE [_____], AMONG THE BENEFICIARY, _____, AND [CUSTOMER/COUNTERPARTY NAME] (THE "AGREEMENT").
2. BENEFICIARY IS MAKING A DRAWING UNDER THE LETTER OF CREDIT IN THE AMOUNT OF \$[_____] BECAUSE [CHECK APPLICABLE PROVISION]:

[_____] (A) THERE CURRENTLY EXIST ONE OR MORE UNPAID AMOUNTS WHICH [CUSTOMER/COUNTERPARTY NAME] IS OBLIGATED TO PAY PURSUANT TO THE TERMS OF THE AGREEMENT.

[_____] (B) AN EVENT HAS OCCURRED (WHICH MAY INCLUDE, WITHOUT LIMITATION, FAILURE TO SATISFY OR MEET AN OBLIGATION, CONDITION, REQUIREMENT, COVENANT OR OTHER COMMITMENT) THAT, UNDER THE TERMS OF THE AGREEMENT, HAS GIVEN RISE TO A RIGHT FOR BENEFICIARY TO MAKE A DRAWING UNDER THE LETTER OF CREDIT AS REQUESTED HEREIN.

[_____] (C) [BANK NAME]'S CORPORATE CREDIT RATING FROM STANDARD & POOR'S HAS FALLEN BELOW A AND/OR [BANK NAME]'S CORPORATE CREDIT RATING FROM MOODY'S INVESTORS SERVICE HAS FALLEN BELOW A2, BENEFICIARY HAS MADE WRITTEN DEMAND ON [CUSTOMER/COUNTERPARTY NAME] TO DELIVER A REPLACEMENT LETTER OF CREDIT ISSUED BY A THIRD PARTY BANK SATISFYING THE REQUIREMENTS OF THE BENEFICIARY, AND [CUSTOMER/COUNTERPARTY NAME] HAS FAILED TO DELIVER SUCH REPLACEMENT LETTER OF CREDIT

TO BENEFICIARY PRIOR TO THE CLOSE OF BUSINESS ON THE TENTH (10TH) DAY FOLLOWING SUCH WRITTEN DEMAND.

[_____] (D) THE BENEFICIARY HAS RECEIVED NOTICE FROM THE BANK OF ITS INTENTION NOT TO EXTEND THE LETTER OF CREDIT BEYOND THE CURRENT EXPIRATION DATE AND [CUSTOMER/COUNTERPARTY NAME] HAS FAILED, PRIOR TO THE CLOSE OF BUSINESS ON [_____] [INSERT DATE WHICH IS NOT MORE THAN THIRTY (30) DAYS BEFORE THE PRESENT EXPIRATION DATE], TO DELIVER TO BENEFICIARY A REPLACEMENT LETTER OF CREDIT SATISFYING THE REQUIREMENTS OF THE AGREEMENT AND THE BENEFICIARY.

3. BASED UPON THE FOREGOING, THE BENEFICIARY HEREBY MAKES DEMAND UNDER THE LETTER OF CREDIT FOR PAYMENT OF U.S. DOLLARS [_____] AND [_____] /100THS (U.S. \$[_____]).
4. FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH THE FOLLOWING INSTRUCTIONS:

[_____

_____]

FOR THE AVOIDANCE OF DOUBT, IN THE EVENT THAT THE BENEFICIARY IS MAKING A DEMAND PURSUANT TO 2(C) OR (D), ABOVE, THE BENEFICIARY SHALL BE ENTITLED TO DRAW THE FULL AMOUNT REMAINING UNDER THE LETTER OF CREDIT AS OF THE DATE SUCH DEMAND IS MADE.

UNLESS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS WHICH ARE USED AND NOT DEFINED HEREIN SHALL HAVE THE MEANING GIVEN EACH SUCH TERM IN THE LETTER OF CREDIT.

IN WITNESS WHEREOF, THIS CERTIFICATE HAS BEEN DULY EXECUTED AND DELIVERED ON BEHALF OF THE BENEFICIARY BY ITS DULY APPOINTED AND ACTING OFFICER OR AUTHORIZED REPRESENTATIVE AS OF THIS [_____] DAY OF [_____, _____].

BENEFICIARY:

NIAGARA MOHAWK POWER CORPORATION

ATTN: _____

APPENDIX J: Summary of Maintenance and Inspection Performed in Prior Calendar Year

DATE WORK ORDER SUBMITTED: 06/28/20

WO#: 11451

EQUIPMENT #: 1CCF-TNK-1

EQUIPMENT DESCRIPTION: AMMONIA STORAGE TANK 1

PROBLEM DESCRIPTION: PURCHASE EMERGENCY ADAPTER FITTINGS FOR UNLOADING GASPRO TANKS TO STORAGE TANK

WORK PERFORMED: PURCHASED THE NEW ADAPTERS AND VERIFIED THEIR OPERATION.

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: AA

-----END OF CURRENT WORK ORDER-----

DATE WORK ORDER SUBMITTED: 05/19/20

WO#: 11136

EQUIPMENT #: 1WSA-BV-12

EQUIPMENT DESCRIPTION: MAKE-UP PI ISOLATION

PROGRAM DESCRIPTION: 'D' MAKE-UP PUMP PI ISOLATION FITTING LEAKING ON SPOOL SIDE

WORK PERFORMED: REMOVED AND REPLACED FITTINGS AND FLANGES WITH STAINLESS STEEL. THIS WORK WAS DONE DURING PUMP OVERHAUL ON WO 1374. JH

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: BB

-----END OF CURRENT WORK ORDER-----

APPENDIX K: Reporting Milestones

Reporting Milestone Date	Description of Each Reporting Milestone
[Date]	Seller shall provide Buyer with a redacted copy of the executed Facility equipment, engineering, procurement and construction (“EPC”) or other general contractor agreements. Under no circumstances shall redactions conceal information that is necessary for Buyer to verify its rights under the Agreement.
[Date]	Seller shall provide Buyer with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.
[Date]	Construction, Building and Operation Permits: Seller or Seller’s EPC contractor shall obtain all necessary permits to construct and operate the Facility from the appropriate authority having jurisdiction.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	All inverters for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site.

APPENDIX L: Project Milestones

Project Milestone (Number of Days After Execution)	Description of Each Project Milestone
151	<p><u>Construction Financing Milestone</u>: Provide Buyer with documentation reasonably satisfactory to Buyer evidencing (i) the closing on financing for the Facility, including ability to draw on funds or (ii) the financial capability to construct the Facility (“<u>Construction Financing Closing Milestone</u>”).</p>
145	<p><u>Permit Application Filing Milestone</u>: Provide Buyer with documentation reasonably satisfactory to Buyer evidencing the filing by or on behalf of Seller of applications for required Permits as defined in Section 2.2 of the Facility Requirements (APPENDIX F).</p>
348	<p><u>Substantial Completion</u>: “<u>Substantial Completion</u>” shall occur upon notice from Buyer to Seller that Buyer has received evidence reasonably satisfactory to Buyer of satisfaction of all of the following conditions. The Parties agree that review and approval of these conditions may occur on an incremental basis as such conditions are satisfied:</p> <p>Seller has entered into, and complied in all material respects with its obligations under, the Interconnection Agreement; interconnection of the Facility has been completed in accordance with the Interconnection Agreement, including installation of all metering and telemetry equipment required to deliver the Flexibility Service; the Interconnection Facilities are sufficient to enable delivery of the installed capacity of the Facility up to the Committed MW/MVAR as defined in the applicable Flexibility Service Form; and the Interconnection Agreement remains in full force and effect;</p> <p>Seller shall have provided a certificate from an independent engineer that the Facility has been mechanically completed in all material respects, excepting items that do not adversely affect the ability of the Project to achieve Commercial Operation in accordance with the requirements of this Agreement;</p> <p>Seller has obtained all Permits necessary for Seller to perform its obligations under this Agreement and all such Permits are in final form and in full force and effect;</p>

Project Milestone (Number of Days After Execution)

Description of Each Project Milestone

Seller has delivered to Buyer all insurance documents required hereunder and all documented insurance shall be in full force and effect with all required premiums paid;

the Project shall not be subject to any encumbrances other than those permitted hereunder;

Seller shall have delivered a final, comprehensive list of remaining tasks required for completion of the Project (“Punch List”) revised to reflect comments from Buyer on a draft Punch List provided by Seller; and

Seller shall not be in default of any obligation under this Agreement.

[Insert Date]

Guaranteed Commercial Operation Date

APPENDIX M: Form of Monthly Progress Report

1. Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Flexibility Services Standard Agreement by and between [_____] (“Seller”), and Niagara Mohawk Power Corporation d/b/a National Grid, dated _____, (the “Agreement”).

In addition to the remedial action plan requirement set forth in Article 3 (Project Milestones Including Commercial Operation) of APPENDIX F, Seller shall review the status of each Construction Milestone of the construction schedule (the “Schedule”) for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- 1.1** Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Project Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Construction Milestone.
- 1.2** Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Construction Milestone;
- 1.3** A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Construction Milestone;
- 1.4** Any material change in the Seller’s schedule for initiating or completing any material aspect of the Facility;
- 1.5** The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, “EPC Contractor” means the contractor responsible for engineering, procurement and construction of the Facility, including Seller if acting as contractor, and including all subcontractors.

2. Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Facility (provide details in subsequent sections of this report):

2.1.1. [Insert Construction Milestones]

2.1.2. Financing

2.1.3. Governmental Approvals for Development

2.1.4. Site Control

2.1.5. Land Rights for Buyer-Owned Interconnection Facilities

2.1.6. Design and Engineering

2.1.7. Major Equipment Procurement

2.1.8. Construction

2.1.9. Interconnection

2.1.10. Startup Testing and Commissioning

2.2 Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Facility since the previous report (provide details in subsequent sections of this report):

2.2.1. [Insert Construction Milestones]

2.2.2. Financing

2.2.3. Development Permits

2.2.4. Site Control

2.2.5. Land Rights for Buyer-Owned Interconnection Facilities

2.2.6. Design and Engineering

2.2.7. Major Equipment Procurement

2.2.8. Construction

2.2.9. Interconnection

2.2.10. Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Facility:

2.3.1. **[Insert Construction Milestones, if needed]**

2.3.2. Financing

2.3.3. Governmental Approvals for Development

2.3.4. Site Control

2.3.5. Land Rights for Buyer-Owned Interconnection Facilities

2.3.6. Design and Engineering

2.3.7. Major Equipment procurement

2.3.8. Construction

2.3.9. Interconnection

2.3.10. Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Facility (provide details in subsequent sections of this report):

2.4.1. Construction Milestones

2.4.2. Financing

2.4.3. Governmental Approvals

2.4.4. Site Control

2.4.5. Land Rights for Buyer-Owned Interconnection Facilities

- 2.4.6. Design and Engineering
- 2.4.7. Major Equipment procurement
- 2.4.8. Construction
- 2.4.9. Interconnection
- 2.4.10. Startup Testing and Commissioning

3. Milestones

3.1 Milestone schedule

Please list all Construction Milestones and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [<i>specify reason</i>]; current expected completion date)
------------------------	--	---

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller’s course of action and plan to achieve the missed Construction Milestones and all subsequent Construction Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1. Identify Missed Construction Milestone
- 3.2.2. Explain plans to achieve missed Construction Milestone
- 3.2.3. Explain plans to achieve subsequent Construction Milestones
- 3.2.4. Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Construction Milestones

4. Financing

Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5. Project Schedule

Please provide a copy of the current version of the overall Facility schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals for Development, design and engineering, procurement, construction, interconnection and testing.

6. Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Facility. Indicate whether dates are expected or actual.

Agency

Date of application/submission ___/___/___ (expected / actual)

Date application/submission deemed complete by agency ___/___/___ (expected / actual)

Date of initial study (if applicable) ___/___/___ (expected / actual)

Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)

Date of Notice of Preparation ___/___/___ (expected / actual)

Date of Draft ND/MND/EIR ___/___/___ (expected / actual)

Date Notice of Determination filed at OPR or County Clerk ___/___/___ (expected / actual)

6.2 Governmental Approvals

Please describe each of the Governmental Approvals to be obtained by Seller and the status of each:

Agency / Approval

Status Summary

e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Authorities.

7. Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month

Please explain in detail the site control activities that are expected to be performed during the current month.

8. Land Rights for the Buyer-Owned Interconnection Facilities

8.1 Table of Land Rights schedule for Buyer-Owned Interconnection Facilities

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Land for the Buyer-owned interconnection facilities (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

8.2 Land Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

8.3 Land Control activities expected during the current month

Please explain in detail the Land control activities that are expected to be performed during the current month.

9. Design and Engineering

9.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

9.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

9.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

10. Major Equipment Procurement

10.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

10.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

10.3 Major Equipment procurement activities expected during the current month

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

11. Construction

11.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

11.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

11.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

11.4 EPC Contractor Monthly Construction Progress Report

Please attach a copy of the Monthly Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

12. Interconnection

12.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

12.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

12.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

13. Startup Testing and Commissioning

13.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

13.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

13.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

14. Safety and Health Reports

14.1 Accidents

Please describe all Facility-related accidents reported since the previous report.

14.2 Work stoppages

Please describe all Facility-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Facility schedule.

15. Community Outreach

Please describe all community outreach efforts undertaken since the last report.

16. Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

DRAFT

APPENDIX N: National Grid Contractor Background Check Program

National Grid strives to maintain a safe, secure, productive work environment and to protect company assets. Our Contractor Background Check Program helps us achieve this by requiring all Contractor Employees performing work for National Grid to have background checks conducted commensurate with the risk involved. This requirement covers all work performed on-site and remotely, within and outside the U.S. Contractors (may also be referred to as Vendors or Suppliers) include:

- Contractors
- Consultants
- Staffing Agencies
- Professional Service Firms
- Subcontractors

Background check requirements

There are two levels of background checks required for Contractors depending upon the nature and location of the work that they will perform. Additional requirements beyond these baselines may be stipulated by National Grid based upon risk assessments or legal requirements.

Level 1 background checks require identity verification and verification of legal right to work in the United States and are required of all Contractors. The following are the requirements for Level 1 background checks:

- I-9
- E-Verify
- Consent Based Social Security Number Verification (CBSV)

National Grid does not require Level 1 contractors to use our third-party vendor to conduct these verifications.

For Contractor Employees outside the US, national identification (ID) or national tax ID trace should be used, as available.

Level 2 background checks are required for all Contractor Employees who will be performing work for National Grid and meet any of the following criteria:

- have direct contact with customers
- have access to the National Grid customer records database or employee records
- require unescorted access to National Grid buildings, records, property, rights-of-way, vehicles, materials and assets
- have direct and/or remote electronic and/or physical access to cyber assets (hardware/software) or records (electronic, paper, etc.)
- provide software, database, and/or application development services, whether on-site or remote

Contractor Employees that are required to complete Level 2 background checks must comply with the requirements in the attachments included herein.



- NGSP6 - Attachment A.pdf



- NGSP6 - Attachment B2.pdf



- NGSP6 - Attachment C.pdf



- NGSP6 Pricing for NG Suppliers.pdf

DRAFT

APPENDIX O:National Grid Safety Procedures N1401 and N1402



Health and Safety
Plan (HASP) Guidanc



N1401 - Contracted
Services.pdf



N1402 - Contractor
Safety Requirements



Pre-Construction
Meeting Guidelines.

DRAFT