February 13, 2017

Proposed SIR Contract Provisions

1. Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

2. Indemnity

2.1. This provision protects each Party from liability incurred to third parties arising from actions taken pursuant to the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Section 1.

2.2 Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold the other Party (the “Indemnified Party”) harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, the alleged violation of any Environmental Law, or the release or threatened release of any Hazardous Substance, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Indemnifying Party's action or failure to meet its obligations under this Agreement , except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

2.3 If a Party is entitled to indemnification under this section as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under this section, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

2.4 If a Party is obligated to indemnify and hold the Indemnified Party harmless under this section, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual loss, net of any insurance or other recovery.

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

3. Consequential Damages

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

4. Insurance

4.1 The Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. The Customer shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Such insurance shall be obtained from an insurance provider authorized to do business in New York State. Certification that such insurance is in effect shall be provided upon request of the Utility, except that the Customer shall show proof of insurance to the Utility no later than ten (10) Business Days prior to the anticipated commercial operation date. If the Customer is of sufficient credit-worthiness, the Customer may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

4.2 The Customer shall maintain, during the term of the Agreement, general liability insurance with a combined single limit of not less than:

 4.2.1 Five million dollars ($5,000,000) for each occurrence and in the aggregate if the Gross Nameplate Rating of the Interconnecting Customer’s Facility is greater than two (2) MW;

 4.2.2 Two million dollars ($2,000,000) for each occurrence and five million dollars ($5,000,000) in the aggregate if the Gross Nameplate Rating of Interconnecting Customer’s Facility is greater than three hundred (300) kW and less than or equal to two (2) MW;

 4.2.3 One million dollars ($1,000,000) for each occurrence and in aggregate if the Gross Nameplate Rating of Interconnecting Customer’s Facility is greater than fifty (50) kW and less than or equal to three hundred (300) kW;

 4.2.4 Five hundred thousand dollars ($500,000) for each occurrence and in the aggregate for systems with a Gross Nameplate Rating of Interconnecting Customer’s Facility less than or equal to fifty (50) kW.

4.3 The Utility agrees to maintain general liability insurance or self-insurance consistent with its existing commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility’s liabilities undertaken pursuant to this Agreement.

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

The following definitions will need to be added to the preamble of the Standardized Contract:

**Environmental Law** – Laws or regulations of a Governmental Authority relating to the discharge of air pollutants, water pollutants or process waste, or otherwise relating to the environment or Hazardous Materials, as amended from time to time.

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

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