

EXECUTION

REDACTED

ENGINEERING, PROCUREMENT

AND

CONSTRUCTION AGREEMENT

BY AND BETWEEN

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

AND

NRG STORAGE ON DEMAND NY LLC

September 30, 2019

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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this “Agreement”) is entered into as of September 30, 2019 (the “Execution Date”), by and between **Consolidated Edison Company of New York, Inc.**, a New York corporation (“Con Edison” or “Owner”), and **NRG Storage on Demand NY LLC**, a Delaware limited liability company (“NRG” or “Contractor”). Contractor and Owner may be referred to individually as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS, Owner wishes to engage Contractor to design, engineer, procure, assemble, construct, long-haul transport, interconnect, commission, start up, and test (the foregoing, together with all of Contractor’s other obligations set forth in this Agreement, collectively, the “Work”) a project which will be comprised of three (3) 500kW independently functioning Mobile Battery Storage on Demand Units (each a “Unit”), a docking station (the “Docking Station”), and any ancillary equipment related to the Units and Docking Station that is required pursuant to the Design Documents and Specifications, at the Astoria Generation Station owned by one or more Affiliates of the Contractor (the “Astoria Generation Station”) which will enable the Units to be interconnected to the Owner’s [REDACTED] distribution system and will enable Owner to mobilize the Units, individually or in the aggregate, to support its electric distribution system at times when Owner deems such mobilization necessary or advisable, and when not so mobilized, will enable the Owner to utilize the Units for participation in the then-available NYISO markets;

WHEREAS, Owner and Astoria Gas Turbine Power LLC (“Astoria Gas”), an Affiliate of Contractor, have entered or will enter into a lease of a portion of the Astoria Generation Station (the “NRG Site”) providing for the location of the Docking Station and the storage of the Units;

WHEREAS, commencing approximately one (1) month prior to System Substantial Completion of the Work and pursuant to the O&M Agreement, Contractor shall operate and maintain the Units and the Docking Station;

WHEREAS, commencing approximately one (1) month prior to System Substantial Completion of the Work and pursuant to the EMS Agreement, Contractor shall provide Owner with energy management services in connection with the energy stored in the Units; and

WHEREAS, Contractor has previously completed and has received payment for a portion of the Work pursuant to the LNTP and Contractor desires to perform and complete the Work in accordance with the terms and provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the Parties hereto, intending to be legally bound, hereby agree that (a) if the Effective Date (as defined below) does not occur within ninety (90) days of the Execution Date, then this Agreement shall terminate without further action and (b) if the Effective Date occurs within ninety (90) days of the Execution Date, then commencing on the Effective Date the Parties further agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS

Capitalized terms used in this Agreement (including in the Recitals hereto), not defined above, have the following definitions:

“**Actual Cost**” shall have the meaning set forth in Section 33(a)(ii).

“**Additional Docking Stations**” shall mean docking stations, other than the Docking Station, manufactured using Contractor Intellectual Property.

“**Additional MS Units**” shall mean mobile battery storage units, other than the Units, manufactured using Contractor Intellectual Property.

“**Affiliate**” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agent**” shall have the meaning set forth in Section 54.

“**Applicable Laws**” means any applicable federal, state or local law, ordinance, statute, regulation, decision, judgment, order, injunction, ruling, tariff provision, operating rule, procedure, protocol, standard, criteria, permit or other similar requirement issued by any Governmental Authority having jurisdiction or authority over a Party or the Project (which, for purposes of clarity, shall include the LONO unless and until the Operational Permit is issued and thereafter, the Operational Permit), and including all Environmental Laws and actions by regulatory and judicial agencies or tribunals, as the same may be modified, amended or repealed from time to time, and applicable anti-corruption and anti-bribery laws or regulations, and all applicable export controls laws and regulations, including the Export Administration Act, as amended (50 U.S.C. 2401-2420) and the U.S. Export Administration Regulations (EAR), as amended (15 CFR 730-774), as the same may be amended from time to time.

“**Astoria Gas**” shall have the meaning set forth in the Recitals to this Agreement.

“**Astoria Generation Station**” shall have the meaning set forth in the Recitals to this Agreement.

“**Bill of Sale**” means a bill of sale substantially in the form attached hereto as Exhibit N.

“**Business Activities**” shall mean the use, operation, leasing, maintenance, management and control of the Units and the Docking Station, including: (a) the use of the Project Assets to provide power output, charging and discharging, frequency regulation, reserves, and voltage control

through reactive power support; (b) the use, deployment and transportation of the Units on public streets, including the use of the batteries, inverters, transformers, HVAC systems, fire suppression, bus bars, disconnects, metering and communication equipment housed in the Units; and (c) the use of an energy management system to charge and discharge the Units.

“Business Day” means any day that is not a Saturday or Sunday and on which each of the Owner and the Contractor are open for business. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. New York time.

“Change of Control” means any event (such as a transfer of voting securities) that causes the Contractor to cease to be a direct or indirect wholly-owned subsidiary of the [REDACTED].

“Change Order” shall have the meaning set forth in Section 15(b).

“Change Order Request” shall have the meaning set forth in Section 15(c).

“Change(s)” shall have the meaning set forth in Section 15(b).

“Claims” shall mean, collectively, all claims, demands, actions, suits, assessments or proceedings (judicial, governmental or otherwise) asserted, threatened or filed against a Person, and all fines, penalties, losses, liabilities, judgments, damages, costs and expenses incurred by a Person (including, but not limited to, due to injury to or the death of persons, or damage to property, including the property of Owner Indemnified Parties and Contractor Indemnified Parties, as applicable), including reasonable attorneys’ fees and costs of investigation, litigation, settlement and judgment.

“Cloud Platform” means: (a) the servers and information technology infrastructure that host the Software and enable Users to use the Software by remotely logging into such servers and infrastructure; and (b) the Software, as hosted by and operable on such servers and infrastructure.

“Confidential Information” means, with respect to a Party (in such capacity, the “Disclosing Party”) all documents, materials, data, and other information (in each case, whether oral, written, electronic or visual) pertaining to the business, trade secrets, finances, source code, technology, intellectual property, infrastructure, assets, programs, suppliers, customers or employees of the Disclosing Party and its affiliated entities, including, without limitation, information about research, development, operations, marketing, transactions, regulatory affairs, discoveries, inventions, methods, processes, algorithms, software, proposals, specifications, designs, drawings, strategies, financial forecasts and analysis, customer lists and prospects, know-how, and ideas, that are disclosed to or otherwise made available to the other Party (in such capacity, the “Receiving Party”) in connection with the Work or the Project, whether or not marked or identified as confidential, as well as the terms of this Agreement and each other Contract Document (except, with regard to this Agreement and the other Contract Documents, to the extent this Agreement and the other Contract Documents are required to be filed with or submitted to the NYPSC in compliance with Section 54). Confidential Information shall include copies of Confidential Information and all prepared notes, analyses, compilations, studies or other documents that contain or reflect a Party’s Confidential Information. Certain Confidential Information may consist of “Critical Energy Infrastructure Information” or “CEII” which, for purposes of this Agreement, means information about proposed or existing Critical Infrastructure

that relates to the production, generation, transportation, transmission, or distribution of electricity, gas or steam and could be useful to a person in planning an attack on Critical Infrastructure. CEII includes, but is not limited to, engineering, design, physical or cybersecurity, location, and pictorial information about proposed or existing Critical Infrastructure.

“ [REDACTED] ”

“**Contract Documents**” shall mean this Agreement, the O&M Agreement, the EMS Agreement, and the Lease Agreement, and any agreements between Contractor and any Subcontractor after they have been assigned to Owner.

“**Contract Price**” shall have the meaning in Section 33(a)(i).

[REDACTED]

[REDACTED]

“**Contractor Event of Default**” shall have the meaning set forth in Section 37(a).

[REDACTED]

“**Contractor Extended Cure Period**” shall have the meaning set forth in Section 37(a)(i).

“**Contractor Force Majeure**” shall have the meaning set forth in Section 44(a).

“**Contractor Indemnifiable Loss**” shall have the meaning set forth in Section 26.3(b).

“**Contractor Indemnified Parties**” shall have the meaning set forth in Section 26.3(b).

“**Contractor Intellectual Property**” shall have the meaning set forth in Section 11(a).

[REDACTED]

“**Contractor’s Permits**” means any permit listed on Exhibit D as Contractor’s responsibility to obtain.

[REDACTED]

“**Contractor Taxes**” shall have the meaning set forth in Section 33(c).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Credit Rating**” means, with respect to any Person, on any date of determination, the respective ratings then assigned to such Person’s senior unsecured, long-term debt (not supported by third party credit enhancement) or current corporate credit rating (whichever is lower) or if such Person is a financial institution, its long-term unsecured unsubordinated deposits, in each case by S&P or Moody’s. In the event of an inconsistency in ratings by S&P and Moody’s, the lowest rating assigned shall control.

“**Critical Infrastructure**” means existing and proposed energy systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect the ability of Owner or Contractor and their respective affiliated entities to produce, generate, store, transport, transmit, or distribute electricity, gas or steam. Without limiting the generality of the foregoing, location information and diagrams, pictorial and other information about Owner’s or Contractor’s facilities shall constitute CEII.

“**Defective Work**” shall have the meaning set forth in Section 13.

“**Delay Liquidated Damages**” shall have the meaning set forth in Section 25(a).

“**Demonstration Period**” means the period commencing on System Substantial Completion and ending three (3) years thereafter.

“**Design Documents**” shall have the meaning set forth in Section 4(b).

“**Detailed Cost Breakdown**” shall have the meaning set forth in Section 34(b).

“**Docking Station**” shall have the meaning set forth in the Recitals to this Agreement.

“**Docking Station Substantial Completion**” shall have the meaning set forth in Section 23(c).

“**Document List**” means the list of documents set forth in Exhibit Z.

“Effective Date” means, the first day following the Execution Date in which all of the conditions in (a) and if applicable, in (b) and (c) are met:

(a) each of the documents listed in the Document List shall have been fully executed and delivered.

(b) in the event this Agreement is subject to Parts 216.1 and 216.2 of Title 16, Chapter II of the New York City Codes Rules and Regulations, thirty (30) days (or such longer period as requested by the NYPSC) have passed from the date in which the Agreement is filed with the NYPSC, unless the NYPSC determines during such period that the Agreement is not to be effective.

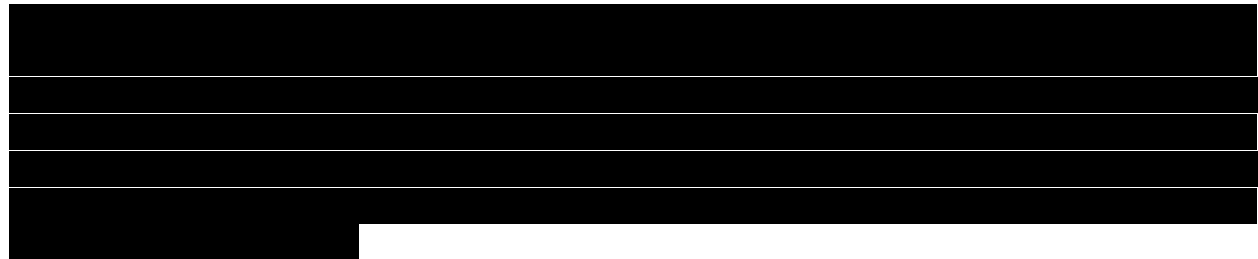
(c) if the NYPSC notifies Owner in writing that it does not object to this Agreement becoming effective within fourteen (14) days from date it is filed with the NYPSC, fifteen (15) days have passed since Owner provided Contractor written notice of such notification by the NYPSC.

“EMS Agreement” means the Energy Management Services Agreement dated of even date herewith by and between Con Edison and NRG.

“Environmental Laws” means all applicable federal, state or local laws, statutes, regulations, ordinances or rules, and orders, judgements, injunctions, rulings, protocols, and requirements of any Governmental Authority (including actions by regulatory and judicial agencies and tribunals) relating in whole or in part to the protection of the environment (including, without limitation air, surface water, ground water, or soil) or relating to human health and safety and includes those laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, release or disposal of any Hazardous Materials, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., the Toxic Substances and Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the New York Environmental Conservation Law, and the New York Navigation Law, each as amended from time to time.

“Equipment” shall have the meaning set forth in Section 27(b).

“Equipment Component” means each part of the Equipment, whether a hardware component, software component or other component of the Equipment.



“FARS” means the Federal Acquisition Regulations as set forth in Appendix D hereto, as amended, applicable to this Agreement.

“FAT” shall mean each factory acceptance test as described in Section 22(d).

“FDNY” means the Fire Department of the City of New York.

“FDNY Information Request Notification” shall have the meaning set forth in Section 6(d).

“FDNY Information Request” shall have the meaning set forth in Section 6(d).

“Final Completion” shall mean the consummation of all items set forth in Section 24.

[REDACTED]

[REDACTED]

“Final Design Documents” shall have the meaning set forth in Section 4(c).

“Final Lien Release” shall have the meaning set forth in Section 39(b).

“[REDACTED]” shall mean [REDACTED] and its successors and assigns.

“[REDACTED]” means [REDACTED] and its successors and assigns.

[REDACTED]” means [REDACTED] and its successors and assigns.

“Full Level 3 CPM Schedule” shall have the meaning set forth in Section 18(a).

“Full License Date” shall have the meaning set forth in Section 11(c).

“Gift” shall have the meaning set forth in Section 53.

“Governmental Authority” means (a) any federal, state, local, municipal, tribal or other governmental, regulatory, administrative, judicial, public or statutory instrumentality, court or governmental tribunal, agency, commission, authority, body or entity, or any political subdivision thereof including, without limitation, the New York State Public Service Commission, the New York State Department of Environmental Conservation, the New York City Department of Environmental Protection, the FDNY or the New York Department of Buildings or (b) any entity authorized by such a governmental body administering or regulating wholesale energy, capacity and/or ancillary services markets or electric transmission systems or generation, in all cases in clauses (a) and (b), having competent jurisdiction or authority over the matter or Person in question.

[REDACTED].

“Hazardous Materials” means any substance or material that has been defined or regulated by any Environmental Law as a “hazardous substance”, “hazardous waste”, “hazardous material”,

or “toxic substance” or words of similar import, under any Environmental Law, including, but not limited to, substances that are radioactive, toxic, hazardous, chemicals or otherwise a pollutant, contaminant or waste, or any substance waste or material having any constituent elements displaying any of the foregoing characteristics, including PCBs, asbestos, petroleum products or any fraction thereof, or urea-formaldehyde.

“**Indemnifiable Loss**” shall mean an Owner Indemnifiable Loss or a Contractor Indemnifiable Loss.

“**Indemnified Party**” shall have the meaning set forth in Section 26.4(a).

“**Intellectual Property**” shall have the meaning set forth in Section 11(a).

“**Interconnection Agreement**” means an interconnection agreement by and between NYISO, and Owner, which shall be based on OATT 32- Attachment Z - Small Generator Interconnection Process and any accompanying appendices which are tailored to the Project.

“**Lease Agreement**” means the Battery Storage Ground Lease dated of even date herewith by and between Con Edison and Astoria Gas.

[REDACTED]

[REDACTED]

“**Licenses**” and “**License**” shall have the meaning set forth in Section 11(a).

“**Lien**” means any mortgage, lien (statutory or other), pledge, hypothecation, assignment, preference, priority, security interest, or any other encumbrance or charge (including any conditional sale or other title retention agreement, any sale-leaseback, any financing lease or similar transaction having substantially the same economic effect as any of the foregoing, the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any other jurisdiction, domestic or foreign, and mechanics’, materialmen’s and other similar liens and encumbrances, as well as any option to purchase, right of first refusal to purchase, right of first offer to purchase or similar right), it being understood that the Subcontractor Terms shall not constitute a Lien, and the use limitations imposed under a Subcontract with respect to the Subcontractor Restricted IP shall not constitute a Lien.

“**Lien Release**” shall have the meaning set forth in Section 39(a).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“LNTTP” means the Letter Agreements identified in Exhibit Q under which Owner commissioned Contractor to commence the Work in order to timely reach System Substantial Completion for all aspects of the Work.

“Long Haul Transport” shall have the meaning set forth in Section 23(b)(ii).

“LONO” means the Letter of No Objection from the FDNY with respect to the Project dated as of November 26, 2018 as it may have been and may hereafter be amended, modified, waived or supplemented.

“Malicious Code” means computer code designed to disable, disrupt, destroy, damage or gain unauthorized access to Owner software, any Owner computer, system or network, or any data residing on any Owner computer, system or network, including, without limitation, viruses, malware, ransomware, adware, worms, time bombs, Trojan horses, trap doors, back doors, and all other harmful, malicious or destructive computer code.

“Manager” shall have the meaning set forth in Section 10.

“Manufacturers’ Requirements” means the written guidelines, recommendations, policies, usage terms and restrictions, and protocols of the Subcontractors who are manufacturers or procurers of Work, Project Assets, Equipment Components, parts, materials and supplies, and components thereof, including, without limitation, the Subcontractor Terms and any recommendations or requirements concerning the storage, handling, transportation, charging and discharging of the same, as well as maintenance of warranties or the applicability of performance guarantees.

“Mechanical Completion” shall have the meaning set forth collectively in Section 23(b)(i) and 23(c)(i).

“Milestone” shall mean each milestone that is set forth in the Schedule.

“Milestone Completion Date” shall mean the completion date applicable to each Milestone as set forth in the Schedule.

“Milestone Payment Schedule” shall mean the schedule of payments set forth on Exhibit F.

“Milestone Payments” shall mean each payment for meeting a milestone as set forth on the Milestone Payment Schedule.

“Minimum Issuer Rating” shall mean, with respect to any Person, a Credit Rating of at least (a) A- by S&P and A3 by Moody’s, if such Person is rated by both S&P and Moody’s or (b) A- by S&P or A3 by Moody’s, if such Person is rated by either S&P or Moody’s but not both.

“**Notice**” shall have the meaning set forth in Section 43.

“**Notice of Final Completion**” shall mean a Notice in the form of Exhibit AA-1.

“**Notice of Mechanical Completion**” shall mean a Notice in the form of Exhibit AA-2.

“**Notice of System Substantial Completion**” shall mean a Notice in the form of Exhibit AA-3.

“**Notice of Unit Substantial Completion**” shall mean a Notice in the form of Exhibit AA-4.

“**NRG Site**” shall have the meaning set forth in the Recitals to this Agreement.

“**NTE**” shall have the meaning set forth in Section 15(b).

“**NYISO**” shall mean the New York Independent System Operator, Inc.

“**NYPSC**” shall mean the New York State Department of Public Service, including the New York State Public Service Commission and its staff.

“**O&M Agreement**” means the Operations and Maintenance Agreement dated of even date herewith by and between Con Edison and NRG.

“**Obstruct**” means to materially restrain an activity to the extent that undermines a principal purpose of such activity, and “**Obstruction**” means the noun form of Obstruct.

[REDACTED]

“**Operational Permit**” shall mean the FDNY Operational Permit for the NRG Site in a form reasonably acceptable to Owner.

“**Operational Permit Items**” shall have the meaning set forth in Section 23(d).

“**Operational Permit Milestone Payment**” shall have the meaning set forth in Section 34(h).

“**OSHA**” shall have the meaning set forth in Section 17(e).

“**Owner Authorized Person**” shall have the meaning set forth in Section 11(m).

“**Owner Event of Default**” shall have the meaning set forth in Section 37(c).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Owner Extended Cure Period**” has the meaning set forth in Section 37(c)(ii).

“**Owner Force Majeure**” shall have the meaning set forth in Section 44(b).

“**Owner Indemnifiable Loss**” shall have the meaning in Section 26.3(a).

“**Owner Indemnified Parties**” shall have the meaning set forth in Section 26.3(a).

“**Owner Liability Cap**” shall have the meaning set forth in Section 26.3(c).

“**Owner LOC**” shall have the meaning in Section 38(c).

“**Owner Permits**” means those permits listed on Exhibit D as Owner’s responsibility to obtain.

“**Owner Post-SSC Convenience Termination**” shall mean a termination by Owner pursuant to Section 36(a) at a point after System Substantial Completion.

“ [REDACTED] [REDACTED] ”

“**Patent Troll**” means an entity engaged solely in the business of buying and asserting patents, and that does not (i) produce the patented invention, or (ii) dedicate resources to promoting research or innovation.

“**Performance Guarantees**” shall mean the performance guaranteed by the Contractor and applicable Subcontractor set forth on Exhibit H and Appendix A.

“**Performance Test**” means each FAT, Site Performance Test, any other test agreed to by the Parties pursuant to Section 22 (including through a Change Order), and any re-test of any of the foregoing.

“**Permits**” means collectively Contractor’s Permits and Owner Permits.

“**Person**” means an individual, partnership, corporation, unincorporated organization, joint stock company, limited liability company, trust or joint venture, Governmental Authority or other entity.

“**Point of Interconnection**” means the point where the battery system connects to the Owner distribution grid.

“**Project**” consists of the Work, the operation and maintenance of the Units and the Docking Station as described in the O&M Agreement and the hosting thereof at the NRG Site pursuant to the Lease Agreement, and Contractor’s delivery of energy management services to Owner as described in the EMS Agreement.

“Project Assets” any and all materials, goods, supplies, tools, equipment, hardware, software, firmware, designs, processes and works of authorship (including computer programs and documentation) resulting from Contractor’s performance of the Work, including the Units and Docking Station.

“Project Data” means all data, analyses, statistical information and reports generated as a result of the work conducted pursuant to this Agreement, including, but not limited to, Performance Tests.

“Prudent Industry Practices” means those practices, acts, methods, equipment, specifications, codes and standards of safety and performance as the same may be changed from time to time, as are generally used in designing, engineering, procuring, assembling, constructing, long-haul transporting, interconnecting, commissioning, starting up and testing commercial-grade, interconnected, lithium-ion battery storage units and related docking station, including the engineering, operating and safety practices generally followed by the electric utility industry in New York and followed by similar battery storage project operations in the U.S., which in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered good, safe, sound and prudent practices and which are in the accordance with law and generally accepted national standards of professional care, skill, diligence and competence applicable to the foregoing.

“Punch List” shall have the meaning set forth in Section 23(d).

[REDACTED]

“Regulated Affiliates” means Affiliates of Owner that are subject to the Public Utility Regulatory Policies Act, as amended from time to time and any successor statute.

“Representative” shall have the meaning set forth in Section 10.

“Schedule” shall have the meaning set forth in Section 18.

[REDACTED]

[REDACTED]

“Security Incident” shall have the meaning set forth in Section 54(b).

“Security Safeguard” means any software, code, device or tool operable to safeguard the authorized access to and use of, any Software, including: (a) an entryway that: (i) is issued for exclusive use by Owner; and (ii) requires the entry of a unique login credential (e.g., a unique username-password combination or unique biometric profile) for accessing or using the Software; and (b) any security key, license key, passcode or security code for accessing or using the Software.

[REDACTED]

“Site Performance Tests” shall mean the performance tests as described in Section 22(e).

“Software” means the object code and graphical interfaces of any computer program that is: (a) incorporated into any Project Assets; or (b) operatively coupled to any Project Assets, including software, firmware, machine-readable logic, data libraries and databases, whether embedded in hardware or otherwise recorded or stored.

“Software Documentation” means all information provided, directly or indirectly, by any Subcontractor to Contractor or Owner that describes technical or functional aspects of Software, including any user manuals, guides, release notes, technical manuals, specifications, use policies, license terms, help interfaces, support databases, readme files and other documentation.

“Specifications” shall have the meaning set forth in Section 3(b).

“Standards” shall have the meaning set forth in Section 3(b).

“Subcontract” shall have the meaning set forth in Section 9(c).

“Subcontractor” means any Person hired by Contractor to perform or provide any portion of the Work, Units, Docking Station or other Project Assets or Equipment Components.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Subcontractor Warranties” shall have the meaning set forth in Section 30(a).

“Subject Portion” shall have the meaning set forth in Section 11(k).

“Substance Abuse Program” shall have the meaning set forth in Section 17(c).

“Support Representatives” shall have the meaning specified in Section 54(d).

“System Substantial Completion” shall mean the consummation of all items set forth in Section 23(a).

“System Substantial Completion Deadline” shall have the meaning set forth in Section 23(f).

[REDACTED]

“Term” shall have the meaning set forth in Section 2.

“Termination for Convenience” shall have the meaning set forth in Section 36.

“Third Party” and **“Third Parties”** shall mean any Person(s), other than any Owner Indemnified Party, Contractor Indemnified Party, or an Affiliate of either Indemnified Party.

“Troll Claims” shall mean a Claim by a Patent Troll.

“Turnover Package” shall mean the transition documents which include, but are not limited to, results of all Performance Tests and any and all other Project Data, Project Assets information, Unit and Docking Station design documents and drawings, and the Project Operations Manual (as defined in the O&M Agreement).

[REDACTED]

“Unit” shall have the meaning set forth in the Recitals to this Agreement.

“Unit Substantial Completion” shall have the meaning set forth in Section 23(b).

“Usage Restrictions” shall mean the terms, conditions and provisions set forth in Exhibit BB.

“User Documentation” shall have the meaning set forth in Section 20.

“Users” shall mean the employees and contractors of Owner and its Affiliates who are authorized by Owner to use the Units.

“Warranty” means each Subcontractor Warranty.

“Waste” shall have the meaning set forth in Section 8.

“Work” shall have the meaning set forth in the Recitals to this Agreement and shall include, the scope of work set forth in Exhibit A.

2. TERM OF AGREEMENT

Unless otherwise terminated and subject to the provisions herein that survive termination, this Agreement will be in effect for a period commencing on the Effective Date and continuing until Final Completion (the “Term”).

3. PERFORMANCE OF THE WORK

(a) Owner previously commissioned Contractor through the LNTP to commence the Work in order to timely reach System Substantial Completion. As of the Execution Date, Contractor has completed the work set forth on Exhibit R. Contractor shall complete the remaining work in the LNTP in accordance with the terms of this Agreement.

(b) Owner retains Contractor, and Contractor agrees to be retained by Owner, to duly and properly perform and complete the Work, including the Work commenced under the LNTP, in accordance with this Agreement (including all Schedules and Exhibits hereto) and in accordance with the following (collectively, the “Standards”): (i) a design basis for the Units and for the Docking Station that assumes a ten (10) year life from System Substantial Completion and complies with the requirements set forth in Exhibit A; (ii) the plans and specifications set forth on Exhibits A and J (the “Specifications”); (iii) Applicable Laws; (iv) the codes and standards provided in this Agreement, including those listed in Section 3(a) of Exhibit A; (v) approval as to form, use and content by public entities authorized under Applicable Law to administer or enforce any building or construction code or standard and whose approval of the final design of the Work, or any portion thereof, is necessary for the construction, operation or maintenance of the Project in accordance with Applicable Laws in effect on the date of this Agreement, (vi) Prudent Industry Practices and (vii) the Schedule. Contractor further covenants and agrees that, subject to the terms and conditions of this Agreement, it shall provide and pay for, subject to the terms of Section 33 of this Agreement (Contract Price), all items or services necessary for the proper execution and completion of the Work, whether temporary or permanent, including, but not limited to, all designing, engineering, procuring, assembling, constructing, installing, interconnecting, commissioning starting up and testing services, all administration, supervision, management, training and coordination services, all labor, materials, office trailers, equipment, supplies, insurance, bonds, Permits (subject to the limitations and obligations set forth in Section 3(i)), tests, inspections, tools, machinery, water, heat, utilities and transportation, and all other items, facilities and services necessary to complete the Work. Contractor represents and warrants to Owner that all services provided by Contractor under this Agreement, and any Work provided by Contractor under this Agreement, will be performed in a good and workmanlike manner.

(c) Contractor has included within the Contract Price the cost to complete the entire Work such that it (i) will meet the Standards and (ii) will be accomplished in accordance with the Schedule except to the extent the Schedule is adjusted because of a Change Order, a Contractor Force Majeure or other reason permitted by this Agreement.

(d) Contractor represents and warrants to Owner: (i) that it has carefully and thoroughly reviewed, analyzed, compared and familiarized itself with the Specifications, (ii) that it is satisfied that the Specifications are in accordance with generally accepted engineering

standards and Prudent Industry Practices, and (iii) that the Specifications contain all information, data, measurements, instructions, direction and guidance (or such information, data, measurements, instructions, direction and guidance are reasonably inferable from the Specifications) as is necessary, when used in conjunction with the Manufacturers' Requirements, for Contractor to prepare the Design Documents and to complete the Work in accordance with the terms and provisions of this Agreement, and for the Contract Price and by the dates set forth in the Schedule. In the event Contractor discovers an error, omission, mistake, discrepancy or defect in the Specifications, Contractor shall promptly report the same to Owner and shall propose a resolution thereof for Owner's review and approval. Owner acknowledges that it has seen the Specifications as of the Execution Date and has not objected to them.

(e) Contractor represents that it is knowledgeable about the NRG Site, and that it has investigated and satisfied itself as to the general and local conditions which can affect the NRG Site and the performance of the Work.

(f) Contractor will not incorporate any used or reconditioned parts into the Work without the express prior written consent of Owner. If permitted to be used by Owner, Contractor shall note used or reconditioned items in any and all bills of materials provided to Owner.

(g) Contractor covenants and agrees that all individuals and entities who will perform or be in charge of professional architectural, design and engineering services will have experience with the type of Work being undertaken and will be duly licensed to practice under the laws of the State of New York. Similarly, all construction services shall be undertaken and performed by qualified construction contractors, vendors and suppliers licensed in the State of New York.

(h) Contractor shall provide reasonable assistance to Owner in connection with any communications with or submittals to Governmental Authorities that Owner is required to, or deems desirable to, make concerning the Work.

(i) Contractor shall be responsible for identifying, obtaining, paying for, complying with and maintaining any and all Permits, registrations, licenses, certifications, authorizations, inspections, approvals and any other consents required to be maintained by any Applicable Law for carrying out the Work as well as complying with the Interconnection Agreement; provided however, with respect to obtaining Owner Permits, Contractor shall only be required to support Owner in Owner's obtaining of Owner Permits but shall still be required to identify, pay for and maintain the same. Prior to Final Completion, Contractor shall be solely responsible for any fines, penalties or other charges which result from Contractor's failure to obtain the Contractor Permits and, with respect to the LONO and, if and when issued, the Operational Permit, for its compliance with such Permits while the Units are at the NRG Site. Owner agrees that it either has obtained or will obtain the permits and licenses, if any, designated as Owner Permits. Owner shall comply while the Units are deployed with the LONO and, if applicable, the Operational Permit, and shall comply with the other Owner Permits. Owner shall be solely responsible for any fines, penalties or other charges which result from Owner's failure to obtain the Owner Permits and for Owner's failure to comply as stated above with the LONO and the Operational Permit, if any, with respect to the Units.

(j) During the application process for any Permit, Contractor and Owner shall submit to the other for its review and comment the application and other documentation to be submitted to any Governmental Authority with respect to such Permit.

(k) Contractor shall comply with the provisions contained in Appendix D (FARS) and Appendix E (Cybersecurity and Information Security Matters) in the performance of its obligations hereunder, each of which is incorporated into, and made part of this Agreement as if fully set forth herein. [REDACTED]

4. ENGINEERING AND DESIGN

(a) *Engineering.* In exchange for the Final Contract Price, Contractor shall perform all engineering and design services necessary for completion of the Work in accordance with the Standards and this Section 4. All engineering work of Contractor requiring certification shall be certified, and any design documents requiring sealing shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in the State of New York.

(b) *Design.* Contractor shall design the Work (i) in accordance with the Specifications and the Standards and (ii) to be capable of meeting the Performance Guarantees. Contractor shall prepare design documents (“Design Documents”) necessary to perform the Work, setting forth in detail the requirements for the Work and in accordance with Exhibit A. As such Design Documents for the Work are issued, they shall be clearly identified as Design Documents and provided to Owner in accordance with the Schedule, Full Level 3 CPM Schedule or as otherwise provided in this Agreement. Each electronic copy of a Design Document shall be delivered to Owner in a format that enables Owner to review, revise and reproduce such Design Document. The Design Documents shall include all drawings, specifications, schedules, diagrams, plans, bills of materials, and such other content and detail as is necessary to obtain Permits and to properly complete the Work in accordance with the Standards, and shall provide information customarily necessary for the use of such documents by those in the building trades and the electric utility business.

(c) *Owner Comment on Design Documents.* Contractor shall issue and deliver to Owner all Design Documents by the dates specified in the Full Level 3 CPM Schedule. After receipt of any such Design Documents (or any revision thereof), Owner shall have the right to notify Contractor, as soon as possible after receipt of the Design Documents (or any revision thereof), of any Owner comments or queries. Contractor must correct any errors in the Design Documents (or any revision thereof) and otherwise incorporate all of Owner’s comments necessary to make such Design Documents (or any revision thereof) comply with the Specifications and the Standards. If comments and queries are not provided by Owner to

Contractor within eight (8) Business Days after receipt by Owner of the Design Documents (or any revision thereof), then Owner will be deemed to have no comments or queries, provided, however, Owner may request an extension of such eight (8) Business Day period and Contractor shall grant such extension unless such extension is reasonably likely to adversely affect the Schedule or the Work in any material way. The final Design Documents submitted to Owner and to which Owner has no comments and queries are referred to herein as, the “Final Design Documents.” The review (or lack thereof) by Owner of Design Documents and the fact that Owner has not discovered any errors or defects reflected in such Design Documents, whether with respect to the accuracy of the dimensions, details, integrity or quality of the Design Documents, or otherwise, will not relieve or release Contractor of any of its duties, obligations or liabilities under the terms of this Agreement. Contractor will not make any changes to the Final Design Documents unless approved in writing by Owner.

5. PROCUREMENT

(a) Contractor shall procure, and shall cause its Subcontractors to procure, in Contractor’s name, as an independent contractor and not as an agent of Owner, all materials, supplies, tools, applicable Contractor Permits, insurance, Contractor and Subcontractor labor, and equipment, each as may be necessary to perform the Work in accordance with the Standards and within the Schedule. Contractor shall make payment in full for all materials, supplies and equipment needed to perform the Work and shall take commercially reasonable efforts to cause the same to be delivered in time to meet the Schedule.

(b) In the event that this Agreement designates any equipment, parts, materials or supplies by proprietary name or name of manufacturer, Contractor shall use such designated equipment, parts, materials or supplies unless specifically otherwise agreed to by Owner in writing. Proposed alternates or substitutes shall not be procured, used or installed by Contractor until Owner has agreed to such alternates or substitutes in writing. If non-conforming equipment, parts, materials and supplies are installed without Owner’s written consent, Contractor shall remove and replace the non-conforming equipment, materials and supplies with equipment, parts, materials and supplies compliant with this Agreement at Contractor’s expense. Unless this Agreement otherwise requires, Contractor shall comply with Manufacturer’s Requirements for any equipment, parts, materials and supplies provided by such manufacturer.

(c) Contractor shall utilize packaging, mode of transportation and shipping consistent with the terms and conditions contained herein, and in accordance with the Standards for the equipment, parts, materials and supplies being shipped.

(d) Contractor shall provide to Owner its schedule and procedure for procurement and storage of long lead time items supplied by Contractor that constitute part of the Work and shall identify those portions of the Work where such procurement is advantageous to the completion of the Work. Contractor then shall procure such items as necessary to meet the Schedule.

(e) Contractor shall receive, handle, store, warehouse or otherwise provide appropriate storage and maintenance in accordance with Manufacturers’ Requirements as well as the Standards for all equipment, parts, materials and supplies required for performance of the

Work. All equipment, parts, materials and supplies that are stored at the NRG Site (or any other location under the control of Contractor or its Affiliates or its Subcontractors) shall be: (i) stored in an appropriate location and in a container that is in accordance with Manufacturers' Requirements and maintained in accordance with Manufacturers' Requirements; (ii) properly tagged and identified for the Work and segregated from Contractor's and its Affiliates' and its Subcontractors' other goods; and (iii) insured in accordance with Section 28 for so long as risk of loss remains with Contractor. Contractor shall maintain, or as applicable, cause its Affiliates or Subcontractors to maintain, appropriate records to document proper storage and maintenance of materials, supplies, parts, or equipment and shall make such records available to Owner upon request.

(f) Receipt or payment for materials, equipment, parts, and associated goods delivered under this Agreement shall not constitute acceptance and shall not relieve Contractor of any of its obligations under this Agreement. Owner with reasonable advance notice shall have the right to inspect, test, and reject such materials, equipment, parts, and associated goods during the warranty periods stated in Exhibit H.

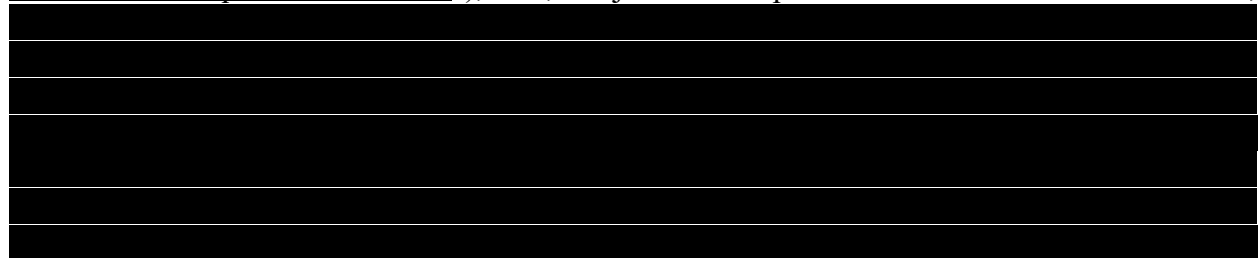
6. COMMENCEMENT AND COMPLETION OF WORK

(a) *Commencement of Work.* Contractor shall not furnish, nor receive any payment for, any Work, except for such Work that Owner expressly authorizes Contractor to furnish pursuant to Section 3.

(b) *Limited Notice to Proceed.* The scope and cost of the LNTP is part of the total scope of Work and Contract Price and shall be subject to the terms of this Agreement. Contractor shall be paid for the Work described and authorized under the LNTP in accordance with the payment terms set forth therein. Payments made in relation to the Work described and authorized under the LNTP shall be credited against the Contract Price. The Parties acknowledge and agree that as of the Execution Date, Owner has paid Contractor the amounts set forth on Exhibit R under the LNTP and such amounts shall be credited against payment of the Target Cost and Contractor Fee components of the Contract Price, as applicable.

(c) *Full Notice to Proceed.* It is the intent of the Parties that the Effective Date shall constitute a full notice to proceed with the Work.

(d) *FDNY Information Request.* In connection with Contractor's prosecution of the application for an Operational Permit (or any modification to the LONO), in the event any additional information is requested by the FDNY (an "FDNY Information Request"), Contractor shall, within two (2) Business Days of receipt thereof, notify Owner of such request (the "FDNY Information Request Notification"), and, subject to the possible extension described below,



[REDACTED]

7. SUBMITTALS

(a) In all instances, where Contractor is required to submit documents, including but not limited to Design Documents, Schedule updates, Change Order Requests, requests for information, notices, and similar documents, Contractor shall make such submission utilizing Owner’s electronic project management system (if any), or as otherwise agreed to in writing by the Parties in good faith as the most efficient means of submitting such documents.

(b) Contractor will provide monthly written progress reports in reasonably sufficient detail and engage in monthly meetings to provide Owner with information regarding the progress on the Work, the Schedule and the Costs including, without limitation, the information required by Exhibit G and information deemed necessary or advisable by Owner to enable Owner, subject to the confidentiality obligations in Section 54, to make industry presentations regarding the Project, and to fulfill all NYPSC reporting requirements applicable to Owner with respect to the Project. Contractor shall not be required to participate in any such industry presentations.

8. WASTE MATERIALS AND WASTE HANDLING

Contractor is responsible for determining and implementing, in accordance with Applicable Laws, the proper characterization, manifesting, storage, transportation and disposal of any waste, including all solid wastes, Hazardous Materials, recyclable materials and demolition waste from or related to the Work (collectively, “Waste”). Without limiting the foregoing, Contractor shall: (i) use only licensed and bonded transporters for the transportation and disposal of all Waste; (ii) receive and accept title, risk of loss, and all other incidents, rights, and obligations of ownership

to all Waste; and (iii) be listed as the “generator” on all manifests prepared in connection with the Waste.

9. INDEPENDENT CONTRACTOR AND SUBCONTRACTING

(a) Contractor agrees that it is an independent contractor and shall be at all times solely responsible for itself, as well as its employees, agents and Subcontractors as to workmanship, accidents, injuries, wages, supervision and control. Owner and its Representatives may visit the NRG Site (or any other site where the Work is being performed, regardless of the location) during normal hours of work at the site to observe the Work and monitor quality, compliance with this Agreement and other aspects of the Work in order to keep Owner informed as to the progress thereof only, but Owner will not be deemed responsible for the same or deemed to identify or waive any defects. Owner shall provide Contractor one (1) Business Day’s advance notice of any visit to observe the Work except in cases of emergency when no advance notice is required; provided that Owner’s rights in this Section 9(a) shall be in addition to Owner’s rights to visit the NRG Site pursuant to the Lease Agreement and, when effective, the O&M Agreement. Owner and its Representatives shall be entitled to be present at any Performance Test conducted under this Agreement; provided, that Owner shall be responsible for all costs, expenses and fees payable or reimbursable to any of its Representatives. This Agreement may not be altered in any manner so as to change the relationship of Contractor under this Agreement from that of independent contractor.

(b) Contractor shall employ only competent workers and supervisors. [REDACTED]

(c) Pursuant to written subcontracts with a member of the Subcontractor Group (the “Subcontracts” and each, a “Subcontract”), Contractor may retain Subcontractors qualified to perform the applicable Work to complete all or a portion of Contractor’s duties and obligations under this Agreement. [REDACTED]

A list of approved subcontractors is shown in Exhibit C. Contractor may subcontract the part of the Work with approved Subcontractors as set forth in Exhibit C without Owner’s further approval; [REDACTED]

If Contractor wishes to hire additional subcontractors for [REDACTED] or if any Subcontractor desires to assign its Subcontract to another person, Contractor will request approval from Owner [REDACTED]

[REDACTED] Terms and provisions (including warranties, indemnities and any other remedies or

guarantees) of Subcontracts, as well as any subsequent amendments or modifications thereto, shall be consistent with the terms of this Agreement, including Section 9(d) and Section 30, and shall be subject to the review and approval of Owner [REDACTED]

[REDACTED] Any Owner approval of a Subcontractor shall not relieve the Contractor of its obligations under this Agreement.

(d) Any part of the Work performed for Contractor by a Subcontractor shall be pursuant to a written Subcontract between Contractor and such Subcontractor. All Subcontracts shall (i) require that such portion of the Work be performed in accordance with the requirements of this Agreement; (ii) include, at a minimum, the applicable Subcontractor Warranties and Performance Guarantees; (iii) recognize the right of Owner upon its termination of this Agreement (regardless of whether such termination is for default, for convenience or otherwise) to assume the Subcontracts in the place of the Contractor; (iv) include a requirement that the Subcontractors be licensed and bonded to the extent required under New York law; and (v) contain dispute resolution provisions consistent with this Agreement.

(e) (i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(f) If Contractor enters into a Subcontract with a Subcontractor to whom Contractor is subcontracting all or any portion of the performance of the Work on a cost-plus or T&M basis in an amount exceeding [REDACTED], immediately after Contractor enters into such Subcontract, Contractor shall send a copy of such Subcontract to: Consolidated Edison Company of New

York, Inc., 4 Irving Place, New York, NY 10003, Attention: Purchasing Department Section Manager, Technology and Strategic Initiatives.

(g) Subject to Section 26.2, Contractor shall be responsible to Owner during the Term for the acts and omissions of Contractor, Subcontractors and their respective agents and employees, and any other Persons performing portions of the Work. Contractor acknowledges and agrees that any review, approval, comment or evaluation by Owner of any Subcontractor shall be solely for Owner's determining for Owner's own satisfaction the suitability of such Subcontractor to perform the Work. Owner, in reviewing, approving, commenting on or evaluating any Subcontractor shall have no responsibility or liability for the acts or omissions of such Subcontractor or their respective agents and employees or for any failure of such Subcontractors or their respective agents and employees to comply with the requirements set forth in this Agreement or any Subcontract. In no event shall any review, approval, comment or evaluation by Owner of any Subcontractor relieve Contractor of any liability or responsibility for its Subcontractors or their respective agents and employees under this Agreement.

(h) Contractor shall not, and shall cause its Affiliates not to, employ any Owner employee to perform any services hereunder without the prior written permission of Owner. Further, Contractor shall not, and shall cause its Affiliates not to, utilize or otherwise permit any former employee of Owner to render any services under this Agreement of any nature for or on behalf of Contractor or its Affiliates (as an employee or consultant or otherwise) within five years of such former employee's separation from Owner if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Owner at any time during the three-year period immediately preceding the employee's separation from Owner. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Owner and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order." This Section shall survive termination of this Agreement.

(i) The execution and performance of the terms of this Agreement and any other course of dealing by the Parties hereunder shall not be deemed to create a joint venture, partnership, or other similar arrangement, or to create any fiduciary relationship between the Parties. Neither Party nor any of its employees, agents or officers will be considered an employee, joint venturer, or partner of the other Party or its Affiliates. Each Party's personnel and employees will at all times be under the exclusive direction and control of such Party.

10. MANAGERS AND REPRESENTATIVES

Owner and Contractor each shall appoint a Person to act as its manager and coordinator on its behalf with respect to this Agreement (the "Manager"). Each Manager shall act as the liaison for its Party's communications with the other Party. Each Party shall notify the other of such appointment as of the Effective Date of this Agreement.

In addition, Owner and Contractor may each appoint one or more Persons as their respective representative(s) (each, a “Representative”) to assist with the management and oversight of the Work.

11. INTELLECTUAL PROPERTY; TITLE TO WORK DOCUMENTS

(a)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e)

[Redacted text block]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

12. QUALITY CONTROL

(a) Contractor shall fully implement and comply with the quality assurance and quality control requirements set forth in this Agreement which include the Performance Tests and completing the Work in compliance with the Standards.

(b) Contractor shall notify Owner as soon as possible, but in no event longer than within twenty-four (24) hours of Contractor's knowledge thereof, of any material damage to, loss of the use of the Units or the Docking Station, or any other issue that could reasonably be expected to materially adversely affect the Work, the Schedule, the Subcontractor Warranties or Final Contract Price.

13. CORRECTION OF DEFECTS

Until System Substantial Completion and, thereafter with regard to the Punch List items, Contractor at its sole cost and expense shall either correct or cause its Subcontractor(s) to promptly repair or correct any part of the Work that does not and would not meet the requirements of the Contract Documents, including but not limited to the applicable Standards, Specifications, or Design Documents (collectively, "Defective Work"). Contractor's obligation to repair or correct such Defective Work shall be without prejudice to and with full reservation of Owner's other rights under the Contract Documents with respect to Defective Work. Likewise, such obligation of Contractor to repair or correct Defective Work shall apply notwithstanding Owner's payment for such Defective Work or Owner's prior inspection or approval of such Defective Work.

14. RESERVED

15. CHANGES

(a) Owner and Contractor agree that the Contract Price includes all services and items necessary to complete the Work within the Schedule and in accordance with the Standards.

(b) Without invalidating this Agreement, Owner may, by issuance of a written order in the form of Exhibit L signed by both Parties (each such order, a "Change Order"): (a) instruct Contractor to make certain changes to the Work, including any addition to, deletion from, suspension of or other modification to the quality, function or intent of the Work; and (b) to the extent specifically provided for in this Agreement, adjust the Schedule, Final Contract Price, and any other provision of this Agreement (all of the foregoing, "Changes", any of the foregoing, a "Change"). Exhibit L sets forth an agreed-upon form of Change Order that may be used in connection herewith. In the event that Owner and Contractor are unable to agree on adjustments to the Final Contract Price and Schedule resulting from such Changes in the Work (whether requested by the Owner or the Contractor), then Owner may require Contractor to proceed with such Work on a time and materials basis with a not-to-exceed ("NTE") value based on the rates set forth in Exhibit T. If a Change is to be performed on an NTE value, Contractor shall submit a detailed cost breakdown including man-hours by craft or discipline, quantities of material, equipment and other applicable costs. Performance of a Change on an NTE value does not mandate the Contractor to perform such change in the Work on a fixed fee equal to such NTE

value or deem Contractor to have waived its right to dispute pursuant to Section 40. For any Schedule impact, Contractor shall provide the impact to specific Schedule activities.

(c) In the event of a circumstance or occurrence for which Contractor deems it is entitled to receive a Change Order under this Agreement, Contractor shall submit to Owner a Change Order request to Owner (a “Change Order Request”) no less than ten (10) Business Days prior to the date Contractor expects to incur any portion of the Cost Overruns associated with such Change Order Request, together with reasonable documentation evidencing the scope of the Work and associated Costs that Contractor wishes to incur pursuant to such Change Order Request in order to permit Owner to evaluate such Change Order Request. Owner shall respond to such Change Order Request within eight (8) Business Days of receipt of such Change Order Request and communicate its decision to approve or deny such Change Order Request, as the case may be, to Contractor’s Representative. No less than monthly, Owner shall aggregate any approved, agreed to, or accepted Change Order Requests, into a Change Order.

(d) Contractor shall not perform any Changes to the Work or the scope of the Work until either (i) Owner and Contractor have each agreed to a Change Order or (ii) Owner has expressly directed Contractor in writing to perform the Change prior to reaching agreement on a Change Order in accordance with this Section 15. Under no circumstance shall Contractor be entitled to rely upon any purported verbal directives or verbal changes.

16. LIENS

(a) If there arises any Lien related to the Work (including any Liens imposed by Contractor and its Subcontractors) and Owner has made all payments required pursuant to Section 33 of this Agreement, then Contractor, at its sole cost and expense, shall:

(i) promptly, following receipt of written notice of such Lien or otherwise becoming aware of the existence of such Lien, provide written notice thereof to Owner; and

(ii) as soon as reasonably practicable, but in no event later than ten (10) Business Days after the receipt of notice regarding the intended filing or recording of such Lien, either (x) pay or discharge or release and remove of record any such Lien, (y) pay the appropriate amount into court in order to have such Lien vacated or (z) provide, at its option, a bond or letter of credit from a surety or commercial bank reasonably acceptable to Owner in an amount and on terms and conditions reasonably acceptable to Owner to protect against such Lien.

(b) Upon the failure of Contractor to perform its obligations under this Section 16, Owner may, but shall not be obligated to, pay or discharge or obtain a bond, letter of credit or other security to remove such Lien and, upon doing so, will be entitled to recover promptly from Contractor the costs and expenses incurred by Owner in connection therewith. In addition, Owner may offset such amounts from any amounts otherwise due to Contractor hereunder. For purposes of clarity, any amounts paid or payable pursuant to this Section 16 shall not constitute an Actual Cost (as defined in Section 33) includable in the Final Contract Price calculation.

(c) Contractor represents and warrants that, by submittal of an invoice, all Work for which payments have been previously issued and payments received from Owner shall be free and clear of Liens, suits or other legal proceedings, or encumbrances in favor of Contractor,

Subcontractors or other Persons or entities making a claim by reason of having provided labor, materials or equipment relating to the Work, and that no basis exists for the filing of any such Lien, Claim, or encumbrance; [REDACTED]

(d) Contractor represents and warrants that it has no business or operations other than its involvement in the Project pursuant to the Contract Documents and that it was recently formed in order to negotiate and enter into the Contract Documents and participate in the Project. Contractor further represents and warrants that Contractor has no knowledge of any Liens, suits or other legal proceedings, or encumbrances against it or any of its material assets or properties, including the Contractor Intellectual Property; provided, however, that the use limitations imposed under a Subcontract with respect to the Subcontractor Restricted IP and the Subcontractor Terms shall not be deemed an encumbrance for purposes of this representation and warranty.

(e) The provisions of this Section 16 shall survive the termination of this Agreement.

17. PROTECTION OF EMPLOYEES AND PUBLIC; ENVIRONMENTAL AND CHEMICAL HAZARD REQUIREMENTS

(a) Contractor shall be solely responsible for the safety of its, and each Subcontractor's, employees and agents. Without limiting the foregoing, Contractor shall also at all times remain familiar with the NRG Site and its environments, and shall inspect at all times the Work to discover and promptly take all precautions and remedies necessary to protect and warn all employees, Subcontractors and Third Parties against existing conditions or conditions created during the progress of the Work that may involve risk of bodily harm or property damage of all persons, including employees or property of Parties and Third Parties. Contractor shall implement and fully comply with its site safety plan, which will at a minimum meet the standards and requirements set forth in Exhibit U. Contractor will provide its site safety plan to Owner for review and acceptance within 30 days of the Effective Date.

(b) Contractor shall be solely responsible for all compliance with or liability that may arise under Environmental Laws in the course of performing the Work. Without limiting the foregoing, Contractor shall also: (i) immediately notify Owner if it or any Subcontractor discovers any unsafe substance or condition (or adverse change in condition) that may present a threat to human health, safety or the environment; (ii) report any employee illnesses or injuries that may occur in connection with the performance of the Work to Governmental Authorities in accordance with Environmental Laws; and (iii) report all Contractor and Subcontractor employees' injuries that occur during performance of the Work to Owner's Manager and the contact person named in Section 43 of this Agreement.

(c) In order to maintain a safe, healthy and efficient work environment, and to minimize absenteeism and tardiness, Owner requires that the NRG Site be a drug and alcohol free environment. Contractor agrees that throughout the Term it shall implement and shall have in full force and effect a written substance abuse program (the "Substance Abuse Program") that

meets Applicable Laws and Prudent Industry Practice. Within 10 days after the Effective Date, Contractor shall provide Owner with a copy of Contractor's Substance Abuse Program. Owner shall review the program and if acceptable, approve the program within 30 days of the Effective Date. Any failure of Owner to act on the Substance Abuse Program within this time frame shall constitute Owner approval.

(d) Contractor will test its employees in accordance with its Substance Abuse Program. Contractor's and each Subcontractor's employees will be subject to a drug and alcohol test based on their involvement in or cause of a reportable accident or incident that causes personal injury or property damage in accordance with Applicable Laws. Contractor's employees will be subject to a drug and alcohol test based on a reasonable and articulated belief that the employee is using or has recently abused alcohol or drugs. All testing shall be paid for in full by Contractor.

(e) Contractor is and shall remain, and will cause its Subcontractors to remain, in full compliance with all requirements of Applicable Laws related to the Work, including all Environmental Laws and those laws applicable to (i) the protection of Owner and Contractor's (including Subcontractors') employees and members of the public, including all regulations, interpretations and directives of the Occupational Health and Safety Administration ("OSHA") and its state counterpart, (ii) laws prohibiting discrimination against any employee or applicant for employment because of race, creed, color, sex, national origin, age or disability, (iii) unemployment insurance laws and federal social security laws and (iv) workers' compensation laws.

(f) If Contractor or any of its agents or Subcontractors causes a spill or release of any Hazardous Materials into the environment at the NRG Site or on any Owner-owned property which requires reporting to local, state and/or federal agencies under any Applicable Laws, Contractor shall immediately notify Owner and provide Owner with the details, status, and compliance efforts associated with the spill or release. Notwithstanding notice to Owner, Contractor shall be responsible for ensuring timely and adequate reporting of any such spill or release to the appropriate agencies. Contractor shall be responsible for remediation of any such spill or release to the extent required by Environmental Laws at no cost to Owner and, if on an Owner-owned property (or the NRG Site so long as the Lease Agreement is in effect), also to the satisfaction of Owner.

(g) Contractor and Owner shall comply with all applicable hazard communication requirements of OSHA, as codified at 29 C.F.R. 1910.1200. Contractor shall provide the necessary information in training to its employees on each Hazardous Material to which they may be exposed in performance of the Work.

18. SCHEDULE

(a) Time is of the essence with respect to Contractor's performance of the Work. Contractor commits to complete the Work in accordance with the approved milestone schedule Exhibit B (the "Schedule") and to meet the System Substantial Completion Deadline in accordance with Section 23(f). Within 30 days of the Effective Date, Contractor will produce a

full Level 3 CPM schedule (the “Full Level 3 CPM Schedule”) which aligns with the milestones set forth in the Schedule for the purposes of managing and reporting on the progress of the Work.

(b) Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there may be a material deviation in the Schedule (e.g., expected failure to meet any Milestone Completion Date) and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligation to complete the Work in accordance with the Schedule. In the absence of a Change Order, no update to the Schedule will amend, alter or otherwise change any Milestone Completion Date.

19. SPARE PARTS

(a) Contractor shall provide a complete set of all materials, equipment and spare parts that may be needed to start-up, commission and test the Work through Final Completion. Such materials, equipment and spare parts shall be delivered to the NRG Site at least two weeks prior to the startup, commissioning and performance testing. Any materials, equipment and spare parts not used during start-up, commissioning and performance testing shall become the property of Owner and after System Substantial Completion the storage of such materials, equipment and spare parts shall be made in accordance with the terms of the O&M Agreement.

(b) Upon System Substantial Completion, Contractor shall submit to Owner a recommended list of spare parts and consumables for the Work for the two (2) year period after Final Completion. Upon Owner’s request, Contractor shall provide such spare parts at Owner’s cost and Owner shall provide for the storage of the spare parts at its cost after System Substantial Completion in accordance with the terms of the O&M Agreement.

20. CONTRACTOR-PROVIDED TRAINING AND MANUALS

Contractor will provide on-the-job training to Owner’s employees in the safe and effective operation and maintenance of the Units and, if requested by Owner, the Docking Station in each case as set forth in Exhibit A under the heading “owner training”, and will coordinate and conduct all training sessions set forth therein in a manner sufficient to provide Owner and its personnel with an adequate understanding of the basic design, operation and maintenance aspects, safety and environmental protection of the Units and the Docking Station. In addition, Contractor shall supply to Owner up-to-date operating and maintenance manuals that describe how the Units and Docking Station should be operated and maintained, as well as troubleshooting and repair procedures (“User Documentation”). The User Documentation shall be reasonably sufficient to assure that designated Owner personnel can operate and maintain the Units and Docking Station.

21. COMPLETION OF WORK

- (a) System Substantial Completion shall occur as set forth in Section 23.
- (b) Final Completion shall occur as set forth in Section 24.

[REDACTED]

[REDACTED]

(e) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(v) [REDACTED]

(f) Performance Testing:

(i) Exhibit V sets forth the minimum performance requirements for each of the Performance Tests which must be met for such Performance Test to be deemed completed.

(ii) A detailed testing procedure and related requirements for each of the Performance Tests will be prepared by Contractor and submitted to Owner for review and approval no later than four (4) months prior to the System Substantial Completion Deadline. Within thirty (30) days following such submission, Owner will review the procedure and provide any comments in writing to Contractor, which comments shall be reflected in a revised procedure to be submitted to Owner and mutually agreed to by the Parties promptly thereafter. Such revised procedures will provide that the Work be tested while it is in a new and clean condition, or be subject to correction for degradation if not in a new and clean condition.

23. SYSTEM SUBSTANTIAL COMPLETION

(a) "System Substantial Completion" shall have occurred upon occurrence of all of the following:

(i) Unit Substantial Completion and Docking Station Substantial Completion has occurred.

(ii) The Units shall have been delivered to the NRG Site, re-stacked from Long Haul Transport and the system has been tested individually and in the aggregate in accordance with the Performance Test procedures contemplated by Section 22 and the protocols set forth in Exhibit W and shall have met the minimum performance requirements set forth in Exhibit V. An end to end system controls test and check out shall have been conducted by the Contractor. All Units, individually and in the aggregate, shall have been tested and commissioned and confirmed to be mechanically, electrically and structurally sound in accordance with the Standards, and the requirements and inspection procedures set forth in Section 22 shall have been completed in accordance with the provisions of Section 22. Contractor shall have (A) executed and delivered to Owner any and all documentation necessary to evidence conveyance of title to the Units and the personal property specified in Exhibit A (and spare parts to the extent set forth in Section 19) that constitutes part of the Project, including, but not limited to, bills of sale and certificates of title as set forth in Section 27(e), (B) included Owner in the Subcontractor Warranties or assigned the Subcontractor Warranties (and the warranties provided by [REDACTED]) to Owner in compliance with the applicable Subcontracts, (C) delivered a draft of the Turnover Package and (D) delivered to Owner any and all documentation necessary to evidence the license contemplated by Section 11(c) to become effective as set forth therein. All Permits (except for the FDNY Operational Permit which, if required, will be a separate Milestone following System Substantial Completion) necessary for the operation of the Units and Docking Station shall have been obtained.

(iii) The Point of Interconnection shall have been tied in and energized and hot commissioning activities have been completed. The Docking Station shall have been tested and commissioned and confirmed to be mechanically, electrically and structurally sound in accordance with the Standards, and with the requirements and inspection procedures set forth in Section 22.

(iv) Contractor shall have completed all actions necessary to fully integrate the Units and the Docking Station with Owner's SCADA network such that Owner has the ability to monitor and dispatch the Units through its SCADA network.

(v) The Punch List shall have been finalized pursuant to Section 23(d) below.

Notice of System Substantial Completion will be provided to Owner with sufficient detail to enable Owner to determine whether Contractor has achieved the requirements for System Substantial Completion set forth in this Agreement and in accordance with the Standards. Owner will have seven (7) Business Days to accept or provide notice of deficiencies.

(b) "Unit Substantial Completion" shall have occurred upon occurrence of all of the following:

(i) Mechanical Completion: "Mechanical Completion" of the Units occurs upon completion of the design, engineering, procurement, permitting, assembly for the Units. Notice of Mechanical Completion will be provided to Owner with sufficient detail to enable

Owner to determine whether Contractor has achieved these requirements in accordance with Standards. Owner will have seven (7) Business Days for response to accept or provide notice of deficiencies.

(ii) Unit Testing: Unit testing with respect to a Unit is completed when Owner has accepted Mechanical Completion, FAT has been successfully completed and the Unit has been prepared for Long Haul Transport. Notice of Unit Substantial Completion will be provided to Owner with sufficient detail to enable Owner to determine whether Contractor has achieved these requirements in accordance with the Standards. Owner will have seven (7) Business Days to accept or provide notice of deficiencies. "Long Haul Transport" means that a Unit(s) has been prepared so that it may travel at speeds greater than 20 mph. Prior to Long Haul Transport, the Unit(s) will be de-stacked and made ready for transport.

(c) Station and Point of Interconnection: "Docking Station Substantial Completion" shall have occurred upon occurrence of all of the following:

(i) Mechanical Completion: "Mechanical Completion" of the Docking Station occurs upon completion of the design, engineering, procurement, permitting, assembly and construction of the Docking Station and Point of Interconnection, including cold commissioning activities and providing the system in a safe and stand by readiness for integrated Performance Tests. Notice of Mechanical Completion will be provided to Owner with sufficient detail to enable Owner to determine whether Contractor has achieved these requirements in accordance with the Standards. Owner will have seven (7) Business Days for response to accept or provide notice of deficiencies.

(ii) Interconnection Agreements: The design of the Units and the Docking Station and their operational characteristics must meet the interconnection requirements of Owner, including the terms of the Interconnection Agreement, and the requirements of NYISO. The Parties acknowledge and agree that, as a further condition to Mechanical Completion, Owner must enter into the Interconnection Agreement thirty (30) days prior to any operation (other than for testing purposes) of the Units and/or Docking Station at the NRG Site.

(iii) Arrangements for Electric Supply for the Work: Contractor acknowledges that this Agreement does not provide for any electric service by Owner to Contractor. Prior to the date of System Substantial Completion, Owner is responsible for applying for and obtaining electric service to meet its obligations under this Agreement pursuant to the NYISO tariff. Contractor shall comply with all applicable terms of the NYISO tariff and its obligations thereunder.

(iv) Execution of Required Documents: With respect to the Work and prior to any operation of the Units and/or Docking Station (other than for testing purposes) at the NRG Site, Owner shall have (a) executed and/or filed all necessary grid connection, maintenance, or transmission facility services agreements (including the Interconnection Agreements and all required NYISO agreements (if required in accordance with Section 23(c)(ii) and (iii)), and (b) obtained electric service to meet its obligations under this Agreement pursuant to the NYISO tariff, in each case as necessary to enable Owner to use the Units and Docking Station. Owner will deliver to Contractor true and complete copies of such agreements. If Owner has not

satisfied the requirements of this Section 23(c)(iv) prior to delivery of the Units to the Site, Costs and expenses incurred by Contractor in connection with a delay in satisfying the requirements of this Section 23(c)(iv) shall be considered a cost for which a Change Order Request may be submitted. Owner will also use Prudent Industry Practices to keep such agreements, as originally executed by Owner, in full force and effect throughout the Term.

(d) Contractor shall, no later than twenty (20) Business Days prior to achieving System Substantial Completion, prepare and submit to Owner a comprehensive punch list setting forth any punch list items, and also including performance of clean-up and other post-construction activities (a "Punch List"). In the event that the Operational Permit has not been obtained on or before System Substantial Completion and the Parties have not received written confirmation from the FDNY that an Operational Permit will not be required for the Project, the Punch List shall also include the items necessary to obtain the Operational Permit (such items, the "Operational Permit Items"). Contractor's obligation to complete the Operational Permit Items in accordance with the terms of this Section 23(d) shall survive the termination of this Agreement. Owner will be entitled to verify and, if necessary, correct or add items to the Punch List. Owner will notify Contractor in writing within ten (10) Business Days after receipt of the Punch List (or revision thereof) whether Owner has additions or corrections. Upon such notice, such additions and corrections shall be included in the Punch List and Contractor may submit a Change Order Request if the requested additions to the Punch List change the scope of Work completed herein or the Schedule. If Owner fails to respond within fourteen (14) Business Days, then such Punch List shall be deemed accepted by Owner.

(e) Punch List items shall be corrected as soon as reasonably practicable. The Parties agree that with respect to the items on the Punch List, all Punch List items must be completed for Contractor to achieve Final Completion. If any items on the Punch List remain uncompleted thirty (30) days following the System Substantial Completion for reasons other than a Contractor Force Majeure, an Owner Event of Default or an item that by its nature is not capable of being completed by Contractor acting in a commercially reasonable manner within such thirty (30) day period, Contractor shall notify Owner when the Punch List will be completed and shall complete the Punch List within such time period. In the event any items on the Punch List identified by Contractor as being by their nature not capable of being completed by Contractor acting in a commercially reasonable manner within such thirty (30) day period remain uncompleted as of the completion date notified to Owner by Contractor for such items, then Owner, with fifteen (15) Business Days advance notice to Contractor, may elect to complete such Punch List items itself, and shall be entitled to receive payment from Contractor or, alternatively, to deduct from remaining amounts due to Contractor, for the cost of performing the remaining items on the Punch List, whereupon such items will be deemed removed from the Punch List. Notwithstanding the foregoing, if Owner mobilizes the Units after System Substantial Completion, the terms of Section 24(c) shall apply.

(f) Timing. Contractor shall be obligated to achieve System Substantial Completion no later than [REDACTED] from the Effective Date (the "System Substantial Completion Deadline") as set forth in Exhibit B.

24. FINAL COMPLETION

(a) Contractor shall achieve "Final Completion" of the Work by (i) completing all items on the Punch List; (ii) providing a final Turnover Package as amended or changed by Contractor; (iii) submitting original Final Lien Release from itself and from all Subcontractors and sub-Subcontractors; (iv) if not already done at System Substantial Completion, providing and assigning to Owner all manufacturer's warranties associated with any labor, materials, parts and equipment supplied by Contractor or any Subcontractor as part of the Work, including assigning the Subcontractor Warranties (and the warranties provided by ██████ to Owner in compliance with the applicable Subcontracts; (v) to the extent not already paid in accordance with Section 25(a), paying any Delay Liquidated Damages ██████ (vi) submitting a final payment invoice; (vii) finalizing a Final Cost Reconciliation, (viii) submitting Contractor's Notice of Final Completion, subject to Owner's reasonable acceptance; and (ix) providing all Project Data generated up to such date (provided that Contractor may maintain a copy thereof subject to Sections 36(d) or 37(f), and the terms of the O&M Agreement and the EMS Agreement).

(b) Contractor acknowledges and agrees that Contractor shall have a continuing obligation to use commercially reasonable efforts to pursue, and cause all applicable Subcontractors to pursue, securing an Operational Permit before System Substantial Completion or as soon as practicable thereafter, including as set forth in Section 6(d). Contractor shall be entitled to the Operational Permit Milestone Payment at the earlier of the issuance of the Operational Permit or Final Completion so long as it has complied with the obligations of Section 6(d) and this Section 24(b), and the Operator (as defined in the O&M Agreement) has agreed in the O&M Agreement to assume Contractor's obligation to use commercially reasonable efforts to pursue, and cause its Subcontractors to pursue, securing an Operational Permit if the permit has not been issued or determined to be unnecessary prior to Final Completion. This Section 24(b) shall survive termination of this Agreement.

(c) Upon System Substantial Completion Owner may deploy the Units, including mobilizing the Units for grid support.

(i) If Owner deploys the Units and returns the Units to the Site within sixty (60) days from the date of deployment and allows the Units to remain at the Site for at least thirty (30) consecutive days, then Contractor shall have thirty (30) days from such return date to complete the outstanding items in the Punch List. If the Punch List is not completed for reasons other than a Contractor Force Majeure, an Owner Event of Default or an item that by its nature is not capable of being completed by Contractor acting in a commercially reasonable manner within such thirty (30) day period, Contractor shall notify Owner when the Punch List will be completed and shall complete the Punch List within such time period. In the event any items on the Punch List identified by Contractor as being by their nature not capable of being completed by Contractor acting in a commercially reasonable manner within such thirty (30) day period remain uncompleted as of the completion date notified to Owner by Contractor for such items, then Owner with fifteen (15) Business Days advance notice to Contractor, may elect to complete such Punch List items itself, and shall be entitled to receive payment from Contractor or, alternatively, to deduct from remaining amounts due to Contractor, for the cost of performing the

remaining items on the Punch List, whereupon such items will be deemed removed from the Punch List.

(ii) If Owner deploys the Units and does not return the Units to the Site within sixty (60) days from the date of deployment and allow the Units to remain at the Site for at least thirty (30) consecutive days, then, despite the Punch List not being completed, payment shall be made to the Contractor that is payable at Final Completion provided that all conditions to Final Completion have otherwise occurred. Contractor shall have thirty (30) days from the return date to complete the outstanding items in the Punch List and may request a Change Order for the excess in the Costs needed to complete the Punch List over the Costs (the “Base Punch List Costs”) that would have been incurred to complete the Punch List if such completion was conducted pursuant to Section 24(c)(i). If the Punch List is not completed within such 30-day period for reasons other than a Contractor Force Majeure, an Owner Event of Default or an item that by its nature is not capable of being completed by Contractor acting in a commercially reasonable manner within such thirty (30) day period, Contractor shall notify Owner when the Punch List will be completed and shall complete the Punch List within such time period. In the event any items on the Punch List identified by Contractor as being by their nature not capable of being completed by Contractor acting in a commercially reasonable manner within such thirty (30) day period remain uncompleted as of the completion date notified to Owner by Contractor for such items, then Owner with fifteen (15) Business Days advance notice to Contractor, may elect to complete such Punch List items itself, and shall be entitled to receive payment from Contractor or, alternatively, to deduct from remaining amounts due to Contractor, the amount of the Base Punch List Costs plus any other amounts already paid to Contractor for performing the remaining items on the Punch List.

(d) Issuance of a final payment invoice and agreement to the Final Cost Reconciliation shall be deemed to be Contractor’s certification that all obligations of Contractor have been paid, including Subcontractors, suppliers, payrolls, materials, freight bills, applicable sales taxes, and other indebtedness connected with the Work. Payment of the final invoice shall constitute (i) full satisfaction of final settlement of all Contractor’s claims arising out of the Work, other than those specifically reserved on Contractor’s Final Lien Release, including, but not limited to claims for additional Work, and (ii) a waiver and release by Contractor of all liens, claims, or rights, including but not limited to those arising by virtue of the mechanic’s lien, or any other lien law(s) of the State of New York, on account of work, labor, services, equipment, plans, specifications, or materials furnished to Owner.

(e) Owner may, in its discretion, accept in writing portions of the Work without releasing or waiving any of its rights under the terms and conditions of this Agreement or at law. Contractor’s obligation to submit supporting documentation shall remain the same as if Owner had made no partial acceptance of the Work.

25. LIQUIDATED DAMAGES

(a) Owner and Contractor acknowledge and agree that if Contractor fails to achieve System Substantial Completion on or before the System Substantial Completion Deadline, Owner will suffer actual and substantial, but difficult to calculate, damages. These damages

might include increased cost in energy purchases, overhead, legal and transportation expenses as well as taxes and other costs. Moreover, Owner recognizes that Contractor would not be willing to risk paying Owner's actual damages in such event. Therefore, Owner and Contractor acknowledge and agree that if Contractor fails to achieve System Substantial Completion on or before the System Substantial Completion Deadline, the Contractor shall pay the Owner, as its exclusive measure of damages against Contractor for a failure to meet this deadline because of delays, an amount equal to [REDACTED] per day as liquidated damages from the System Substantial Completion Deadline until System Substantial Completion, provided that such payments by Contractor shall not exceed [REDACTED] in the aggregate (collectively, the "Delay Liquidated Damages").

[REDACTED]

The Delay Liquidated Damages shall be due and payable thirty (30) days after the earlier of (a) the date of System Substantial Completion or (b) termination of this Agreement. This Section 25(a) shall survive termination of this Agreement.

(b) The Parties acknowledge as of the Execution Date that the Delay Liquidated Damages specified herein represent reasonable estimates of actual damages that Owner would incur as a result of delays resulting from Contractor's failure to achieve the Milestone Completion Dates, and such Delay Liquidated Damages are not a penalty. Owner will not be required to prove that it has incurred actual damages in order to assess such delay liquidated damages against Contractor.

[REDACTED]

(c) The Delay Liquidated Damages shall be the only damages against Contractor for delays in reaching System Substantial Completion by the System Substantial Completion Deadline. Notwithstanding the foregoing, if a court of competent jurisdiction determines the Delay Liquidated Damages to be legally invalid or unenforceable, Owner shall be entitled to seek all other rights and remedies at law or in equity.

[REDACTED]

(e) If Owner becomes entitled to liquidated damages pursuant to this Agreement, Owner may invoice Contractor or deduct the amount of such liquidated damages from any money due or which may become due to Contractor under this Agreement.

(f) Notwithstanding anything in this Section 25 to the contrary, the payment of the Delayed Liquidated Damages does not preclude the Owner from seeking indemnification from Contractor pursuant to Section 26 for Owner Indemnifiable Losses other than damages for a failure to meet the System Substantial Completion Deadline because of delays.

26. INDEMNIFICATION AND LIMITATION OF LIABILITY

26.1 Punitive and Other Damages

(a) Neither Contractor nor any of its Affiliates, nor any employee, shareholder, partner, member, representative, officer, or director of the Contractor or such Affiliates, whether past, present, or future, will be liable, whether in contract, in tort or otherwise, for any punitive, consequential or special damages whatsoever, which in any way arise out of, relate to, or are a consequence of, this Agreement or performance or nonperformance hereunder, or, as applicable, the provision of or failure to provide the Work hereunder, even if made aware of the possibility of such damages; provided, however, that this limitation shall not apply to damages where such damages arise due to: [REDACTED]

(b) Neither Owner nor any of its Affiliates, nor any employee, shareholder, partner, member, representative, officer, or director of the Owner or such Affiliates, whether past, present, or future, will be liable, whether in contract, in tort or otherwise, for any punitive, consequential or special damages whatsoever, which in any way arise out of, relate to, or are a consequence of, this Agreement or performance or nonperformance hereunder even if made aware of the possibility of such damages; provided, however, that this limitation shall not apply to damages where such damages arise due to: [REDACTED]

[Redacted]

26.2 Limitation of Contractor Liability

[Redacted]

26.3 Indemnification

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e) This Section 26.3 shall survive termination of this Agreement.

26.4 Procedure for Indemnification

(a) When seeking indemnification pursuant to Section 26.3, the applicable indemnified party (an “Indemnified Party”) shall give prompt written Notice together with a copy of such claim, process or other legal pleading, or a reasonably detailed description of the Claim, to the indemnifying party of the assertion of any claim, or the commencement of any action, suit or proceeding, or the existence of any Claim, in respect of which indemnity is sought hereunder and shall give the indemnifying party such information with respect thereto as the indemnifying party may reasonably request, but no failure to give such notice shall relieve the indemnifying party of any liability hereunder (except to the extent the indemnifying party suffers prejudice or damages thereby). Any Indemnified Party and the indemnifying party shall in all other respects use commercially reasonable efforts to cooperate with each other to mitigate the cost of any Claim or Indemnifiable Loss and to settle the same promptly in a mutually satisfactory manner. The payment of any indemnity due to an Indemnified Party pursuant to Section 26.3 will be due and payable thirty (30) days after the date that the indemnifying party receives notice from the Indemnified Party of the amount of the underlying claim and the underlying claim is resolved.

(b) The indemnifying party will have the right to participate in or, by giving written Notice to the Indemnified Party, to elect to assume the defense of any Third Party claim for an Indemnifiable Loss or Claim at such indemnifying party’s expense and by such indemnifying party’s own counsel, provided that in the event of the indemnifying party’s assumption of the defense (and at the expense of the Indemnified Party except as provided in subsection (c) below), the Indemnified Party shall have the right to participate in the defense of such Third Party claim and to employ counsel separate from the counsel employed by the indemnifying party. The Indemnified Party shall cooperate in good faith in such defense at such Indemnified Party’s own expense. If an indemnifying party elects not to assume the defense of any Third Party claim as provided in this Section 26.4(b), the Indemnified party may compromise or settle such Third Party claim over the objection of the indemnifying party.

(c) If, within twenty (20) days after an Indemnified Party provides written Notice to the indemnifying party of any Third Party claim, the Indemnified Party receives written Notice from the indemnifying party that such indemnifying party has elected to assume the defense of such Third Party claim as provided in Section 26.4(b), the indemnifying party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided that without the prior written consent of the Indemnified Party, the indemnifying party shall not enter into any settlement of any Third Party claim unless such settlement releases the Indemnified Party and its Affiliates from liability in connection with such matter and provides relief consisting solely of money damages borne by the indemnifying party. If a firm offer is made to settle a Third Party claim and such settlement releases the Indemnified Party from liability in connection with such matter and provides relief consisting solely of money

damages borne by the indemnifying party and the indemnifying party desires to accept and agree to such offer, the indemnifying party shall give written Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the indemnifying party shall be relieved of its obligations to defend such Third Party claim and the Indemnified Party may contest or defend such Third Party claim. In such event, the maximum liability of the indemnifying party as to such Third Party claim will be the amount of such settlement offer.

(d) Section 26 shall survive termination of this Agreement.

27. LOSS OR DAMAGE, TITLE, RISK OF LOSS

(a) The risk of loss and damage to the Work is, and will remain, with Contractor until the achievement of System Substantial Completion provided that risk of loss and damage for Punch List Work will remain with Contractor until such work is completed. Risk of loss and damage to the Units and the Docking Station occurring after System Substantial Completion, other than for Punch List Work, shall be with the Owner. The Parties acknowledge that the O&M Agreement contains provisions regarding responsibility for care, custody, control and risk of loss and damage to the Units and Docking Station independent of this Agreement.

(b) Upon acceptance by Contractor of any and all materials, goods, supplies, tools, equipment and Equipment Components resulting from Contractor's performance of the Work (individually and collectively, "Equipment"), Contractor shall have full responsibility for care, custody, and control for Equipment until System Substantial Completion, at which time such responsibility for care, custody, and control shall pass to Owner. Subject to applicable insurance, if any loss or damage occurs to Equipment prior to System Substantial Completion, Contractor shall, without cost to Owner, promptly repair or replace the Equipment so lost or damaged.

(c) Risk of loss for any materials, parts, goods and equipment being replaced or repaired shall remain with Contractor until completion and final acceptance by Owner of any corrective Work including, without limitation, any Work pursuant to the Punch List.

(d) In the event of any emergency when, in the judgment of Owner, delay in the performance of the Work could cause serious loss or damage, repairs, replacements, or adjustments may be made by Owner or a Third Party chosen by Owner with reasonable notice to Contractor of the terms and conditions under which the repair or replacement work will be done, and the reasonable cost of which, including materials and labor, shall be paid by Contractor and be considered a Cost for which Contractor may submit a Change Order Request if such delay was not due to the act or omission of the Contractor or any Subcontractor.

(e) Pursuant to a Bill of Sale, Certificate of Title or any other documentation necessary to evidence conveyance of title, Contractor will transfer title to the three Units, the Docking Station and any other personal property specified in Exhibit A to the Owner at System Substantial Completion. Contractor represents and warrants that it shall pass good legal and equitable title to the Units and Docking Station to Owner, free and clear of all Liens or any other defects in title upon System Substantial Completion.

(f) Nothing in this Section 27 will excuse, modify, or limit Contractor's indemnity, insurance, or any other obligations herein. This Section 27 shall survive termination of this Agreement.

28. INSURANCE

Contractor shall, and shall cause its Subcontractors, to carry and maintain in full force and effect during the Term, and for any extended period provided for in this Agreement or by Applicable Law, the insurance coverages as well as the limits and endorsements set forth in Exhibit K and shall name the Owner and its Affiliates as additional insureds by a proper endorsement on all policies as indicated in Exhibit K except for workers compensation and employer liability policies. Owner's obligation to provide insurance with respect to the Units while they are deployed prior to Final Completion is set out in the O&M Agreement.

29. RESERVED

30. SUBCONTRACTOR WARRANTIES

(a) Contractor has obtained, for the protection of Contractor and Owner, the guarantees and warranties set forth in the Subcontracts and in Appendix A, which shall include, but are not limited to, the warranties listed on Exhibit H (such warranties collectively, the "Subcontractor Warranties"). Contractor shall deliver to Owner copies of all relevant contracts providing for such guarantees and warranties.

(b) If, at any time prior to Final Completion, (i) Contractor has knowledge of any failure or breach of any Subcontractor Warranty and/or Performance Guarantee (and the warranties and guarantees provided by [REDACTED]), or (ii) Owner discovers any failure or breach of any Subcontractor Warranty and/or Performance Guarantee (and warranty and guarantee provided by [REDACTED]) and notifies Contractor, Contractor shall at Contractor's sole cost and expense, immediately cause Subcontractor to correct such failure or breach, and otherwise cause the Work to comply fully with the Subcontractor Warranty and Performance Guarantee (and warranty and guarantee provided by [REDACTED]). All parts and components employed in repairs and replacements shall be subject to the Subcontractor Warranty and Performance Guarantee (and warranty and guarantee provided by [REDACTED]) and have a level of quality and workmanship equivalent to or greater than that required of the Work as initially installed under this Agreement. Any corrective work performed by the applicable Subcontractor pursuant to this Section 30 shall be completed within a reasonable period of time and shall address the cause (by delivery of a root cause analysis in reasonable sufficient detail), and not just the effect, of such failure or breach.

(c) [REDACTED]

(d)

[REDACTED]

[REDACTED]

31. SITE ACCESS

The Docking Station will be located at the NRG Site. Concurrent with the execution of this Agreement, the Parties are entering into the Lease Agreement, that will provide for Owner to lease the NRG Site in connection with the Docking Station and the storage and maintenance of the Units.

32. RESERVED

33. CONTRACT PRICE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) The Contract Price includes all applicable Contractor Taxes. Contractor, at its sole cost and expense, shall be responsible for the payment of the following (“Contractor Taxes”): (i) all foreign and U.S. federal, state, local and other taxes which may be assessed on Contractor’s income or gross receipts; (ii) all payroll and other related employment compensation taxes for Contractor’s employees; (iii) taxes, duties, excise fees associated with the importation or exportation of the material and equipment related to the Work, and (iv) all applicable sales, use, ownership or other similar taxes made applicable to Contractor or its Subcontractors under applicable state law. Taxes included in the Contract Price shall include only the actual Contractor Taxes owed by Contractor with no additional markups.

(d) Except for Contractor Taxes, Owner shall be responsible for the administration and timely payment of all applicable sales, ownership, excise, use or other similar taxes that are properly payable in connection with or arising from the Work and that are made applicable to Owner under applicable state law. Estimated sales taxes are included in the [REDACTED] as provided in Exhibit E.

(e) The Parties shall cooperate with one another in obtaining any sales or use tax exemptions and qualifying for any real property tax abatements related to the Work or the Project. Contractor agrees to present, if so requested by Owner, satisfactory evidence of payment for all Contractor Taxes to the proper Governmental Authorities. Owner is responsible for the payment of sales taxes for the purchase of the Units and Docking Station and, to the extent set forth in Lease Agreement, real property taxes.

(f) Contractor and Owner each agrees to indemnify and to hold the other harmless from any expense, cost or liability resulting from the nonpayment of any taxes or withholding for which it is contractually liable. The Party failing to pay the tax or withholding shall also reimburse the other Party for any cost or expense it incurs as a result of the nonpayment of the tax or withholding.

34. PAYMENT TERMS

(a) Owner will pay Contractor through Milestone Payments as outlined in the initial Milestone Payment Schedule set forth as Exhibit F, as such Milestone Payment Schedule may be adjusted in accordance with this Section 34, it being understood and agreed by the Parties that the [REDACTED] will only be paid or accounted for at Final Completion of the Work.

(i) The [REDACTED] shall only be due and payable to Contractor on the earlier to occur of (A) the Owner Post-SSC Convenience Termination and (B) Final Completion of the Work.

(ii) Invoicing: Contractor will invoice Owner on a monthly basis and in accordance with the Milestone Payment Schedule, with the invoice covering the calendar month ending on the last day of the month immediately preceding the month in which an invoice is received by Owner. Contractor will submit original invoices to Owner's Accounts Payable Department via Owner's Supply Chain and Accounts Payable system after the rendering of the services being invoiced, and shall provide Owner with such supporting documentation as may be required by this Agreement, including applicable Lien Release as set forth in Section 39(a), or as may reasonably be required by Owner for tax and regulatory purposes. Invoices may also include the lump sum price for any fixed price Change Orders or will itemize materials, labor and supplies to verify costs of any non-fixed price Change Orders. Invoices shall separately state and itemize all Contractor Taxes, including, but not limited to, applicable sales and/or use taxes and reference this Agreement.

(iii) Payment

(A) Owner shall make payment within 30 days of invoice. If Section 756-a of the New York General Business Law is applicable to this Agreement (the parties hereto do not intend such statute to be applicable since the parties do not intend that the Docking Station is an improvement to real property), then the requirement of Section 756-a.2(a)(i) of the New York General Business Law that an owner shall approve or disapprove an invoice from a contractor within twelve business days of receipt of such receipt and all contractually required documentation, is hereby waived by Contractor to the fullest extent permitted by Applicable Law. All payments shall be made via Owner's Supply Chain and Accounts Payable system.

(B) Any and all amounts payable by Contractor to Owner hereunder shall be paid within thirty (30) Business Days from the date they become due and payable and shall be made by wire transfer in immediately available funds to the account or accounts designated by Owner.

(b) Contractor will keep accurate records (and make them available [REDACTED] to document the Costs incurred by Contractor as required to meet the scope, performance and compliance obligations under this Agreement as described in the Schedule, as well as the Exhibits and Annexes hereto, and any changes thereto, including records documenting the portion of the Costs incurred attributable to [REDACTED] any Changes authorized pursuant to Section 15, [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

[REDACTED]

[REDACTED]

(d) Reserved.

(e) Reserved.

(f) Contractor must promptly pay each Subcontractor, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from Milestone Payments made to Contractor on account of such Subcontractor's

portion of the Work. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors and suppliers in a similar manner. Owner shall not have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor.

(g) Owner may withhold a Milestone Payment in whole or in part for a Milestone not properly completed or as may be necessary to protect Owner from loss because of (i) Work that does not comply with the Standards and which has not been remedied, (ii) claims filed by Third Parties including, without limitation, the assertion, filing or recording of any Liens, (iii) failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment, (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price, (v) damage to Owner or a separate Subcontractor resulting from acts or omissions of Contractor or its Subcontractors, (vi) reasonable evidence that the Work, or portions thereof, will not be completed within the Schedule and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, or (vii) failure to carry out the Work in accordance with Prudent Industry Practices. Owner shall not be deemed in default by reason of withholding a Milestone Payment in whole or in part while any of the above matters remains uncured. When Contractor believes that it has cured the reason for any such withholding, it shall resubmit an invoice for the amount which was withheld. If Owner agrees that the reason for withholding has been cured, certification and payment for the withheld amount shall be made as provided in this Agreement. If Contractor fails to cure the reason for any withholding, then Owner may complete or cause another contractor to complete the Milestone Work and, if the cost of completing the Milestone exceeds the amount of the Milestone Payment, Contractor shall pay the difference to Owner within thirty (30) days from the date of Owner's demand subject to the limitations set forth in Sections 26.1 and 26.2; provided, however, in any event, Contractor's right to dispute such action and costs of the Owner pursuant to Section 40 are not waived.

(h) A portion of the Contractor Fee shall be paid at the time each Milestone Payment is made in the amounts set forth in Exhibit F; provided that [REDACTED] of the System Substantial Completion payment provided for in Exhibit F shall be held back until the earlier of Final Completion or completion of the Operational Permit Milestone (such holdback amount, the "Operational Permit Milestone Payment").

(i) Final payment due by Owner to Contractor shall be due thirty (30) days after (i) Contractor submits the final invoice in accordance with Section 34(a)(ii); and (ii) Final Completion is achieved.

(j) A payment for any Work furnished under this Agreement, or partial or entire use of the Units or Docking Station by Owner, will not constitute acceptance of any Work that is not in accordance with the terms of this Agreement, including the Standards.

(k) If there is a dispute between the Parties pending under this Agreement at the time payment is due for System Substantial Completion, then title shall nonetheless transfer in accordance with Section 23(a) and 27(e) upon the deposit of the disputed amount into an escrow with a Third Party escrowee chosen by Owner subject to customary escrow instructions which escrowee and escrow instructions are reasonably acceptable to Contractor. The costs and

expenses of the escrowee, shall be paid by the non-prevailing Party upon resolution of the dispute.

(1)

35. STOPPAGE OR SUSPENSION OF WORK

(a) Owner may, if Contractor fails to correct defective Work, require Contractor to stop performance of the portion of the Work affected. Contractor shall not be entitled to any adjustment in Contract Price or the Schedule in the event of such stoppage.

(b) Owner, for its convenience and upon written notice to Contractor, may delay or suspend the time of performance of any item of Work. Contractor shall be entitled to request a Change Order setting forth an equitable adjustment in Contractor's compensation and/or the Schedule equal to the actual and documented costs and delays directly attributable to such suspension. Contractor must provide prompt written notice to Owner in order to receive such equitable adjustments.

(c) On the date of any such delay or suspension stated in the notice, Contractor shall, and shall cause its Subcontractors to, suspend the item(s) of Work set forth in such notice and shall, and shall cause its Subcontractors to, take all reasonable steps to preserve and protect Work in progress and completed Work. Contractor shall resume any suspended Work within five (5) days of Owner's written notice directing the same as long as the Work has not been suspended for more than [REDACTED] consecutive days.

36. TERMINATION FOR CONVENIENCE

(a) Owner shall have the right to terminate for its convenience further performance of the Work at any time by giving five (5) days prior written notice to Contractor of such termination. In the event such termination constitutes an Owner Post-SSC Convenience Termination, [REDACTED] shall be payable in accordance with Section 34(a)(i).

(b) If the Work has been suspended for a period of [REDACTED] consecutive days for Owner's convenience in accordance with Section 35 and Contractor is otherwise in compliance with the terms of this Agreement, including Section 35(c), Contractor shall have the right to terminate this Agreement for convenience by giving Owner five (5) days prior notice of the termination.

(c) If either Party terminates the Work for convenience pursuant to this Section 36, Contractor's sole and exclusive remedy and Owner's sole and exclusive liability shall be that Owner will pay Contractor for: (i) the Work actually and properly performed prior to the date of notice of termination; (ii) actual and reasonable cancellation costs for Subcontractor and supply contracts and committed materials that cannot be reused; (iii) actual and reasonable equipment lease and rental fees that cannot be avoided; and (iv) solely in the event of a termination pursuant to Section 36(a), a pro rata portion of the total Contractor Fee [REDACTED] not previously disbursed to Contractor.

(d) In the event of a termination for convenience, Contractor shall use commercially reasonable efforts to: (i) immediately curtail all charges and commitments for the Work; (ii) take all actions necessary, or that Owner may direct, for the protection and preservation of the Work, including but not limited to all equipment, materials, parts, tools, and supplies; (iii) prepare and deliver to Owner bills of sale, certificates of title or any other documentation necessary to evidence conveyance of title to the three Units, the Docking Station and any other personal property specified in Exhibit A to the Owner (and, if any such property has not already been paid by Owner, to cause every Subcontractor to sell to Owner any such property requested by Owner regardless of whether the applicable Subcontract is assigned to Owner); (iv) deliver to Owner the Subcontractor Warranties in accordance with Section 30(c), as well as any products, documents, records, books of account, equipment, materials, parts, tools, and supplies paid for, or otherwise owned, by Owner; (v) confirm in writing the survival of licenses in the Contractor Intellectual Property (including, without limitation, the Subcontractor Intellectual Property) set forth in Section 11; and (vi) deliver to Owner all Project Data in a medium reasonably acceptable to Owner.

(e) In the event of a termination for convenience, Owner may, without prejudice to any other right or remedy, take an assignment of each Subcontract, or if not assignable, cause Contractor to enforce each Subcontract, and take possession of the Work, and may finish the Work by whatever reasonable method Owner may deem expedient.

37. TERMINATION FOR CAUSE

(a) The occurrence of any one or more of the following events shall constitute an event of default by Contractor hereunder (a "Contractor Event of Default"):

(i) Except as otherwise expressly addressed in this Section 37(a), Contractor is in breach of its obligations under this Agreement and such breach continues uncured for thirty (30) days after receipt of Notice of the breach from Owner, unless Contractor notifies Owner in writing within five (5) days of receipt of such Notice that such breach cannot be cured within said thirty (30) day period and specifies the time it will take Contractor to cure such breach, which in any event shall not exceed sixty (60) days (the "Contractor Extended Cure Period"), and Contractor promptly and diligently cures such breach within the Contractor Extended Cure Period;

(ii) Any representation or warranty made or furnished by Contractor pursuant to this Agreement is discovered to have been false or misleading in any material respect when

made and such representation or warranty continues to be false or misleading in any material respect for a period of thirty (30) days after Notice to that effect is provided to Contractor;

(iii) Contractor or [REDACTED] terminates its existence or a petition in bankruptcy is filed by or against Contractor or the [REDACTED] and is not dismissed within ninety (90) days; or Contractor or [REDACTED] becomes insolvent within the meaning of any state or federal bankruptcy or insolvency laws; or a receiver for all or any part of Contractor's or [REDACTED] businesses shall be appointed by any state or federal court and such appointment of a receiver is not vacated within ninety (90) days of being made;

(iv) [REDACTED]

(v) Contractor breaches its obligations under Section 38(a) to timely deliver the payment and performance bonds from Subcontractors or breaches its obligations under Section 34(k), and any such breach continues uncured for fifteen (15) days after Notice of the breach from Owner;

(vi) Contractor breaches its obligations under Section 48 or Section 53;

(vii) [REDACTED] fails to honor its obligations under the [REDACTED];

(viii) Contractor fails to make any payment to Owner pursuant to this Agreement when due and such amount remains unpaid until the later of (A) thirty (30) days after Notice from Owner or (B) if Contractor's nonpayment is the result of a good faith dispute as to an invoice or Claim and is limited to the amount in dispute, ten (10) days after the dispute resolution procedures in Section 40 are concluded;

(ix) any Change of Control occurs or Contractor assigns the Contractor Intellectual Property to anyone other than an Affiliate of [REDACTED] or

(x) (A) Contractor's fraud or the willful misconduct of Contractor's senior management in connection with the performance of its obligations hereunder, or (B) a cancellation or termination by Owner of any other contract between Contractor or its Affiliates on the one hand, and Owner or its Affiliates on the other (including the Contract Documents), for Contractor's (or its applicable Affiliate's) fraud or willful misconduct in connection therewith, which results in the removal of Contractor or its Affiliates from the Owner or its Affiliates' list of qualified bidders.

(b) Upon a Contractor Event of Default, Owner may pursue any and all remedies available under this Agreement, law or equity including but not limited to terminating this Agreement [REDACTED]; provided, however, any monetary remedy available to the Owner is subject to the limitation of Sections 26.1(a) and 26.2; [REDACTED]

[REDACTED]

(c) The occurrence of any one or more of the following events shall constitute an event of default by Owner hereunder (an “Owner Event of Default”):

(i) Owner fails to make any payment to Contractor pursuant to this Agreement when due and such amount remains unpaid until the later of (A) [REDACTED] days after Notice from Contractor or (B) if Owner’s nonpayment is the result of a good faith dispute as to an invoice or Claim and is limited to the amount in dispute, [REDACTED] after the dispute resolution procedures in Section 40 are concluded;

(ii) Except as otherwise expressly addressed in this Section 37(c), Owner is in breach of its obligations under this Agreement and such breach continues uncured for thirty (30) days after receipt of Notice from Contractor, unless Owner notifies Contractor in writing within five (5) days of receipt of such Notice that such breach cannot be cured within said thirty (30) day period and specifies the time it will take Owner to cure such breach, which in any event shall not exceed sixty (60) days (the “Owner Extended Cure Period”), and Owner promptly and diligently cures such breach within the Owner Extended Cure Period;

(iii) Any representation or warranty made or furnished by Owner pursuant to this Agreement is discovered to have been false or misleading in any material respect when made and such representation or warranty continues to be false or misleading in any material respect for a period of thirty (30) days after Notice to that effect is provided to Owner;

(iv) Owner terminates its existence or a petition in bankruptcy is filed by or against Owner and is not dismissed within ninety (90) days; or Owner becomes insolvent within the meaning of any state or federal bankruptcy or insolvency laws; or a receiver for all or any part of Owner’s businesses shall be appointed by any state or federal court and such appointment of a receiver is not vacated within ninety (90) days of being made;

(v) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] or

(vii) Owner’s fraud or the willful misconduct of Owner’s senior management in connection with the performance of its obligations hereunder.

(d) Upon an Owner Event of Default, Contractor may pursue any and all remedies available under this Agreement, law or equity, including, but not limited to, terminating this Agreement; provided, however, any monetary remedy available to Contractor is subject to the limitations in Sections 26.1(b), 26.3(c) and 38(c); provided, further, Contractor may not

terminate this Agreement if the Owner Event of Default is a monetary default which may be paid pursuant to Section 38(c).

(e) In the event Owner terminates this Agreement for a Contractor Event of Default, Owner may take possession of the Work, and may finish the Work by whatever reasonable method Owner may deem expedient, subject to the terms and conditions in Section 11.

(f) In the event Owner terminates this Agreement for a Contractor Event of Default, Contractor shall use commercially reasonable efforts to: (i) immediately curtail all charges and commitments for the Work; (ii) take all actions necessary, or that Owner may direct, for the protection and preservation of the Work, including but not limited to all equipment, materials, parts, tools, and supplies; (iii) prepare and deliver to Owner bills of sale, certificates of title or any other documentation necessary to evidence conveyance of title to the three Units, the Docking Station and any other personal property that constitutes part of the Project to the Owner (and, if any such property has not already been paid by Owner, to cause every Subcontractor to sell to Owner any such property requested by Owner regardless of whether the applicable Subcontract is assigned to Owner); (iv) deliver to Owner the Subcontractor Warranties in accordance with Section 30(c), as well as any products, documents, records, books of account, equipment, materials, parts, tools, and supplies paid for, or otherwise owned, by Owner; (v) confirm in writing the survival of licenses in the Contractor Intellectual Property (including, without limitation, the Subcontractor Intellectual Property) set forth in Section 11; and (vi) deliver to Owner all Project Data in a medium reasonably acceptable to Owner.

(g) In the event Owner terminates this Agreement for a Contractor Event of Default, Owner may, without prejudice to any other right or remedy, take an assignment of each Subcontract, or if not assignable, cause Contractor to enforce each Subcontract.

(h) In the event Owner or Contractor terminates this Agreement pursuant to a default described in Section 37(a)(iii) or Section 37(c)(iv), respectively, such non-defaulting Party shall be entitled to cancel for default any of the other Contract Documents.

(i) The rights, powers and remedies of Owner hereunder shall be in addition to all rights, powers and remedies given by statute or rule of law and are cumulative, subject to Sections 26.1(a) and 26.2. The exercise of any one or more of the rights, powers and remedies provided herein shall not be construed as a waiver of or election of remedies with respect to any other rights, powers and remedies of Owner herein, under law or otherwise.

38. BONDS [REDACTED]

(a) Contractor will procure a payment and performance bond from each of the Subcontractors set forth in Exhibit C, each in substantially the form of Exhibit M and deliver same to the Owner within eight (8) days of the Effective Date. Contractor shall use a surety that is reasonably satisfactory to Owner. [REDACTED]

[REDACTED] If Contractor fails to furnish or

maintain such bonds [REDACTED], as applicable, or deliver same to Owner as set forth above, in addition to the rights that Owner may have under this Agreement for a breach of this Section 38(a), Owner may procure payment and performance bonds for each such Subcontractor and Contractor shall pay the cost thereof to Owner upon demand.

(b)

[REDACTED]

(c)

[REDACTED]

[REDACTED]

39. LIEN RELEASE

(a) Contractor shall, at the time of submission of each payment invoice, submit to Owner appropriate duly executed written lien waivers and release of claims, substantially in the applicable form provided in Exhibit X (a “Lien Release”) from Contractor and each of its Subcontractors whose work, materials or equipment is included in the payment invoice or, if advance lien waivers are not permitted by Applicable Laws, shall provide a Lien Release for such invoice at the time of submission of any subsequent invoice for any Work by any Person.

(b) Upon the final payment by Contractor to each of its Subcontractors for completion of such Subcontractor’s portion of the Work, Contractor shall obtain an unconditional, final Lien Release relating to such Subcontractor’s performance of such portion of the Work. At the time of submission of Contractor’s final payment invoice, Contractor shall submit a duly executed final Lien Release relating to Contractor’s performance of the Work, conditioned only upon receipt of payment, and a final Lien Release from each Subcontractor. Such final Lien Release shall be in the form provided in Exhibit Y (a “Final Lien Release”).

40. DISPUTES AND GOVERNING LAW

(a) Any claims, disputes or other controversies arising out of, or relating to, this Agreement shall initially be submitted to each Party’s Representative for resolution. If the Representatives are unable to resolve the matter, it shall be submitted to a senior executive from each Party for resolution by mutual agreement between the Parties. Any mutual determination by the senior executives shall be final and binding upon the Parties.

(b) Should the Parties’ senior executives fail to arrive at a mutual decision as to the controversy within thirty (30) days after a Party has requested a meeting with senior executives pursuant to Section 40(a), then the controversy shall be subject to litigation in the United States District Court for the Southern District of New York or the courts of the State of New York located in New York County.

(c) All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the dispute resolution procedures set forth in this Section are in process. The Parties will take such action, if any, required to effectuate such tolling. Notwithstanding the terms of this Section 40(c) and without invalidating a Party’s obligation to engage, in good faith, in the dispute resolution procedures set forth in this Section 40, a Party shall be entitled to file a complaint for statute of limitations purposes, if in its sole judgment such action is necessary to preserve its claim or defenses.

(d) Each Party acknowledges that any violation of Section 9(e) and Section 11 may cause the other Party immediate and irreparable harm that monetary damages would not adequately remedy, and the Parties agree that, in addition to all other available remedies, upon any actual or impending violation of Section 9(e) or 11, a Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, without bond or proof of damages. Notwithstanding anything to the contrary, the Party seeking such equitable relief may initiate and conduct the applicable legal action, lawsuit and legal proceeding in any jurisdiction, venue and forum selected by such Party.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles.

(f) This Section 40 shall survive termination of this Agreement.

41. AUDIT REVIEW

(a) Contractor and Owner will each maintain its records related to this Agreement and the LNTP for a period of [REDACTED] years from the termination of this Agreement. Each Party and its Representative shall have access to the other Party's records maintained pursuant to this Agreement at the NRG Site or at the Party's regular place of business during normal business hours in order to review, audit, and verify information connected with this Agreement that is required by a Party to determine the accuracy of any invoice, the costs associated with non-fixed price or unit price Work or cancellation of Work in progress, or to evaluate and monitor quality assurance programs. A Party shall make copies of any of its records requested by the other Party for said purposes at the requesting Party's expense. [REDACTED]

[REDACTED] Access to a Party's records for the above audit purposes or for technical review purposes shall be granted to a Party for [REDACTED] years from the termination of this Agreement. A Party's rights and obligations under this Section 41 shall survive the termination of this Agreement.

(b) If any investigation, audit or inquiry by either Party discloses that a Party improperly calculated any invoice, claim, charge or calculation made pursuant to this Agreement so that Party A made an overpayment or received an underpayment from Party B, Party B shall promptly refund the amount owing to Party A, together with interest accruing at the rate of [REDACTED] per annum from (and including) the date of the Party A's overpayment or receipt of underpayment through (and excluding) the date finally paid under this Section 41(b).

(c) This Section 41 shall survive termination of this Agreement.

42. REPRESENTATIONS

(a) Each Party represents and warrants to the other that it is a limited liability company or a corporation, as applicable, duly organized, validly existing and in good standing under the laws of its state of formation or incorporation, as applicable, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting; and is and will be duly licensed and qualified to do business, in and is in good standing under the laws of the State of New York.

(b) Each Party represents and warrants to the other that this Agreement has been duly authorized, executed and delivered by it and is, upon execution and delivery, the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as

such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

43. COMMUNICATION BETWEEN THE PARTIES

Any notice, invoice, or submission required or authorized to be given regarding this Agreement (“Notice”) shall be in writing and shall be personally delivered, sent by overnight service, or certified mail to the authorized representatives designated below.

If to Contractor:

[REDACTED]

With a copy to:

[REDACTED]

If to Owner:

[REDACTED]

With a copy to each of the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notice shall be deemed to have been received upon delivery to the receiving Party.

44. FORCE MAJEURE

(a) Contractor shall be excused in any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority (other than the FDNY to the extent addressed in this Agreement), acts of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, its Affiliates or any Subcontractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, its Affiliates or any Subcontractor, riot, and failure of public transportation facilities (collectively, “Contractor Force Majeure”). Delay in Contractor’s receipt of subcontracted supplies or services for reasons beyond the control of the Contractor shall not be a Contractor Force Majeure hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be Contractor Force Majeure hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, its Affiliates or any Subcontractor. Contractor shall give Owner written notice and full particulars of the cause of any delay within forty-eight (48) hours after its occurrence and thereafter shall update Owner on a bi-weekly basis. The time for performance of a Party’s obligation in any such instance shall be extended by a period equal to the time such Party is unable to perform its duties hereunder by reason of the Contractor Force Majeure. Such extension shall be Contractor’s sole and exclusive remedy for such delay and Owner shall not be liable for any damages or additional costs incurred as a result of such delay.

(b) Owner shall be excused in any delay in the performance of its obligations hereunder, other than payment obligations, arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, acts of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Owner or its Affiliates, strike which is not the result of an unfair labor practice or other unlawful activity by Owner or its Affiliates, riot, and failure of public transportation facilities (collectively, “Owner Force Majeure”). Owner shall give Contractor written notice and full particulars of the cause of any delay within forty-eight (48) hours after its occurrence and thereafter shall update Contractor on a bi-weekly basis. The time for performance of a Party’s applicable obligations in any such instance shall be extended by a period equal to the time such Party is unable to perform its duties hereunder by reason of the Owner Force Majeure. Such extension shall be Owner’s sole and exclusive remedy for such delay and Contractor shall not be liable for any damages or additional costs incurred as a result of such delay.

45. SAVING CLAUSE/INDEPENDENT TERMS

Each term and condition of this Agreement is deemed to have independent effect and the invalidity of any partial or whole Section shall not invalidate the remaining Sections of this Agreement.

46. NON-WAIVER

The failure of Owner to insist on or enforce, in any instance, strict performance by Contractor of any of the terms of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such terms or rights on any future occasion.

47. USE OF MARKS, PUBLICITY AND ENDORSEMENTS

Neither Party shall use any trademark, service mark, logo, or trade name of the other Party in any manner whatsoever without the other Party's express, advance written consent, and then only in strict compliance with the permitting Party's instructions; provided that, Contractor may place its mark or logo on the Units as set forth on Exhibit A in a manner not to interfere with Owner's markings and with Owner's prior approval which approval shall not be unreasonably withheld. Notwithstanding the foregoing, if Owner believes in good faith that Contractor's mark or logo on the Units could adversely affect the image or goodwill of Owner or its Affiliates due to an action or omission of Contractor, ██████████ or their Affiliates, Owner may remove Contractor's mark or logo from the Units and shall provide Contractor with written notice of such removal. Neither Party shall issue any press release, announcement, or public statement with respect to the Agreement or Work, without advance, written consent of the other Party after its review and written approval, regardless of whether or not it may be considered an endorsement; provided, however, nothing contained in this Agreement shall limit (a) the Owner from providing information to, or making public information concerning this Agreement or the Work if required by, the NYPSC (or other applicable Governmental Authority) or Applicable Laws or (b) the rights and obligations of the Parties pursuant to Section 54. Either Party may revoke consent or any other approval under this Section at any time for any reason by written notice to the other Party. Either Party's breach of this Section shall be a breach of this Agreement. This provision shall survive termination of this Agreement.

48. ASSIGNMENT

Except as otherwise provided in this Section 48, neither Owner nor Contractor will assign, pledge or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, Contractor hereby covenants and agrees that Owner may, without Contractor's consent, assign this Agreement to any of Owner's Affiliates. Except as specifically provided in this Section 48, any attempt to assign or transfer this Agreement or any rights, duties or interest hereunder by Owner or Contractor without the prior written consent of the other Party shall be void and of no force and effect.

49. FURTHER ASSURANCES

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary to carry out the terms of this Agreement, the other Party, if it will not be incurring any additional risk or liability, shall execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement. If there is any cost to the Party being asked to execute and deliver such instruments or assurances, then the requesting Party shall reimburse such other Party such reasonable and necessary out-of-pocket costs. This provision shall survive termination of this Agreement.

50. ENTIRE AGREEMENT; SURVIVAL

(a) All appendices, exhibits and schedules annexed hereto are incorporated herein by reference. This Agreement and all appendices, exhibits, schedules and other documents incorporated herein, shall, when fully executed, constitute the entire agreement by and between the Parties as to the subject matter hereof, and shall supersede all prior understandings, agreements or representations by or between the Parties, written or oral to the extent they have related in any way to the subject matter hereof, including the LNTP, the Confidentiality Agreement (as defined in the LNTP) and any related term sheets preceding this Agreement. Each Party represents and warrants to the other that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement that is not set forth in this Agreement. The Parties agree that upon the Effective Date the Transaction Agreements (as defined in the LNTP) shall have been entered into.

(b) Provisions specifically designated in this Agreement to survive the termination hereof and any other provision which, by its nature, may become performable by a Party after termination of this Agreement will survive termination of this Agreement.

51. INTERPRETATION

(a) Unless otherwise expressly provided or unless required by the context in which any term appears:

(i) use of the term “including” means “including without limitation;”

(ii) use of the term “day” means “calendar day;”

(iii) references to any agreement, document or instrument mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(iv) references to any Applicable Law or Permit mean a reference to such Applicable Law or Permit as the same may be amended, modified, supplemented or restated and be in effect from time to time, including rules and regulations promulgated under the Applicable Law or Permit;

(v) any captions or headings used in this Agreement are for convenience only and do not define or limit the scope of this Agreement;

(vi) the singular of any term, including any defined term, shall include the plural and the plural of any term shall include the singular; and

(vii) whenever the masculine or feminine gender is used in this Agreement, it shall equally apply to, extend to, and include the other.

(b) The Parties acknowledge and agree that they have been represented by legal counsel during, and have participated jointly in, the negotiation and execution of this Agreement and each document drafted or delivered in connection with the transactions contemplated by this Agreement. Accordingly, they waive the application of any Applicable Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document. This Section 51 shall survive termination of this Agreement.

52. COUNTERPARTS AND ADMISSIBILITY OF ELECTRONIC (PDF) COPIES

This Agreement may be executed in counterparts, each of which when executed by the requisite Parties shall be deemed to be a complete original Agreement. An electronic (PDF) or facsimile copy of the executed Agreement or counterpart shall be deemed and shall have the same legal force and effect as, an original document.

53. GIFT POLICY

Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively “Gift”), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee’s family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the services to be performed under this Agreement. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and Contractor or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, representatives and subcontractors have not engaged and will not engage in any of the acts prohibited under this Section 53. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Section 53, Contractor shall be in default under this Agreement and all other purchase orders and contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, terminate for default this Agreement, the other Contract Documents and any other purchase order or contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison’s list of qualified bidders, (c) Contractor shall have forfeited all rights it has under this Agreement and any other contract between Con Edison and Contractor

(including, but not limited to, the right to payments for services performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Section 53, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Section 53, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under this Agreement or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Section 53 are non-exclusive, and Con Edison expressly reserves all rights and remedies under such purchase orders or contracts, and in law and equity. For the purposes of this Section 53, the term "Con Edison" shall include all of Con Edison's Affiliates. Contractor shall promptly report any alleged violation of this Section 53 to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). This Section 53 shall survive termination of this Agreement.

54. CONFIDENTIALITY

(a) Each Party agrees to hold in confidence any Confidential Information of the other Party. Confidential Information of a Party shall not include (i) information which is or becomes generally available to the public other than through a breach of this Agreement by a Receiving Party, (ii) information that was rightfully known to the Receiving Party without restriction before receipt from the Disclosing Party, as evidenced by documentation existing before the date of such receipt, (iii) information which is rightfully disclosed to the Receiving Party without restriction by a third party who is not bound to keep such information confidential, and (iv) information that the Receiving Party can demonstrate by written evidence it developed without access to, use of or reliance on the Disclosing Party's Confidential Information, as evidenced by documentation existing before the date of such receipt. The foregoing exclusions, however, shall not apply to CEII. The obligations under this Section 54 shall remain in full force and effect until [REDACTED] years following the completion of the Demonstration Period; provided that: (1) with respect to CEII, the obligations shall continue as long as such information constitutes Confidential Information as defined in this Agreement; and (2) with respect to Confidential Information constituting trade secrets, the obligations shall continue as long as Applicable Law affords trade secret protection to such information.

(b) Except as otherwise expressly permitted by this Agreement, each Receiving Party shall, with respect to the Disclosing Party's Confidential Information: (i) hold such Confidential Information in strict confidence and not disclose Confidential Information, in any manner whatsoever, in whole or in part, to any third party, (ii) not use the Confidential Information other than in connection with the Work in accordance with this Agreement, (iii) exercise the same degree of care that the Receiving Party uses to safeguard its own confidential information of a similar nature, but not less than a commercially reasonable standard of care, (iv) will limit the number of copies it makes of a Disclosing Party's Confidential Information to that which is reasonable to complete its obligations under this Agreement, (v) not decompile, disassemble or otherwise reverse engineer any Confidential Information, or use any similar means to discover its underlying composition, structure, source code or trade secrets, (vi) store, transmit, and otherwise handle all Confidential Information in accordance with laws, rules and regulations applicable to any particular type of Confidential Information, including, without limitation, laws,

rules and regulations related to personally identifiable information and the export of technical data, (vii) store, transmit, and otherwise handle all Owner Confidential Information, including CEII, in accordance with any special cybersecurity requirements provided by the Disclosing Party to the Receiving Party in writing, (viii) store Confidential Information in a secure location and transmit Confidential Information in a secure manner such that the Confidential Information is not accessible to any person or entity not authorized to receive it under this Agreement, and (ix) promptly (i.e., within ■ hours in the case of CEII and within ■ hours in all other cases) notify the Disclosing Party if the Receiving Party reasonably believes that there has been unauthorized use, access to, loss, destruction or disclosure of a Disclosing Party's Confidential Information (a "Security Incident"). In connection with any Security Incident, the Receiving Party shall, at its expense, provide reasonable cooperation to the Disclosing Party in order to help the Disclosing Party investigate the Security Incident, retrieve the affected Confidential Information and mitigate the effects of the Security Incident. In addition, without Owner's prior written consent, the Receiving Party shall not be permitted to transmit or store (physically or electronically) Owner's Confidential Information outside of the United States.

(c) In addition to the confidentiality obligations set forth in Section 54(a) and (b) above, the Receiving Party agrees that (i) it shall not disclose CEII of Owner to any third party (including Support Representatives) without Owner's prior written consent and (ii) it shall not disclose CEII to any of its Agents unless and until (y) that Agent has a need to access the CEII in connection with the Work, and (z) immediately prior to providing an Agent with CEII, the Receiving Party has conducted a security check on the Agent to ensure that he/she is not included on OFAC's List of Specially Designated Nationals and Blocked Persons, is not a citizen or lawful permanent resident of a country subject to comprehensive U.S. sanctions, and is not a person listed on the Terrorist Security Administration's No-Fly List. In addition, if and to the extent required by Owner based upon the type of Owner Confidential Information to be provided to a Receiving Party's Agents or the type of system access to be granted to the Receiving Party's Agents, the Receiving Party shall conduct additional background checks, such as criminal record searches on the applicable Agent(s). Receiving Party is hereby notified that CEII is highly sensitive information and each copy of CEII provided to Receiving Party and all copies, notes, analysis, extracts or other documents that contain CEII shall constitute CEII and accordingly, must be clearly marked as "Critical Energy Infrastructure Information" and may not be disclosed to anyone except as expressly permitted by this Agreement.

(d) Subject to and without limiting the restrictions in Section 54(c), a Receiving Party may disclose and transmit Confidential Information to Agents who need to know such Confidential Information in connection with the Work and who are informed of the confidential or proprietary nature thereof and are caused by the Receiving Party to comply with the terms of this Section 54. In addition, with the prior written consent of the Disclosing Party, a Receiving Party may disclose a Disclosing Party's Confidential Information to employees of third party subcontractors, suppliers, vendors, professional advisors, or consultants of the Receiving Party ("Support Representatives") (i) who need to know such Confidential Information in connection with the Work, (ii) who have been advised of the sensitive or confidential nature of the Confidential Information, and (iii) who are also bound (consistent with the restrictions in this Section 54) to protect the Disclosing Party's Confidential Information. For purposes of this Agreement, "Agent" means, with respect to any Receiving Party, (x) employees of the Receiving Party's parent company, (y) employees of a wholly owned subsidiary of the Receiving Party's

parent company, or (z) employees of the Receiving Party's wholly owned subsidiaries. [REDACTED]

(e) The Receiving Party agrees to be responsible for any breach of this Section 54 by its Agents or Support Representatives.

(f) Within fifteen (15) days after the Disclosing Party's written request, the Receiving Party shall, at the Receiving Party's discretion, promptly return to the Disclosing Party or destroy all originals and copies of any Confidential Information, and any such destruction shall be performed in accordance with Applicable Law. The Receiving Party shall provide the Disclosing Party, within fifteen (15) days after such request, a written certification of compliance with this provision, signed by an authorized officer of the Receiving Party. Notwithstanding the foregoing, the Receiving Party shall be entitled to retain copies of such Confidential Information to the extent such retention is required by law or regulation or is consistent with the Receiving Party's standard automatic electronic backup procedures or is otherwise required by the Receiving Party's internal document retention policies. All such retained Confidential Information shall remain subject to the terms of this Section 54 for so long as the Receiving Party retains the Confidential Information notwithstanding any termination or expiration of the Work or this Agreement.

(g) If the Receiving Party or any of its Agents or Support Representatives becomes legally compelled to disclose any of the Disclosing Party's Confidential Information [REDACTED], the Receiving Party, to the extent permitted by law, will provide the Disclosing Party with prompt written notice of this so that the Disclosing Party may seek a protective order or other appropriate remedy. In any event, Receiving Party will disclose (and will cause its Agents and Support Representatives to disclose) only that portion of the Confidential Information which legal counsel advises is legally required to be disclosed, and the Receiving Party will cooperate with (and will cause its Agents and Support Representatives to cooperate with) the Disclosing Party's counsel to enable the Disclosing Party to obtain a protective order or other reliable

assurance that confidential treatment will be accorded the Confidential Information that is subject to mandated disclosure.

(h) The Parties agree that: (i) all rights to Confidential Information disclosed by a Disclosing Party pursuant to this Agreement are reserved to the Disclosing Party; and (ii) except as expressly provided in this Agreement no license or conveyance of any rights relating to the Confidential Information is granted or implied by either Party to the other.

(i) The Receiving Party acknowledges that any violation of this Section 54 may cause the Disclosing Party immediate and irreparable harm that monetary damages would not adequately remedy, and the Receiving Party agrees that, in addition to all other available remedies, upon any actual or impending violation of this Section 54, the Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, without bond or proof of damages. Notwithstanding anything to the contrary, the Party seeking such equitable relief may initiate and conduct the applicable legal action, lawsuit and legal proceeding in any jurisdiction, venue and forum selected by such Party.

(j) Each Party agrees and covenants that it will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the other Party or its Affiliates or its businesses, or any of its employees, officers, and existing and prospective customers, suppliers, and other associated third parties. This Section 54(j) does not, in any way, restrict or impede any Party from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any Applicable Law or regulation or a valid order of a court of competent jurisdiction or an authorized Governmental Authority, provided that such compliance does not exceed that required by the law, regulation, or order.

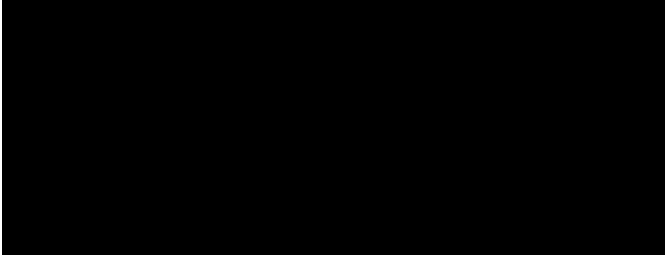
[REDACTED]

(l) This Section 54 shall survive the termination of this Agreement.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative, as of the Execution Date first written above.

NRG Storage on Demand NY LLC



Consolidated Edison Company of New York, Inc.

By: _____

Name: _____

Title: _____

Date of Signature: _____

By: _____

Name: _____

Title: _____

Date of Signature: _____

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative, as of the Execution Date first written above.

NRG Storage on Demand NY LLC

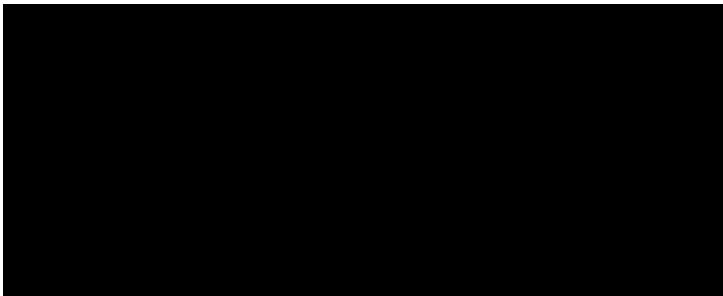
Consolidated Edison Company of New York, Inc.

By: _____

Name: _____

Title: _____

Date of Signature: _____



~~By: _____~~

~~Name: _____~~

~~Title: _____~~

~~Date of Signature: _____~~