

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

CASE 20-M-0082 - In the Matter of the Strategic Use of Energy  
Related Data.

DATA ACCESS FRAMEWORK MATRIX

This Matrix is filed in compliance with the Public Service Commission's (Commission) Order Adopting a Data Access Framework and Establishing Further Process, issued on April 15, 2021 in the above referenced proceeding. The Matrix maps the existing Commission authorized cybersecurity and privacy requirements to the various combinations of purpose, access mechanism, and data type. The Matrix includes the components of all the existing Data Security Agreements and the Self-Attestation, as well as the other existing data access requirements. Each requirement is listed with a name, description, where it originated from, indicators for access mechanism and/or data sets, and the use case applicability.

- The applicability column shows what use cases would be subject to the requirement.
- If the requirement is specific to an access mechanism or specific data set, it is indicated in those columns and would apply to the use case(s) in the applicability box.
- When there is a control that does not have an access mechanism or data set indicated, this means the control is not specific to those items and will be part of the Data Access Agreement for the use case(s) listed in the applicability column.

Dated: May 17, 2021

Control Name	Description	Requirement Origination	Access Mechanism	Data Set	Applicability
Privacy Screen	Building Benchmarking 4/50	Building Benchmarking		Customer Energy Usage Data	Building Benchmarking
Specific Performance	The Parties acknowledge that disclosure or misuse of Confidential Customer Utility Information in violation of this Agreement may result in irreparable harm to Data Custodian, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Data Custodian shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Data Custodian's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend in accordance with the UBP, UBP DERS and the Commission's rules and orders the provision or Processing of Confidential Customer Utility Information hereunder. ESE agrees to waive any requirement for the securing or posting of any bond or other security in connection with Data Custodian obtaining any such injunctive or other equitable relief.	CCA			Community Choice Aggregation, State University of New York/Office of General Services
Registration	DPS Registration Requirement: ESCO, DER or General	DAF			Community Choice Aggregation, Green Button Connect, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Privacy Screen	4/50 Privacy Screen	DAF		Customer Energy Usage Data	Statewide General
Information Security Policy	An Information Security Policy is implemented across the ESE's corporation which includes officer level approval.	DSA/SA	Custodian IT System	Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Mobile Storage	It is prohibited to store Confidential Customer Utility Information on any mobile forms of storage media, including, but not limited to, laptop PCs, mobile phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Green Button Connect, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Incident Response Procedure	An Incident Response Procedure is implemented that includes notification within 48 hours of knowledge of a potential incident alerting Data Custodian when Confidential Customer Utility Information is potentially exposed, or of any other potential security breach.	DSA/SA	Custodian IT System	Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Role-based Access Controls	Role-based access controls are used to restrict system access to authorized users and limited on a need-to-know basis.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General

Recitals	WHEREAS, ESE desires to have access to Confidential Customer Utility Information, or the New York State Public Commission (“Commission”) has ordered Data Custodian to provide to ESE customer information; and WHEREAS, ESE has obtained consent, except fowhere otherwise directed by Commission Order, Law or Regulation, from all customers from whom the ESE intends to obtain information from Data Custodian; and WHEREAS, ESE may utilize a third party to fulfill its Service obligations, including but not limited to, Electronic Data Interchange (“EDI”) communications with Data Custodian, data collection or analysis, or billing; and WHEREAS, ESE utilization of a third party provider does not relieve ESE of their transactional obligation; and WHEREA Data Custodian and ESE also desire to enter into this Agreement to establish, among other things, the full scope of ESE’s obligations of security and confidentiality with respect to the Confidential Customer Utility Information in a manner consistent with the orders, rules and regulations of the Commission and requirements of Data Custodian, as well as the obligations of theData Custodian under this Agreement; and NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:	DSA/SA			Community Choice Aggregation, Statewide General
Multi-factor Authentication	Multi-factor authentication is used for all remote administrative access, including, but not limited to, access to production environments.	DSA/SA	Custodian IT System		Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Production Systems	All production systems are properly maintained and updated to include security patches on a periodic basis. Where a critical alert is raised, time is of the essence, and patches will be applied as soon as practical.	DSA/SA	Custodian IT System		Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Antivirus Software	Antivirus software is installed on all servers and workstations and is maintained with up-to-date signatures.	DSA/SA	Custodian IT System		Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Encryption - In Transit	ESE and Data Custodian shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Processing and Storage	ESE will not process Confidential Customer Utility Information outside of the United States or Canada absent a written agreement with Data Custodian. For the avoidance of doubt, Confidential Customer Utility Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General
Storage Location	All Confidential Customer Utility Information is stored in the United States or Canada only, including, but not limited to, cloud storage environments and data management services.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Networking Monitoring	ESE monitors and alerts their network for anomalous cyber activity on a 24/7 basis.	DSA/SA	Custodian IT System		Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General

Return/Destruction of Information	<p>Within thirty (30) days after Data Custodian’s written demand, ESE shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Customer Utility Information and shall at the Data Custodian’s option: (A) return such Confidential Customer Utility Information to Data Custodian in such manner, format, and timeframe as reasonably requested by Data Custodian or, if not so directed by Data Custodian, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable (“Destroy”) all copies of all Confidential Customer Utility Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Customer Utility Information) that has come into ESE’s or its Third-Party Representatives’ possession, including Destroying Confidential Customer Utility Information from all systems, records, archives, and backups of ESE and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Customer Utility Information by ESE and its Third-Party Representatives shall cease, provided any items required to be maintained by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. A Data Custodian making a written demand of an ESE for the return or destruction of Confidential Customer Utility Information will specify the reason for the demand. ESE agrees that upon a customer revocation of consent, ESE warrants that it will no longer access through Utility Confidential Customer Utility Information and that it will Destroy any Confidential Customer Utility Information in its or its Third-Party Representative’s possession. Notwithstanding the foregoing, ESE and its Third-Party Representatives shall not be obligated to erase Confidential Customer Utility Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that ESE and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain Cybersecurity and Data Privacy Protections to limit access to or recovery of Confidential Customer Utility Information from such computer backup system and; (3) keep all such Confidential Customer Utility Information confidential in accordance with this Agreement. ESE shall, upon request, certify to Data Custodian that the destruction by ESE and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of ESE complete, execute, and deliver to Data Custodian a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section shall not relieve ESE from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Customer Utility Information pursuant to this Section may occur if the ESE has been decertified pursuant to the UBP or UBP DERS, the Data Custodian has been notified of a potential or actual Data Security Incident and Data Custodian has a reasonable belief of potential ongoing harm or the Confidential Customer Utility Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement. Subject to applicable federal, state and local laws, rules, regulations and orders, at ESE’s written demand and termination of electronic exchange of data with Data Custodian, Data Custodian will Destroy or return, at ESE’s option, Confidential ESE Information.</p>	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General, State University of New York/Office of General Services
Disclosure to Representatives	<p>Notwithstanding the provisions herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Customer Utility Information for the purposes of providing Services in accordance with the UBP, UBP DERS and Commission orders and rules.</p>	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General
Exceptions Allowing ESE to Disclose Confidential Customer Utility Information	<p>Exceptions Allowing ESE to Disclose Confidential Customer Utility Information. provided that each such Third-Party Representative first is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Customer Utility Information. Notwithstanding the foregoing, the ESE shall be liable for any act or omission of its Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.</p> <p>b. Disclosure if Legally Compelled. Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.</p>	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General

Utility Obligations	Each Data Custodian, for itself only, represents that for all information received from ESE that is marked CONFIDENTIAL by ESE Data Custodian shall: (A) hold such Confidential Information in strict confidence; (B) not disclose such Confidential Information to any other person or entity; (C) not Process such Confidential Information outside of the United States or Canada; (D) not Process such Confidential Information for any purpose other than to assess the adequate security of ESE pursuant to this and to work with ESE to permit it to achieve adequate security if it has not already done so; (E) limit reproduction of such Confidential Information; (F) store such Confidential Information in a secure fashion at a secure location in the United States or Canada that is not accessible to any person or entity not authorized to receive such Confidential Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of such Confidential Information as Data Custodian employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.	DSA/SA			Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Security Awareness Training	Security awareness training is provided to all personnel with access to Confidential Customer Utility Information.	DSA/SA	Custodian IT System	Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Confidentiality	ESE shall: (A) hold all Confidential Customer Utility Information in strict confidence pursuant to the UBP or UBP DERS and Commission's orders and rules; except as otherwise expressly permitted herein; (B) not disclose Confidential Customer Utility Information to any Third-Party Representatives, or affiliates, except as set forth in this Agreement; (C) not Process Confidential Customer Utility Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Customer Utility Information; (E) store Confidential Customer Utility Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Customer Utility Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Customer Utility Information as ESE employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care. At all times, Data Custodian shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Customer Utility Information are being observed and ESE shall be obligated to promptly provide Data Custodian with the requested assurances. An ESE may provide Confidential Customer Utility Information to a Third-Party representative without a direct electronic connection with the Data Custodian, to assist the ESE in providing permitted Services, but an ESE utilizing such Third party Representative shall be solely responsible and fully liable for the actions of the Third Party Representative.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General
Provision of Information	Data Custodian agrees to provide to ESE or its Third-Party Representatives, certain Confidential Customer Utility Information, as requested, provided that: (A) if the utility has identified a potential Cybersecurity or Data Privacy Protection issue ESE (and its Third-Party Representatives with an electronic connection to the Data Custodian other than by email) are in compliance with the terms of this Agreement in all material respects; (B) if required by Data Custodian due to the identification of a potential or actual Data Security Incident, ESE shall undergo an audit, at the ESE's expense; (C) ESE (and its Third-Party Representatives with an electronic connection to the Data Custodian other than by email) shall have and maintain throughout the term, systems and processes in place and as detailed in the DRC to protect utility IT systems, Data Privacy Protections and Confidential Customer Utility Information. Provided the foregoing prerequisites have been satisfied, ESE shall be permitted access to Confidential Customer Utility Information and/or Data Custodian shall provide such Confidential Customer Utility Information to ESE. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or Confidential Information of the other Party. Data Custodian will comply with the security requirements set forth in its Assessment.	DSA/SA	Custodian IT System	Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General, State University of New York/Office of General Services
Access Agreement	WHEREAS, ESE desires to obtain or retain access to Data Custodian IT systems and electronically exchange energy-related data with the Data Custodian, ESE must THEREFORE comply with the Cybersecurity Protections as listed herein. ESE acknowledges that non-compliance with any of the Requirements may result in the termination of Data Custodian data access as per the discretion of the Data Custodian for its system). Any termination process will proceed pursuant to the Uniform Business Practices or Distributed Energy Resources Uniform Business Practices.	DSA/SA	Custodian IT System		Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General

Binding Effect	No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. The Data Custodian shall execute and deliver a signed original copy of this Agreement to the ESE within five (5) business days of receiving an executed Agreement, if the ESE has an electronic interconnection with the utility other than by email, from the ESE. Prior to such execution and delivery by the Parties, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a “draft” document, shall have any binding effect on a Party.	DSA/SA			Community Choice Aggregation, Statewide General
Construction	This Agreement shall be construed as to its fair meaning and not strictly for or against any party.	DSA/SA			Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Relationship of the Parties	Data Custodian and ESE expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General
Force Majeure	No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or governmental action or order or other cause beyond such Party’s reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence. For the avoidance of doubt a Data Security Incident is not a force majeure event.	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, New York State Energy Research and Development Authority, New York Power Authority
No Third-Party Beneficiaries	This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.	DSA/SA			Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Severability	Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.	DSA/SA			Community Choice Aggregation, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Employee Screening	Employee background screening occurs prior to the granting of access to Confidential Customer Utility Information.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General
Assignment	This Agreement (and the Data Custodian’s or ESE’s obligations hereunder) may not be assigned by Data Custodian, ESE or Third-Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General
Customer Consent	The Parties agree that the UBP, UBP DERS, Federal, State and local laws, and the orders, rules and regulations of the Commission govern an ESE’s obligation to obtain informed consent from all customers before ESE requests Confidential Customer Utility Information from Data Custodian. The ESE agrees to comply with the UBP, UBP DERS (when applicable), Federal, State and local laws, the orders, rules and regulations of the Commission, and the Data Custodian’s tariffs regarding customer consent.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General
Amendments; Waivers	Except as directed by the Commission, this Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.	DSA/SA			Community Choice Aggregation, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Counterparts	This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.	DSA/SA			Community Choice Aggregation, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Survival	The obligations of ESE under this Agreement shall continue for so long as ESE and/or ESE’s Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Customer Utility Information even if all Agreements between ESE and Data Custodian have expired or been terminated	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General

Governing Law	This Agreement shall be interpreted, and the rights and obligations of the Parties determined in accordance with the laws of the State of New York, without recourse to such state's choice of law rules.	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General, New York Power Authority
Consent to Jurisdiction; Selection of Forum	ESE irrevocably submits to the jurisdiction of the Commission and courts located within the State of New York with regard to any dispute or controversy arising out of or relating to this Agreement. ESE agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to ESE at the address for ESE and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. ESE agrees that service of process on it may also be made in any manner permitted by law. ESE consents to the selection of the New York State and United States courts within _____ County, New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement. If the event involves all of the Data Custodians, jurisdiction will be in Albany County, New York.	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General
Term and Termination	This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated in accordance with the provisions of the service agreement, if any, between the Parties or the UBP or UBP DERS and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Data Custodian may terminate this Agreement if the ESE is decertified under Commission Orders, the UBP or DER UBP, where applicable, has not served customers for two (2) years, or has not had electronic communication, other than by email, with Data Custodian for one (1) year. Further, Data Custodian may terminate this Agreement immediately upon notice to ESE in the event of a material breach hereof by ESE or its Third-Party Representatives. The Breaching Party will provide the non-breaching Party with a written description and notice of material breach. Upon the expiration or termination hereof, neither ESE nor its Third-Party Representatives shall have any further right to Process Confidential Customer Utility Information or Customer Information, unless the customer has given written or electronic consent to do so, and shall immediately comply with its obligations and the Data Custodian shall not have the right to process Confidential ESE Information and shall immediately comply with its obligations.	DSA/SA			Community Choice Aggregation, Statewide General, State University of New York/Office of General Services
Indemnification	To the fullest extent permitted by law, ESE shall indemnify and hold Data Custodian, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by ESE or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Data Custodian.	DSA/SA			Community Choice Aggregation, Statewide General
Notices	With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery.	DSA/SA			Community Choice Aggregation, Statewide General
Replication of Information	Replication of Confidential Customer Utility Information to non-company assets, systems, or locations is prohibited.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
ESE Compliance with all Applicable Commission Uniform Business Practices	The Parties agree that the Commission's UBP and UBP DERS set forth rules governing the protection of Confidential Information and electronic exchange of information between the Parties, including but not limited to EDI. ESE utilizes a Third-Party Representative as a vendor, agent or other entity to provide electronic exchange of information, other than by email, with Data Custodian and ESE will require such Third-Party Representative to be DRC certified and abide by the applicable UBP, UBP DERS or Commission order or rule.	DSA/SA			Community Choice Aggregation, Statewide General, State University of New York/Office of General Services

Entire Agreement	This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written Agreements or understandings with respect to such subject matter are merged herein. This Agreement may not be amended without the written Agreement of the Parties.	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General
Data Security Incident Policy and Procedure	ESE shall establish policies and procedures to provide reasonable and prompt assistance to Data Custodian in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Customer Utility Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Customer Utility Information.	DSA/SA	Custodian IT System	Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General
Information Security Program	ESE shall have in place appropriate and reasonable processes and systems, including an Information Security Program to protect the security of Confidential Customer Utility Information and protect against a Data Security Incident, including, without limitation, a breach resulting from or arising out of ESE's internal use, processing, or other transmission of Confidential Customer Utility Information, whether between or among ESE's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of ESE, including without limitation Third-Party Representatives. The Data Custodian's determination is subject to the dispute resolution process under the UBP or UBP DERS.	DSA/SA	Custodian IT System	Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Derivation of Data	ESE shall not create or maintain data which are derivative of Confidential Customer Utility Information except for the purpose of performing its obligations under this Agreement, as authorized by the UBP or UBP DERS, or as expressly authorized by the customer, unless that use violates Federal, State, and local laws, tariffs, rules, and regulations. For purposes of this Agreement, the following shall not be considered Confidential Customer Utility Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by ESE that reference estimated or actual measured customer usage information, which ESE needs to maintain for any tax, financial reporting or other legitimate business purposes consistent with the UBP or UBP DERS; and (ii) Data collected by ESE from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with ESE or its partners.	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, Statewide General
No Intellectual Property Rights Granted	Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Data Custodian, and ESE shall acquire no ownership interest in the Confidential Customer Utility Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General



Data Security Incidents	<p>ESE is responsible for any and all Data Security Incidents involving Confidential Customer Utility Information that is Processed by, or on behalf of, ESE. ESE shall notify Data Custodian in writing immediately (and in any event within forty-eight (48) hours) whenever ESE reasonably believes that there has been a Data Security Incident. After providing such notice, ESE will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Customer Utility Information and keep Data Custodian advised of the status of such Data Security Incident and all matters related thereto. ESE further agrees to provide, at ESE's sole cost: (1) reasonable assistance and cooperation requested by Data Custodian and/or Data Custodian's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Data Custodian may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Data Custodian deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, ESE shall develop and execute a plan, subject to Data Custodian's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. ESE agrees that Data Custodian may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Data Custodian pursuant to this paragraph will be temporary, lasting until the Data Security Incident has ended, the ESE security has been restored to the reasonable satisfaction of the Data Custodian so that Data Custodian IT systems and Confidential Customer Utility Information are safe and the ESE is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be made, or subject to dispute resolution and appeal as applicable, pursuant to the UBP or UBP DERS processes as approved by the Commission.</p>	DSA/SA			Community Choice Aggregation, Statewide General
Revocation of Access	<p>Access to Confidential Customer Utility Information is revoked when no longer required, or if employees separate from the ESE or Third Party Representative.</p>	DSA/SA			Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Investigation	<p>Upon notice to ESE, ESE shall assist and support Data Custodian in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Customer Utility Information Processed by ESE on behalf of Data Custodian. Such assistance shall be at Data Custodian's sole expense, except where such investigation was required due to the acts or omissions of ESE or its Representatives, in which case such assistance shall be at ESE's sole expense.</p>	DSA/SA			Community Choice Aggregation, State University of New York/Office of General Services, Statewide General
Audit	<p>Upon thirty (30) days notice to ESE, ESE shall permit an auditor selected by the Data Custodian through a competitive solicitation and agreed ("CSA") to by the ESE to audit and inspect, at Data Custodian's sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Data Custodian's regulators). The audit may include (A) the facilities of ESE and ESE's Third-Party Representatives where Confidential Customer Utility Information is Processed by or on behalf of ESE; (B) any computerized or paper systems used to Process Confidential Customer Utility Information; and (C) ESE's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Customer Utility Information. Such audit rights shall be limited to verifying ESE's compliance with this Agreement, including all applicable Data Protection Requirements. If the ESE provides a SOC II report or its equivalent to the Data Custodian, or commits to complete an independent third-party audit of ESE's compliance with this Agreement acceptable to the Data Custodian at ESE's sole expense, within one hundred eighty (180) days, no audit by an auditor selected by the Data Custodian through a CSA and conducted at Data Custodian's sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in this Agreement. The auditor will audit the ESE's compliance with the required Cybersecurity and Data Privacy Protections and provide those results to the Data Custodian and ESE. The audit report sent to the Data Custodian shall not include any ESE confidential information, it will simply provide an assessment as to the ESE's compliance with the terms of this agreement. In the event of a "failed" audit dispute, the dispute resolution processes outlined in the UBP can be utilized or a complaint can be brought to the Department of Public Service's Office of Consumer Services Staff. Data Custodian shall provide ESE with a report of the findings as a result of any audit carried out by an auditor selected by a CSA. ESE shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between the ESE and Data Custodian, correct any deficiencies identified in the audit, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor at ESE expense to the Data Custodian and provide a report regarding the timing and correction of identified deficiencies to the Data Custodian.</p>	DSA/SA			Community Choice Aggregation, Statewide General

Scope of the Agreement	This Agreement shall govern the Cybersecurity and Data Privacy Protections of ESEs that electronically receive or exchange customer information, other than email, from a direct connection with the Data Custodian IT systems and the privacy protections that apply to Confidential Information disclosed to ESE or to which ESE is given access by Data Custodian, including all archival or back-up copies of the Confidential Information held or maintained by ESE (or its Representatives) and Confidential ESE Information. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to ESE or Data Custodian, ESE or Data Custodian will immediately notify the Data Custodian/ESE and destroy any such information in the appropriate manner.	DSA/SA	Custodian IT System		Community Choice Aggregation, Statewide General
Utility Obligations	Data Custodian shall: (A) hold all Confidential ESE Information in strict confidence; except as otherwise expressly permitted herein; (B) not disclose Confidential ESE Information to any other person or entity except as set forth in this Agreement; (C) not Process Confidential ESE Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential ESE Information; (E) store Confidential ESE Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential ESE Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential ESE Information as Data Custodian employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by ESE, each Third Party Representative with a need to know the Confidential ESE Information shall sign the Third-Party Representative Agreement. At all times, ESE shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential ESE Information are being observed and Data Custodian shall be obligated to promptly provide ESE with the requested assurances.	DSA/SA			Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Encryption - At Rest	ESE and Data Custodian shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications	DSA/SA		Customer Contact Data, Customer Billing Data	Community Choice Aggregation, New York Power Authority, New York State Energy Research and Development Authority, State University of New York/Office of General Services, Statewide General
Data Security Incidents	ESE shall establish policies and procedures to provide reasonable and prompt assistance to Data Custodian in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Customer Utility Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Customer Utility Information.	DSA/SA			Community Choice Aggregation, Statewide General
Customer Consent	Data Custodian, at NYPA's request will send electronically to NYPA Confidential Customer Utility Information associated with NYPA Transmission Access Charges ("NTAC"), Recharge New York ("RNY"), the Excelsior Jobs Program and other NYPA programs associated with the provision of utility delivery service or negotiated contracts. NYPA agrees to obtain written or recorded informed consent from all customers before NYPA requests from Data Custodian any other Confidential Customer Utility Information.	NYPA			New York Power Authority
Provision of Information	Data Custodian agrees to provide to NYPA or its Third-Party Representatives, certain Confidential Customer Utility Information, as requested, provided that: (A) if the Data Custodian has identified a potential Cybersecurity or Data Privacy Protection issue NYPA (and its Third-Party Representatives with an electronic connection to the Data Custodian other than by email) are in compliance with the terms of this Agreement in all material respects; (B) if required by Data Custodian due to the identification of an actual Data Security Incident, NYPA shall undergo an audit, at NYPA's expense; (C) NYPA (and its Third-Party Representatives with an electronic connection to the Data Custodian other than by email) shall have and maintain throughout the term, systems and processes in place and as detailed in the DRC to protect Data Custodian IT systems, Data Privacy Protections and Confidential Customer Utility Information. Provided the foregoing prerequisites have been satisfied, NYPA shall be permitted access to Confidential Customer Utility Information and/or Data Custodian shall provide such Confidential Customer Utility Information to NYPA. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or Confidential Information of the other Party. Data Custodian will comply with the security requirements set forth in this Agreement.	NYPA			New York Power Authority

Confidentiality	<p>NYPA shall: (A) hold all Confidential Customer Utility Information in strict confidence pursuant to the terms and conditions of this Agreement except as otherwise expressly permitted herein; (B) not disclose Confidential Customer Utility Information to any Third-Party Representatives, or affiliates, except as set forth in this Agreement; (C) not Process Confidential Customer Utility Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Customer Utility Information; (E) store Confidential Customer Utility Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Customer Utility Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Customer Utility Information as NYPA employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by the Data Custodian, each Third-Party Representative shall sign the Third-Party Representative Agreement. At all times, Data Custodian shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Customer Utility Information are being observed and NYPA shall be obligated to promptly provide Data Custodian with the requested assurances. NYPA may provide Confidential Customer Utility Information to a Third-Party representative without a direct electronic connection with the Data Custodian, to assist the NYPA in providing permitted Services, but an NYPA utilizing such Third party Representative shall be solely responsible and fully liable for the actions of the Third Party Representative. Data Custodian shall: (A) hold all Confidential NYPA Information in strict confidence; except as otherwise expressly permitted herein; (B) not disclose Confidential NYPA Information to any other person or entity except as set forth in this Agreement; (C) not Process Confidential NYPA Information other than for the Services authorized by this Agreement; (D) limit reproduction of Confidential NYPA Information; (E) store Confidential NYPA Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential NYPA Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential NYPA Information as Data Custodian employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by NYPA, each Third Party Representative with a need to know the Confidential NYPA Information shall sign the Third-Party Representative Agreement. At all times, NYPA shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential NYPA Information are being observed and Data Custodian shall be obligated to promptly provide NYPA with the requested assurances.</p>	NYPA			New York Power Authority
Exceptions Allowing Disclosure of Confidential Information.	<p>a. Disclosure to Representatives. Notwithstanding the provisions herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Customer Utility Information for the purposes of providing Services provided that each such Third-Party Representative first is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information. NYPA shall require its Representatives to comply with NYPA's Information Security Requirements for Vendors and External Partners prior to disclosure of Confidential Customer Utility Information and shall be liable for any act or omission of its Third Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.</p>	NYPA			New York Power Authority
Exceptions Allowing Disclosure of Confidential Information.	<p>b. Disclosure if Legally Compelled. Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one(1) business day, notify the other Party, in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall each have the independent right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the disclosing Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the disclosing Party) and the disclosing Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.</p>	NYPA			New York Power Authority

<p>Exceptions Allowing Disclosure of Confidential Information.</p>	<p>c. Freedom of Information Law ("FOIL"). Notwithstanding any other provision of this Agreement, Utility acknowledges that NYPA is required to comply with the New York State, Public Officers Law, Article 6 [FOIL]. FOIL generally requires the public disclosure of records in the possession of NYPA, but there are certain exemptions in FOIL that would allow NYPA to deny a request for records. Those exemptions are found in § 87of the Public Officers Law, and exempt records or portions thereof that (a) "are specifically exempted from disclosure by state or federal statute," (b) "if disclosed would constitute an unwarranted invasion of privacy under the provisions of subdivision two of section eighty-nine," (c) "if disclosed would impair present or imminent contract awards or collective bargaining negotiations," or (d) "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."</p>	<p>NYPA</p>			<p>New York Power Authority</p>
<p>Exceptions Allowing Disclosure of Confidential Information.</p>	<p>d. Among other things, subdivision two(c) ) of Public Officers Law section eighty-nine provides that disclosures shall not be construed to constitute an unwarranted invasion of personal privacy "when identifying details are deleted" and "when the person whom a record pertains consents in writing to disclosure" and so the Parties acknowledge and agree that compliance with FOIL hereunder shall not necessitate any disclosures of Confidential Information without the consent of Utility customer or without such customer information first being anonymized by the deletion of identifying details. NYPA agrees and confirms that it considers the Confidential Customer Utility Information to constitute protectable information under the trade secrets, confidential commercial information, personal privacy information, customer information or critical infrastructure exceptions of the Public Officers Law (FOIL) § 87(2)(d) and that the Confidential Information to be exchanged may be "inter -agency records" under Public Officers Law § 87(2)(e)(g) (See Xerox Corp. v. Town of Webster, 65 N.Y.2d 132 (1985)), and that NYPA will, should such Confidential Information be requested under FOIL, promptly notify Data Custodian and deny disclosure and assert defenses to disclosure, in accordance with NYPA's FOIL regulations. Nothing herein is intended to limit the exceptions to FOIL disclosure listed herein and the Parties recognize that federal, state and local statutes, rule and regulation, and orders made by a court or regulatory agency of competent jurisdiction prohibiting disclosure of protected material also constitute exceptions to FOIL disclosure. In addition, information submitted to NYPA by Data Custodian as the disclosing party shall be identified and labeled "Confidential" or "Proprietary" on each page and accompanied by a written statement (which in all instances may be an electronic transmission) of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501.</p>	<p>NYPA</p>			<p>New York Power Authority</p>
<p>Return/Destruction of Information</p>	<p>Within thirty (30) days after Data Custodian's written demand, NYPA shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Customer Utility Information and shall at the Data Custodian's option: (A) return such Confidential Customer Utility Information to Data Custodian in such manner, format, and timeframe as reasonably requested by Data Custodian or, if not so directed by Data Custodian, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable ("Destroy") all copies of all Confidential Customer Utility Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Customer Utility Information) that has come into NYPA's or its Third-Party Representatives' possession, including Destroying Confidential Customer Utility Information from all systems, records, archives, and backups of NYPA and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Customer Utility Information by NYPA and its Third-Party Representatives shall cease, provided any items required to be maintained to meet reporting requirements as set forth by federal, state, and/or local laws, regulations, rules, NY state policies, or executive directives, by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. A Data Custodian making a written demand of NYPA for the return or destruction of Confidential Customer Utility Information will specify the reason for the demand. NYPA agrees that upon a customer revocation of consent, NYPA warrants that it will no longer access through Utility Confidential Customer Utility Information and that it will Destroy any Confidential Customer Utility Information in its or its Third-Party Representative's possession. Notwithstanding the foregoing, NYPA and its Third-Party Representatives shall not be obligated to erase Confidential Customer Utility Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that NYPA and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain Data Security Protections to limit access to or recovery of Confidential Customer Utility Information from such computer backup system and; (3) keep all such Confidential Customer Utility Information confidential in accordance with this Agreement. NYPA shall, upon request, certify to the Data Custodian that the destruction by NYPA and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of NYPA complete, execute, and deliver to Utility a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this shall not relieve NYPA from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Customer Utility Information pursuant to this Section may occur if the Data Custodian has been notified of a potential or actual Data Security Incident and Utility has a reasonable belief of potential ongoing harm or the Confidential Customer Utility Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement.</p>	<p>NYPA</p>			<p>New York Power Authority</p>

Return/Destruction of Information	<p>a. Upon NYPA’s written demand and termination of electronic exchange of data with Data Custodian, Data Custodian shall at NYPA’s option: (A) return such Confidential NYPA Information to NYPA in such manner, format, and timeframe as reasonably requested by NYPA or, if not so directed by NYPA, (B) Destroy all copies of all Confidential NYPA Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential NYPA Information) that has come into Utility’s(ies’) or its Third-Party Representatives’ possession, including Destroying Confidential NYPA Information from all systems, records, archives, and backups of Data Custodian and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential NYPA Information by Data Custodian and its Third-Party Representatives shall cease, provided any items required to be maintained to meet reporting requirements as set forth by federal, state, and/or local laws, regulations, rules, NY state policies, or executive directives, by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. Upon request, Data Custodian shall certify to NYPA that the destruction by Data Custodian and/or its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of Data Custodian complete, execute, and deliver to NYPA a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this shall not relieve Data Custodian from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential NYPA Information pursuant to this Section may occur if NYPA has been notified of a potential or actual Data Security Incident, or has a reasonable belief of potential ongoing harm, or the Confidential NYPA Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement.</p>	NYPA			New York Power Authority
Audit	<p>Upon thirty (30) days notice to NYPA, NYPA shall permit an auditor selected by the Data Custodian through a competitive solicitation and agreed (“CSA”) to by the NYPA to audit and inspect, at Data Custodian’s sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Data Custodian’s regulators). The audit may include (A) the facilities of NYPA and NYPA’s Third-Party Representatives where Confidential Customer Utility Information is Processed by or on behalf of NYPA; (B) any computerized or paper systems used to Process Confidential Customer Utility Information; and (C) NYPA’s security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Customer Utility Information. Such audit rights shall be limited to verifying NYPA’s compliance with this Agreement, including all applicable Data Protection Requirements. If NYPA provides a SOC II report or its equivalent (current within twelve (12) months of the Utility’s request) to the Data Custodian, or commits to complete an independent third-party audit of NYPA’s compliance with this Agreement acceptable to the Utility at NYPA’s sole expense, within one hundred eighty (180) days, no audit by an auditor selected by the Data Custodian through a CSA and conducted at Data Custodian’s sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in this Agreement. The auditor will audit the NYPA’s compliance with the required Cybersecurity and Data Privacy Protections and provide those results to the Data Custodian and NYPA. In the event of a “failed” audit dispute, dispute resolution may proceed through mediation with a third-party mediator agreed to by the Parties. NYPA shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between NYPA and Utility, correct any deficiencies identified in the audit, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor at NYPA expense to the Data Custodian and provide a report regarding the timing and correction of identified deficiencies to the Data Custodian.</p>	NYPA			New York Power Authority
Investigation	<p>Upon notice to NYPA, NYPA shall assist and support Data Custodian in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Customer Utility Information Processed by NYPA on behalf of Data Custodian. Such assistance shall be at Data Custodian’s sole expense, except where such investigation was required due to the acts or omissions of NYPA or its Representatives, in which case such assistance shall be at NYPA’s sole expense.</p>	NYPA			New York Power Authority

Data Security Incidents	<p>NYPA is responsible for any and all Data Security Incidents involving Confidential Customer Utility Information that is Processed by, or on behalf of, NYPA. NYPA shall investigate all detected Events and shall notify Data Custodian in writing as soon as possible upon declaration of a Data Security Incident and in accordance with the New York State Information Security Breach and Notification Act, and applicable laws, rules, and regulations. NYPA will notify the applicable Utility(s) if NYPA determines that there is a potential or actual unauthorized disclosure of Confidential Customer Utility Information and/or potential or actual harm to Data Custodian(s) Information Technology or Operation Technology systems. NYPA will immediately take all necessary steps to eliminate or contain any exposure of Confidential Customer Utility Information and keep Data Custodian advised of the status of such Data Security Incident and all matters related thereto. NYPA further agrees to provide, at NYPA's sole cost: (1) reasonable assistance and cooperation requested by Data Custodian and/or Data Custodian's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Data Custodian may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Data Custodian deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, NYPA shall develop and execute a plan, subject to Data Custodian's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. NYPA agrees that Data Custodian may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Data Custodian pursuant to this paragraph will be temporary, lasting until the Data Security Incident has ended, the NYPA security has been restored to the reasonable satisfaction of the Data Custodian so that Data Custodian IT systems and Confidential Customer Utility Information are safe and the NYPA is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be subject to dispute resolution and appeal as applicable.</p>	NYPA			New York Power Authority
No Intellectual Property Rights Granted	<p>Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Data Custodian, and NYPA shall acquire no ownership interest in the Confidential Customer Utility Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.</p>	NYPA			New York Power Authority
Additional Obligations.	<p>a. NYPA shall not create or maintain data which are derivative of Confidential Customer Utility Information except for the purpose of performing the Services under this Agreement, or after obtaining customer consent, for meeting reporting requirements as set forth by federal, state, and/or local laws, regulations, rules, NY state policies, or executive directives, or as expressly authorized by the customer, unless that use violates Federal, State, and local laws, tariffs, rules, and regulations. For purposes of this Agreement, the following shall not be considered Confidential Customer Utility Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by NYPA that reference estimated or actual measured customer usage information, which NYPA needs to maintain for any tax, financial, regulatory reporting, or other legitimate business purposes; and (ii) Data collected by NYPA from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with NYPA or its partners.</p>	NYPA			New York Power Authority
Additional Obligations.	<p>b. NYPA shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Data Custodian in violation of any privacy or security law known by NYPA to be applicable to Data Custodian.</p>	NYPA			New York Power Authority
Additional Obligations.	<p>c. NYPA shall have in place appropriate and reasonable processes and systems, including an Information Security Program to protect the security of Confidential Customer Utility Information and protect against a Data Security Incident, including, without limitation, a breach resulting from or arising out of NYPA's internal use, Processing, or other transmission of Confidential Customer Utility Information, whether between or among NYPA's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of NYPA, including without limitation Third Party Representatives.</p>	NYPA			New York Power Authority
Additional Obligations.	<p>d. NYPA and Data Custodian shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications</p>	NYPA			New York Power Authority
Additional Obligations.	<p>e. NYPA shall establish policies and procedures to provide reasonable and prompt assistance to Data Custodian in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Customer Utility Information Processed by NYPA to the extent such request, complaint or other communication relates to NYPA's Processing of such individual's Confidential Customer Utility Information.</p>	NYPA			New York Power Authority
Additional Obligations.	<p>f. NYPA shall establish policies and procedures to provide all reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Customer Utility Information, data theft, or other unauthorized release of Confidential Customer Utility Information, disclosure of Confidential Customer Utility Information, or misuse of Confidential Customer Utility Information to the extent such request, complaint or other communication relates to NYPA's accessing or Processing of such Confidential Customer Utility Information.</p>	NYPA			New York Power Authority

Additional Obligations.	g. NYPA will not process Confidential Customer Utility Information outside of the United States or Canada absent a written agreement, whereby NYPA shall require its Third Party Representatives to comply with both the Data Protection Requirements and NYPA's Information Security Requirements for Vendors and External Partners. For the avoidance of doubt, Confidential Customer Utility Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.	NYPA			New York Power Authority
Specific Performance	The Parties acknowledge that disclosure or misuse of Confidential Information in violation of this Agreement may result in irreparable harm to the non-disclosing Party, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore the non-disclosing Party shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. The non-disclosing Party's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Information hereunder. Each Party agrees to waive any requirement for the securing or posting of any bond or other security in connection with Utility obtaining any such injunctive or other equitable relief.	NYPA			New York Power Authority
Indemnification	To the fullest extent permitted by law, NYPA shall indemnify and hold Utility, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by NYPA or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the acts or omissions.	NYPA			New York Power Authority
Notices	<p>With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:</p> <p>If to NYPA, to:  NYPA Name:  Name of Contact:  Address:  Phone:  Email:</p> <p>If to Data Custodian, to:  Data Custodian Name:  Name of Contact:  Address:  Phone:  Email:</p> <p>A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.</p>	NYPA			New York Power Authority

Term and Termination	<p>This Agreement shall be effective as of the date first set forth above and shall remain in effect until the electronic connection, other than by email, used to transfer information between the Parties is severed and cannot be cured as provided for in this Agreement, or until terminated in accordance with the provisions of the service agreement, if any, between the Parties and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, whichever occurs first, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Further, either party may dispense with the required thirty (30) day notice period in the event of a material breach hereof by NYPA or its Third-Party Representatives. The Breaching Party will provide the non-breaching Party with a written description and notice of material breach. Upon the expiration or termination hereof, neither NYPA nor its Third-Party Representatives shall have any further right to Process Confidential Customer Utility Information or Customer Information, with the exceptions noted below and unless the customer has given written or electronic consent to do so, and shall immediately comply with its obligations and the Data Custodian shall not have the right to process Confidential NYPA Information and shall immediately comply with its obligations. Upon expiration or termination of this Agreement, NYPA shall retain the right to Process all Confidential Information acquired during the term of this Agreement to provide Services and to meet reporting requirements as set forth by federal, state, and/or local laws, regulations, rules, NY state policies, or executive directives.</p>	NYPA			New York Power Authority
Consent to Jurisdiction; Selection of Forum	<p>NYPA agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to NYPA at the address for NYPA and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. NYPA agrees that service of process on it may also be made in any manner permitted by law. The Parties agree to submit all disputes to a court of competent jurisdiction within Albany or Dutchess Counties, New York or the federal courts for the Southern District of New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.</p>	NYPA			New York Power Authority
Survival	<p>The obligations of NYPA under this Agreement shall continue for up to two years, so long as NYPA and/or NYPA's Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Customer Utility Information even if all Agreements between NYPA and Utility have expired or been terminated. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.</p>	NYPA			New York Power Authority
Amendments; Waivers	<p>This Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.</p>	NYPA			New York Power Authority
Assignment	<p>This Agreement (and the Utility's or NYPA's obligations hereunder) may not be assigned by Data Custodian, NYPA or Third-Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.</p>	NYPA			New York Power Authority
Severability	<p>Any provision of this Agreement which is determined by any court or having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.</p>	NYPA			New York Power Authority
Entire Agreement	<p>This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and This Agreement may not be amended without the written Agreement of the Parties.</p>	NYPA			New York Power Authority, New York State Energy Research and Development Authority



Relationship of the Parties	Data Custodian and NYPA expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.	NYPA			New York Power Authority
Construction	This Agreement shall be construed as to its fair meaning and not strictly for or against any party.	NYPA			New York Power Authority
Binding Effect	No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party and delivered to the other Party. The Data Custodian shall execute and deliver a signed original copy of this Agreement to the NYPA within five (5) business days of receiving an executed Agreement with a complete SA, if the NYPA has an electronic interconnection with the Data Custodian other than by email, from the NYPA. Prior to such execution and delivery by the Parties, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.	NYPA			New York Power Authority
NYPA Recitals	WHEREAS, NYPA desires to have access to Confidential Customer Utility Information, or the New York State Public Commission ("Commission") has ordered Data Custodian to provide to NYPA customer information; and WHEREAS, NYPA has obtained consent, excluding GBC, from all customers from whom the NYPA intends to obtain information from Data Custodian; and WHEREAS, NYPA may utilize a third party to fulfill its Services (defined herein) obligations; and WHEREAS, NYPA utilization of a third party provider does not relieve NYPA of their transactional obligation such that it must ensure that the third party provider must comply with all NYPA obligations; and WHEREAS, Data Custodian and NYPA also desire to enter into this Agreement to establish, among other things, the full scope of NYPA's obligations of security and confidentiality with respect to the Confidential Customer Utility Information in a manner consistent with the requirements of Data Custodian, as well as the obligations of the Data Custodian under this Agreement; and NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:	NYPA			New York Power Authority
Scope of the Agreement	This Agreement shall govern NYPA's Cybersecurity and Data Privacy Protections when it electronically receives or exchanges customer information, other than email, from a direct connection with the Data Custodian IT systems and the privacy protections that apply to Confidential Information disclosed to NYPA or to which NYPA is given access by Data Custodian, including all archival or back-up copies of the Confidential Information held or maintained by NYPA (or its Representatives) and Confidential NYPA Information. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to NYPA or Data Custodian, NYPA or Data Custodian will immediately notify the Data Custodian/NYPA and destroy any such information in the appropriate manner. This Agreement supersedes and replaces prior agreements between the Parties regarding the electronic transfer of information between the Parties except to the extent agreed upon by the Parties in writing. Each Party will, within thirty (30) days of the Effective Date of this Agreement, determine and agree in writing, which prior agreements, if any, between the Parties will survive this Agreement.	NYPA			New York Power Authority
Governance of Confidential Customer Utility Information and Transfer of information Electronically Exchanged by NYPA with Utility.	The Parties agree that, except as otherwise permitted in this Agreement, Confidential Customer Utility Information will not be disclosed without the customer's consent. The Parties may agree in writing on a standard to anonymize data and to make public anonymized data. The Parties agree that Data Protection Requirements will govern the electronic interconnection and data transfer between the Parties. The Parties agree that Data Protection Requirements mean that NYPA, at a minimum, will maintain Cybersecurity and Data Privacy Protections that are equivalent or superior to those that NYPA requires of its vendors and external partners through the Information Security Requirements for Vendors and External Partners.	NYPA			New York Power Authority

Recitals	<p>WHEREAS, in order to comply with directives in various New York State Public Service Commission-issued Orders governing the implementation, study, and evaluation of its Clean Energy Fund (and predecessor portfolios of the System Benefits Charge and Energy Efficiency Portfolio Standard), the Clean Energy Standard (and its predecessor portfolio, the Renewable Portfolio Standard), the NY Green Bank, and energy storage efforts. NYSERDA requires access to certain utility customer information, either customer-specific or aggregated customer information; and</p> <p>WHEREAS, the New York State Public Service Commission’s (“Commission”) January 17, 2019 Order Regarding New York State Energy Research and Development Authority Data Access and Legacy Reporting in Case 14-M-0094 (“NYSERDA Data Order”) permits NYSERDA to request certain customer-specific data from Data Custodian solely for the purposes of conducting NYSERDA’s own studies to assess performance and effectiveness of clean energy programs and policies, including potential, baseline, and market-characterization studies as well as other NYSERDA-funded evaluation, measurement and verification (“EM&amp;V”) activities; and</p> <p>WHEREAS, on March ____, 2015, Utility and NYSERDA entered into an Electronic Data Interchange (“EDI”) Agreement (“EDI Agreement”) that allows NYSERDA to use EDI to access Confidential Information, including utility customer usage information, once NYSERDA obtains consent from the Utility customer; and</p> <p>WHEREAS, the Parties desire to have this Agreement replace and supersede the EDI Agreement and govern the obligations of the Parties with respect to requests for Confidential Information requested by NYSERDA via EDI, or as a result of NYSERDA studies or EM&amp;V activities authorized by the NYSERDA Data Order; and WHEREAS, NYSERDA may utilize a third party to fulfill its regulatory and statutory obligations, including but not limited to, EDI communications with Data Custodian and conducting required studies and analyses; and</p> <p>WHEREAS, NYSERDA’s utilization of a third-party provider does not relieve NYSERDA of its transactional obligation such that it must ensure that the third-party provider must comply with all NYSERDA obligations; and</p> <p>WHEREAS Data Custodian and NYSERDA also desire to enter into this Agreement to establish, among other things, the full scope of the Parties’ obligations of security and confidentiality with respect to Confidential Information in a manner consistent with the rules and regulations of the Commission and requirements of Data Custodian; and</p> <p>NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:</p>	NYSERDA			New York State Energy Research and Development Authority
Scope of the Agreement	<p>This Agreement shall govern security practices of NYSERDA and its Representatives that have electronic communications, other than email, with Data Custodian and security practices that apply to all Confidential Utility Information disclosed to NYSERDA or its Representatives or to which NYSERDA or its Representatives are given access by Data Custodian, including all archival or back-up copies of the Confidential Utility Information held or maintained by NYSERDA (or its Representatives) and Confidential NYSERDA Information. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to NYSERDA or its Representatives, NYSERDA will immediately notify Data Custodian and destroy any such information in the appropriate manner.</p>	NYSERDA			New York State Energy Research and Development Authority
Process for NYSERDA to Request Information Pursuant to NYSERDA Data Order	<p>Consistent with the NYSERDA Data Order, NYSERDA may request Utility Data, including Confidential Utility Information, for assessing performance and effectiveness of clean energy programs and policies, including potential, baseline, and market-characterization studies as well as other NYSERDA-funded EM&amp;V activities. NYSERDA shall send all data requests to Data Custodian and concurrently file the data request in Commission Matter No. 19-00087 - In the Matter of NYSERDA Data Requests, redacted as necessary to protect Confidential Utility and NYSERDA Information with unredacted requests filed with the Commission’s Records Access Officer. The request shall detail the need for the data, including the specific data fields required, time period for the request, and whether the request is expected to be repeated and, if so, how frequently; the planned retention period and use of that data; and justification as to why no currently available data is a viable alternative. Data Custodian shall use commercially reasonable efforts to respond to NYSERDA within ten (10) days, measured from the day after the request is filed with the Commission, and concurrently file its response in Commission Matter No. 19-00087, redacted as necessary to protect Confidential Utility and NYSERDA Information with unredacted requests filed with the Commission’s Records Access Officer. Data Custodian’s response shall either identify the anticipated date by which the requested data will be provided or, if Data Custodian believes the request is not consistent with the NYSERDA Data Order, detail the objection and explain the reason why the request is not in compliance with the NYSERDA Data Order. Where Data Custodian does not object, it will provide the requested data to NYSERDA through any method mutually agreeable to NYSERDA and Data Custodian.</p> <p>If Data Custodian objects to NYSERDA’s request, and the Parties cannot reach a mutually agreeable resolution, Department of Public Service Staff (“Staff”) will make a determination as to whether the request is consistent with the NYSERDA Data Order. If either Party objects to Staff’s determination, either Party may seek a formal Commission order as to whether the requested data must be provided. The Parties agree that no data will be provided prior to a Commission order if there is an objection and formal request for Commission approval.</p> <p>NYSERDA shall keep requests for customer data to a minimum, consistent with the NYSERDA Data Order.</p>	NYSERDA			New York State Energy Research and Development Authority

Customer Consent	Except for non-participant data requested by NYSEDA pursuant to the NYSEDA Data Order, the Parties agree that the UBP and UBP-DERS govern NYSEDA's obligation to obtain informed consent from all customers about whom NYSEDA requests data from Data Custodian. NYSEDA and its Representatives agree to comply with the UBP and UBP- DERS on customer consent and Data Custodian's tariffs regarding customer consent.	NYSEDA			New York State Energy Research and Development Authority
Provision of Information	Data Custodian agrees to provide to NYSEDA or its Representatives, certain Utility Data and Confidential Utility Information consistent with (4) and (5) above, as requested, provided that: (A) NYSEDA and its Representatives are in compliance with the terms of this Agreement in all material respects; (B) if required by Data Custodian, NYSEDA has provided and has required its Representatives to provide, to the satisfaction of Data Custodian any Vendor Product/Service Security Assessments or such other risk assessment forms as Utility may require from time to time ("Assessment") and NYSEDA will comply with the Utility Assessment requirements as approved by the Data Custodian; (C) NYSEDA (and its Representatives, as applicable) shall have and maintain throughout the term, systems and processes in place and as detailed in the Assessment acceptable to Data Custodian to protect system security and Confidential Utility Information; and; (D) NYSEDA complies and shall require its Third-Party Representatives who process Confidential Information to comply with Data Custodian's Assessment requirements as approved by Data Custodian. Provided the foregoing prerequisites have been satisfied, NYSEDA shall be permitted access to Confidential Utility Information and/or Data Custodian shall provide such Confidential Utility Information to NYSEDA. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or Confidential Information of the other Party. Data Custodian will comply with the security requirements set forth in its Assessment.	NYSEDA			New York State Energy Research and Development Authority
Confidentiality	NYSEDA and its Representatives shall: (A) hold all Confidential Utility Information in strict confidence pursuant to Commission's orders; except as otherwise expressly permitted herein; (B) not disclose Confidential Utility Information to any Third-Party Representatives, or affiliates, except as set forth in this Agreement; (C) not Process Confidential Utility Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Utility Information; (E) store Confidential Utility Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Utility Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Utility Information as NYSEDA employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by Data Custodian, each Representative with a need to know the Confidential Utility Information shall sign the Third-Party Representative Agreement. At all times, Data Custodian shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Utility Information are being observed and NYSEDA and its Representatives shall be obligated to promptly provide Data Custodian with the requested assurances. Data Custodian shall: (A) hold all Confidential NYSEDA Information in strict confidence; except as otherwise expressly permitted herein; (B) not disclose Confidential NYSEDA Information to any other person or entity except as set forth in this Agreement; (C) not Process Confidential NYSEDA Information other than for the Services as authorized by this Agreement; (D) limit reproduction of Confidential NYSEDA Information; (E) store Confidential NYSEDA Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential NYSEDA Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential NYSEDA Information as Data Custodian employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by NYSEDA, each Representative with a need to know the Confidential NYSEDA Information shall sign the Third-Party Representative Agreement. At all times, NYSEDA shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential NYSEDA Information are being observed and Data Custodian shall be obligated to promptly provide NYSEDA with the requested assurances.	NYSEDA			New York State Energy Research and Development Authority

<p>Exceptions Allowing NYSERDA to Disclose Confidential Utility Information</p>	<p>a. Disclosure to Representatives. Notwithstanding the provisions herein, NYSERDA may disclose Confidential Information to its Third-Party Representatives who have a legitimate need to know and access such Confidential Information to fulfill NYSERDA's obligations with respect to the NYSERDA Data Order, provided that each such Third-Party Representative first: (A) is advised by the Disclosing Party of the sensitive and confidential nature of such Confidential Information; (B) agrees to comply with the provisions of this Agreement, provided that with respect to Third-Party Representatives and this subsection, such Third-Party Representatives must agree in writing to be bound by and observe the provisions of this Agreement as though such Third-Party Representatives were a Party/NYSERDA; and (C) signs the Third-Party Representative Agreement. All such written Third-Party Representative Agreements with Third-Party Representatives shall include direct liability for the Third-Party Representatives towards Data Custodian/NYSERDA for breach thereof by the Third-Party Representatives, and a copy of such Agreement and each Third-Party Representative Agreement shall be made available to Data Custodian/NYSERDA upon request. Notwithstanding the foregoing, the Parties shall be liable for any act or omission of a Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.</p>	<p>NYSERDA</p>			<p>New York State Energy Research and Development Authority</p>
<p>Exceptions Allowing NYSERDA to Disclose Confidential Utility Information</p>	<p>b. Disclosure if Legally Compelled. Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.</p>	<p>NYSERDA</p>			<p>New York State Energy Research and Development Authority</p>
<p>Exceptions Allowing NYSERDA to Disclose Confidential Utility Information</p>	<p>c. Freedom of Information Law ("FOIL"). Notwithstanding any other provision of this Agreement, Utility acknowledges that NYSERDA is required to comply with the New York State FOIL, Public Officers Law, Article 6. The FOIL provides exceptions to disclosure, including Section 87(2)(a)-(d) which provides for exceptions to disclosure for records or portions thereof that (a) "are specifically exempted from disclosure by state or federal statute," (b) "if disclosed would constitute an unwarranted invasion of privacy under the provisions of subdivision two of section eighty-nine," (c) "if disclosed would impair present or imminent contract awards or collective bargaining negotiations," or (d) "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Among other things, subdivision two of section eighty-nine referred to by above of this Section provides that disclosures shall not be construed to constitute an unwarranted invasion of personal privacy "when identifying details are deleted" and "when the person whom a record pertains consents in writing to disclosure" and so the Parties acknowledge and agree that compliance with FOIL hereunder shall not necessitate any disclosures of Confidential Information without the consent of Utility customer or without such customer information first being anonymized by the deletion of identifying details. NYSERDA agrees and confirms that it considers the Confidential Utility Information to constitute protectable information under the trade secrets, confidential commercial information, personal privacy information, customer information or critical infrastructure exceptions of the Public Officers Law (FOIL) § 87(2)(d) and that the Confidential Information to be exchanged may be "inter-agency records" under Public Officers Law § 87(2)(e)(g) (See Xerox Corp. v. Town of Webster, 65 N.Y.2d 132 (1985)), and that NYSERDA will, should such Confidential Information be requested under FOIL, promptly notify Data Custodian and deny disclosure and assert defenses to disclosure. Nothing herein is intended to limit the exceptions to FOIL disclosure to the exceptions listed herein and the Parties recognize that federal, state and local statutes, rule and regulation, and orders made by a court or regulatory agency of competent jurisdiction prohibiting disclosure of protected material also constitute exceptions to FOIL disclosure. In addition, information submitted to NYSERDA by Data Custodian as the disclosing party shall be identified and labeled "Confidential" or "Proprietary" on each page and accompanied by a written statement (which in all instances may be an electronic transmission) of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501.</p>	<p>NYSERDA</p>			<p>New York State Energy Research and Development Authority</p>

Return/Destruction of Information	<p>Within thirty (30) days after Data Custodian’s written demand, NYSEDA shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Utility Information and shall at Data Custodian’s option: (A) return such Confidential Utility Information to Data Custodian in such manner, format, and timeframe as reasonably requested by Data Custodian or, if not so directed by Data Custodian, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable (“Destroy”) all copies of all Confidential Utility Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Utility Information) that has come into NYSEDA’s or its Third-Party Representatives’ possession, including Destroying Confidential Utility Information from all systems, records, archives, and backups of NYSEDA and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Utility Information by NYSEDA and its Third-Party Representatives shall cease provided any items required to be maintained by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. NYSEDA agrees that upon a customer revocation of consent, NYSEDA and its Representatives warrant that it will no longer access Confidential Utility Information and that it will Destroy any Confidential Utility Information in its or its Third-Party Representative’s possession. Notwithstanding the foregoing, NYSEDA and its Third-Party Representatives shall not be obligated to erase Confidential Utility Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that NYSEDA and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain Data Security Protections to limit access to or recovery of Confidential Utility Information from such computer backup system and; (3) keep all such Confidential Utility Information confidential in accordance with this Agreement. NYSEDA shall, upon request, certify to Data Custodian that the destruction by NYSEDA and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of NYSEDA complete, execute, and deliver to Data Custodian a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section shall not relieve NYSEDA from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Utility Information pursuant to this Section may occur if the Data Custodian has been notified of a potential or actual Data Security Incident and Data Custodian has a reasonable belief of potential ongoing harm or the Confidential Utility Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement. Subject to applicable federal, state and local laws, rules, regulations and orders, at NYSEDA’s written demand and termination of electronic exchange of data with Data Custodian, Data Custodian will Destroy or return, at NYSEDA’s option, Confidential NYSEDA Information.</p>	NYSEDA			New York State Energy Research and Development Authority
Audit	<p>Upon thirty (30) days’ notice to NYSEDA, NYSEDA shall, and shall require its Third-Party Representatives to permit Data Custodian, its auditors, designated representatives, to audit and inspect, at Data Custodian’s sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Data Custodian’s regulators). The audit may include (A) the facilities of NYSEDA and NYSEDA’s Third-Party Representatives where Confidential Utility Information is Processed by or on behalf of NYSEDA; (B) any computerized or paper systems used to Process Confidential Utility Information; and (C) NYSEDA’s security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Utility Information. Such audit rights shall be limited to verifying NYSEDA’s compliance with this Agreement, including all applicable Data Protection Requirements. If NYSEDA provides a SOC II report or its equivalent to Data Custodian, or commits to complete an independent third-party audit of NYSEDA’s compliance with this Agreement acceptable to Data Custodian at NYSEDA’s sole expense, within one hundred eighty (180) days, no Data Custodian audit is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in this Agreement. Data Custodian shall provide NYSEDA with a report of its findings as a result of any audit carried out by or on behalf of Data Custodian. NYSEDA shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between NYSEDA and Data Custodian, correct any deficiencies identified by Data Custodian, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor to Data Custodian and provide a report regarding the timing and correction of identified deficiencies to Data Custodian.</p>	NYSEDA			New York State Energy Research and Development Authority
Investigation	<p>Upon notice to NYSEDA, NYSEDA shall assist and support Data Custodian in the event of an investigation by any regulator, if and to the extent that such investigation relates to Confidential Utility Information Processed by NYSEDA or its Representatives on behalf of Data Custodian. Such assistance shall be at Data Custodian’s sole expense, except where such investigation was required due to the acts or omissions of NYSEDA or its Representatives, in which case such assistance shall be at NYSEDA’s sole expense.</p>	NYSEDA			New York State Energy Research and Development Authority

Data Security Incidents	<p>NYSERDA is responsible for any and all Data Security Incidents involving Confidential Utility Information that is Processed by, or on behalf of, NYSERDA. NYSERDA shall notify Data Custodian in writing immediately (and in any event within forty-eight (48) hours) whenever NYSERDA reasonably believes that there has been a Data Security Incident. After providing such notice, NYSERDA will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Utility Information and keep Data Custodian advised of the status of such Data Security Incident and all matters related thereto. NYSERDA further agrees to provide, at NYSERDA's sole cost: (1) reasonable assistance and cooperation requested by Data Custodian and/or Data Custodian's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Data Custodian may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Data Custodian deems appropriate to provide to such individuals. NYSERDA agrees that Data Custodian may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Utility pursuant to this paragraph will be temporary, lasting until the Data Security Incident has ended, the NYSERDA security has been restored to the reasonable satisfaction of Data Custodian so that Data Custodian IT systems and Confidential Utility Information are safe, and NYSERDA is capable of maintaining adequate security once electronic communication resumes.</p>	NYSERDA			New York State Energy Research and Development Authority
Cybersecurity Insurance	<p>Commencing as of the date of this Agreement, NYSERDA shall carry and maintain Cybersecurity insurance in an amount of no less than \$5,000,000 per incident. Data Custodian will maintain at least \$5,000,000 of Cybersecurity insurance.</p>	NYSERDA			New York State Energy Research and Development Authority
No Intellectual Property Rights Granted	<p>Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Data Custodian, and NYSERDA shall acquire no ownership interest in the Confidential Utility Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.</p>	NYSERDA			New York State Energy Research and Development Authority
Additional Obligations.	<p>a. NYSERDA and its Representatives shall not create or maintain data which are derivative of Confidential Utility Information except for the purpose of performing its obligations under this Agreement. For purposes of this Agreement, the following shall not be considered Confidential Utility Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by NYSERDA or its Representatives that reference estimated or actual measured customer usage information, which NYSERDA needs to maintain for any tax, financial reporting or other legitimate business purposes; and (ii) data collected by NYSERDA or its Representatives from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with NYSERDA or its partners.</p>	NYSERDA			New York State Energy Research and Development Authority
Additional Obligations.	<p>b. NYSERDA and its Representatives shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Data Custodian in violation of any privacy or security law known by NYSERDA to be applicable to Data Custodian.</p>	NYSERDA			New York State Energy Research and Development Authority
Additional Obligations.	<p>c. NYSERDA and its Representatives shall have in place appropriate and reasonable processes and systems, including an Information Security Program, defined as having completed an accepted Attestation as reasonably determined by Data Custodian in its discretion, to protect the security of Confidential Utility Information and prevent a Data Security Incident, including, without limitation, a breach resulting from or arising out of NYSERDA or its Representatives' internal use, Processing, or other transmission of Confidential Utility Information, whether between or among NYSERDA's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of NYSERDA, including without limitation Third-Party Representatives.</p>	NYSERDA			New York State Energy Research and Development Authority
Additional Obligations.	<p>d. NYSERDA and its Representatives and Data Custodian shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information.</p>	NYSERDA			New York State Energy Research and Development Authority
Additional Obligations.	<p>e. NYSERDA and its Representatives shall establish policies and procedures to provide reasonable and prompt assistance to Data Custodian in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Utility Information Processed by NYSERDA or its Representatives to the extent such request, complaint or other communication relates to NYSERDA or its Representatives' Processing of such individual's Confidential Utility Information.</p>	NYSERDA			New York State Energy Research and Development Authority
Additional Obligations.	<p>f. NYSERDA and its Representatives shall establish policies and procedures to provide all reasonable and prompt assistance to Data Custodian in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Utility Information, data theft, or other unauthorized release of Confidential Utility Information, disclosure of Confidential Utility Information, or misuse of Confidential Utility Information to the extent such request, complaint or other communication relates to NYSERDA or its Representatives' accessing or Processing of such Confidential Utility Information.</p>	NYSERDA			New York State Energy Research and Development Authority

Additional Obligations.	g. NYSERDA and its Representatives will not process Confidential Utility Information outside of the United States or Canada absent a written agreement with Data Custodian. For the avoidance of doubt, Confidential Utility Information stored in the United States or Canada, or other countries as agreed upon in writing, will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.	NYSERDA			New York State Energy Research and Development Authority
Specific Performance	The Parties acknowledge that disclosure or misuse of Confidential Utility Information in violation of this Agreement may result in irreparable harm to Data Custodian, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Data Custodian shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Data Custodian’s right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages and the right to terminate this Agreement.	NYSERDA			New York State Energy Research and Development Authority
Indemnification	To the fullest extent permitted by law and up to an amount equal to that of its cyber-security insurance coverage, NYSERDA shall indemnify and hold Data Custodian, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys’ fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by NYSERDA or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Data Custodian.	NYSERDA			New York State Energy Research and Development Authority
Notices	<p>With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:</p> <p>If to NYSERDA, to:  Name of Contact:  Address:  Phone:  Email:</p> <p>If to Data Custodian, to:  Data Custodian Name:  Name of Contact:  Address:  Phone:  Email:</p> <p>A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.</p>	NYSERDA			New York State Energy Research and Development Authority
Term and Termination	This Agreement shall be effective as of the date first set forth above and shall remain in effect for three years, until terminated by either party upon not less than 30 days prior written notice specifying the effective date of termination, or in accordance with [changes in terms or conditions or default] provided, however, that written notice any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Data Custodian may terminate this Agreement immediately upon notice to NYSERDA in the event of a material breach hereof by NYSERDA or its Third-Party Representatives. Upon the expiration or termination hereof, neither NYSERDA nor its Third-Party Representatives shall have any further right to Process Confidential Utility Information or Customer Information and shall immediately comply with its obligations and Data Custodian shall not have the right to process Confidential NYSERDA Information and shall immediately comply with its obligations.	NYSERDA			New York State Energy Research and Development Authority

Consent to Jurisdiction; Selection of Forum	The Parties irrevocably submit to the jurisdiction of the Commission and courts located within the State of New York with regard to any dispute or controversy arising out of or relating to this Agreement. NYSEDA agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to NYSEDA at the address for NYSEDA and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. NYSEDA agrees that service of process on it may also be made in any manner permitted by law. NYSEDA consents to the selection of the New York State and United States courts within _____ County, New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement. If the event involves any individual Data Custodian, combination of Data Custodian, or all of the Utilities jurisdiction will be in Albany County, New York.	NYSEDA			New York State Energy Research and Development Authority
Governing Law	This Agreement shall be governed and interpreted in accordance with the laws of the State of New York, excluding any conflicts-of-law rules and principles of that jurisdiction which would result in reference to the laws or law rules of another jurisdiction.	NYSEDA			New York State Energy Research and Development Authority
Survival	The obligations of NYSEDA and its Representatives under this Agreement shall continue for so long as NYSEDA and/or NYSEDA's Third-Party Representatives continue to have access to, are in possession of, or acquire Confidential Utility Information even if all agreements between NYSEDA and Data Custodian have expired or been terminated.	NYSEDA			New York State Energy Research and Development Authority
Counterparts	This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.	NYSEDA			New York State Energy Research and Development Authority
Assignment	This Agreement (and Data Custodian's or NYSEDA's obligations hereunder) may not be assigned by Data Custodian, NYSEDA or Third-Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.	NYSEDA			New York State Energy Research and Development Authority
Relationship of the Parties	Data Custodian and NYSEDA expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.	NYSEDA			New York State Energy Research and Development Authority
Binding Effect	No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.	NYSEDA			New York State Energy Research and Development Authority
Recitals SUNY OGS	WHEREAS, ESE desires to have access to certain utility customer information, either customer-specific or aggregated customer information, or the New York State Public Commission ("Commission") has ordered Utility to provide to ESE customer information; and WHEREAS, ESE has obtained consent from all customers from whom the ESE intends to obtain information from Utility; and WHEREAS, Energy Services Company ("ESCO"), Direct Customer, Distributed Energy Resource ("DER") Supplier, Green Button Connect ("GBC") Provider or Governmental Units may utilize a third party to fulfill its Service obligations, including but not limited to, Electronic Data Interchange ("EDI") communications with Utility; and WHEREAS, ESCO, Direct Customer, DER Supplier ("DERS"), GBC Provider or Governmental Unit utilization of a third party provider does not relieve ESCO, Direct Customer, DERS, GBC Provider or Governmental Units of their transactional obligation such that they must ensure that the third party provider must comply with all ESCO, Direct Customer, DERS, GBC Provider or Governmental Unit obligations; and WHEREAS, Data Custodian and ESE also desire to enter into this Agreement to establish, among other things, the full scope of ESE's obligations of security and confidentiality with respect to the Confidential Information in a manner consistent with the orders, rules and regulations of the Commission and requirements of Utility; and NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:	SUNY-OGS			State University of New York/Office of General Services



Scope of the Agreement	<p>This Agreement shall govern security practices of ESEs that have electronic communications, other than email, with the Utility and security practices that apply to all Confidential Customer Utility Information disclosed to ESE or to which ESE is given access by Data Custodian, including all archival or back-up copies of the Confidential Customer Utility Information held or maintained by ESE (or its Representatives) and Confidential ESE Information. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to ESE or Data Custodian, ESE or Data Custodian will immediately notify the Data Custodian/ESE and destroy any such information in the appropriate manner.</p>	SUNY-OGS			State University of New York/Office of General Services
Customer Consent	<p>The Parties agree that the UBP, UBP DERS, Federal, State and local laws, and the orders, rules and regulations of the Commission govern an ESE's obligation to obtain informed consent from all customers about whom ESE requests data from Data Custodian. The ESE agrees to comply with the UBP, UBP DERS, Federal, State and local laws, the orders, rules and regulations of the Commission, and the Data Custodian's tariffs regarding customer consent.</p>	SUNY-OGS			State University of New York/Office of General Services
Confidentiality	<p>ESE shall: (A) hold all Confidential Customer Utility Information in strict confidence pursuant to the UBP or UBP DERS and Commission's orders and rules; except as otherwise expressly permitted herein; (B) not disclose Confidential Customer Utility Information to any Third-Party Representatives, or affiliates, except as set forth in this Agreement; (C) not Process Confidential Customer Utility Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Customer Utility Information; (E) store Confidential Customer Utility Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Customer Utility Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Customer Utility Information as ESE employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care. ; and (G) to the extent required by the Data Custodian, each Third Party Representative with a direct electronic connection with the Data Custodian, other than by email, shall sign the Third-Party Representative Agreement. At all times, Data Custodian shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Customer Utility Information are being observed and ESE shall be obligated to promptly provide Data Custodian with the requested assurances. An ESE may provide Confidential Customer Utility Information to a Third Party representative without a direct electronic connection with the Data Custodian, but with the need to know the Confidential Customer Utility Information to assist the ESE to provide permitted Services but an ESE utilizing such Third party Representative shall be solely responsible and liable for the actions of the Third Party Representative. Data Custodian shall: (A) hold all Confidential ESE Information in strict confidence; except as otherwise expressly permitted herein; (B) not disclose Confidential ESE Information to any other person or entity except as set forth in this Agreement; (C) not Process Confidential ESE Information other than for the Services authorized by this Agreement; (D) limit reproduction of Confidential ESE Information; (E) store Confidential ESE Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential ESE Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential ESE Information as Utility employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by ESE, each Third Party Representative with a need to know the Confidential ESE Information shall sign the Third-Party Representative Agreement. At all times, ESE shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential ESE Information are being observed and Data Custodian shall be obligated to promptly provide ESE with the requested assurances.</p> <p>This supersedes prior data security agreements between the Parties pertaining to Confidential Information.</p>	SUNY-OGS			State University of New York/Office of General Services

<p>Exceptions Allowing ESE to Disclose Confidential Customer Utility Information.</p>	<p>Exceptions Allowing ESE to Disclose Confidential Customer Utility Information.</p> <p>a. Disclosure to Representatives. Notwithstanding the provisions herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Information for the purposes of providing Services in accordance with the UBP, UBP DERS and Commission orders and rules, provided that each such Third-Party Representative first: (A) is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information. Notwithstanding the foregoing, the ESE shall be liable for any act or omission of its Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.</p>	<p>SUNY-OGS</p>			<p>State University of New York/Office of General Services</p>
<p>Exceptions Allowing ESE to Disclose Confidential Customer Utility Information.</p>	<p>b. Disclosure if Legally Compelled. Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.</p>	<p>SUNY-OGS</p>			<p>State University of New York/Office of General Services</p>
<p>Exceptions Allowing ESE to Disclose Confidential Customer Utility Information.</p>	<p>c. Freedom of Information Law ("FOIL"). Notwithstanding any other provision of this Agreement, Utility acknowledges that a Governmental Unit is required to comply with the New York State FOIL, Public Officers Law, Article 6. The FOIL provides exceptions to disclosure, including Section 87(2)(a)-(d) which provides for exceptions to disclosure for records or portions thereof that (a) "are specifically exempted from disclosure by state or federal statute," (b) "if disclosed would constitute an unwarranted invasion of privacy under the provisions of subdivision two of section eighty-nine," (c) "if disclosed would impair present or imminent contract awards or collective bargaining negotiations," or (d) "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Among other things, subdivision two of section eighty-nine referred to by (b) above that disclosures shall not be construed to constitute an unwarranted invasion of personal privacy "when identifying details are deleted" and "when the person whom a record pertains consents in writing to disclosure" and so the Parties acknowledge and agree that compliance with FOIL hereunder shall not necessitate any disclosures of Confidential Information without consultation with Utility customer or without such customer information first being anonymized by the deletion of identifying details. Governmental Unit agrees and confirms that it considers the Confidential Customer Utility Information to constitute protectable information under the trade secrets, confidential commercial information, personal privacy information, customer information or critical infrastructure exceptions of the Public Officers Law (FOIL) § 87(2)(d) and that the Confidential Information to be exchanged may be "inter-agency records" under Public Officers Law § 87(2)(e)(g) (See Xerox Corp. v. Town of Webster, 65 N.Y.2d 132 (1985)), and that Governmental Unit will, should such Confidential Information be requested under FOIL, promptly notify Utility and give utility and customer an opportunity to assert defenses to disclosure. Nothing herein is intended to limit the exceptions to FOIL disclosure to the exceptions listed herein and the Parties recognize that federal, state and local statutes, rule and regulation, and orders made by a court or regulatory agency of competent jurisdiction prohibiting disclosure of protected material also constitute exceptions to FOIL disclosure. In addition, information submitted to Governmental Unit by Data Custodian as the disclosing party shall be identified and labeled "Confidential" or "Proprietary" on each page and accompanied by a written statement (which in all instances may be an electronic transmission) of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501.</p>	<p>SUNY-OGS</p>			<p>State University of New York/Office of General Services</p>

Audit	<p>Upon thirty (30) days notice to ESE, ESE shall, and shall require its Third-Party Representatives to permit an auditor selected by the Data Custodian through a competitive solicitation to audit and inspect, at Data Custodian's sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Data Custodian's regulators). The audit may include (A) the facilities of ESE and ESE's Third-Party Representatives where Confidential Customer Utility Information is Processed by or on behalf of ESE; (B) any computerized or paper systems used to Process Confidential Customer Utility Information; and (C) ESE's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Customer Utility Information. Such audit rights shall be limited to verifying ESE's compliance with this Agreement, including all applicable Data Protection Requirements. If the ESE provides a SOC II report or its equivalent to the Data Custodian, or commits to complete an independent third-party audit of ESE's compliance with this Agreement acceptable to the Utility at ESE's sole expense, within one hundred eighty (180) days, no audit by an auditor selected by the Data Custodian through a competitive solicitation and conducted at Data Custodian's sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in this Agreement. Data Custodian shall provide ESE with a report of the findings as a result of any audit carried out by an auditor selected by the Utility through a competitive solicitation. ESE shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between the ESE and Data Custodian, correct any deficiencies identified in the audit, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor at ESE expense to the Data Custodian and provide a report regarding the timing and correction of identified deficiencies to the Data Custodian.</p>	SUNY-OGS			State University of New York/Office of General Services
Data Security Incidents	<p>ESE is responsible for any and all Data Security Incidents involving Confidential Customer Utility Information that is Processed by, or on behalf of, ESE. ESE shall notify Data Custodian in writing immediately (and in any event within forty-eight (48) hours) whenever ESE reasonably believes that there has been a Data Security Incident. After providing such notice, ESE will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Customer Utility Information and keep Data Custodian advised of the status of such Data Security Incident and all matters related thereto. ESE further agrees to provide, at ESE's sole cost: (1) reasonable assistance and cooperation requested by Data Custodian and/or Data Custodian's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Data Custodian may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Utility deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, ESE shall develop and execute a plan, subject to Data Custodian's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. ESE agrees that Data Custodian may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Data Custodian pursuant to this paragraph will be temporary, lasting until the Data Security Incident has ended, the ESE security has been restored to the reasonable satisfaction of the Data Custodian so that Data Custodian IT systems and Confidential Customer Utility Information are safe and the ESE is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be made, or subject to dispute resolution and appeal as applicable, pursuant to the UBP or UBP DERS processes as approved by the Commission.</p>	SUNY-OGS			State University of New York/Office of General Services
Additional Obligations.	<p>a. ESE shall not create or maintain data which are derivative of Confidential Customer Utility Information except for the purpose of performing its obligations under this Agreement, as authorized by the UBP or UBP DERS, or as expressly authorized by the customer, unless that use violates Federal, State, and local laws, tariffs, rules, and regulations. For purposes of this Agreement, the following shall not be considered Confidential Customer Utility Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by ESE that reference estimated or actual measured customer usage information, which ESE needs to maintain for any tax, financial reporting or other legitimate business purposes consistent with the UBP or UBP DERS; and (ii) Data collected by ESE from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with ESE or its partners.</p>	SUNY-OGS			State University of New York/Office of General Services
Additional Obligations.	<p>b. ESE shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Utility in violation of any privacy or security law known by ESE to be applicable to Data Custodian.</p>	SUNY-OGS			State University of New York/Office of General Services

Additional Obligations.	c. ESE shall have in place appropriate and reasonable processes and systems, including an Information Security Program, to protect the security of Confidential Customer Utility Information and prevent a Data Security Incident, including, without limitation, a breach resulting from or arising out of ESE's internal use, processing, or other transmission of Confidential Customer Utility Information, whether between or among ESE's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of ESE, including without limitation Third-Party Representatives. The Data Custodian's determination is subject to the dispute resolution process under the UBP or UBP DERS.	SUNY-OGS			State University of New York/Office of General Services
Additional Obligations.	d. ESE and Data Custodian shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications.	SUNY-OGS			State University of New York/Office of General Services
Additional Obligations.	e. ESE shall establish policies and procedures to provide reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Customer Utility Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Customer Utility Information.	SUNY-OGS			State University of New York/Office of General Services
Additional Obligations.	f. ESE shall establish policies and procedures to provide all reasonable and prompt assistance to Data Custodian in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Customer Utility Information, data theft, or other unauthorized release of Confidential Customer Utility Information, disclosure of Confidential Customer Utility Information, or misuse of Confidential Customer Utility Information to the extent such request, complaint or other communication relates to ESE's accessing or Processing of such Confidential Customer Utility Information.	SUNY-OGS			State University of New York/Office of General Services
Additional Obligations.	g. ESE will not process Confidential Customer Utility Information outside of the United States or Canada absent a written agreement with Data Custodian. For the avoidance of doubt, Confidential Customer Utility Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.	SUNY-OGS			State University of New York/Office of General Services
Indemnification	To the fullest extent permitted by law, including without limitation the New York State Court of Claims Act, ESE shall indemnify and hold Data Custodian, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by ESE or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Utility.	SUNY-OGS			State University of New York/Office of General Services
Notices	With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows: If to ESE, to: ESE Name: Name of Contact: Address: Phone: Email: If to Data Custodian, to: Data Custodian Name: Name of Contact: Address: Phone: Email: A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.	SUNY-OGS			State University of New York/Office of General Services

Binding Effect	No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. The Data Custodian shall execute and deliver a signed original copy of this Agreement to the ESE within five (5) business days of receiving an executed Agreement from the ESE. Prior to such execution and delivery by the Parties, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.	SUNY-OGS			State University of New York/Office of General Services
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