

ENERGY STORAGE SERVICES AGREEMENT

This Energy Storage Services Agreement (“Agreement”) is made and entered into as of July_____, 2020 (“Effective Date”), by and between Georgia BESS, LLC, a Vermont Limited Liability Company (“Seller”), and Green Mountain Power Corporation, a Vermont corporation (“Buyer”). Each of Seller and Buyer may be referred to herein as a “Party” and collectively, as the “Parties.”

RECITALS

WHEREAS, Seller controls by ownership, lease, an option to purchase, or an option to lease a parcel of land known at 980 Ballard Road, Georgia, VT 05454 (as more particularly described on **Exhibit A**, the “Premises”);

WHEREAS, Seller shall design, install, own, operate and maintain a battery energy storage asset (as further described in this Agreement, the “Project”), on the Premises;

WHEREAS, Seller desires to sell to Buyer a “Peak Reduction Services” (as defined herein) produced by the Project, and Buyer desires to purchase the Peak Reduction Services generated by the Project; and

WHEREAS, Seller and Buyer agree that they will take all commercially reasonable steps pursuant to the terms of this Agreement to enable Buyer to obtain the Peak Reduction Services produced by the Project during the Term of this Agreement.

WHEREAS, Seller will consume energy (kWh) required for operation of the Project from the Buyer (as defined herein), and Seller will provide energy (kWh) to the Buyer during operation of the Project (as defined herein); and

WHEREAS, Seller will participate in the ISO-NE regulation market (as defined herein).

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, the Parties hereby covenant and agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Definitions.

“Agreement” means this Energy Storage Services Agreement, as the same may be modified or amended from time to time in accordance with the provisions hereof.

“Battery Discharge Request” means Buyer’s request to Seller for delivery of the Peak Reduction Services, including the start hour, stop hour and total volume of Energy requested.

“Battery Nominal Energy Rating” means the kWh-AC energy available at the Delivery Point, net any auxiliary loads.

“Battery Nominal Power Rating” means the kW-AC power capability at the Delivery Point, net any auxiliary loads.

“Commercial Operation Date” or “COD” has the meaning set forth in Section 4.2.4.

“Day Ahead Notice” means issuing a Battery Discharge Request to Seller on the day preceding the scheduled delivery of the Peak Reduction Services as defined in Section 7.1.

“Defaulting Party” means the Party responsible for an uncured Event of Default.

“Delivery Point” means the Buyer side of the distribution transformer at the physical location where the Project connects to the Site Electrical System.

“Designated Operator” means a third party operator and registered ISO-NE participant to operate the Project and provide reporting.

“Discharge Hours” means Buyer’s right to schedule the discharge of the energy storage system in accordance with the terms and condition herein for the agreed upon hours per year during the Term as defined in Section 7.1.9.

“Dispute” means a dispute as defined in Section 13.1 of this Agreement.

“Due Date” means the due date for payment of an invoice for Products as set forth in Section 7.8.1.

“DPS” means the Vermont Department of Public Service.

“Effective Date” has the meaning set forth in the preamble hereto.

“Energy” means the electric energy discharged by the Project and delivered to Buyer at the Delivery Point, net of Station Use.

“Energy Costs” means any and all costs associated with making the Project charged and capable of delivering the Peak Reduction Services.

“Event of Default” means the events set forth in Section 11.1.

“ESSA” means this Energy Storage Service Agreement

“Forecasted Commercial Operation Date” means the date by which Buyer will be able to request Peak Reduction Services as set forth in Section 4.2.3.

“Force Majeure” and “Force Majeure Event” shall have the meanings set forth in Section 10.1.

“Good Engineering and Operating Practices” means any of the practices, methods and activities adopted as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity as the Project, including any of the practices, methods or activities that, in the exercise of skill, diligence, prudence,

foresight and reasonable judgment by a prudent generator of electricity or from a facility of similar type, size and capacity as the Project that are generally accepted in the region where the Project is located in light of the facts known at the time the applicable decision was made, reasonably could have been expected to accomplish the desired result consistent with good business practices, reliability, safety, environmental protection, economy, expedition and laws and regulations.

"Governmental Authority" means any national, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, court, body, agency, department, bureau, or entity with authority to bind a Party at law, provided, however, that "Governmental Authority" shall not in any event include any Party.

"Governmental Charges" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Metered Output or Other Project Attributes contemplated by this Agreement, either directly or indirectly.

"Intended Benefit" shall have the meaning set forth in Section 6.1.1.

"Interconnection Agreement" means the Interconnection Agreement between Seller and GMP executed pursuant to the Interconnection Procedures.

"Interconnection Procedures" means the 5.500 Interconnection Procedures for Proposed Electric Generation (Energy Storage) Resources from the Vermont Public Utilities Commission.

"ISO" or "ISO-NE" shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

"Late Fee" means the late fee that Seller may impose on GMP for payments not made by the Due Date pursuant to Section 7.8.2.

"Lender" shall mean any Person (including lenders or third parties (including tax equity or similar investors)) providing or who may provide financing or other credit support for the development, installation, construction, ownership, operation and maintenance of the Project, or any refinancing of that financing, and shall include any assignee or transferee of such a party and any trustee, collateral agent or similar entity acting on behalf of such a party.

"Meter" means standard instrument(s) and equipment installed at the Delivery Point by Seller pursuant to the Interconnection Agreement as part of the Project to be used to measure and record the Energy delivered to GMP at the Delivery Point.

"Non-Defaulting Party" means the Party that is not responsible for creating or committing an Event of Default.

“Non-Delivery Period” means the period during which an unexcused non-delivery of Energy by Seller occurs as set forth in Section 11.1.1.

“Other Products” means any mutually agreed upon benefit other than the Peak Reduction Services, the Project’s provision of regulation services, or benefits from Tax Credits. The Parties intend to share such benefits on a 50/50 basis between Buyer and Seller. For the avoidance of doubt, energy consumed by the Project shall be billed to Seller pursuant to Section 7.4.1 and the value of energy provided by the Project during discharging will be credited by the Buyer to the Seller pursuant to Section 7.5.1 and there shall be no cost or benefit sharing with respect to such payments or credits.

“Peak Reduction Services” means the product delivered to Buyer under this Agreement, which is the right to schedule the discharge of the energy storage system with sufficient notice for a number of Discharge Hours within the limits of the equipment as described herein. Scheduling will be in accordance with Section 7.6.2 and Section 7.6.3.

“Person” means any natural person, partnership, trust, estate, association, corporation, limited liability company, governmental authority or agency or any other individual or entity.

“Premises” means the property where the Project is situated, as described in **Exhibit A**.

“Project” means all equipment and materials, including but not limited to batteries, DC/AC inverters, wiring, meters, tools, software, and any other property now or hereafter installed, owned, operated, or controlled by Seller for the purpose of, or incidental or useful to, maintaining and modifying the use of the energy storage system and providing Energy to Buyer at the Delivery Point. For the avoidance of doubt, the Project specifically excludes any part of the Site Electrical System owned or controlled by Buyer.

“PUC” means the Vermont Public Utilities Commission.

“Site” means the area on the Premises described in **Exhibit A** on which the Seller will install the Project.

“Site Electrical System” means Buyer’s existing distribution, electrical systems that are owned or leased, operated, maintained and controlled by Buyer, and which systems are relevant to interconnection.

“Service Price” means the price specified in Section 7.1.4 that Buyer shall pay Seller for the delivery of the Peak Reduction Services.

“Station Use” means the electricity that is: (i) used within the Project to power the lights, motors, control systems and other electrical loads; and (ii) consumed within the Project’s current inverters, transformers and other equipment.

“Tax Credits” means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of Energy from the Project.

"Taxes" means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, payroll, unemployment, and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto.

"Term" has the meaning set forth in Section 2.1

"Vermont nodal LMP" means the real time hourly price as reported by ISO New England at the Vermont load zone (ID# 4003).

1.2 Interpretation.

In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

**ARTICLE II
TERM**

2.1 Term. The term of this Agreement (the "Term") commences on the Effective Date and ends at midnight on the day following the completion of twenty (20) years from the Commercial Operation Date unless terminated earlier in accordance with provisions of this Agreement.

**ARTICLE III
PRE-CONSTRUCTION REQUIREMENTS**

3.1 Conditions. Subject to Seller's termination rights in Section 4.1.3, each of the following conditions must be satisfied by Seller before beginning construction of the Project.

3.1.1 Receipt of Required Third Party Authorizations. At no expense to Buyer, Seller shall obtain any and all leases, licenses, consents, acknowledgments, approvals and other rights and authorizations from Governmental Authorities and third parties, including entities or persons holding any mortgage or other lien or lease burdening the Premises, necessary for Seller to install and test the Project, to produce and deliver the Services to

Buyer to the Delivery Point, and to own, operate and maintain the Project under this Agreement.

- 3.1.2 Receipt of all Necessary Construction Permits and Other Permits. At no expense to Buyer, Seller shall obtain all necessary construction permits and other permits, licenses and approvals from the relevant authorities in connection with Seller's construction of the Project. These permits and approvals shall include a Certificate of Public Good (CPG) and Interconnection Agreement. Buyer shall cooperate in good faith with Seller as necessary in the permitting process, however, Buyer shall not be required to take a position or action that it reasonably determines would be detrimental or contrary to Buyer's interests.

ARTICLE IV SYSTEM INSTALLATION AND COMMERCIAL OPERATION

- 4.1 Project Description. The Project shall have a Battery Nominal Power Rating of 4,999 kW AC and a Battery Nominal Energy Rating of 9,998 kWh AC at the beginning-of-life. The energy rating is expected to be at or above the beginning-of-life value for each annual performance test described in Section 7.1.6. The equipment shall consist of multiple containers of lithium ion batteries that will interface with multiple pad mounted inverters and transformers. A more detailed description of the equipment and electrical interconnection with the utility distribution system may be found in the Utility Interconnection Agreement.
- 4.1.1 Buyer's Option to Increase Battery Nominal Energy Rating. Both the utility interconnection limits and the physical space at the site allow for an expansion of the Peak Reduction Services provided to the Buyer from the Seller at this location. Buyer shall have the option to increase the Battery Nominal Energy Rating (kWh AC) of the Project so that it is capable of providing Peak Reduction Services for four continuous discharge hours at the Battery Nominal Power Rating. If Buyer wishes to exercise such option, Buyer will provide written notice to Seller that the Project is to be upgraded. Upon receipt of such notice, Seller will use commercially reasonable efforts to complete upgrades to the Project within 12 months of notice being received; provided, however, that Buyer will collaborate with Seller, at Buyer's cost, to produce any interconnection studies or modifications to the Interconnection Agreement to accommodate the Project upgrades. Buyer shall be solely responsible for all costs on Buyer's side of the Delivery Point, if any, including those relating to interconnection and system work, modifications and upgrades. Upon completion of the upgrades, Buyer will begin making increased payments based on the values shown in **Exhibit D**. The Project Upgrade Pricing table in **(Exhibit D)** indicates the prices for such an upgrade based on the year in which the upgraded Project would be capable of providing four continuous discharge hours. The Annual Peak Reduction Service Fees in the first year the Project is so upgraded are set forth in **Exhibits C and D**. In the event Buyer wishes to increase the energy rating so that the Project can provide Peak Reduction Services for longer than four continuous hours,

Seller will make commercially reasonable efforts to collaborate and cooperate with Buyer to so upgrade the Project.

4.2 System Installation.

4.2.1 Specifications and Standards. Seller or its designees shall design and perform the installation of the Project in a good and competent manner and in compliance with all applicable laws, regulations and with good engineering and operating practices. Seller and Buyer shall test the Project on the Site in accordance with the technical specifications set forth in the Interconnection Procedures and the Interconnection Agreement.

4.2.2 Installation of Meter. Seller shall be responsible for the installation of a Meter(s), at Seller's expense, to measure the amount of Energy delivered by the Project to Buyer at the Delivery Point. Buyer will own the Meter(s), however, Seller will be responsible for operation, maintenance, and replacement, if necessary, of the Meter during the Term. The Meter(s) shall meet the requirements of the Interconnection Agreement.

4.2.3 Project Schedule; Termination Rights. The initial Forecasted Commercial Operation Date is June 30, 2022. Seller may extend the Forecasted Commercial Operation Date to December 31, 2022, by providing written notice to Buyer before the designated Forecasted Commercial Operation Date. Buyer may terminate this Agreement for failure to reach COD, as defined in Section 4.2.4, on or prior to the Forecasted Commercial Operation Date (if applicable, as extended), which is Buyer's sole and exclusive remedy for failure of the Project to reach COD. Seller shall have the right to terminate this Agreement at any time before achieving COD without any further obligation to Buyer. Notwithstanding the foregoing, Buyer may not terminate this Agreement if the failure to reach COD on or prior to the Forecasted Commercial Operation Date (if applicable, as extended) is directly related to any Buyer failure, action or inaction with respect to the Project (i) to provide temporary power services within sixty (60) days prior to COD to support testing, and/or (ii) to timely, within fourteen (14) days prior to COD, implement and complete the required system upgrades, and/or (iii) to seek and obtain the necessary and required approvals, consents or authorizations.

4.2.4 Commercial Operation Date. Provided that no Event of Default shall have occurred and remained uncured, "Commercial Operation Date" or "COD" means the date on which the Seller notifies Buyer that all of the requirements set forth in Sections 4.2.1 and 4.2.2 have been satisfied.

4.2.5 Project Ownership. Seller is the legal and beneficial owner of the Project and Tax Credits, if any, related to the Project. The Project is the personal property of Seller.

**ARTICLE V
OPERATION AND MAINTENANCE**

- 5.1 Seller Responsibilities Regarding Operations and Maintenance. Seller shall keep the Project in good working condition and shall operate, maintain, and repair the Project in accordance with all applicable laws, regulations and ordinances, and in conformance with Good Engineering and Operating Practices.
- 5.2 Permits. Seller shall maintain in full force and effect all permits, licenses and approvals necessary for it to perform its obligations under this Agreement, including all permits, licenses and approvals necessary for it to operate and maintain the Project.
- 5.3 Forecasts. Commencing at least thirty (30) days prior to the Commercial Operation Date and continuing throughout the Term, Seller shall update and deliver to Buyer on a quarterly basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecast of Energy discharge capability (power in kW and energy in kWh) of the Project, which forecasts shall be prepared in good faith and in accordance with Good Engineering and Operating Practices based on historical performance, maintenance schedules, Seller's discharge capability projections and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and an explanation provided. The forecasts shall not be binding and shall create no obligation on the Seller, other than to prepare the forecasts in accordance with the standard set forth in this section.

ARTICLE VI DELIVERY of ENERGY STORAGE SERVICES

- 6.1 Obligation to Sell and the Purchase Peak Reduction Services.
- 6.1.1 Output. Beginning on the Commercial Operation Date through the end of the Term and subject to Section 6.1.2, Seller shall sell and deliver, and Buyer shall purchase and receive, at the Delivery Point the Peak Reduction Services, produced by the Project in accordance with the terms and conditions of this Agreement. The aforementioned obligations of Seller to sell and deliver these Peak Reduction Services and for Buyer to purchase and receive the same shall be subject to the lawful operation of the Project.

Seller acknowledges that the intended benefit of the Project to Buyer is to provide and/or deliver Peak Reduction Services and Capacity Peak Reduction Services based on Buyer's system load (the "Intended Benefit"). Accordingly, the Project shall not register as an asset with ISO-NE in a way that will interfere with the Intended Benefit to Buyer. However, the Project may register with ISO-NE as an alternative technology regulation resource (ATRR) for purposes of participating in the regulation market. Seller will have rights to any and all revenue or value derived from the Project participating in the regulation market. The Project may in the future register as any type of asset for Other Products that do not conflict with the Intended Benefit to Buyer. Any additional registrations in ISO markets will require approval by Buyer. Buyer shall only limit registration in the event that such registration would put pose a reasonable and material risk to Buyer's Intended Benefit. Buyer shall provide approvals within 10 business days.

If sales and delivery of any previously approved Other Products are reasonably demonstrated to conflict with the Project's Intended Benefit to Buyer, Seller shall cease such activities upon notice of conflict from Buyer. Failure to cease such activities will constitute a Seller Default.

- 6.1.2 Exclusive Delivery. Seller shall deliver the Peak Reduction Services produced by the Project exclusively to Buyer, and Seller shall not sell, divert, grant, transfer or assign such Peak Reduction Services to any person or entity other than Buyer during the Term; provided, however, that Seller may sell, divert, grant, transfer or assign such Peak Reduction Services or any certificate or other attribute that constitutes part of the Peak Reduction Services to any Person during any period of time in which Buyer refuses to accept all or part of the Peak Reduction Services to be purchased by Buyer hereunder and such refusal is not excused under the terms of this Agreement. Subject to the foregoing, Buyer shall have the exclusive right to use, resell or convey the Peak Reduction Services in its sole discretion.
- 6.1.3 Automated Battery Discharge Request. Buyer and Seller agree to that in the event Buyer implements an automated system for communicating Battery Discharge Requests the parties will use reasonable effort to include the Project in such a system without negatively impacting either parties agreed use the system. The cost of implementing such a system will be solely the responsibility of the Buyer.
- 6.1.4 Curtailment. Buyer's curtailment or interruption of Energy deliveries in accordance with the terms of the Interconnection Agreement does not constitute a refusal to accept any Peak Reduction Services.

ARTICLE VII PURCHASE AND SALE OF ENERGY STORAGE SERVICES

- 7.1 Peak Reduction Services. This Agreement will include the following Peak Reduction Services.
 - 7.1.1 Distribution Peak Reduction Service. Buyer shall predict the monthly peaks in the Buyers Distribution system and Seller shall operate the project in accordance with Buyer's Battery Discharge Request(s).
 - 7.1.2 Capacity Peak Reduction Service. Buyer shall predict the annual capacity peaks in the ISO- New England and Seller shall operate the project in accordance with Buyer's Battery Discharge Request(s).
 - 7.1.3 The Peak Reduction Services provided shall be limited to 4,999 kW AC power output for two (2) hours per day unless Buyer exercises the option to increase the Project's energy rating to four (4) hours per day pursuant to Section 4.1.1, or as otherwise modified by mutual agreement. Buyer may also request a longer discharge at a reduced battery nominal power, provided that the total energy requested does not exceed the Battery Nominal Energy Rating pursuant to Section 7.6.4, and all such hours of discharge will count against the cap in Section 7.1.8.

- 7.1.4 The initial Service Price for the Peak Reduction Services shall be \$5.76 per kW-month. This amounts to \$345,531 of Peak Reduction Service fees in year 1 (\$5.76/kW-month X 12 months X 4,999 kWh of 2-hr AC discharge capacity).
- 7.1.5 The Peak Reduction Service rate shall escalate at 2.0% per year.
- 7.1.6 The Peak Reduction Service fees will be based the system net AC discharge capacity, measured annually in May of each year and performed using a measurement method mutually agreed to by the Seller and the Buyer. See expected performance table (**Exhibit C**) for rates and expected fees for each year of the agreement.
- 7.1.7 If the Battery Nominal Energy Rating as measured pursuant to section 7.1.6 is more than 10% lower than the expected value found in **Exhibit C**, then the Buyer may terminate this Agreement in accordance with and subject to Section 11.1.1(c), including the notice and cure provisions of that Section.
- 7.1.8 Peak Reduction Services requests shall be limited to 200 hours of discharge per year, or 400 hours per year in the event Buyer exercises the option to increase the Project's energy rating to four (4) continuous hours per day, per Section 4.1.1.
- 7.1.9 Additional discharge hours beyond the number of hours in Section 7.1.8 may be purchased for \$1,200 per hour, not to exceed 530 hours annually, or 1060 hours per year in the event Buyer exercises the option to increase the Project's energy rating to four (4) continuous hours per day per Section 4.1.
- 7.1.10 The Buyer shall provide "Day Ahead Notice" to the Seller for Battery Discharge Requests for Peak Reduction Services of no later than 9:00 AM Eastern Prevailing Time, or one hour prior to day-ahead deadline with ISO-NE, whichever is earlier. In addition, Buyer and Seller shall cooperate to revise the Day Ahead Operating Plan in real time as data becomes available with the goal of hitting peaks and minimizing Buyer operating costs.
- 7.1.11 Buyer will advise operator whether the requested battery discharge is for a Capacity Peak Reduction Service as practicable.
- 7.1.12 Charging times and power levels will be chosen by Seller and will not exceed 4,999 kW AC. Seller will use commercially reasonable efforts to avoid charging the system during peak demand periods prior to or following a Battery Discharge Request.
- 7.1.13 Peak Reduction Services requests shall be issued for a minimum of one hour of discharge per month at the system's full power rating.
- 7.1.13 Any lost peak reduction benefits due to the Project's failure to operate when called upon by the Buyer shall be credited as a Performance Adjustment against the Peak Reduction Service fees, provided that the Buyer has provided a discharge request pursuant to Section 7.6.2. The intent of the Performance Adjustment is that the Seller takes responsibility for operational performance of the equipment. Performance Adjustments shall be based on the actual lost financial performance benefit to Buyer caused by Seller's missed performance. The Performance Adjustment will be limited by and shall never be greater than the value of Peak Reduction Service fees in any given year.

7.2 Performance Adjustments. Performance Adjustments may apply only if the Project provides less Power than was requested during actual coincident peak hours. Performance Adjustments apply when the relevant Transmission (RNS) or Capacity (FCM) Peaks calculation results in a negative value.

7.2.1 Distribution Peak Performance Adjustment Calculation.

*(Average kW delivered – kW requested) * prevailing ESSA rate, \$/kW-month [*60%]*

Example: If in May of the first year of operations Buyer requests 3,000 kW of Peak Reduction Services and Seller delivers an average of 2,000 kW and that event is the actual monthly RNS peak hour then the following Performance Adjustments would apply:

$(2,000 \text{ kW} - 3,000 \text{ kW}) * \$5.76 / \text{kW-month} [* .6] = -\$3,456$

That Performance Adjustment amount would then appear as a credit on the next ESSA monthly invoice.

7.2.2 Capacity (FCM) Peaks Performance Adjustment Calculation.

*(Average kW delivered – kW requested) * prevailing ESSA rate, \$/kW-month * 40% * 12 months 1/12th of this Performance Adjustment will be applied each of 12 months starting in January of the following year.*

Example: If in the summer of the first year of operations Buyer requests 3,000 kW of Peak Reduction Services and Seller delivers an average of 2,000 kW and that event is the actual annual capacity peak hour then the following Performance Adjustments will apply:

$(2,000 \text{ kW} - 3,000 \text{ kW}) * \$5.76 / \text{kW-month} * 0.4 = -\$2,304/\text{month}$ for 12 months or a total Performance Adjustment of $-\$27,648$

That Performance Adjustment amount would appear as a credit each month on the January through December ESSA monthly invoices of the following year.

7.2.3 Buyer shall be responsible for calculating any Performance Adjustments and providing the information to Seller in sufficient detail for Seller to verify. Seller shall have up to ten (10) business days to review and verify the calculations and the Performance Adjustment, if any, shall be included on the current invoice or next invoice if no invoice is currently due. In no event shall the Performance Adjustments be valued higher than the Buyer's actual current value for the Peak Reduction Services.

7.3 Regulation Market Participation.

7.3.1 The Seller may register the Project as an Alternative Technology Regulation Resource (ATRR) and may operate the Project in the regulation market so long as such operation does not conflict with Peak Reduction Service requests. Seller shall not register the project with ISO-NE as a wholesale generation asset or as a wholesale dispatch asset without explicit consent from Buyer.

- 7.3.2 The Seller shall retain all revenues from operation of the Project as an ATRR.
- 7.3.3 The Project may operate in the regulation market with a rated power of 4,999 kW AC.
- 7.4 Energy (kWh) Consumed by the Project.
- 7.4.1 Energy (kWh) consumed by the Project will be billed to the Seller using GMP Tariff 63/65 with a Curtailable Load Rider. Such \$/kWh charges will include all applicable delivery and supply charges.
- 7.4.2 Any Demand Charges, including Peak kW and Off peak kW charges, that are incurred, as a result of Buyer request (whether these charges were incurred for charging or discharging the Project) will be the responsibility of the Buyer. Consistent with the ISO New England Tariff, Seller will not be responsible for Demand Charges while providing ATRR service to ISO-NE For any Demand Charges that are the result of charging or discharging, Seller will initially pay for all such \$/kW charges pursuant to the GMP tariff 63/65, or in the event the Parties move the Project to a new utility tariff pursuant to Section 7.4.3, the applicable utility tariff.
- 7.4.3 In the event that a new utility tariff is developed, which is more appropriate for this Project, the Parties may mutually agree to move the Project onto that tariff.
- 7.5 Energy (kWh) Provided by the Project.
- 7.5.1 Energy (kWh) provided by the Project during discharging will be credited by the Buyer to the Seller based on GMP Tariff 63/65 Peak and Off-peak rates (\$/kWh) plus the average real-time hourly Vermont nodal LMP (capped at \$500 per MWH).
- 7.5.2 Hourly data recorded by the project will be used to determine the Vermont nodal LMP value of the energy for each hour where net energy is provided to the Buyer by the Project.
- 7.5.3 Energy (kWh) will be measured at the Point of Interconnection (POI) as defined in the Project interconnection agreement.
- 7.6 Battery Operation.
- 7.6.1 Designated Operator. The Seller may engage a Designated Operator. Seller will inform Buyer in writing of any Designated Operator or change in Designated Operator. The Designated Operator will have the right to perform all operations as described herein as the responsibility of the Seller. For the avoidance of doubt, Seller retains all obligations at all times under this Agreement whether or not a Designated Operator is acting as agent for Seller.
- 7.6.2 Discharge Requests. Buyer shall issue a Battery Discharge Request to Seller with at least Day Ahead Notice of when Buyer desires Energy to be delivered to the Delivery Point. The Battery Discharge Request will include the following information:
- Type of event (i.e. annual peak, monthly peak);
 - Date of discharge;

- Beginning hour of discharge;
- Ending hour of discharge;
- MW output; and
- Hours of duration

7.6.3 Modifications to Discharge Requests during the operating day. If the Buyer requests a change to the Battery Discharge Request after the Day Ahead Notice time has passed, then the Seller shall make a commercially reasonable effort to meet that request. In exercising such commercially reasonable efforts to meet Buyer's modification of a Battery Discharge Request, Seller shall be permitted to consider factors such as impacts of meeting the request on the Project's accuracy score, lost revenue, penalties, costs, ability to participate in regulation and other markets in the future and other commercial factors relevant to the Project. As a general principle, if the changes do not affect the Seller's ability to participate in the regulation or other markets and there is adequate time to update the battery operating schedule, then the requested change should not impact the standard terms as described in this Section 7. If the changes do affect the Seller's ability to participate in the regulation market and, notwithstanding such affect, Seller meets Buyer's requested modification of a Battery Discharge Request, then those hours and minutes shall be debited against the Buyer's annual allotment of Peak Services Reduction discharge hours (in addition to the hours of the actual Battery Discharge Request). Performance Adjustments following a change request will not apply.

7.6.4 Any single Battery Discharge Request shall not exceed the maximum amount of Energy resulting from the Battery Nominal Energy Rating.

7.6.5 Seller shall confirm receipt of the Battery Discharge Request that are provided pursuant to Section 7.6.2, or any modifications that Seller accepts pursuant to Section 7.6.3, and shall make the necessary arrangements to prepare the Project to fulfill the Battery Discharge Request with accuracy and precision.

When not providing Peak Reduction Services the Seller shall employ intelligent operating control to maximize net benefit to Buyer and the Seller while operating within the battery capacity retention limitations. The Seller shall generally collaborate with Buyer on this strategy and exercise reasonable efforts to remain current with market rules and changes in an effort to continuously strive to maximize the total benefit from the system. Generally, the strategy will involve choosing optimum times to recharge the battery after Peak Reduction Service discharge and to operate the regulation market at all times in which it is not more economical to charge or discharge the battery when the real time price is very low or very high.

7.7 Taxes.

- 7.7.1 Allocation of Taxes and Governmental Charges. Seller shall pay or cause to be paid all Taxes and Governmental Charges (i) on or with respect to the Project, and on or (ii) with respect to the sale or making available to Buyer the Peak Reduction Service Product to the Delivery Point. Buyer shall pay or cause to be paid all Taxes and Governmental Charges (other than any Taxes or Governmental Charges for which Seller is liable under this Section 7.2) on or with respect to the taking and purchase by Buyer of the Peak Reduction Service Product that are imposed at and from the taking of the Peak Reduction Service Product by Buyer at the Delivery Point. If a Party is required to remit or pay Taxes or Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes or Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with their intent to minimize Taxes and Governmental Charges. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Tax or Governmental Charge for which it is exempt under Applicable Law. In the event any sale of the Product hereunder is exempt from or not subject to any particular Tax or Governmental Charge, the affected Party shall provide the other Party with all necessary documentation within thirty (30) Days after the Effective Date to evidence such exemption or exclusion. If such Party does not provide such documentation, then such Party shall indemnify, defend, and hold the other Party harmless from any liability with respect to Taxes to which Buyer claims it is exempt.
- 7.7.2 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts.
- 7.8 Invoice and Payment. Following the end of each month after the initial Commercial Operation Date, Seller shall prepare and provide Buyer with an invoice within twenty (20) days for the Peak Reduction Services. Each invoice shall set forth in reasonable detail the calculation of all services delivered and amounts owed. A description of the invoice information to be provided is shown in **Exhibit B**.
- 7.8.1 Payments. Subject to the provisions of Section 7.1 of this Agreement, Buyer shall pay the full amount of each invoice on or before thirty (30) days following receipt of an invoice ("Due Date").
- 7.8.2 Late Payment Fees. If any part of a monthly payment is not made by Buyer within five (5) business days following the Due Date, Buyer agrees to pay Seller a late fee that shall accrue on the basis of one percent (1%) per thirty (30) day period (or such lower percentage as and if required by Applicable Law) on the amount of such late payment ("Late Fee").
- 7.8.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, within

twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the late payment rate set forth in Section 7.8.2 from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 7.8.3 within the referenced twelve (12) month period. Inadvertent overpayments shall not be subject to the twelve (12) month period for presentment, and shall be reimbursed upon notification of the same, or deducted by the Party receiving such overpayment from subsequent payments, with interest at the rate set forth in Section 7.8.2 and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party.

ARTICLE VIII INTENTIONALLY LEFT BLANK

8.1 Intentionally Left Blank.

ARTICLE IX REPRESENTATIONS AND WARRANTIES

- 9.1 Buyer Representations, Warranties And Covenants. Buyer makes the following representations and warranties to Seller as of the Effective Date.
- 9.1.1 Buyer is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder.
- 9.1.2 Buyer has all the rights required to enter into this Agreement and perform its obligations hereunder, and has obtained all necessary consents.
- 9.1.3 This Agreement is enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by law or principles of equity, and does not conflict with or violate the terms of any other agreement to which Buyer is a party; provided that the failure of the Vermont Public Service Board to approve pass through of the cost of this Agreement to ratepayers shall not invalidate this Agreement or its enforceability.
- 9.1.4 There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Buyer, or, to Buyer's knowledge, threatened against it.

- 9.1.5 The information provided to Seller by Buyer pursuant to this Agreement is, to Buyer's knowledge, true in all material respects when so provided.
- 9.1.6 There are no actions, suits or other proceedings, at law or in equity, by or before any governmental entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer which relate in any manner to this Agreement or the transactions contemplated hereby between the parties, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Buyer's ability to perform its obligations under this Agreement.
- 9.2 Seller Representations, Warranties And Covenants. Seller makes the following representations and warranties to Buyer as of the Effective Date.
- 9.2.1 Seller is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder.
- 9.2.2 Seller has all the rights required to enter into this Agreement.
- 9.2.3 This Agreement is enforceable against Seller in accordance with its terms as such enforceability may be limited by law or principles of equity, and does not conflict with or violate the terms of any other agreement to which Seller is a party.
- 9.2.4 The information provided to Buyer by Seller pursuant to this Agreement is, to the Seller's knowledge true in all material respects.
- 9.2.5 There are no actions, suits or other proceedings, at law or in equity, by or before any governmental entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Seller or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or the transactions contemplated hereby between the Parties, or which Seller reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Seller's ability to perform its obligations under this Agreement.
- 9.2.6 There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.
- 9.2.7 On the COD, Seller covenants that it will be in material compliance with applicable laws for the construction and operation of the Project.

ARTICLE X FORCE MAJEURE

10.1 Definition of Force Majeure, Force Majeure Events.

"Force Majeure" or "Force Majeure Event" means any cause or event beyond the reasonable control of the affected Party, and not due to the fault or negligence of the affected Party, and which could not have been avoided or overcome by due diligence

and the use of reasonable efforts, including flood, tornado, hurricane, lightning, earthquake, fire, explosion, acts of the public enemy or terrorism, sabotage, civil disturbance, revolution, labor disturbances, strikes and other labor disputes, impact of war or mobilization, national emergency and order by any governmental authority; provided that Buyer shall not constitute a governmental authority for purposes of this Agreement. Force Majeure Event shall not include any of the following, all of which are solely the responsibility of the affected Party: (i) Buyer's inability economically to use or resell the Peak Reduction Service Product, (ii) Seller's ability to sell the Peak Reduction Service Product at a price greater than the Service Price, (iii) any other economic hardship or changes in market conditions, (iv) late delivery of machinery, equipment, spare parts and consumables for the Project, except to the extent resulting from a cause or event described in the first sentence of this definition, (v) a delay in performance or faulty performance by any of Seller's contractors or suppliers, except to the extent resulting from a cause or event described in the first sentence of this definition or (vi) failure or breakdown of equipment or facilities comprising the Project, except to the extent resulting from a cause or event described in the first sentences of this definition.

10.2 No Default.

Neither Seller nor Buyer shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. Notwithstanding any provision herein to the contrary, Buyer shall not be obligated to make payments under this Agreement for any monthly period during which the Seller is unable to deliver the Peak Reduction Services to Buyer by reason of a Force Majeure Event impacting the Project's system. For any period, during which the Seller is unable to deliver the Peak Reduction Services to Buyer by reason of a Force Majeure Event impacting the Project's system, the applicable Buyer Performance Adjustments as defined in Section 7.2 will apply.

10.3 Notice and Cure.

If a Party is prevented or delayed in the performance of any obligation by a Force Majeure Event, then such Party shall provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof as soon as reasonably practicable after discovery of the occurrence of the claimed Force Majeure Event. Such notice shall be confirmed in writing as soon as reasonably possible. The suspension of or extension of time for performance shall be of no greater scope and of no longer duration than is required by the Force Majeure event and the Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable, but shall not be required to make any concession in any labor negotiation or dispute. The Term shall be extended for each day performance is suspended due to a Force Majeure event.

10.4 Termination for Force Majeure.

Notwithstanding the foregoing, if a Force Majeure prevents full or partial performance under this Agreement for a period of one hundred and eighty (180) days or more within

a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

ARTICLE XI
DEFAULT, CURE PERIOD, REMEDIES AND LIMITATIONS,
INDEMNITY, RELEASE AND DISCLAIMER

11.1 Default. It shall constitute an event of default (“Event of Default”) if:

11.1.1 Failure to Perform or to Meet a Material Obligation. Any of the following shall occur:

- (a) Seller fails to provide the Peak Reduction Services following the Commercial Operation Date for a period of at least one hundred and eighty (180) consecutive days during the Term (“Non-Delivery Period”); provided that the Non-Delivery Period shall not include any period during which the Project (i) is not operating due to a Force Majeure Event, or (ii) Buyer cannot accept delivery of Energy for any reason, or (iii) Buyer is in default of its obligations under this Agreement.
- (b) Either Party’s failure to pay an invoice following the Due Date for amounts due and owing, and such failure continues for a cure period of twenty (20) days after written notice of such nonpayment is provided to the party owing such payment; provided that this provision shall not include any amount that remains in dispute in accordance with the terms of this Agreement.
- (c) A Party’s failure to perform fully any other material obligation under this Agreement and either (i) such failure continues for a cure period of thirty (30) days after written notice of such nonperformance from the other Party; or (ii) if the nonperforming Party commences an action to cure such failure to perform within such thirty (30) day period, and thereafter proceeds with all due diligence to cure such failure, but such failure is still not cured within sixty (60) days after the expiration of the initial thirty (30) day period.

- 11.1.2 Material Misrepresentation. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured.
- 11.1.3 Bankruptcy. A Party (a) voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition that is not dismissed within ninety (90) days, (b) enters into an assignment of its assets for the benefit of its creditors or (c) otherwise is unable to pay its debts as they become due.
- 11.2 Remedies.
- 11.2.1 Remedies Available to Both Parties. Upon the occurrence and during the continuance of an Event of Default, subject to the cure rights and cure periods set forth herein, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due to the Defaulting Party under this Agreement, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Agreement or, to the extent not inconsistent with the terms of this Agreement, at law, including, without limitation, the termination rights set forth in this Agreement, in each case upon five (5) days prior written notice to the Defaulting Party following the Event of Default.
- 11.2.2 Seller's Termination Rights. Subject to the cure rights and cure periods set forth in Section 11, if an Event of Default occurs and Buyer is the Defaulting Party Seller shall provide written notice to Buyer that an Event of Default has occurred. Seller shall have the right to terminate this Agreement sixty (60) days after providing such written notice to Buyer. In the event that Seller exercises such right to terminate this Agreement due to a Buyer Event of Default, Seller shall provide a written termination notice to Buyer. Seller shall be entitled to calculate and receive as its sole remedy for such Event of Default a termination payment as follows: a payment by Buyer to Seller equal to the net present value of the remaining payments of Buyer owed to Seller under the Agreement, using a discount rate of 6.5%. Seller shall include such calculation and the amount of the termination payment in the written termination notice to Buyer, which shall include reasonable detail and appropriate supporting documentation regarding the calculation and the amount of the termination payment. Any Disputes regarding the termination payment shall be resolved in accordance with Section 13.1 below. Buyer shall make payment of undisputed amounts of the termination payment hereunder within five (5) days following the Buyer's receipt of Seller's written termination notice.
- 11.2.3 Buyer's Termination Rights. Subject to the cure rights and cure periods set forth in Section 11, if an Event of Default occurs and Seller is the Defaulting Party, Buyer shall provide written notice to Seller that an Event of Default has occurred. Buyer shall have the right to terminate this Agreement sixty (60) days after providing such written notice to Seller. In the event that Buyer exercises such right to terminate this Agreement due to a Seller Event of Default, Buyer shall provide a written termination notice to Seller. Buyer shall be entitled to calculate and receive as its sole remedy for such Event of

Default a termination payment as follows: a payment by Seller to Buyer equal to: a) the net present value, using a discount rate of 6.5%, of the sum of the values that would have been realized by Buyer customers through delivery of the Peak Reduction Services; less b) the net present value, using a discount rate of 6.5%, of the sum of the remaining payments that Buyer would have otherwise paid to Seller under the Agreement. Buyer shall include such calculation and the amount of the termination payment in the written termination notice to Seller, which shall include reasonable detail and appropriate supporting documentation regarding the calculation and the amount of the termination payment. Any Disputes regarding the termination payment shall be resolved in accordance with Section 13.1 below. Seller shall make payment of undisputed amounts of the termination payment hereunder within five (5) days following the Seller's receipt of Buyer's written termination notice.

11.2.4 Limitation of Liability. Neither Party shall be liable to the other Party for any special, indirect, consequential, punitive or exemplary damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty.

11.2.5 Set-off. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to withhold and set off any amounts owed by the Non-Defaulting Party to the Defaulting Party against any payments and any other amounts owed by the Defaulting Party to the Non-Defaulting Party, including any termination payment payable as a result of any early termination of this Agreement.

11.2.6 Exclusive Remedies. The remedies set forth in this Agreement shall be the sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

11.3 Mutual General Indemnification

To the maximum extent permitted by law, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its directors, officers, shareholders, partners, agents, employees, affiliates, and assigns from and against all loss, damage, expense and liability to third parties in connection with this Agreement (including court costs and reasonable attorney's fees) to the extent caused by, or arising out of, the negligent acts or omissions of the Indemnifying Party, it being understood that this provision is not intended to include loss, damage, expense or liability that would otherwise be precluded pursuant to Section 11.2.4.

ARTICLE XII ASSIGNMENT

12.1 Assignment by Buyer.

Buyer shall not assign this Agreement without the consent of Seller, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing,

Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with any merger or consolidation of Buyer with or into another Person or any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property or any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, Buyer, or (b) to any substitute purchaser of the Peak Reduction Service Product so long as in the case of either clause (a) or clause (b) of this Section 12.1, either (1) the proposed assignee's credit rating is at least either BBB- from S&P or Baa3 from Moody's or (2) the proposed assignee's credit rating is equal to or better than that of the Buyer at the time of the proposed assignment.

12.2 Assignment by Seller.

12.2.1 General. Seller may not assign its rights under this Agreement or delegate its obligations under this Agreement without Buyer's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Buyer, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Lender, (ii) directly or indirectly assign this Agreement to an affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the Project and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller, provided that if Seller assigns one hundred percent of its interest in this Agreement to another Person Buyer shall be deemed to release Seller from all of its obligations under this Agreement upon assumption of Seller's obligations by the assignee. Buyer's consent to any other assignment shall not be withheld if Buyer has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining energy storage systems comparable to the Project and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the Project and provide the services contemplated by this Agreement in the manner required by this Agreement.

12.2.2 Collateral Assignment by Seller. In the event that Seller transfers, pledges, encumbers or collaterally assigns this Agreement to Seller's Lender, Seller shall provide written notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Seller's Lender. In connection with any financing or refinancing of the Project, Buyer shall have the following obligations:

- (a) Buyer shall execute one or more estoppel certificates in respect of this Agreement in a form reasonably acceptable to Seller's Lender or investors (with such changes as may be reasonably necessary to make the certifications contained therein true in all respects);
- (b) Buyer shall cooperate with Seller in the negotiation and execution of any reasonable amendment or addition to this Agreement required by Seller's Lender that does not result in a material adverse change in Buyer's rights or obligations under this Agreement; and
- (c) Buyer shall execute a consent to collateral assignment of this Agreement, which consent to collateral assignment shall be in a form conventionally required for similar financings,

and shall include customary provisions reasonably requested by Seller's Lender. Such provisions may relate to payment of amounts due to bank accounts controlled by Seller's Lender, reasonable consent rights of Seller's Lender to any amendment of this Agreement, Buyer's obligation to provide notices of Events of Default to Seller's Lender, and Buyer's obligation to allow Seller's Lender the ability to cure Events of Default.

12.2.3 New Agreement and Lender Step-In Rights.

- (a) Seller's Lender shall have the right, but not the obligation, to pay all sums due under this Agreement, to perform any other obligation required of Seller, or cause to be cured any default of Seller under this Agreement. However, nothing in this Agreement shall be construed to require a Lender to make any such payments, perform such obligations or cure such defaults, unless that Lender has succeeded to Seller's interests under this Agreement.
- (b) A Lender shall give notice to Buyer of the exercise of any remedies under such Lender's security interest in the Project which may include:
 - (i) sale by judicial proceeding or under any right of sale in a financing agreement; or
 - (ii) any assignment from Seller to such Lender in lieu of sale.
- (c) Any such exercise of remedies shall not constitute a default under this Agreement.
- (d) Any notices required to be made under this Agreement by Buyer to Seller shall also be made to any Lender of whom Buyer has notice. No notice of an Event of Default by Buyer to Seller shall be effective unless Buyer simultaneously delivers such notice to any Lender of whom Buyer has notice.
- (e) Buyer will not exercise any right to terminate this Agreement unless it shall have given prior written notice of its intent to terminate this Agreement to any Lender of whom Buyer has notice, specifying the condition giving rise to such right.
- (f) A Lender shall have an additional 30 days beyond Seller's cure periods to effect a cure of an Event of Default. However, if the Seller default reasonably cannot be cured by a Lender within such period and that Lender begins and continuously pursues cure of such default, such period for cure will be extended for a reasonable period of time under the circumstances. The Parties' respective obligations will otherwise remain in effect during any cure period.

**ARTICLE XIII
MISCELLANEOUS**

- 13.1 Disputes. The Parties agree to attempt to resolve any dispute, controversy or claim (each, a “Dispute”) arising out of or relating to this Agreement or any breach or alleged breach hereof through an informal process that shall be assigned to a senior executive officer of each Party. In the event such a process fails, each Party may seek appropriate relief in an appropriate forum.
- 13.2 Confidentiality.
- 13.2.1 Non-Disclosure of Confidential Information. Except as may otherwise be required by Applicable Law, all information and data provided by the Parties to one another pursuant to this Agreement and marked “Confidential” or otherwise identified as confidential at the time of disclosure (“Confidential Information”) shall be treated as confidential and proprietary material of the providing Party and shall be kept confidential by the receiving Party and used solely for purposes relating to this Agreement. Confidential Information shall not include (i) this Agreement, (ii) information that is or becomes available to the public through no breach of this Agreement, (iii) information that was previously known by the receiving Party without any obligation to hold it in confidence, (iv) information that the receiving Party receives from a third party who may disclose that information without breach of Applicable Law or an agreement with such third party, (v) information that the receiving Party develops independently without using the Confidential Information and (v) information that the disclosing Party approves for release in writing. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party. The receiving Party shall limit the disclosure of any Confidential Information to only those personnel within its organization with responsibility for using such information in connection with this Agreement. Each Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise. Each Party agrees that violation of the terms of this Section constitutes irreparable harm to the other Party and that the harmed Party may seek any and all remedies available at law or in equity, including injunctive relief, provided that any damages shall be subject to the limitations set forth in this Agreement.
- 13.2.2 Permitted Disclosures. Notwithstanding the foregoing, the Parties may provide any Confidential Information: (i) to FERC, the ISO, the PUC, the DPS or any other governmental authority or in other litigation or regulatory proceedings arising from or related to this Agreement, however any party releasing Confidential Information pursuant to this subparagraph (i) shall take reasonable steps to obtain an appropriate protective order prior to doing so; (ii) to a Transmission Provider as required for scheduling, settlement and billing; (iii) to any Person with review rights specified in other provisions of this Agreement and (iv) on a need-to-know basis, to agents, trustees, employees, managers, officers, representatives, consultants, accountants, financial advisors, experts, legal counsel, other professional advisors to the Parties, their Affiliates, any Lender or potential Lender or purchasers of direct or indirect interests in the Project or a Party, and prospective lenders to either Party or its direct or indirect equity owners, provided that in the case of item (iv), such Persons have been advised of

the confidential nature of the information and have agreed to maintain the confidentiality thereof in accordance with this Agreement. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. In the event of disclosure of Confidential Information under item (i) above, the disclosing Party shall to the extent practicable notify the other Party of such disclosure at least three (3) business days in advance of such disclosure. If Confidential Information is the subject of a subpoena from a third party, the receiving Party may disclose such Confidential Information on the advice of its counsel in compliance with the subpoena, provided that the disclosing Party shall provide notice thereof to the providing Party and make reasonable efforts to afford the providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

- 13.2.3 Communications; Press Releases. The Parties shall cooperate and coordinate with each other with regard to any communications in respect of the Project or the transactions contemplated by this Agreement with state and local community organizations and groups or the public generally, whether through press releases or otherwise. Each Party agrees to provide the other Party with a reasonable opportunity to stay fully informed with respect to all such matters, to participate therein jointly and to review and provide prior comment upon any communications that it plans to deliver or submit to the foregoing Persons and shall promptly provide the other Party with copies of any communications sent, delivered or received, provided that nothing in the foregoing shall operate to prevent a Party from complying with Applicable Law or the requirements of any governmental authority concerning such matters, and provided further, that the foregoing shall not apply to communications that are in the ordinary course of a Party's business and consistent with past practices.
- 13.2.4 Disclosures Relating to Tax Treatment. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction described in this Agreement, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction.
- 13.2.5 Use of Trademarks. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party.

13.3 Notices.

Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be delivered (a) personally to the Party to whom notice is to be given, (b) by electronic mail to the Party to whom notice is to be given (provided receiving Party issues an electronic mail receipt acknowledgment), (c) by a recognized overnight delivery service to the Party to whom notice is to be given, or (d) to the Party to whom notice is to be given, by first class registered or certified mail, return receipt requested, postage prepaid (with additional notice by regular mail), and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Section.

If to Seller: Georgia BESS, LLC
127 Bent Hill Road
Waitsfield, VT 05673

If to GMP: Power Supply
Green Mountain Power Corporation
163 Acorn Lane
Colchester, VT 05448

13.4 Applicable Law and Jurisdiction; Jury Trial Waiver.

13.4.1 Vermont Law. This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of Vermont. The Parties hereby consent and submit to the personal jurisdiction of the courts of Vermont or the United States District Court for Vermont.

13.4.2 Jury Trial Waiver. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

13.5 Entire Agreement.

This Agreement and any documents expressly incorporated herein by reference shall constitute the entire Agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations whether oral or written. There are no agreements, understandings, or covenants between the Parties of

any kind, expressed or implied, or otherwise, pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

13.6 Amendments and Modifications.

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

13.7 Invalidity.

The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall immediately renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability, subject to Applicable Law.

13.8 Counterpart Execution.

This Agreement may be executed and delivered by the Parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

13.9 Neutral Interpretation.

The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party.

13.10 Headings.

Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

13.11 No Waiver.

No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

13.12 Survival.

Any provisions that are necessary to give effect to the intent of the Parties hereunder after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

13.13 Tax and Bankruptcy Treatment of Agreement.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. Buyer acknowledges and agrees that, for purposes of this Agreement, Seller is not a “utility” as such term is used in Section 366 of the Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor. This Agreement is intended by the Parties to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Neither Party shall take a position on any tax return or other filing, litigation or arbitration that is inconsistent with the respective bankruptcy and tax treatments described in this section.

13.14 FERC.

To the extent applicable: (a) absent the agreement of both Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in clause (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the ‘public interest’ standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the ‘Mobile Sierra’ doctrine), and (b) notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by applicable laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

13.15 No Dedication.

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of Buyer’s system or Seller’s Project, or any portion of it, to the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

13.16 Attorney Fees.

The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

13.17 No Third Party Beneficiaries. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right.

13.18 Relationships of Parties.

This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.

[Signature Page Follows]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Agreement as of the Effective Date.

Seller: Georgia BESS, LLC

By: _____

Name: Nathaniel E. Vandal

Title: Member Green Peak Solar, LLC sole member of Georgia BESS, LLC

Buyer: Green Mountain Power Corporation

By: _____

Name: Josh Castonguay

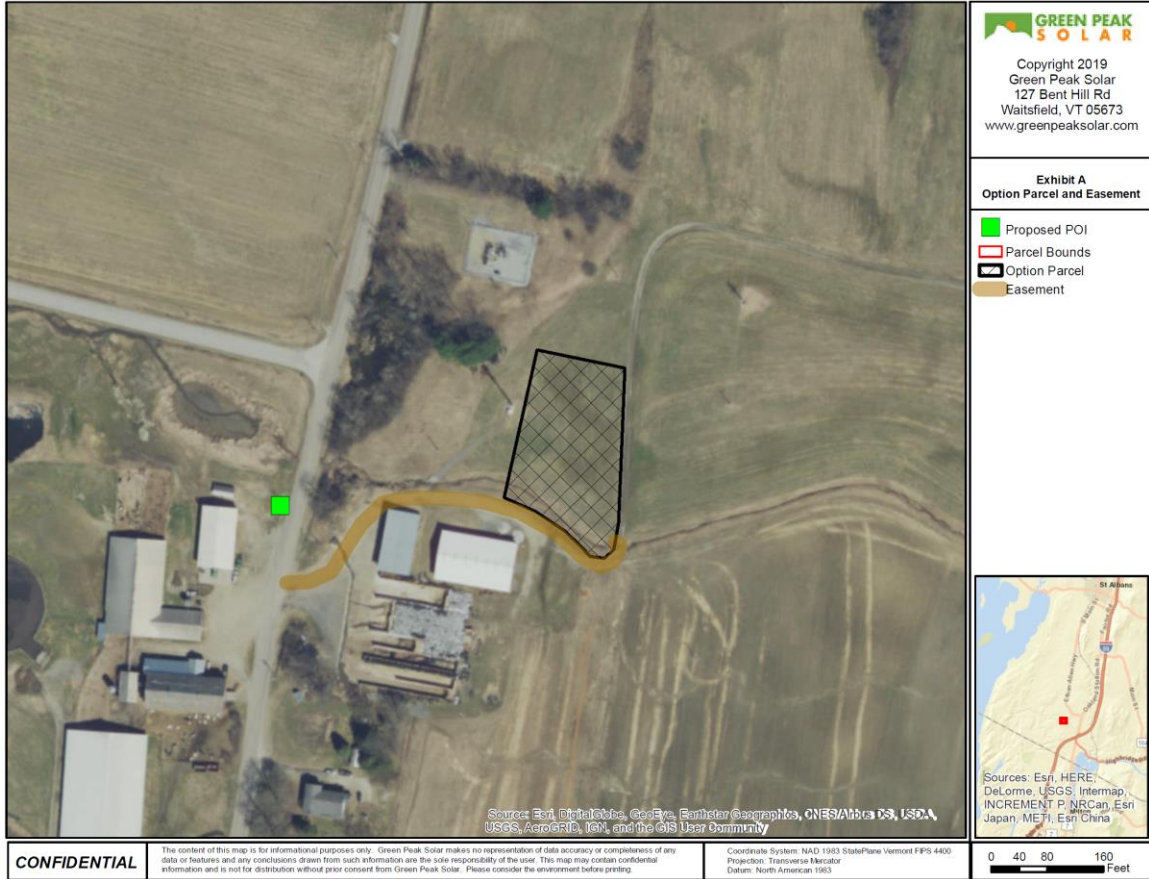
Title: Vice President Power Supply and Engineering

LIST OF EXHIBITS

- Exhibit A Description of Premises and Site
- Exhibit B Invoice and Reporting Description
- Exhibit C Expected Performance and Cost
- Exhibit D Project Upgrade Pricing Table for 4-Hour Energy Storage System

EXHIBIT A Description of Premises and Site

The property is generally described as the parcel at 980 Ballard Road, Georgia, VT 05454.



Site overview

EXHIBIT B
Invoice and Reporting Description

Information to be provided in an invoice to Buyer from the Seller shall include:

- Site name and address
- Invoice Date
- Billing Period
- Current energy capacity (in kWh) of System (as measured per this Agreement)
- Number of Peak Reduction Service hours used this period
- Number of Peak Reduction Service hours used for year
- Number of Peak Reduction Service hours remaining for year
- Total Performance Adjustment amount
- Total Peak Reduction Service payment (Noting capacity adjustment if any)
- Total energy service provided (separate documentation of energy calculations)
- Total energy service fee
- Any Demand Charges, including Peak kW and Off peak kW charges, that were incurred, as a result of Buyer request for the prior month.
- Net Bill amount

For each performance adjustment

- Date and time of discharge requiring a performance adjustment
- Power (kW) of adjustment
- Dollar value of adjustment

For each requested discharge *

Request data

- Date and time request received
- Date and time requested to start discharge
- Duration requested for discharge
- Power requested for discharge
- Energy requested for discharge

Provided response

- Actual start time of discharge
- Actual finish time of discharge
- Total Energy discharge in event

*If multiple discharge events are requested in a day, each shall be listed separately

EXHIBIT C
Expected Performance

Expected Performance and Cost				
Year Beginning	Expected Battery Nominal Power Rating (kW AC)	Expected Battery Nominal Energy Rating (kWh at POI)*	Annual Peak Reduction Services Rate (\$/kW-month)	Annual Peak Reduction Services Fees (\$/yr)
COD Year	4,999	9,998	\$5.76	\$345,531
COD Year + 1	4,999	9,998	\$5.88	\$352,441
COD Year + 2	4,999	9,998	\$5.99	\$359,490
COD Year + 3	4,999	9,998	\$6.11	\$366,680
COD Year + 4	4,999	9,998	\$6.23	\$374,014
COD Year + 5	4,999	9,998	\$6.36	\$381,494
COD Year + 6	4,999	9,998	\$6.49	\$389,124
COD Year + 7	4,999	9,998	\$6.62	\$396,096
COD Year + 8	4,999	9,998	\$6.75	\$404,844
COD Year + 9	4,999	9,998	\$6.88	\$412,941
COD Year + 10	4,999	9,998	\$7.02	\$421,200
COD Year + 11	4,999	9,998	\$7.16	\$429,624
COD Year + 12	4,999	9,998	\$7.31	\$438,217
COD Year + 13	4,999	9,998	\$7.45	\$446,981
COD Year + 14	4,999	9,998	\$7.60	\$455,921
COD Year + 15	4,999	9,998	\$7.75	\$465,039
COD Year + 16	4,999	9,998	\$7.91	\$474,340
COD Year + 17	4,999	9,998	\$8.07	\$483,827
COD Year + 18	4,999	9,998	\$8.23	\$493,503
COD Year + 19	4,999	9,998	\$8.39	\$503,373

*Expected Battery Nominal Energy doubles in the event Buyer exercises the option to increase the Project's energy rating to four (4) continuous hours per day, per Section 4.1.1.

Exhibit D
Project Upgrade Pricing Table for 4-Hour Energy Storage System

2-hour Expansion Adder	
Year Upgrade Project is Operational	Adder to Peak Reduction Services Rate (\$/kW-mo)
COD Year	N/A
COD Year + 1	\$4.82
COD Year + 2	\$4.85
COD Year + 3	\$4.85
COD Year + 4	\$4.88
COD Year + 5	\$4.92
COD Year + 6	\$5.01
COD Year + 7	\$5.06
COD Year + 8	\$5.17
COD Year + 9	\$5.30
COD Year + 10	\$5.50
COD Year + 11	\$5.72
COD Year + 12	\$6.04
COD Year + 13	\$6.47
COD Year + 14	\$7.09
COD Year + 15	\$7.89
COD Year + 16-19	N/A

Note – adder is a constant value (based on year upgraded project is operational) that is added to the escalated value in each year shown in Appendix C. For example, if the upgraded project is operational in 2025, \$4.88/kW-month will be added to the values listed in Appendix C in 2025 and in each subsequent year through the end of the contract term.