

**ENERGY STORAGE PROJECT
EPC CONTRACT TERM SHEET**

This EPC Contract term sheet (this “*Term Sheet*”) is provided pursuant to the requirements set forth in the term sheet for the Build, Own Transfer Agreement (the “*BOT Term Sheet*”). The BOT Term Sheet requires that Seller shall be responsible for negotiating and documenting a lump-sum turn-key engineering, procurement and construction contract (the “*EPC Contract*”) with an Approved Contractor. The terms and conditions of the EPC Contract shall be substantially similar to the terms and conditions set forth in this Term Sheet. Further, the final terms of the EPC Contract shall be subject to review and approval by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed. (*Capitalized terms not defined herein shall have the meanings ascribed to them in the BOT Term Sheet*).

<p>A. TRANSACTION</p>	<p>[NAME OF ENTITY], a [(e.g., LLC, LP, CORPORATION) (“<i>Company</i>”), is developing a[n] [DESCRIBE PROJECT] energy storage facility with a nominal rating of [XXX MW_{AC}], to be located at [DESCRIBE LOCATION] (the “<i>Project</i>”) located in [____], New York. [NAME OF ENTITY], a [(e.g., LLC, LP, CORPORATION) (“<i>Contractor</i>”), shall perform lump-sum turn-key engineering, procurement and construction services to design and build the Project (the “<i>Work</i>”). For purposes of this Term Sheet, Company and Contractor are each a “<i>Party</i>” and together “<i>Parties</i>”.</p>
<p>B. EPC CONTRACT</p>	<p>The EPC Contract shall set forth the terms and conditions acceptable to the Parties for the Contractor to design, engineer, construct, test, start-up and commission the Project.</p>
<p>C. COMPANY’S OBLIGATIONS</p>	<p>The EPC Contract will provide for, among other things, the following obligations of Company:</p> <p>Cooperation with Contractor – Company to cooperate with Contractor, including timely supply of all those items, personnel, services, and information required to be supplied by Company under this EPC Contract and the timely administration of all of Company’s obligations under the EPC Contract.</p> <p>Access to the Site – Company shall assure reasonable rights of ingress to and egress from the Project Site for Contractor and obtain necessary real property rights at the Project Site for performance of the Work.</p> <p>Operations Personnel - Company to provide operations personnel for training by Contractor during start-up, testing and commissioning of the Work under the direction of Contractor.</p>
<p>D. CONTRACTOR’S OBLIGATIONS</p>	<p>The EPC Contract will provide for, among other things, the following obligations of Contractor:</p> <p>Perform the Work – Work includes (i) the design, engineering, procurement, construction of the Project and installation of materials and equipment; (ii) start-up, commissioning, and testing of the Project and of any materials and equipment; (iii) provision of construction equipment and aids; (iv) loading, transportation, delivery and unloading of materials and equipment; (v) other services as provided in the Scope of Work; and (vi) provision of any and all (a) intellectual property and other Contractor deliverables required under the EPC Contract, (b) work performed pursuant</p>

to a Change Order, and (c) all work indicated or reasonably inferred from the terms of the EPC Contract.

Manner of Performance - Contractor will perform the Work (a) with the degree of skill and judgment normally exercised by firms performing similar work and consistent with Prudent Industry Practices, (b) in a manner that does not cause Company to be in violation of applicable law, codes or permits; and (c) in compliance with manufacturer's instructions and printed directions.

Contractor's Schedules and Reports - Contractor will submit the schedules and reports as identified in the EPC Contract to allow Company to monitor the progress of the Work, which schedules and the progress reports will be provided in Primavera native file format (which will allow Company to print, save, revise, and otherwise manipulate the data) and in PDF format. Beginning the first month after the effective date of the EPC Contract (the "**Effective Date**"), Contractor will prepare the progress reports to accurately define the current status of the Work.

Quality Requirements – Within 45 days after the Effective Date, Contractor will establish, subject to Company's review and approval, a quality assurance and quality control program (the "**QA/QC Program**").

Safety and Environmental program - Contractor will submit a copy of a Project Site specific "Safety & Environmental Compliance Program" for approval by Company no less than 60 days prior to commencing Work at the Project Site. Mobilization to the Project Site without a Company-approved Safety & Environmental Compliance Program is prohibited.

Clean-Up and Waste Disposal - Contractor will perform daily Project Site and laydown area clean-up and waste disposal and otherwise keep the Project Site and the laydown area reasonably free from accumulation of waste materials, rubbish, crating, packaging materials, and other debris resulting from performance of the Work.

Construction Power - Contractor will supply electric energy and any utilities required for the construction of the Work at the Project Site.

Construction Aids - Contractor will furnish and maintain all necessary construction aids and equipment, measuring and test equipment, instruments, and devices required to complete the Work, and any fuel, oil, and repair services required by such construction aids.

Spare Parts - Contractor will be responsible for the procurement, replacement, and cost of all spare parts consumed during installation, startup, and testing before Substantial Completion and will deliver a recommended spare parts list for all materials and equipment (including quantities, prices, OEM part numbers, and identification of all critical spares) for the first 10 years after Substantial Completion.

Repair, Replacement or Reperformance of Defective Work before Substantial Completion - Prior to Substantial Completion, Contractor will (i) reperform, repair or replace any item of the Work (including supply of materials and equipment) that is Defective; (ii) bear all costs and expenses

associated with correcting any Defect, including the costs of labor, necessary disassembly, transportation, reassembly, retesting, reworking, repair, decontamination, or replacement of such Defect, as well as those caused to any other portion of the Work, property of Company or any third party, or the work of other contractors damaged by the Defect being repaired or replaced; (iii) perform investigations and analyses; and (iv) take appropriate actions to prevent recurrence.

Training - Contractor will provide training for all of Company's operations and maintenance personnel.

NERC Compliance - Contractor will comply with the NERC requirements.

Licensed Engineers - Contractor will ensure that any person performing engineering Work will be a professional engineer duly licensed in the State of New York or will perform their Work under the supervision of a professional engineer duly licensed by the State of New York. All drawings and documents required by applicable laws and codes will be stamped by a professional engineer duly licensed by the State of New York.

Contractor Licenses - Contractor will obtain and maintain, and will require all subcontractors and vendors to obtain and maintain, applicable licenses as required by applicable laws and codes.

E. PERSONNEL

Project Management - Contractor will provide an experienced management staff with a proven record supervising engineering, procurement, construction, start-up, commissioning and testing activities to oversee and efficiently execute the Work in accordance with the Project Schedule.

Adequate and Competent Workforce - At all times during the performance of the Work, Contractor will have a sufficient number of skilled workmen, laborers, and other personnel necessary to perform and complete the Work in accordance with the EPC Contract.

Wages and Benefits - Contractor will be responsible for payment of all wages, fringe benefits, pension or retirement obligations, housing obligations, social security, unemployment, workers compensation and all other social taxes or charges for its employees.

Key Personnel – Key Personnel identified by Contractor are designated as essential personnel for purposes of the EPC Contract (“**Key Personnel**”). Designation of Key Personnel not identified as of the Effective Date will be subject to Company's review and approval. Key Personnel will (i) have as their primary responsibility the performance of the Work and (ii) be assigned to the Work on a full-time basis in accordance with their respective responsibilities. Contractor will not change any of the Key Personnel without the prior written consent of Company. Company may, in its sole discretion and at any time, request and Contractor will remove any Key personnel from the Work and provide a replacement reasonably acceptable to Company.

F. OWNER REVIEW

Right to Review and Inspect - Company and/or its designees have the right to review all documents (including shop drawings, construction drawings, manuals, or specifications) prepared for, or that may impact, the Work and

its operations as they are developed by Contractor. The Parties will establish witness and hold points for materials and equipment or other aspects of the Work in accordance with the QA/QC Program. Contractor will not proceed with the applicable Work past the established witness and hold points without offering to Company the opportunity to inspect and review the materials and equipment or Work in question.

Review is not Approval - No inspection, review, or approval by Company or an applicable governmental authority will constitute an endorsement or confirmation that any materials and equipment or other Work done satisfies the requirements of the EPC Contract.

G. PROJECT SCHEDULE

Project Schedule – Contractor will perform the Work in accordance with the mutually agreed Project Schedule. Contractor is required to achieve Substantial Completion by the Guaranteed Substantial Completion Date to be agreed in the EPC Contract.

Full Notice to Proceed (“FNTP”) – Upon receipt of all necessary regulatory approvals, Company may issue to Contractor a notice specifying the date for a full release of all Work, including fabrication and construction. Contractor is not entitled to compensation for Work performed prior to FNTP.

Progress Behind Schedule and Recovery Plan - Contractor will provide prompt notice to Company if it becomes aware of any actual or potential delays in progress of the Work that could jeopardize achievement of Substantial Completion by the Guaranteed Substantial Completion Date. In addition, if Company believes that achievement of Substantial Completion by the Guaranteed Substantial Completion Date may be in jeopardy, Company may request that the Contractor provide and perform a written recovery plan to overcome the delay at Contractor’s cost, which recovery plan will be subject to Company’s review and approval.

H. PROJECT SITE

Use of Project Site - Contractor will confine its operations at the Project Site to areas permitted by applicable laws and codes and the EPC Contract and will not unreasonably encumber the Project Site with equipment and materials, supplies or other aspects of the Work. Contractor will store its tools and materials at locations permitted by Company, but Company will assume no responsibility for loss or damage in connection therewith.

Site Conditions – By signing the EPC Contract, Contractor acknowledges that it was afforded the opportunity to perform Project Site investigations necessary to investigate conditions at the Project Site. Company will assume no responsibility for any conclusions or interpretations made by Contractor on the basis of the information made available by Company, including any the geotechnical reports, Project Site drawings or other information contained in the Scope of Work.

Security - Contractor will construct temporary and permanent fencing around the Project Site and the laydown areas. Contractor, and any subcontractors or vendors will enter the Project Site only through a gate designated by Company. Contractor will provide security for the Project Site

and the laydown areas, as well as any off-Project Site security necessary to protect the Work and all materials and equipment.

I. COMPENSATION AND INVOICING

Total Compensation - Contractor's total compensation for performance of the Work on a lump sum turnkey basis under the EPC Contract will be \$ _____ (the "**Contract Price**").

Milestone Payments - Contractor will be compensated through Milestone Payments associated with the successful completion of Project Milestones as set forth in a mutually agreed Milestone Payment Schedule.

Monthly Applications for Payment – At the end of each month, Contractor will submit to Company a detailed Application for Payment meeting the requirements of the EPC Contract. No payment will be made for partial completion of a Project Milestone. Company will pay Contractor the undisputed amount payable from each Application for Payment within 30 days after Company's receipt thereof.

Right to Set Off - Company may set-off against any other amounts owed to Contractor by Company any Liquidated Damages payable by Contractor or any other amounts owed to Company by Contractor.

Withholding of Payments - Company, without limitation of any other rights or remedies contained in the EPC Contract, may withhold payment, on one or more Applications for Payment, or any portion thereof, in an amount and to such extent as may be reasonably necessary to protect Company from losses because of, among other things:

- (a) Contractor's, or its subcontractor's, or vendor's failure to carry out the Work in accordance with the EPC Contract;
- (b) third party claims made or filed against Company due to Contractor's performance of the Work or liens filed in connection with the Work;
- (c) damage to Company or its subcontractors arising from the performance of the Work;
- (d) failure of Contractor to maintain the Letter of Credit required under the EPC Contract in full force and effect;
- (e) failure of the Contractor or Contractor guarantor to maintain the parent company guaranty in full force and effect;
- (f) unfinished Punch List items;
- (g) failure to provide any lien releases required by the EPC Contract;
- (h) damage suffered by Company arising from Contractor's failure to perform its indemnity or insurance obligations;

(i) any Defect not remedied pursuant to the provisions of the EPC Contract; or

(j) failure by Contractor to pay its subcontractors or vendors.

Retainage - Company has the right to retain from amounts otherwise due Contractor an amount equal to 10% of the amount of each Application for Payment (such amounts, "**Retainage**"). If Contractor fails to pay Liquidated Damages or fails to perform other obligations to pay money to Company or reimburse Company for damages under the EPC Contract, then Company is entitled to draw upon the Retainage for the amount due by Contractor.

J. CHANGE ORDERS

Company-Requested Change Orders - Company may order changes to the Work that may result in changes to the Contract Price and/or the Project Schedule through the issuance of a Change Order. The Parties will use their good faith efforts to agree on all terms for such ordered changes before the issuance of such Change Order. If the Parties cannot agree on the adjustment to be made to the Contract Price, the Project Schedule, or other applicable Contract provision as a result of such Change Order, then Contractor must nevertheless proceed to execute the Work described in the Change Order promptly upon authorization from Company.

Contractor-Requested Change Orders - If Contractor believes that it is entitled to a Change Order, Contractor must give Company notice within 5 days after Contractor knows or should have known of the occurrence of the event giving rise to such request. Within 15 days after the delivery of such notice, Contractor will provide Company with a detailed statement setting forth the justification for the Change Order and the proposed adjustments to the Project Schedule and Contract Price. Contractor will not be entitled to a Change Order where the delay or increase is caused by Contractor or any its subcontractors or vendors. If the Parties fail to agree on a mutually acceptable Change Order, Contractor must continue performing the Work notwithstanding the dispute, unless otherwise directed by Company.

Change Orders for Company Caused Delays - Contractor may be entitled to receive a Change Order equitably adjusting the Project Schedule and Contract Price, as applicable, to the extent that it can demonstrate that there was a delay or suspension in the performance of the Work caused by Company such that Work slips from the critical path of the Project Schedule so that Substantial Completion by the Required Substantial Completion Date may be in jeopardy.

Change Orders for Force Majeure Events - Contractor may be entitled to receive a Change Order equitably adjusting the Project Schedule, but not the Contract Price, to the extent that it can demonstrate that there was a delay or suspension in the performance of the Work caused by a Force Majeure Event such that Work slips from the critical path of the Project Schedule so that Substantial Completion by the Required Substantial Completion Date may be in jeopardy.

K. PARTIES' REPRESENTATIVES

Representatives - Both the Contractor and Company will name a Representative (the Contractor Representative and the Company Representative respectively) who will be authorized to act on behalf of and

bind the Contractor and Company, respectively, except with respect to changing, amending, or modifying any terms of the EPC Contract.

Stop Work Directives – Company’s Representative may issue a stop work directive (“**SWD**”) in any situation where, in the reasonable judgment of Company’s Representative, either (a) Contractor or its subcontractors or vendors are performing Work contrary to the terms of the EPC Contract; (b) continued Work could cause damage to the Project or the Project Site; (c) there exists an actual or potential safety issue that is an imminent threat to person(s) or property; or (d) a violation of any applicable laws or codes, or applicable permits has occurred or is reasonably likely to occur. Upon receipt of a SWD, Contractor and its subcontractors and vendors must cease operations, including any shipments, on any specified Work to the extent stipulated by the SWD. Contractor will not resume Work on an activity described in a SWD until Contractor has obtained a written authorization from Company’s Representative, and any delay in the performance or increase in the cost of the Work will be to Contractor’s account.

L. SUBCONTRACTORS AND VENDORS

General - Company’s approval of any subcontractors or vendors will not relieve Contractor of its obligations under the EPC Contract. Contractor is fully responsible to Company for the acts and omissions of its subcontractors and vendors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Contractor.

Approval of Subcontractors and Vendors - Contractor may only subcontract Work to subcontractors and vendors listed in an exhibit to the EPC Contract listing the approved subcontractors and vendors (the “**AVL**”). Contractor is required to seek approval to engage any subcontractor or vendor in the Work that is not listed in the AVL.

Requirements in Subcontracts – Each subcontract must include language that requires such subcontractor (a) be bound to Contractor by certain key terms and requirements (including safety, warranty, termination, taxes, confidentiality, and indemnification) of the EPC Contract; (b) make Company an intended third party beneficiary and preserve the rights and remedies of Company under the EPC Contract with respect to the portion of the Work to be performed by a such subcontractor; and (c) provide for assignments to Company, including assignment to lenders, as required by the EPC Contract.

Payments to Subcontractors and Vendors - Upon receipt of payment from Company, Contractor must promptly pay each subcontractor and vendor in accordance with the terms of the applicable subcontract.

M. REPS AND WARRANTIES

The EPC Contract will include customary representations, warranties and covenants from each of the Contractor and Company, including without limitation, the following:

Representations, Warranties and Covenants of the Parties:

- absence of litigation affecting a Party’s ability to perform its obligations or affecting the enforceability of the EPC Contract;

- organization and good standing of each Party, authority of each Party to execute its obligations under the EPC Contract and validity of the execution of the EPC Contract;
- each Party has the legal right to transact business and to execute and deliver the EPC Contract and perform its obligations thereunder;
- each Party has obtained, or will be obtain, all regulatory authorizations required to perform its obligations thereunder and such authorizations will be maintained;
- the EPC Contract constitutes a legal, valid, and binding act and obligation of each Party, enforceable against it in accordance with the EPC Contract's terms, subject to applicable bankruptcy, insolvency, or reorganization laws;
- each Party will comply at all times with all applicable laws and codes necessary for its performance under the EPC Contract; and
- each Party will give all required notices, and procure, maintain, and comply with all applicable permits necessary for the performance of its obligations under the EPC Contract.

Representations and Warranties of Contractor:

- to the extent required by applicable laws and codes, it is fully experienced and properly licensed in the State of New York, and equipped, organized, financed, and qualified to perform the Work; and
- Contractor covenants, represents, and warrants that the Work supplied pursuant to the EPC Contract will operate at the levels required by the Performance Guarantees in addition to meeting the requirements of any permits and applicable laws and codes.

Warranty and Passage of Title - Contractor warrants that title to the materials and equipment and other property supplied under the EPC Contract will pass to Company free and clear of all liens, claims, judgments, security interests, or encumbrances. Title to each portion of the materials and equipment will pass from Contractor to Company when Contractor (or the subcontractor or vendor on behalf of Contractor) delivers such item to a common carrier for shipment to the Project Site or an approved storage site.

N. PERFORMANCE SECURITY

Parent Company Guaranty – Contractor to provide a parent company guaranty on the Effective Date in the form set forth in the exhibits to the EPC Contract guarantying all performance, payment, indemnity, warranty, and other obligations of Contractor under the EPC Contract.

Other Information - Contractor will require Contractor guarantor to deliver to Company, from time to time, such information or documents (financial or otherwise) regarding Contractor guarantor as Company may reasonably request, including audited financial statements of Contractor guarantor.

Letter of Credit – Contractor will provide an irrevocable, stand-by letter of credit substantially in the form set forth in the exhibits to the EPC Contract in an amount equal to 10% of the Contract Price. If Contractor fails to pay

	<p>Liquidated Damages or fails to perform other obligations to pay money to Company or reimburse Company for damages under the EPC Contract, then Company is entitled to draw upon the Letter of Credit for the amount due by Contractor.</p>
<p>O. PERMITS</p>	<p>Contractor Permits – Contractor will obtain all permits necessary for performance of the Work, other than those required to be obtained by Company.</p> <p>Company Permits – Company to provide the permits identified in an exhibit to the EPC Contract.</p>
<p>P. WARRANTY OF THE WORK AND REMEDIES</p>	<p>General Warranty - Contractor to provide personnel that are qualified to perform the engineering, procurement, construction and installation services required to perform the Work. Work (other than engineering and design Services) furnished and performed (a) will be furnished and performed to comply with Prudent Industry Practices and professional standards, and with the accuracy, care and skill customarily expected in connection with comparable projects in the general construction, electric generation and utility scale battery storage industries; (b) will be compliance with all applicable laws and codes; (c) will conform to the requirements of the EPC Contract, including permits related to applicable environmental laws; (d) will be free from defects in materials and workmanship; and (e) all materials and equipment will be new and free from defects in materials and workmanship and fit for the purpose of receiving, storing and discharging electric power.</p> <p>Engineering and Design Warranty - Contractor to provide that all engineering and design services performed as part of the Work will be performed in accordance with sound engineering practice and with the accuracy, care, and skill customarily expected in connection with comparable projects in the general construction, electric generation and utility scale battery storage industries, Prudent Industry Practices, and applicable laws and codes, and will operate in conformity with the requirements of the EPC Contract, Prudent Industry Practices, and all applicable laws and codes.</p> <p>Software Warranty – Contractor will provide a software warranty to ensure that the software will conform to the applicable software specifications and will be free from any defects in design, materials or workmanship. In addition, Contractor will warrant that the software will not contain any virus or other malicious computer code.</p> <p>Warranty Period – The general warranty period will commence upon Substantial Completion and will run until 3 years thereafter (the “<i>Warranty Period</i>”).</p> <p>Correction Obligations – Any Defect repaired, replaced or otherwise corrected by Contractor will be warranted by Contractor for a period of time following the date of such reperformance, repair, or replacement equal to the longer of (i) the remainder of the Warranty Period and (ii) 18 months from the date of such reperformance, repair, or replacement.</p>

Subcontractor Warranties – Contractor will use commercially reasonable efforts to obtain from all vendors and subcontractors, and thereafter enforce during the Warranty Period, all warranties with respect to Work performed by them and materials and equipment procured from them that are the same or similar to the warranties provided by the Contractor to Company. Contractor will use commercially reasonable efforts to ensure that the warranty periods for warranties provided by vendors and subcontractors will extend for at least as long as the Warranty Period. Subcontractor and vendor contracts that provide for a warranty longer than the Warranty Periods will be assigned to Company upon Substantial Completion. Subcontractor warranties do not relieve Contractor’s warranty obligations to Company.

Remedial Action - Any decision as to (i) whether to reperform, repair, or replace any Defect, and (ii) who will perform such Work will each be made by Company, and the reperformance, repair, or replacement will be scheduled consistent with Company’s operating requirements to minimize loss of production or use of any portion of the Work. If Contractor fails to commence remedial Work within 5 days after notice from Company of a Defect, Company will have the right to remedy such Defect or have such Defect remedied by third parties, and the reasonable direct costs thereof will be borne by Contractor. Company’s exercise of its right to remedy, or have a third party remedy, a Defect will not relieve Contractor of its warranty obligations with regard to such Defect.

Q. PERFORMANCE TESTING AND ACCEPTANCE OF THE WORK

Performance Test Procedures - At least 30 days prior to the anticipated date for each Performance Test, Contractor will prepare and submit a test plan for each such Performance Test to Company for review and approval.

Performance Testing - Contractor to provide at least 10 business days’ written notice of the commencement of each Performance Test.

Performance Guarantees - Company will guarantee that the Project will satisfy certain performance specifications as demonstrated during the applicable Performance Test (collectively, the “*Performance Guarantees*”).

Capacity Test – A Capacity test in accordance with the procedures set forth in the EPC Contract to determine whether the Required Project Capacity of [XXX] MW has been achieved.

Roundtrip Efficiency Test – A Roundtrip Efficiency test to measure the amount of energy the Project delivers to the Delivery Point relative to the amount of energy injected into the Project during the preceding charge with a Required Roundtrip Efficiency of no less than [_____] %.

Ramp Rate Test – The minimum response rate of the Project expressed as a percentage (%) of the Contract Capacity per minute that Contractor agrees to provide for a specified time subject to liquidated damages for failure to perform. The Guaranteed Ramp Rate may vary depending on the primary use case for the particular POI.

Duty Cycle Test – A Duty Cycle test to determine the period during which the Project would be discharged from 100% State of

Charge (“SoC”) down to the Minimum SoC and then charged back to 100% SoC. The required Duty Cycle will be [_____] minutes.

Corrective Action - Within 5 days after completion of a failed Performance Test, Contractor will submit a corrective action plan for approval by Company, and will complete all such corrective action as soon as reasonably possible. Following completion of the corrective changes, Performance Testing will be repeated to determine if the Work as so corrected complies with the Performance Guarantees. Contractor will be responsible for all costs of labor and overhead, including indirect costs for the repeated Performance Testing.

Completion Guarantees - Contractor guarantees that it will (i) cause the Project to achieve Mechanical Completion by a specified date; (ii) achieve Substantial Completion by the agreed Guaranteed Substantial Completion Date; and (iii) achieve Final Completion by the agreed Guaranteed Final Completion Date.

Mechanical Completion - Mechanical Completion is achieved when all Work is being mechanically, electrically and structurally complete and properly incorporated into the Project. Mechanical Completion will occur when the following requirements have been satisfied:

- (a) all components and systems have been constructed and installed in accordance with the EPC Contract;
- (b) all equipment and systems and all balance of plant equipment have been fully operated in a safe and prudent manner;
- (c) Contractor has completed initial start-up of each major system in the Project;
- (d) all systems required to be installed and that are necessary for charging and discharging energy are ready to commence Performance Testing; and
- (e) Contractor is ready to commence (x) start-up and commissioning of the Project as an integrated whole and (y) the Performance Tests.

Substantial Completion - Substantial Completion means all of the following requirements have been satisfied:

- (a) Contractor has provided a Punch List and Company has approved such Punch List and the estimated costs therefor;
- (b) all Performance Tests have been completed demonstrating that the Facility meets all the Performance Guarantees;
- (c) all equipment and facilities necessary for the full, safe and continuously reliable operation of the Project have been properly constructed, installed, insulated and protected where required for such operation, and correctly adjusted;

- (d) the Project is fully and properly interconnected and synchronized with the electrical grid and is capable of charging and discharging energy and can satisfy all requirements of the EPC Contract;
- (e) the Project is free from Defects and all quality assurance issues have been resolved to Company's satisfaction
- (f) the Operating Manual has received Company's approval;
- (g) operations personnel have received the training in accordance with the EPC Contract to Company's satisfaction;
- (h) Project complies with all applicable law and codes and Prudent Industry Practices; and
- (i) the Project has performed and passed any required demonstration tests defined in the EPC Contract.

Final Completion - Final Completion means all of the following requirements have been satisfied:

- (a) Mechanical Completion has been achieved;
- (b) Substantial Completion has been achieved and conditions continue to be satisfied;
- (c) Contractor has otherwise performed all Work under the EPC Contract;
- (d) all Punch List items have been completed;
- (e) all Performance Guarantees have been achieved or payment of Liquidated Damages has been received by Seller; and
- (f) all final lien waivers, final as-builts and any remaining documentation have been delivered by Contractor; and Contractor has left the Project Site free of waste materials or rubbish caused by it, or its subcontractors' activities.

**R. RISK OF LOSS;
CARE, CUSTODY
AND CONTROL**

Risk of Loss - Contractor has risk of loss for the Work, including all materials and equipment and its construction aids, through Substantial Completion.

Care, Custody and Control - Care, custody, and control of the Work will pass to Company upon Substantial Completion.

**S. LIMITATION OF
LIABILITY**

Limitation of Liability - Liability of Contractor to Company relating to the Work or the EPC Contract will not exceed the Contract Price (the "**LOL Cap**"). The LOL Cap does not apply to (i) Contractor's indemnity obligations, including for infringement of intellectual property, and

regarding hazardous materials; and (ii) any claims arising out of Contractor's gross negligence, willful misconduct or fraud.

Consequential Damages - Neither Party, nor any of their respective personnel, will be liable for indirect, special, incidental, punitive, consequential, or exemplary damages, including loss of profits or revenue, loss of use, cost of capital, down time costs, loss of opportunity, loss of goodwill and/or claims of customers of the other Party for such damages. The Parties will agree that any Liquidated Damages, and any amounts payable pursuant in respect of indemnification, Company's termination of Contractor for cause, or liability for hazardous materials will not be construed or deemed to be indirect, special, incidental, punitive, consequential or exemplary damages for purposes of the EPC Contract. Any claims arising out of Contractor's gross negligence, willful misconduct or fraud will not be included in such waiver of consequential damages.

T. INDEMNIFICATION

Contractor Indemnity (General) - Contractor to defend, indemnify, and hold harmless Company indemnitees from and against any and all losses, including:

- (a) any third party claim or assertion against any Company indemnitee;
- (b) any fines or penalties imposed under applicable laws or codes;
- (c) personal injury or death; or
- (d) physical damage to property on or off the Project Site;

in each case to the extent arising out of or resulting from Contractor's (or its subcontractor's or vendor's or their respective personnel's) (i) performance of or failure to perform the Work or any of the other obligations under the EPC Contract; (ii) breach of a representation, warranty, or covenant in the EPC Contract; or (iii) violation of any applicable laws or codes.

Company Indemnity - Company to defend, indemnify, and hold harmless Contractor indemnitees from and against any and all losses, including:

- (a) any third party claim or assertion against any Contractor indemnitee;
- (b) any fines or penalties imposed under applicable laws or codes;
- (c) personal injury or death; or
- (d) physical damage to Contractor's property (limited to deductibles under Contractor's applicable insurance policies);

in each case to the extent arising out of or resulting from Company's (or its subcontractor's other than Contractor) (i) performance of or failure to perform the Work or any of the other obligations under the EPC Contract; or (ii) violation of any applicable laws or codes.

	<p>Intellectual Property Indemnity - If any infringement or alleged infringement by Contractor of any intellectual property based upon the performance of or failure to perform the Work occurs, Contractor will:</p> <p>(a) promptly substitute, at its sole cost and expense, non-infringing equipment or processes, or modify such infringing equipment or processes of the Work so they become non-infringing, or obtain at Contractor's expense the necessary licenses to use the infringing equipment or processes, subject to Company's approval; and</p> <p>(b) at its sole expense, promptly defend, indemnify, and hold harmless Company indemnitees from and against any and all losses arising out of or resulting from such infringement or alleged infringement, unless directed otherwise by Company.</p>
<p>U. INSURANCE</p>	<p>General – Each Party, at such Party's sole cost and expense, will obtain as of the Effective Date, and maintain in effect, the insurance coverages (with deductibles) to be set forth in an exhibit to the EPC Contract.</p> <p>Insurance for Indemnity - Contractor will obtain, and maintain, at its sole expense, such insurance as will insure Contractor's indemnity obligations in the EPC Contract; <i>provided, however</i>, that the amount of available insurance will not limit or otherwise restrict Contractor's obligations thereunder.</p>
<p>V. INTELLECTUAL PROPERTY</p>	<p>Royalties and Licenses - Contractor is responsible for obtaining all rights, licenses and permission for use of all intellectual property incorporated in the Work, and paying all required royalties and license fees unless otherwise agreed to in writing by Company.</p> <p>IP License for the Project - Contractor will grant, and cause its subcontractors and vendors to grant, to Company (at no additional cost to Company) a perpetual, irrevocable, non-exclusive, sub-licensable, transferable and assignable, royalty free, fully paid up license to use any intellectual property included in or arising from the Work.</p>
<p>W. SUSPENSION AND TERMINATION</p>	<p>Company's Right to Suspend - Company may at any time request Contractor to stop the Work and to continue at a later date at Company's convenience.</p> <p>Termination for Convenience - Company will have the right to terminate the EPC Contract for convenience at any time. Upon receipt of such notice, Contractor will: (i) discontinue the terminated Work; (ii) thereafter perform only such portion of the Work not terminated; (iii) not place further orders or enter into further subcontracts; and (iv) terminate all existing agreements, orders, and subcontracts that relate to the performance of the terminated Work. Contractor will be entitled to receive (a) outstanding amounts due in an Application for Payment; (b) verified actual direct costs of Work performed prior to termination; (c) reimbursement of all reasonable subcontractor or vendor cancellation charges incurred by Contractor; and (d) reimbursement of all reasonable costs incurred by Contractor associated with</p>

vacating the Project Site, including, but not limited to, all reasonable and documented demobilization costs.

Contractor Events of Default - Any of the following will constitute a Contractor Event of Default if not cured in all material respects within 15 days after receipt of notice, except as otherwise noted:

- (a) breach of a material term of the EPC Contract not otherwise specified in the EPC Contract;
- (b) Contractor guarantor's failure to perform any obligation under the Contractor parent company guaranty;
- (c) Contractor's failure to achieve Substantial Completion within [] days after the Required Substantial Completion Date, for which there will be no cure period;
- (d) insolvency or bankruptcy event of Contractor or Contractor guarantor for which there will be no cure period;
- (e) failure of Contractor or Contractor guarantor to make to Company, when due, any undisputed payment required under the EPC Contract or the parent company guaranty, as applicable, if that failure is not remedied on or before the 15th day after Company provides notice to Contractor thereof, for which there will be no additional cure period;
- (f) failure by Contractor to maintain the Letter of Credit, as required by the EPC Contract;
- (g) assignment of Contractor's rights or obligations under the EPC Contract, except as expressly provided in the EPC Contract; or
- (h) any representation made by Contractor in the EPC Contract or the Contractor guarantor in the parent company guaranty was false or misleading when made and, as a result, there is an adverse impact on Company, the Work, or Contractor's ability to perform its obligations under the EPC Contract.

Remedies for Default – In the event of a Contractor default, Company may (a) proceed against Contractor pursuant to the dispute resolution procedures set forth in the EPC Contract; (b) seek specific performance of Contractor's obligations to the extent permitted by applicable law; or (c) terminate the EPC Contract.

Cost to Cover Remedy - Company will use reasonable efforts to mitigate the costs for completion of the Work, but may employ any person, firm, or corporation to finish the Work by whatever method Company may deem prudent and may undertake such expenditures as in Company's sole judgment will best accomplish the timely completion of the Work. Contractor will be liable for Company's costs and expenses to complete the Work, subject to the LOL Cap.

<p>X. LIQUIDATED DAMAGES</p>	<p>Delay in Substantial Completion - If the Work has not achieved Substantial Completion by the Required Substantial Completion Date, Contractor will be liable for Liquidated Damages per Day (or part thereof) of \$[_____] from the Required Substantial Completion Date until Substantial Completion is achieved. Payment of such Liquidated Damages will not relieve Contractor of its other obligations under the EPC Contract, including the obligations to achieve Substantial Completion and Final Completion and all warranty obligations</p>
<p>Y. HAZARDOUS MATERIALS</p>	<p>General Prohibition on Hazardous Materials - Contractor will not, nor will it permit any subcontractor or vendor to, bring any hazardous material, including any lead paint or asbestos, onto the Project Site.</p> <p>Liability for Pre-Existing Hazardous Materials - Company will be liable for costs and expenses for any action required by applicable laws or codes with respect to any pre-existing hazardous materials at the Project Site.</p> <p>Company Indemnity for Hazardous Materials – Company will indemnify Contractor from and against any and all losses arising out of with (i) a pre-existing hazardous material (other than the exacerbation thereof by Contractor or its subcontractors or vendors set forth below) or unless Contractor expressly assumes responsibility for the abatement or removal of a pre-existing hazardous material by a Change Order; or (ii) any hazardous material introduced to the Project Site by any party other than Contractor, or its subcontractors or vendors.</p> <p>Contractor’s Liability – Contractor will be solely liable for all costs and expense for any action required by applicable laws and codes with respect to (i) any hazardous material that Contractor or any subcontractor of vendor introduces to the Project Site; and (ii) the handling, removal, disturbance, or exacerbation of pre-existing hazardous materials if Contractor or its subcontractors or vendors or their respective personnel handles, removes, disturbs, or exacerbates pre-existing hazardous materials after Contractor or its subcontractors or vendors or their respective personnel knew or reasonably should have known of the existence of such hazardous materials.</p> <p>Contractor Indemnity for Hazardous Materials - Contractor will indemnify Company from and against any and all losses (i) arising out of a hazardous material introduced to the Project Site by Contractor or its subcontractors or vendors or their respective personnel; and (ii) to the extent arising out of Contractor’s handling, removal, disturbance, or exacerbation of any pre-existing hazardous materials after Contractor knew or reasonably should have known of the existence of such hazardous materials.</p>
<p>Z. FORCE MAJEURE</p>	<p>Excused Performance - A Party is excused from performance and will not be considered to be in default if and to the extent that its failure of, or delay in, performance is caused by a Force Majeure Event.</p> <p>Force Majeure Requirements - To be entitled to the foregoing relief, the Party claiming excuse by reason of a Force Majeure Event must:</p>

- (a) give the other Party immediate notice describing the Force Majeure Event as soon as the claiming Party knows of or reasonably should have known of the occurrence of such event, but in no event later than 48 hours after the occurrence thereof;
- (b) suspend performance only to the extent and for the duration that is reasonably required by the Force Majeure Event;
- (c) develop a detailed plan, in the case of Contractor, for Company's approval and a request for Change Order no later than 5 days after the occurrence of the Force Majeure Event describing how Contractor will recover from the Force Majeure Event and any adjustments to the Project Schedule that Contractor requests;
- (d) use commercially reasonable efforts to overcome or mitigate the effects of such occurrence; and
- (e) promptly resume performance hereunder when such Party can resume performance of its obligations under the EPC Contract.

AA. GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law - The EPC Contract and rights and duties of the Parties will be governed by and construed, enforced, and performed in accordance with the laws of the State of New York.

Notice of Dispute – An “*Aggrieved Party*” will have the right to give written notice to the other Party (“*Noticed Party*”) that Noticed Party is not performing in accordance with Aggrieved Party’s interpretation of the terms and conditions of the EPC Contract. Noticed Party must respond to Aggrieved Party’s written notice within 20 days after receipt.

Resolution of Dispute - If Noticed Party disagrees with Aggrieved Party’s concern, each Party will designate a member or members of senior management to discuss the matter and attempt to resolve the dispute. If after 30 days after Noticed Party’s response to Aggrieved Party’s notice, either Party believes that continued discussions will not result in a resolution of the dispute, then such Party may pursue its rights and remedies at law or in equity. All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations will be tolled while discussions are pending.

BB. ASSIGNMENT

Neither Party may assign the EPC Contract to another person without the prior approval of the other Party; *provided, however*, that without any such consent, Company may assign any or all of its rights, titles, and interests hereunder to (i) a financing party, if any, (or its designee) as security in connection with obtaining or maintaining any project financing for the Project; (ii) an affiliate of Company; (iii) an entity that purchases all or substantially all of Company or its assets, or (iv) an entity that purchases, in whole or in part, the Project.

CC. RECORDS AND AUDITS

Records - Contractor will keep records and books of account, including detailed time sheets, showing the actual cost to it of all items of labor, material, equipment, supplies, services and other expenditures of whatever nature for which reimbursement is authorized under the EPC Contract.

Inspections - Company may at reasonable times have access to the premises, materials, correspondence, instructions, working papers, plans, drawings, specifications, and memoranda of Contractor pertaining to the Work, and Contractor will provide facilities adequate for examination and audit by Company.

Audits – If Company’s audit uncovers overcharges, Contractor will reimburse Company for the amount of the overcharges.

**DD. SELECTED
MATERIAL
DEFINITIONS**

“Defect” or “Defective” means Work, or any portion thereof, that does not conform to any portion of the EPC Contract, including the requirements set forth in the Warranty provisions set forth above.

“Force Majeure Event” Any acts, events, or occurrences that are unforeseeable and not caused by the negligence or willful misconduct of the affected Party or any of its personnel and are beyond the reasonable control of such Party or any of its personnel may be considered Force Majeure Events. Depending upon the facts and circumstances, the following may be a Force Majeure Event: acts of God; earthquakes; unusually severe weather conditions; unusually severe drought; blight; famine; quarantine; blockade; governmental acts, the delay or inability to obtain permits despite due diligence in seeking such permits, court orders or injunctions; war; insurrection or civil strife; sabotage; terrorism; transportation accidents; shipwreck; pandemic or epidemic (only to the extent of applicable restrictions); and explosions; *provided, however*, that a Force Majeure Event does not include (i) economic hardship, such as the inability to pay monies due and owing, (ii) a failure of materials and equipment or construction aids except if caused by an independent event constituting a Force Majeure Event, (iii) acts or omissions of a third party, including any vendor or subcontractor, unless such acts or omissions themselves result from a Force Majeure Event, (iv) unavailability of materials and equipment or construction aids except if caused by an independent event constituting a Force Majeure Event, (v) a strike, walkout, or other dispute of Contractor’s or Company’s personnel at the Project Site (that is not part of a national or regional strike or a craft union that is performing Work on the Project Site), or (vi) price fluctuation with respect to materials and equipment or construction aids. In no event shall the unavailability or shortage of skilled or unskilled labor constitute a Force Majeure Event.

“Letter of Credit” means one or more irrevocable standby letters of credit governed by the International Standby Practices 1998 (ISP 98) or later edition issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having at all times (i) net assets of not less than one billion dollars, and (ii) a Credit Rating of at least “A-” from S&P or “A3” from Moody’s or such lower Credit Rating as is acceptable in accordance with customary market practice at the time of issuance of the letter of credit for standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch for credit support on large-scale infrastructure projects, in a form acceptable to the Party in whose favor the letter of credit is issued, which may be drawn at a location in the City of New York, New York. The EPC Contract will attach an agreed form of Letter of Credit.

“Prudent Industry Practices” means good utility practices and those practices, methods, procedures and standards generally prevailing, and as may change from time-to-time, that are commonly used or applied in the United States in the economical and prudent engineering, design, procurement and construction of electric utility facilities and energy storage facilities similar to the Project; *provided, however,* that Prudent Industry Practices shall also include such practices, methods, procedures and standards generally prevailing in the world with respect to such activities if any of them are more stringent than those in the United States and/or in the absence of any of them in the United States. Prudent Industry Practices shall also include any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost. Prudent Industry Practices are not intended to be the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the utility industry for the construction of energy storage facilities in the United States.