

Appendix H- Form Memorandum of Understanding (MOU) with DOER

ENERGY STORAGE SYSTEM REPORTING AGREEMENT

This Energy Storage Systems and associated Environmental Attributes Reporting Agreement (this “Agreement”) is entered into effective as of DATE (the “Effective Date”) by and between COMPANY (“COMPANY NAME” or “Company”), and the Massachusetts Department of Energy Resources (“MA DOER”). Each of COMPANY and MA DOER is referred to as a “Party” and, collectively, as the “Parties.”

RECITALS

WHEREAS, on DATE, COMPANY submitted its proposal (the “Bid”) for a AMOUNT MW energy storage system (the “Project”) in response to the Request for Proposals for Long-Term Contracts for Energy Storage Projects (the “RFP”) issued DATE, by Fitchburg Gas & Electric Light Company d/b/a Unitil, Massachusetts Electric Company d/b/a National Grid, Nantucket Electric Company d/b/a National Grid, and NSTAR Electric Company d/b/a Eversource Energy (each, individually, an electric distribution company or “EDC” and, collectively, the “EDCs”);

WHEREAS, on DATE, DOER selected the Bid as a winning proposal under the RFP;

WHEREAS, following the selection of the Bid, COMPANY and each EDC negotiated and subsequently executed and delivered Long-term Contract for Energy Storage Systems and Associated Environmental Attributes for the EDCs’ purchase of energy and other products to be produced by the Project (as the same may be amended, restated, modified, supplemented, extended or otherwise superseded from time to time, the “LTCs”), each dated DATE, which LTCs will be subsequently submitted for approval to the Massachusetts Department of Public Utilities (“MA DPU”);

WHEREAS, among other aspects of the Bid, COMPANY committed to investments to promote short and long-term employment and economic development in the Commonwealth, track and report on the status of environmental justice impacts, and engagement and employment opportunities (training, recruitment and hiring goals, and a commitment to diversity, equity and inclusion, including employment and procurement/contracting opportunities, for minority, women, veterans, LGBT and persons with disabilities,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. Project Impact Assessment and Reporting. COMPANY hereby agrees that it shall deliver to MA DOER written annual progress reports beginning not later than the date that is one year after the Effective Date of this agreement (the “Reporting Date”) and, thereafter, not later than

August 31st of each year during the term of the LTCs with data through June 30 of each reporting year. Each report shall summarize COMPANY's progress in achieving any direct economic investment commitments and/or economic development commitments from its Bid and shall include in addition, the following information:

- a) The total number of Company's and its affiliates' employees whose work is substantially (i.e., 50% or greater) dedicated to the Project, as well as the number of such employees who reside in the Commonwealth and in which counties;
- b) The total number of workers employed by contractors and subcontractors for the Project, as well as the number who reside in the Commonwealth;
- c) Descriptions of the types of jobs included in (b) by general category (e.g., development, operations & maintenance, construction, manufacturing, etc.) and the average annual salary level by category and county;
- d) Such general demographic information regarding employment created by the Project related to the goals outlined in the COMPANY Bid's regarding diversity, equity and inclusion as COMPANY is able to collect using commercially reasonable efforts, and descriptions of efforts to recruit and retain diverse job candidates;
- e) The extent to which the reported results align with the estimates of the Project's contributions to employment and economic development contained in the Project proposal;
- f) Any relevant lessons learned that Massachusetts officials can use to improve economic outcomes for Massachusetts and inform future state procurement and programmatic efforts;
- g) The estimated employment and economic impact of projects supported by the Project, specifically focusing on funds allocated, revenue generation and the impacts on the communities in which such projects are located;
- h) How the Project provides employment and procurement/contracting opportunities for minority, women, veterans, LGBT and persons with disabilities;
- i) The status of any impacts to EJ Populations from project siting and construction and status of outreach and engagement with affected Environmental Justice ("EJ") Populations;²⁰ and
- j) The status of employment opportunities for EJ Populations and residents of EJ Populations provided by the Project.

MA DOER agree that COMPANY shall not be considered in breach of its obligations hereunder as a result of any such information proving inaccurate or incomplete, as long as COMPANY has used reasonable and good faith means of collecting, analyzing and preparing such information. Further, MA DOER and COMPANY agrees that the annual report will not include any personal identifiable information (PII) with respect to any employees, contractors, workers or other

²⁰ As defined in MGL ch. 30, § 62; see also EEA Environmental Justice Policy (<https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts>).

personnel of any kind.

3. Conditions to Commitments. MA DOER acknowledges and agrees that COMPANY's commitments set forth herein are subject to (1) the Project obtaining all federal, state and local permits needed to construct and operate the Project, and (2) the Project achieving financial close with such lenders and tax equity investors as are necessary to finance the Project ("Financial Close").

5. Representations and Warranties. As of the Effective Date, COMPANY represents and warrants to MA DOER (which representations and warranties shall survive the termination or expiration of this Agreement) that: (i) the execution, delivery and performance of this Agreement has been duly authorized by all requisite action on the part of COMPANY, and COMPANY has full power and authority to enter into this Agreement and fulfill its obligations hereunder; (ii) this Agreement constitutes the legal, valid and binding obligation of COMPANY enforceable against COMPANY in accordance with its terms; (iv) COMPANY's performance or compliance with this Agreement will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under any obligation (including license, sublicense, lease, contract, or agreement) or instrument to which it is bound or to which its properties are subject; (v) except for such litigation as affects the industry generally, there are no lawsuits, actions or any other legal or administrative proceedings pending, or to the knowledge of COMPANY, threatened in writing against COMPANY which, if determined against COMPANY, would have a materially adverse effect on its ability to perform its obligations under this Agreement; and (vi) neither COMPANY or any of its directors, officers, employees or agents have, directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any "foreign official" (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended), foreign political party or official thereof or candidate for foreign political office for the purpose of (1) influencing any official act or decision of such official, party or candidate, (2) inducing such official, party or candidate to use his, her or its influence to affect any act or decision of a foreign governmental authority, or (3) securing any improper advantage, in the case of (1), (2) and (3) above in order to assist such

Party or any of its affiliates in obtaining or retaining business for or with, or directing business to, any person.

6. Public Records. As a public agency, MA DOER is subject to the Massachusetts Public Records Law (set forth at Massachusetts General Laws Chapter 66; "Massachusetts Public Records Law") and thus documents and other materials made or received by MA DOER and/or its employees may be subject to public disclosure. COMPANY acknowledges and agrees that any document, report or other information provided pursuant to this Agreement, including this Agreement, shall be a public document and subject to disclosure under Massachusetts Public Record, as determined by MA DOER. In the event that COMPANY determines that there is a need to protect commercial, proprietary or otherwise sensitive information, MA DOER will reasonably cooperate with COMPANY's efforts to request confidential treatment for such information, consistent with and subject to applicable law.

7. No Partnership, etc. It is expressly agreed that the relationship between the Parties shall not constitute a partnership, joint venture or agency.

8. Miscellaneous.

(a) Entire Agreement. This Agreement sets forth the entire agreement between MA DOER and COMPANY regarding the matters herein and supersedes all prior agreements and understandings, written or oral, between MA DOER and COMPANY with respect to the subject matter hereof.

(b) Amendment; Waiver. This Agreement may be modified or amended only by a writing executed by COMPANY and MA DOER. No failure by a Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

(c) Assignment. This Agreement shall inure to the benefit of each Party and any of its successors and permitted assigns. Neither Party may assign this Agreement without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, that COMPANY shall have the right to assign this agreement to an affiliate that will own the Project effective upon its delivery of Notice to MA DOER and provided further, that MA DOER shall have the right to assign this agreement to its legal successor-in-interest effective upon delivery of Notice to COMPANY. For purposes of COMPANY's rights under this Section 13(c), "affiliate" shall mean an entity that is (a) formed for the purpose of owning, financing and operating the Project, that at such time owns and intends for the duration of this Agreement to continue to own all or substantially all of the assets of the Project and/or (b) is directly, or indirectly through one or more intermediaries controls, or is controlled by, or is under common control where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such affiliate, whether through the ownership of membership interests, by contract or otherwise. MA DOER accepts such an affiliate as a permitted assignee of this Agreement.

(d) Severability. If any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, and the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to the conflicts of laws provisions thereof that would require the application of the laws of another state. Each Party expressly consents that any judicial action with respect to this Agreement shall be filed exclusively in the state courts located in the Commonwealth of Massachusetts, and each Party further irrevocably consents and submits to the personal jurisdiction and venue of the state courts located therein and irrevocably waives any and all claims and defenses it might have in any action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens, or any similar claim or defense.

(f) Notices. All notices, requests, consents, claims, demands, waivers and other

communications hereunder (each, a “Notice”) shall be delivered by an authorized person of a Party in writing and addressed to the receiving Party at the address set forth herein (or to such other address that may be designated by the receiving party from time to time in accordance with this section). Notices to COMPANY shall be addressed to COMPANY, LLC,. Notices to MA DOER shall be addressed to General Counsel, Department of Energy Resources, 100 Cambridge Street, 9th Floor, Boston, MA 02114. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail of a PDF document (with confirmation of transmission) or certified mail (return receipt requested, postage prepaid). All e-mail notices shall be promptly followed by overnight delivery (with all fees pre-paid) or certified mail (return receipt requested, postage prepaid) to the persons identified in this paragraph (f).

(g) Counterparts. This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on each of the parties hereto. Counterparts may be delivered via electronic mail, first class mail or personal delivery and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

(h) Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(i) Force Majeure. Performance by a Party of its obligations contained in this Agreement at the time of and during an event of Force Majeure shall be excused and suspended so long as such event of Force Majeure is in effect, and for a reasonable period thereafter within which such Party shall make all commercially reasonable efforts to

resume performance, but for no longer period. A Party shall give prompt Notice to the other Party of such Force Majeure, which Notice shall provide details regarding the nature, the extent and expected duration of such Force Majeure. Each Party shall keep the other updated and advised of the effect of and remedial measures being undertaken to overcome such an event of Force Majeure. Neither Party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure. “Force Majeure” shall have the meaning set forth in the LTCs as of the Effective Date.

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IN WITNESS WHEREOF, the Parties hereto have executed this Energy Storage Agreement as of the Effective Date.

DOER:

COMPANY:

By:

By:

Name:

Name:

Title

Title