

## DSP-AGGREGATOR AGREEMENT FOR NYISO PILOT PROGRAM

This DSP-Aggregator Agreement (“Agreement”), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_(utility)\_\_\_, a New York corporation with offices at \_\_\_\_\_ (“Distributed System Platform Provider” or “DSP”) and \_\_\_\_\_, a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ (“Aggregator;” and together with the DSP, the “Parties” and each, individually, a “Party”).

### WITNESSETH:

**WHEREAS**, the New York Independent System Operator, Inc. (“NYISO”) has initiated a pilot program for the integration of distributed energy resources (“DER”), as that term is defined by the New York State Public Service Commission, into NYISO-administered markets, that will run from \_\_\_\_\_ until \_\_\_\_\_ (“Pilot Period”), as set forth in \_\_\_\_\_; and

**WHEREAS**, Aggregator, as defined by the NYISO as a DER Coordination Entity, or “DCE,” intends to bid DER into NYISO-administered markets during the Pilot Period; and

**WHEREAS**, the DSP is required to ensure that the dispatch of DER on the distribution system during the Pilot Period does not negatively impact the reliability or safety of the distribution system;

**WHEREAS**, Aggregator and the DSP must share certain information and engage in certain communications during the Pilot Period in order to preserve the reliability of electric service and quality of electric distribution service; and

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

#### **1. ENROLLMENT LIST**

Aggregator shall provide the DSP with a list of all individual DER enrolled by Aggregator during the Pilot Period (“Enrollment List”) and proof of enrollment for each such enrolled DER.

Aggregator shall provide the DSP with an updated Enrollment List on a schedule consistent with its NYISO obligations prior to using an individual DER in an aggregated bid during the Pilot Period.

#### **2. REQUIRED DER INFORMATION**

For each enrolled individual DER, Aggregator shall provide the DSP, in a manner and format approved by the DSP, the following information: (i) resource type; (ii) nameplate capacity, or the equivalent; (iii) utility account number; and (iv) minimum and maximum operating limits. The DSP may, at its sole discretion, waive Aggregator’s obligation to provide any of the foregoing information as to any individual DER on Aggregator’s Enrollment List if the DSP determines that such information is either: (i) not applicable or (ii) provided to the DSP elsewhere.

Aggregator understands and agrees that the DSP may need additional information about individual DER on Aggregator's Enrollment List, including technical information, either for ongoing operations or in emergency situations. The Aggregator will work with the DSP for each individual DER to identify the interconnection point, the associated meter number(s), and transmission node at which the resource will inject into NYISO administered markets (name and pointed). Aggregator agrees to promptly provide the DSP with such additional information at the DSP's request. Aggregator agrees any information provided as part of this agreement does not obviate the requirement for individual DER to go through the utility interconnection process.

### **3. DISPATCH INFORMATION AND COMMUNICATION**

Aggregator shall dispatch and operate only those individual DER on its Enrollment List that, based on system conditions and dispatch schedules, the DSP has determined will not adversely impact distribution system safety or reliability.

- a) The DSP will inform each individual DER on Aggregator's Enrollment List of system information that may impact that individual DER's availability. Aggregator shall consult with each individual DER on its Enrollment List and consider any such information in establishing its dispatch schedule.
- b) In accordance with the development of any DSP operational procedures, Aggregator shall inform the DSP of the dispatch schedule of each individual DER within the aggregation, including any changes to the dispatch schedule.
- c) The dispatch information that Aggregator provides to the DSP shall be communicated in a manner and format approved by the DSP.
- d) The DSP will evaluate DER dispatch schedules to determine the impacts on distribution system safety and/or reliability. In the event that the DSP determines that a re-dispatch is necessary for the above noted reasons, the DSP shall inform Aggregator and Aggregator shall revise its individual DER dispatch schedule. Aggregator shall submit the revised individual DER dispatch schedule to the DSP for review pursuant to part (b) of this section.

### **4. OPERATING DIRECTIVES**

Aggregator understands and agrees that the DSP may need to take actions to maintain or restore the reliability of the distribution system, including limiting or disconnecting an individual DER. Aggregator agrees that the DSP has sole discretion with respect to the need for actions that maintain reliability and safety. Aggregator shall comply with any directives from the DSP and shall not direct or dispatch any individual DER in a manner contrary to a directive.

### **5. COMMUNICATION OF OPERATING STATUS**

Aggregator shall promptly notify the DSP of any changes in operating status of an individual DER on its Enrollment List.

### **6. ONGOING COMMUNICATIONS**

Aggregator understands that it must maintain ongoing communications with the DSP. Aggregator shall: (i) be available for real-time operational oral communications 24 hours a day,

7 days a week;<sup>1</sup> and (ii) promptly inform the DSP of any changes in Aggregator’s contact information.

**7. METER AND TELEMETRY DATA**

For each individual DER on the Enrollment List, Aggregator shall provide the DSP with metered and telemetry data consistent with the requirements established as part of the Interconnection Technical Work Group and/or requirements of the interconnecting DSP. This data can be obtained from facilities installed to meet prior telemetry or metering requirements as part of the individual DER interconnection process. If the NYISO requirements result in additional data, the DSP may request access to that data.

**8. INTERPRETATION OF DATA**

Aggregator has the sole responsibility to interpret and apply any information received from the DSP for the purposes of Aggregator’s business or operations, including for the purpose of dispatch or bidding.

**9. COMPLIANCE WITH INTERCONNECTION AGREEMENTS**

Aggregator shall: (i) confirm that each individual DER on its Enrollment List has a valid interconnection agreement with the DSP; and (ii) not dispatch any individual DER in a manner that violates or is inconsistent with its interconnection agreement with the DSP.

**10. COMPLIANCE WITH NYISO DIRECTIVES AND PROCEDURES**

In meeting NYISO directives and procedures, Aggregator must not act in a manner that is inconsistent with the directives and procedures of the DSP or the NYISO, including those contained in Tariffs, manuals, reference documents, or agreements.

**11. LIMITATION OF LIABILITY**

To the fullest extent allowed by law, in no event shall either Party be liable for any consequential, incidental, direct, indirect, special or punitive damages incurred by the other Party and connected with, arising from or related to this Agreement or the performance or failure to perform services hereunder, including but not limited to loss of good will, cost of capital, claims of customers and lost profits or revenue, whether or not such loss or damages is based in contract, warranty, tort, negligence, strict liability, indemnity, or otherwise, even if a party has been advised of the possibility of such damages.

**12. CONSENT TO INFORMATION SHARING**

Aggregator understands that the DSP and the NYISO may need to share information for the efficient administration of markets and the planning and operation of the utility system. Aggregator consents to the DSP sharing Aggregator’s or individual DER information with the NYISO for these purposes during the Pilot Period. Aggregator also agrees that it will provide NYISO with the necessary consents to allow it to share Aggregator and/or individual DER

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<sup>1</sup> The NYISO expects to test DER pilot projects Tuesday through Friday from the hours HB8 to HB16 (see *NYISO DER Pilot Program Application Form*).

information with the DSP for these purposes, and agrees to execute any documents required by the NYISO to effectuate the communication of such information.

**13. TERMINATION OF REGISTRATION**

The DSP may terminate Aggregator’s registration if Aggregator fails to comply with the terms of this Agreement, to be effective upon \_\_\_\_days’ notice, and notify the NYISO of such termination and the reasons for termination. Aggregator may terminate this Agreement at any time, to be effective upon 30 days’ notice.

**14. TERM**

Once executed, this Agreement shall remain in force for the duration of the Pilot Period, as specified by NYISO, unless terminated earlier pursuant to section 13.

Aggregator understands that Aggregator and the DSP may need to execute new or additional Registration or other agreements after the Pilot Period, and that the terms of this Agreement will have no force beyond the end of the Pilot Period as defined in this Agreement.

**15. NOTICE; CONSENT TO JURISDICTION; SELECTION OF FORUM**

Aggregator irrevocably submits to the jurisdiction of the courts located within the State of New York with regard to any dispute or controversy arising out of or relating to this Agreement. Aggregator agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to Aggregator at:

*[Fill in contact and address info for Aggregator]*

and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. Aggregator agrees that service of process on it may also be made in any manner permitted by law. Aggregator consents to the selection of the New York State and United States courts within \_\_\_\_\_ County, New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.

Notice shall be deemed sufficient if provided by email/in writing:

*[Specify manner of service on DSP, and on Aggregator and contact and address info that suffices for notice and service]*

**16. GOVERNING LAW**

This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the State of New York, without recourse to such state’s choice of law rules.

**17. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this

Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.

**18. AMENDMENTS; WAIVERS**

This Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.

**19. ASSIGNMENT**

This Agreement (and Aggregator's obligations hereunder) may not be assigned by Aggregator without the prior written consent of the DSP, and any purported assignment without such consent shall be void.

**20. SEVERABILITY**

Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

**21. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written agreements or understandings with respect to such subject matter are merged herein. This Agreement may not be amended without the written agreement of the Parties.

**22. NO THIRD PARTY BENEFICIARIES**

This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim or action as a result of this Agreement.

**23. FORCE MAJEURE**

No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence.

**24. RELATIONSHIP OF THE PARTIES.**

The DSP and Aggregator expressly agree they are acting as independent entities and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose.

**25. CONSTRUCTION**

This Agreement shall be construed as to its fair meaning and not strictly for or against any party.

*[signature page follows]*

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**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement as of the date first above written.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT