

APPENDIX 9 - SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (THE “SLA”) BETWEEN VIRGIN ISLANDS WATER AND POWER AUTHORITY (“OWNER”) AND WÄRTSILÄ NORTH AMERICA (“CONTRACTOR”) APPLIES TO THE USE BY OWNER OF THE GREENSMITH ENERGY MANAGEMENT SOFTWARE AND ITS OPERATING MODULES (COLLECTIVELY, THE “SOFTWARE SOLUTION”) INSTALLED IN THE ENERGY STORAGE SYSTEM (THE “SYSTEM”) LOCATED AT THE PROJECT SITE IN ST. THOMAS, U.S. VIRGIN ISLANDS (THE “PROJECT”). EACH OF OWNER AND CONTRACTOR ARE A “PARTY” AND TOGETHER “THE PARTIES.”

EXCEPT WHERE INDICATED OTHERWISE IN THIS SLA, TERMS DEFINED IN THE AGREEMENT FOR THE ENGINEERING, PROCUREMENT, AND CONSTRUCTION WITH RESPECT TO THE RANDOLPH HARLEY POWER PLANT (RHPP) NEW GENERATION, OF A 36 MW (GROSS CAPACITY) POWER FACILITY AND A 9 MW/18MWH BESS (BATTERY ENERGY STORAGE SYSTEM) LOCATED IN ST. THOMAS, DATED _____, 2020 BETWEEN CONTRACTOR AND OWNER (THE “EPC CONTRACT”) HAVE THE SAME MEANING WHEN USED IN THIS SLA.

1. SOFTWARE LICENSE. Subject to the terms and conditions in this SLA, Contractor hereby grants to Owner a non-exclusive, non-transferable, perpetual right to use the Software Solution solely for Owner internal use and solely as installed on the System or as updated from time to time by Contractor or a Contractor authorized sub-contractor.

Owner’s use of the Software Solution pursuant to the SLA is conditional upon timely receipt by Contractor from Owner, of all applicable fees set forth in the Engineering Procurement and Construction Agreement.

The term of Owner’s use of the Software Solution under the SLA under the Agreement shall commence on the “Commercial Operation Date”, which is defined as the date that Owner first begin using the Software Solution for the Project, and shall continue perpetually thereafter (such period being referred to as the “SLA Term”).

2. WARRANTY. For a period of nine (9) months following the Commercial Operation Date, (“Warranty Period”) and as part of the SLA, Contractor shall provide basic warranty in support of the Software Solution, at no cost to Owner. Such services shall consist of providing Owner with: (i) new versions of the Software Solution or any component portion thereof, as the same may become available (“Releases”); (ii) updates consisting of or including modifications or improvements to the existing features of the Software Solution (“Updates”); and (iii) corrections to ensure that the Software Solution functions as intended (“Corrections”), and ensuring that the same are properly integrated into the Software Solution.

Contractor may provide additional services, including but not limited to training of the Owner and the development of any custom improvement(s) to the Software Solution, and/or Releases, Updates or Corrections during any extension of the Warranty Period Term, as Owner may request from time to time during the Warranty Period Term, for which Contractor shall receive additional compensation for its time and materials. Contractor’s standard hourly rate in effect at the time of the SLA is USD \$250 per hour; however, the standard hourly rate is subject to the applicable yearly inflation rate in the United States published by the U.S. Labor Department.

Warranty under the SLA shall not include services by Contractor to the extent arising from any of the following conditions: (i) problems resulting from Owner's misuse, improper use, alteration or damage of or to the Software Solution; (ii) problems resulting from modifications of or to the Software Solution that are not made or authorized by Contractor; (iii) problems resulting from Owner's use of the Software Solution in combination with any other software, equipment or programming which is not approved by Contractor; (iv) changes to the Software Solution that are required as a result of changes in third-party software, equipment or programming; (v) Owner's failure to run the most current Release, Update or Correction delivered by Contractor; and (vi) any Software Solution feature(s) requested by the Owner that is or are in addition to or beyond the scope of those described in this SLA or the EPC Contract.

3. RESTRICTIONS. Owner may not use, copy, modify, download or transfer the Software Solution or any component thereof, in whole or in part, except as expressly provided in the SLA. Owner may not reverse engineer, disassemble, decompile, or translate any software components of the Software Solution, attempt to derive the source code of any software components of the Software Solution, create any derivative work from any software components of the Software Solution, or authorize or assist any third party to do any of the foregoing.

Owner may not rent, lease, loan, resell for profit, or distribute the Software Solution, or any part thereof. Owner may not remove or alter any proprietary notice or legend regarding Contractor's proprietary rights in the Software Solution. Owner may not permit any third party to take any of the actions described in this Section. Each of the components that constitute the Software Solution and its related documentation is a commercial item, and Owner acquires the Software Solution and any associated documentation with only those rights set forth in the SLA.

4. OWNERSHIP. The Software Solution and all components thereof, including but not limited to all software components, are the property of Contractor, and Contractor retains all right, title and interest in and to the foregoing, including any trade secrets, patents, copyrights, trademarks, proprietary designs, engineering, inventions, processes, rights or information, licenses or other intellectual property rights ("Intellectual Property Rights") in the Software Solution. Except for the limited rights granted to Owner in the SLA, Owner obtain no rights to the Software Solution, and Contractor reserves all rights not expressly granted to Owner.

5. DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND/OR OTHER THAN AS SPECIFICALLY SET FORTH IN THIS SLA, THE SOFTWARE SOLUTION IS PROVIDED "AS IS" WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE SOFTWARE SOLUTION RESIDES WITH OWNER. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INTERFERENCE AND/OR QUIET ENJOYMENT, SYSTEM INTEGRATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND DATA ACCURACY. CONTRACTOR AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (I) THE USE OF THE SOFTWARE SOLUTION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (II) THE SOFTWARE SOLUTION WILL MEET OWNER'S REQUIREMENTS OR EXPECTATIONS, (III) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, OR (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY OWNER THROUGH THE SOFTWARE SOLUTION WILL MEET OWNER'S REQUIREMENTS OR EXPECTATIONS. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL LIMIT, RESTRICT OR OTHERWISE ADVERSELY AFFECT ANY WARRANTY OR PERFORMANCE GUARANTEE CONTAINED IN THE EPC CONTRACT, AND CONTRACTOR

SHALL HAVE NO RIGHT TO LIMIT ITS LIABILITY THEREUNDER BY REFERENCE TO THIS AGREEMENT.

6. LIMITATION OF LIABILITY. THE SOFTWARE SOLUTION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CONTRACTOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. IN NO EVENT SHALL CONTRACTOR OR ANY OF ITS AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES SUFFERED OR INCURRED BY THE OWNER OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THE SLA OR USE OF OR INABILITY TO ACCESS THE SOFTWARE SOLUTION OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY HARDWARE, THIRD-PARTY SOFTWARE AND/OR SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, REGARDLESS OF WHETHER (I) CONTRACTOR SHALL HAVE BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH CONSEQUENTIAL DAMAGES OCCURRING AND (II) SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

IN NO EVENT WILL CONTRACTOR'S LIABILITY TO OWNER FOR ANY DAMAGES EVER EXCEED THE TOTAL AMOUNT OF SLA FEES PAID BY OWNER FOR THE SERVICES SOLUTION, TOTALLING ONE HUNDRED FIFTY-TWO THOUSAND (152,000) EUROS, REGARDLESS OF THE FORM OR NATURE OF THE LOSS, CLAIM OR ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, PROVIDED THAT THE LIMITATIONS SET FORTH IN THIS SECTION 6 SHALL NOT APPLY TO CONTRACTOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL LIMIT, RESTRICT OR OTHERWISE ADVERSELY AFFECT ANY WARRANTY OR PERFORMANCE GUARANTEE CONTAINED IN THE EPC CONTRACT, AND CONTRACTOR SHALL HAVE NO RIGHT TO LIMIT ITS LIABILITY THEREUNDER BY REFERENCE TO THIS AGREEMENT.

7. INTELLECTUAL PROPERTY RIGHTS INDEMNITY. The following shall apply to any software delivered with the Software Solution:

(a) Intellectual Property Rights Indemnity. Subject to Section 7(b), Contractor agrees to indemnify Owner against any claims arising from or related to an infringement of Intellectual Property Rights which may occur in connection with Owner's use of the Software Solution in accordance with the SLA, unless such infringement is at the direction of Owner. Contractor shall have sole authority for the control of the defense of any and all such claims and any suits brought and all expenses relating thereto, and Owner shall render such assistance as Contractor may reasonably require in connection therewith; provided that in any suit brought on any such claim, Owner have the right to be represented by counsel of its own choice and at its own expense. If the Software Solution, or any part thereof, is, or in Contractor's opinion is likely to be, claimed to infringe, or otherwise violate any third-party Intellectual Property Rights, or if Owner's use of the Software Solution is enjoined or threatened to be enjoined, Contractor shall, at its option and cost and expense: (i) obtain the right for Owner to continue to use the Software Solution materially as contemplated by the SLA; or (ii) modify or replace the Software Solution, in whole or in part, to seek to make the Software Solution non-infringing, while providing materially equivalent and compatible features and functionality, and such modified or replacement software will constitute the Software Solution under the SLA. In no event will Contractor's indemnity obligations exceed the limitation of liability under Section 5.

(b) Exceptions. The Intellectual Property Rights Indemnity obligation under Section 7(a) does not apply to the extent the claims or suits arise from any allegation of or relating to: (i) infringement of a patent issued

on a patent application published more than three (3) years after the Effective Date; (ii) incorporation by the Software Solution of, or combination, operation or use of the Software Solution in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Contractor or specified for Owner's use in the Software Solution documentation, unless otherwise expressly permitted by Contractor in writing; (iii) modification of the Software Solution other than by Contractor or its subcontractor in connection with the SLA or with Contractor's express written authorization and in strict accordance with Contractor's written directions and specifications; (iv) failure to timely implement any Release, Update, Corrections or replacement of the Software Solution made available to Owner by Contractor; (v) use of the Software Solution after Contractor's notice to Owner of such use's alleged or actual infringement or other violation of a third party's Intellectual Property Rights; (vi) use of the Software Solution or associated documentation by Owner that is outside the purpose, scope or manner of use authorized by the SLA or in any manner contrary to Contractor's instructions; or (vii) modification of Software Solution, including but not limited to customer configurable features, by or on behalf of Owner.

(c) Sole Remedy. This Article 7 sets forth Owner's sole remedies and Contractor's sole liability and obligation for any actual, threatened or alleged claims that the Software Solution infringes, misappropriates or otherwise violates any Intellectual Property Rights of any third party.

8. CYBERSECURITY AND DATA. Contractor shall deliver the Software Solution, and where applicable under the EPC Contract, any other logic-bearing system components of Contractor's Work (e.g., hardware, firmware, and software) (collectively, "**Digital Items**") free of any software virus and malware detectable by current standard industry best practices. Unless otherwise agreed in the EPC Contract, Owner shall be solely responsible for any System integration of the Digital Items with its own and third party information systems and/or system security engineering. It shall be Owner's sole responsibility to protect Digital Items against cyber security threats within Owner's operational environment. During the warranty period and any maintenance period thereafter, Contractor shall apply software patches as necessary to mitigate identified and applicable cyber security threats on a best efforts basis.

Owner acknowledges that any data conversion that results from the execution of the SLA is subject to the possibility of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media, that may give rise to loss or damage. Contractor shall not be liable for any such errors, omissions, delays, or losses. Unless otherwise agreed, Owner is responsible for adopting reasonable measures to limit the impact of such problems, including backing up data, and adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct data. Owner consents to the remote collection and use of information and data relating to the technical operating parameters of the Software Solution and equipment or software operating in connection with the Software Solution, including without limitation, all information that Contractor shall gather from sensors, instruments, monitors, or other industrial control or SCADA devices on the equipment and systems used in connection with the Software Solution ("Equipment Data"). Contractor may collect and use Equipment Data for any purposes including, but not limited to, carrying out system warranty and maintenance agreements and services, and improving solution performances. Owner shall own all Equipment Data collected. Contractor shall own all works, products, reports and improvements it may develop based upon or derived from Equipment Data. Notwithstanding anything to the contrary herein, in no circumstances shall Contractor share any Equipment Data with, or disclose such Equipment Data to, any third parties without the prior written consent of Owner.

9. EXPORT RESTRICTIONS. Owner acknowledge and agree that the Software Solution may be subject to restrictions and controls imposed by national and international laws and regulations, including but not limited the United States Export Administration Act and European Union export regulations or (collectively "Export Rules"). Owner agrees and certifies that neither the Software Solution nor any direct product thereof is being or will be acquired, shipped, transferred, or re-exported, directly or indirectly, into any

country for which such export is prohibited under the Export Rules and the regulations thereunder, nor will it be used for any purpose prohibited by the same.

10. RELEASES, UPDATES AND CORRECTIONS. To the extent Contractor provides Owner with any Releases, Updates or Corrections to the Software Solution as part of the maintenance services set forth in Section 2, such Releases, Updates or Corrections shall be deemed to constitute part of the Software Solution and shall be subject to all terms and provisions set forth in the SLA, including, without limitation, terms and provisions related to use restrictions, ownership and distribution of the Software Solution.

11. MODIFICATIONS TO THE SOFTWARE SOLUTION. Contractor reserves the right to modify or discontinue the Software Solution with notice to Owner, provided that Contractor will not decrease or alter any existing functionality of the Software Solution in any manner that would adversely affect Owner's use of the Software Solution. Contractor shall not be liable to Owner if Contractor exercises its right to modify or discontinue the Software Solution. If Owner objects to any changes to the Software Solution that do not adversely affect Owner's use of the Software Solution or impose additional costs on Owner, Owner must discontinue using the Software Solution.

12. ASSIGNMENT. The SLA or any rights and obligations under the SLA may be assigned, delegated or transferred to any Affiliate of the Contractor. In any other case the SLA or any rights and obligations under the SLA may not be transferred, delegated or assigned by a Party without the prior written consent of the other Party.

If the SLA or any rights or obligations under the SLA are so assigned, delegated or transferred in accordance with this Section, the SLA shall be binding upon and shall inure to the benefit of the assignee.

13. SEVERABILITY. If at any time a provision of the SLA is or becomes illegal, invalid or unenforceable under the Law of any jurisdiction, that will not affect or impair: (i) the legality, validity or enforceability in that jurisdiction of any other provision of the SLA; or (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the SLA.

14. ENTIRE AGREEMENT. The SLA constitutes the entire agreement between the Parties with respect to the subject matter of the SLA and supersedes all prior agreements, discussions, proposals, representations or warranties, whether written or oral, with respect to the subject matter hereof; provided that this SLA is subject to the terms and conditions of the EPC Contract, the terms and conditions of which shall remain applicable to the SLA during the Maintenance Period, including any extension thereof.

In case of any conflict, ambiguity or discrepancy between the terms and conditions of the SLA and the terms and conditions of the EPC Contract, the terms and conditions of the EPC Contract shall control.

15. HEADINGS. Headings are for convenience only and do not affect interpretation of the SLA.

WÄRTSILÄ NORTH AMERICA, INC.

**VIRGIN ISLANDS WATER AND
POWER AUTHORITY**

Signature

Signature

Type or Print Name

Type or Print Name

Title

Title

Date

Date