

Lease Agreement

This Lease Agreement ("Lease") dated _____, 2017, is made between **State House Loop, LLC**, a New Hampshire limited liability company, with a business address of P.O. Box 2520, Concord, New Hampshire 03302-2520 ("Landlord"), and the **State of New Hampshire**, acting through the **Department of Administrative Services**, with a business address of 25 Capitol Street, Concord, New Hampshire 03301 ("Tenant" or "State").

Order No. 25, 966 issued by the New Hampshire Public Utilities Commission ("Commission") on November 10, 2016 approved a Settlement Agreement dated October 4, 2016 by and among Concord Steam Corporation ("Concord Steam"), Commission Staff and Tenant ("Settlement Agreement"). The Settlement Agreement contains terms and conditions under which Concord Steam is authorized to discontinue steam service in the City of Concord, New Hampshire. Among other things, the Settlement Agreement requires Concord Steam to convey the Facility described below to Landlord, and requires Landlord to lease the Facility described below to Tenant pursuant to the terms of this Lease.

Article 1. **Facility.** Landlord shall lease to Tenant and Tenant shall lease from Landlord the steam piping loop for the following six (6) buildings located in Concord, New Hampshire: State House; State House Annex; Department of Justice Building; Legislative Office Building; State Library and Upham Walker House ("Downtown State Buildings"), as shown in Exhibit A. This steam piping loop is hereinafter referred to as the "Downtown Loop" or "Facility". The Facility shall include access to the Downtown Loop, as well as the exclusive use of the steam piping system comprising the Downtown Loop.

Article 2. **Term and Renewal.** The term of this Lease shall commence on the Termination of Service as defined in the Settlement Agreement ("Commencement Date") and continue until such time as the State is able to complete a conversion of the Downtown State Buildings to alternative heating sources. The Term shall end, and the Lease shall be terminated, in the State's sole discretion, upon fifteen (15) days prior written notice from Tenant to Landlord.

Article 3. **Rent.**

(a) **Base Rent.** Tenant further agrees to pay to Landlord an annual rent of Two Thousand Dollars (\$2,000.00), for incidental expenses such as Secretary of State Registration fees, tax return filing expenses and similar administrative expenses ("Base Rent"). Base Rent shall be paid in advance in one lump sum on the Commencement Date and each anniversary thereof until this Lease is terminated. There shall be no refund of Base Rent if the termination of this Lease occurs during the middle of a lease year. For purposes of this Lease, a "Lease Year" shall be the twelve months beginning on the anniversary of the Commencement Date.

(b) **Additional Rent.** In addition to the Base Rent, Tenant covenants and agrees to do the following: (i) pay all real estate and other property taxes assessed against the Facility by the due date of such taxes; (ii) purchase general comprehensive liability and property insurance policies for the Facility naming Landlord as an additional insured, (iii) pay all utility, maintenance and repair costs for the Facility directly to the provider of those services; and (vi) pay all other

expenses associated with the operation of the Facility (other than those included in Base Rent) (individually and collectively, "Additional Rent"). It is the intention of the parties that this is a "triple net" lease. In the event Tenant fails to pay Additional Rent as agreed, Landlord shall have the right, after fifteen (15) days advance notice to Tenant, to pay any of items comprising Additional Rent on the behalf of Tenant, and shall be entitled to full repayment of any funds advanced in connection therewith, plus an administrative fee of \$100. Additional Rent shall be payable as and when due with regard to the items listed in subsection (i) – (iv), and, if owed to Landlord, within fifteen (15) days of receiving an invoice from Landlord for Additional Rent.

(c) All Base Rent shall be paid at the address of Landlord in the introductory paragraph of this Lease, or such other place as Landlord may designate by written notice to Tenant. Additional Rent shall be paid to the address of the party to whom the Additional Rent is owed (e.g., City of Concord, the insurance company, utility company), or if owed to Landlord, then to the address of Landlord in the introductory paragraph of this Lease, or such other place as Landlord may designate by written notice to Tenant. Base Rent and Additional Rent shall be paid without notice or demand and without abatement, deduction or set off of any amount whatsoever. Base Rent and Additional Rent shall collectively be referred to as "Rent" in this Lease.

Article 4. Quiet Enjoyment and Possession. So long as Tenant pays the Rent required by this Lease and performs and observes the covenants and provisions hereof, Tenant shall have possession of and quietly enjoy use of the Facility.

Article 5. Use of Facility and Compliance with Applicable Laws. The Facility is to be used solely for the distribution of steam to the Downtown State Buildings for heating purposes, and for no other use unless Tenant receives the prior written approval of Landlord, which shall not be unreasonably withheld. Tenant shall comply in all material respects with all laws, ordinances and regulations, federal, state, county or municipal, now or hereafter in force, applicable to the Facility, relating to use thereof or to the making of repairs, changes, alterations or improvements, ordinary or extraordinary, seen or unforeseen.

Article 6. Rights to Alter and Improve. Subject to Landlord's prior written consent with respect to structural changes, which shall not be unreasonably withheld, Tenant, at its own expense, may make such alterations, improvements, additions and changes to the Facility as it may deem necessary. All alterations, additions or improvements which can be removed without causing substantial damage to the Facility, and were paid for by the Tenant, shall be the property of the Tenant at the termination of the Lease. Such property may be removed by Tenant prior to the termination of the Lease or abandoned in place.

No change or alteration shall at any time be made which shall impair the structural soundness or diminish the value of the Facility.

Tenant covenants and agrees to hold Landlord harmless from any and all charges, expenses, losses, liens of any nature and any and all liability arising out of or in connection with any improvements, changes, or additions to the Facility made by or on behalf of Tenant.

Article 7. Repair and Maintenance. During the Term Tenant shall keep the Facility, and improvements therein, in good order, repair and condition, reasonable wear and tear excepted, subject to damage by fire, taking and insured casualty, and shall replace where required herein any materials which may be injured or damaged with materials of the same quality.

Article 8. Assignment and Transfer. Tenant may assign or sublet the Facility, or any portion thereof, but only with the prior written consent of Landlord.

Article 9. Insurance. Tenant covenants and agrees at all times throughout the Term to obtain and keep in force for the mutual benefit of Tenant and Landlord comprehensive general public liability insurance against claims for personal injury, death or property damage in such amounts and with such insurers as shall be acceptable to Landlord, but in no event less than \$500,000 per person and \$1,000,000 per occurrence.

All policies of insurance required to be maintained by this Article 9 shall name Tenant and Landlord as insureds as their respective interest may appear, and shall contain an agreement by the insurers that such policies shall not be cancelled without at least ten (10) days' prior written notice to Landlord. Landlord shall be provided with copies of all policies within 30 days of the Commencement Date, and within 30 days of any renewal of said policies during the Term.

Article 10. Fire or Other Casualty. If the Facility shall be damaged by fire or other casualty Tenant shall, at its own expense, cause such damage to be repaired within sixty (60) days after the occurrence of such damage, and the Rent shall not be abated; provided, however, that all insurance proceeds with respect to the Facility ("Facility Insurance Proceeds") shall be assigned to Tenant.

Article 11. Condemnation. Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recovery for damages to the Facility and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of any taking or condemnation for any public or any quasi-public use under any statute or by right of eminent domain. By way of confirming the foregoing, Tenant hereby grants, assigns and covenants with Landlord to grant and assign to Landlord all rights to such damages or compensation. Nothing contained herein shall be deemed or construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for relocation expense.

Article 12. Real Estate Property Taxes. Tenant will pay all real estate taxes levied or assessed on or with respect to the Facility.

Article 13. Representations. Landlord makes no representations or warranties as to the condition of the Facility, or as to the contents thereof or personal property located therein, and Tenant accepts the same in their present AS IS condition after inspecting same.

Article 14. Waste. Tenant will not make or suffer any strip or waste of the Facility.

Article 15. Environmental Provisions.

(a) Tenant represents, warrants and covenants that it will obtain, and will comply with all permits, licenses and other authorizations which are required, if any, under all environmental laws and regulations, including laws relating to emission, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment (including, without limitation, air, surface water, groundwater, or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes, except to the extent failure to have any such permit, license or authorization does not have a material adverse effect on the financial condition, operations, prospects, or business of Tenant.

(b) Tenant shall comply with the requirements of all material federal, state, and local environmental laws relating to Tenant's use of the Facility; shall immediately notify Landlord in the event of any material spill, pollution or contamination affecting the Facility from oil, friable asbestos, hazardous waste, hazardous material, or other waste or material regulated or limited by applicable federal, state, or local environmental law or regulation ("Hazardous Material"); and shall immediately forward to Landlord any notices relating to such matters received from any governmental agency.

(c) Tenant shall immediately contain and remove at its sole cost and expense any Hazardous Material found on the Facility if caused by Tenant or anyone acting under Tenant; such work must be done in compliance with applicable laws.

(d) Tenant will hold Landlord harmless from any claim, cost, damage (including without limitation consequential damages), expense (including without limitation reasonable attorneys' fees and expenses), loss, liability, or judgment now or hereafter arising as a result of any claim for environmental cleanup costs, any resulting damage to the environment relating to any act or failure to act by Tenant or anyone claiming under Tenant and any other environmental claims against Tenant, Landlord, or the Facility relating to any act or failure to act by Tenant or anyone claiming under Tenant, except to the extent any such environmental claim described herein is caused by other tenants (with the exception of assignees or sub-tenants of Tenant), Landlord, or conditions existing at or near the Facility prior to the Commencement Date. The provisions of this section shall continue in effect and shall survive (among other events) any termination or expiration of this Lease.

Article 16. Right of Access. Landlord and its representatives may access the Facility, at any reasonable time and upon reasonable prior notice, for the purpose of inspecting the Facility, performing any work which Landlord elects to undertake, as a result of emergencies or otherwise, or as made necessary by reason of Tenant's default under the terms of this Lease. Any such access hereunder by Landlord shall not unreasonably interfere with normal Tenant operations at the Facility, except in cases of an emergency.

Article 17. Surrender and Decommissioning Upon Termination. Upon (i) the expiration of the Term or (ii) the sooner termination of the Lease pursuant to Article 2 above, Tenant shall be responsible for the filling and stabilization of the manholes associated with the Downtown Loop as shown in Exhibit B, in accordance with the provisions of the Landlord's testimony regarding the decommissioning of the State House Loop before the Public Utility Commission in Docket No. DG 16-769. As set forth in the Settlement Agreement, Concord

Steam shall include a credit to the Tenant on the Tenant's final utility bill from Concord Steam equal to an itemized estimate of the cost of filling the manholes associated with the Downtown Loop; the final bill from Concord Steam is expected to be in May 2017. This provision and any enforcement thereof shall survive the Termination of the Lease, and shall be enforceable by Concord Steam or Landlord.

Article 18. Default. If (a) the Facility shall be abandoned by Tenant, or the estate hereby created shall be taken by process of law, (b) Tenant shall default in the payment of any installment of Rent or any additional rent within fifteen (15) days of its due date, whether or not demanded, (c) Tenant shall default in the faithful observance or performance of any other covenant to be performed or observed by Tenant under this Lease for fifteen (15) or more days after Landlord shall give to Tenant notice in writing of such default and a demand to cure the same, (d) there shall be filed by or against Tenant a petition under any Chapter or Chapters of the Bankruptcy Act of the United States or any other insolvency proceeding relating to the debts of Tenant shall be brought by or against Tenant, or Tenant shall make an assignment for the benefit of creditors, or shall be insolvent or unable to pay its debts as they mature or a receiver shall be appointed for Tenant or any substantial part of its property, and Tenant has not cured the same within thirty (30) days, then and in any one or more of such events Landlord may, at Landlord's sole election, determine Tenant to be in default of the Lease.

Upon default as set out in the immediately preceding paragraph, Landlord may notify Tenant that the Term of this Lease has terminated. In case of termination of this Lease for any such cause, Landlord shall be deemed to have waived no rights or other remedies hereunder, or at law or in equity, and shall be entitled to recover arrearages of Rent, damages as for breach of contract including without limitation consequential damages relative to the remainder of the Term, and Landlord's reasonable attorney's fees and any other expenses of Landlord incurred in connection with the retaking of possession of the Premises and the removal or storage of Tenant's effects and the recovery of damages or the exercise of other rights or remedies.

Article 19. Hold Harmless.

(a) Tenant shall hold Landlord harmless from any and all claims or liability for any injury or damage to any person or property whatsoever occurring in, on, or about the Facility to the extent such injury or damage shall be caused in part or in whole by the act, neglect, fault, or omission of any duty with respect to the same, by Tenant, its agents, employees, or invitees.

(b) Landlord shall hold Tenant harmless from any and all claims or liability for any injury or damage to any person or property whatsoever occurring in, on, or about the Facility, to the extent such injury or damage shall be caused in part or in whole by the act, neglect, fault, or omission of any duty with respect to the same, by Landlord, its agents, employees or invitees.

(c) The covenants contained in this Article shall survive the expiration or earlier termination of this Lease.

Article 20. Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time,

express or implied, of any breach of any provision of this Lease shall be deemed a waiver of such provision of or a subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of said action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies of either party at law or in equity upon any breach shall be distinct, cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by a party or not, shall be deemed to be in exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

Article 21. **Notice.** Whenever by the terms of this Lease notice shall or may be given either to Landlord or Tenant, such notice shall be in writing and shall be sent by registered or certified mail, postage prepaid to the respective addresses set forth in the introductory paragraph of this Lease, or at such other address designated by either of the parties in writing to the other.

Article 22. **Counterparts.** This Lease (a) may be executed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument; and (b) shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors and assigns.

Article 23. **General.** This Lease shall be construed in accordance with the laws of the State of New Hampshire, and the invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions hereof, which shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The captions and headings contained in this Lease are for convenience only and shall not be taken into account in construing the meaning of this Lease or any part thereof. This Lease represents the entire understanding and agreement between the parties, merging all prior or written representations or agreements, and may not be amended or modified except with the mutual consent of the parties hereto. As to the obligation of each party to perform its undertakings, promises, covenants and obligations hereunder, time is of the essence. The parties hereto do not intend to benefit any third parties, and this Lease shall not be construed to confer any such benefit.

Article 24. **Landlord's Relation to the State.** In the performance of this Agreement, the Landlord is in all respects an independent contractor, and is neither an agent nor an employee of the State of New Hampshire (the "State"). Neither the Landlord nor any of its officers, employees, agents, or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

Article 25. **No Waiver of Sovereign Immunity.** No provision of this Lease is intended to be, nor shall it be, interpreted by either party to be a waiver of sovereign immunity.

[Signature page to follow]

Landlord and Tenant have caused this instrument to be signed on the day and year first above written.

LANDLORD:
State House Loop, LLC

By:
Its:

TENANT:
State of New Hampshire,
Department of Administrative Services

By:
Its:

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