

# Attachment I

**Matrix Describing Differences Between EPC Agreement (Service Agreement No. 2449) and Pro Forma LGIA**

| <b>EPC Agreement</b> | <b>Pro Forma LGIA</b> | <b>Modifications Reflected in the EPC Agreement</b>   |
|----------------------|-----------------------|---|
| <b>Recitals</b>      | <b>Recitals</b>       | Modified to describe the purpose of the EPC Agreement, including that: (i) the Developers' facilities will have certain impacts on the Affected Systems; (ii) Affected Transmission Owners will perform the EPC Services for the construction of the Common System Deliverability Upgrades, and (iii) Developers have posted Security to cover the costs of constructing the Common System Deliverability Upgrades.       |
| <b>Article 1</b>     | <b>Article</b>        | <b>Definitions</b>  |
|                      |                       | Modified to: (i) remove defined terms and definitions included in the Pro Forma LGIA that are unnecessary in the EPC Agreement and that could create confusion if retained, <sup>12</sup> (ii) revise definitions of certain defined terms for consistency with the modified purpose and scope of the EPC Agreement, <sup>3</sup> and (iii) insert certain new defined terms required for the EPC Agreement. <sup>4</sup> |
| <b>Article 2</b>     | <b>Article 2</b>      | <b>Effective Date, Term, and Termination</b>  |

<sup>1</sup> This approach was accepted by the Commission with respect to EPC agreements previously filed by the NYISO. *See New York Independent System Operator, Inc., Letter Order*, Docket No. ER15-2083-000 (August 19, 2015); *see also New York Independent System Operator, Inc., and Niagara Mohawk Power Corporation, Letter Order*, Docket No. ER08-320-000 (December 18, 2007).

<sup>2</sup> The removed defined terms are: Affected System Operator, Ancillary Services, Attachment Facilities, Base Case, Byway, Capacity Region, Connecting Transmission Owner, Connecting Transmission Owner's Attachment Facilities, Control Area, Developer's Attachment Facilities, Distribution Upgrades, Emergency State, Energy Resource Interconnection Service, Generating Facility Capacity, Highway, Initial Synchronization Date, Interconnection Facilities Study, Interconnection Facilities Study Agreement, Interconnection Study, Interconnection System Reliability Impact Study, Material Modification, Metering Equipment, NYISO Minimum Interconnection Standard, Other Interfaces, Point of Change of Ownership, Point of Interconnection, Retired, Stand Alone System Upgrade Facility, Standard Large Generator Interconnection Agreement, System Protection Facilities, and System Upgrade Facilities.

<sup>3</sup> The revised defined terms are: Affected System, Affected Transmission Owner, Applicable Reliability Standards, Commercial Operation Date (now Completion Date), Developer, Distribution System, Effective Date, Governmental Authority, In-Service Date, and Party.

<sup>4</sup> The Joint Filing Parties inserted the following terms that describe the facilities to be constructed ("Common System Deliverability Upgrades"), the cap on Developers' payment responsibilities ("Developer Common SDU Cost Cap"), the services to be performed under the EPC Agreement ("EPC Services"), the Security deposits subject to forfeiture should a Developer terminate or abandon the development of a project ("Forfeited Security"), the individual Developer's percentage share of the total cost responsibility ("Invoice Share"), and the milestones for the performance of the EPC Services ("Milestones").

| <b>EPC Agreement</b> | <b>Pro Forma LGIA</b> | <b>Modifications Reflected in the EPC Agreement</b>  |
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| Article 2.1          | Article 2.1           | Modified to incorporate requirement from Article 3.1 of Pro Forma LGIA that Developers cooperate with filing EPC Agreement with Commission.  |
| Article 2.2          | Article 2.2           | Modified to provide that agreement will terminate upon the later of: (i) the completion of EPC Services or (ii) the final payment of all invoices and release or refund of Security.   |
| Article 2.3          | Article 2.3           | Modified (i) to provide that the agreement may be terminated by (a) all Parties agreeing in writing to terminate the agreement or (b) by any Party following a NYISO determination that the triggering threshold is no longer met, and (ii) to include internal cross references to the default and dispute provisions in the agreement. |
| Article 2.4          | Article 2.4           | Modified to reflect the respective rights and cost responsibilities of the Affected Transmission Owners and Developers in the event of an early termination and to remove references to facility types not being constructed under the agreement.  |
|                      | Article 2.5           | Not included in EPC Agreement as the provision concerns the disconnection of the generating facilities, which is covered in the Interconnection Agreements.  |
| Article 2.5          | Article 2.6           | Modified to reflect that Affected Transmission Owners will be performing work.   |
|                      | Article 3             | Modified to focus on the applicable roles with regard to regulatory filings, and relocated to Article 2.1 of the EPC Agreement.  |
|                      | Article 4             | Not included in EPC Agreement, as the “Scope of Interconnection Service” provisions concern the scope of interconnection service provided by the NYISO to the Developers, which is covered in the Interconnection Agreements.  |
| <b>Article 3</b>     | <b>Article 5</b>      | <b>EPC Services</b> (Replacing “Interconnection Facilities, Engineering, Procurement, and Construction”)   |
| Article 3.1          | Article 5.1           | Modified to provide that the Affected Transmission Owners will perform the EPC Services and to clarify that NYISO does not have responsibility or liability for performance of this work.  |
|                      | Articles 5.1.1 - 5.3  | Not included in EPC Agreement, as the provisions concern options for performance of the construction work, which the Affected Transmission Owners have agreed to perform.  |
|                      | Article 5.4           | Not included in EPC Agreement, as the provision concerns power system stabilizers for the generating facilities, which is covered in the Interconnection Agreements.   |
| Articles 3.2-3.6     | Articles 5.5-5.8      | Modified to reflect that Affected Transmission Owners will be performing the EPC Services.   |

| <b>EPC Agreement</b> | <b>Pro Forma LGIA</b>    | <b>Modifications Reflected in the EPC Agreement</b>  |
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|                      | Articles 5.9 - 5.11      | Not included in EPC Agreement, as the provisions concern the construction, ownership, and operation of Developer's Attachment Facilities, Connecting Transmission Owner's Attachment Facilities, and System Upgrade Facilities, which requirements are covered in the Interconnection Agreements.  |
| Article 3.7          |                          | Inserted in EPC Agreement to provide that each Affected Transmission Owner will own its respective Common System Deliverability Upgrades.  |
| Articles 3.8 – 3.9   | Articles 5.12-5.14, 5.16 | Removed Access Rights and Suspension provision and modified Lands of Other Property Owners and Permit provisions to reflect that the Affected Transmission Owners will be performing the EPC Services and that operation and maintenance requirements are not included in EPC Agreement, as all of the EPC work is being performed by Affected Transmission Owners and is not on any of the Developer's facilities nor is access to Developers' facilities required to performed the EPC work. |
|                      | Article 5.15             | Not included in EPC Agreement, as the provision concerns the early construction of base case facilities, which is covered in the Interconnection Agreements.   |
| Article 3.10         | Article 5.17             | Modified to reflect the facilities being constructed under EPC Agreement.  |
| Article 3.11         | Article 5.18             | Modified to remove references to the tax exempt status of certain New York Transmission Owners not a party to the agreement.   |
| Article 3.12         | Article 5.19             | Modified to reflect the facilities being constructed under EPC Agreement.  |
| <b>Article 4</b>     | <b>Article 6</b>         | <b>Testing and Inspection</b>  |
| Articles 4.1-4.2     | Articles 6.1 and 6.3     | Modified to reflect the facilities being constructed under EPC Agreement and to reflect that the Affected Transmission Owners will be performing EPC Services and will notify other parties regarding testing.   |
|                      | Articles 6.2 and 6.4     | Not included in EPC Agreement, as all of the EPC work is being performed by Affected Transmission Owners and is not on any of the Developer's facilities.  |
|                      | Article 7                | Not included in the EPC Agreement, as the "Metering" requirements are covered in the Interconnection Agreements and are not applicable.  |
| <b>Article 5</b>     | <b>Article 8</b>         | <b>Communications</b>  |
| Articles 5.1         | Articles 8.1-8.3         | Modified to remove references to communication requirements that are not applicable and to clarify that during the term of the Agreement, property placed on the premises of a Party remains the property of the Party providing such equipment.   |
| <b>Article 6</b>     | <b>Article 9</b>         | <b>Cost and Security Obligations</b>   |

| <b>EPC Agreement</b> | <b>Pro Forma LGIA</b> | <b>Modifications Reflected in the EPC Agreement</b>  |
|----------------------|-----------------------|--|
| Article 6.1          | Articles 9.1 and 11.3 | Modified to reflect that Affected Transmission Owner will be performing EPC Services, that Developers will be responsible for their share of the monthly costs, the Developers' cost responsibility for the cost above their cost cap as set forth in Attachment S of the NYISO OATT, and the Affected Transmission Owners' responsibility for costs that are not recoverable from Developers. |
|                      | Articles 9.2-9.10     | Not included in EPC Agreement, as the "Operations" requirements are beyond the scope of this agreement, which terminates upon completion of the Common System Deliverability Upgrades and payment of final invoice and refund/release of Security.   |
|                      | Article 10            | Not included in EPC Agreement, as the "Maintenance" requirements are beyond the scope of this agreement, which terminates upon completion of the Common System Deliverability Upgrades and payment of final invoice and refund/release of Security.  |
|                      | Articles 11.1-11.2    | Not included in EPC Agreement, as the provisions concern the construction and ownership of Developer's Attachment Facilities and Connecting Transmission Owner's Attachment Facilities, which is covered in the Interconnection Agreements.  |
|                      | Article 11.4          | Not included in EPC Agreement, as the provision is not applicable under this agreement.  |
| Article 6.2          | Article 11.5          | Modified (i) to provide that Developers have already provided Security in the amount of its cost cap for their shares of the Common System Deliverability Upgrades as determined by Attachment S to the ISO OATT, and (ii) to clarify how the Security may be used by the Affected Transmission Owners.  |
|                      | Article 11.6          | Not included in the EPC Agreement, as the provision concerns compensation for the operation of the constructed facilities.   |
| Article 6.3          | Article 11.7          | Modified to reflect the facilities being constructed under EPC Agreement.  |
| <b>Article 7</b>     | <b>Article 12</b>     | <b>Invoice</b>   |

| <b>EPC Agreement</b> | <b>Pro Forma LGIA</b> | <b>Modifications Reflected in the EPC Agreement</b>   |
|----------------------|-----------------------|---|
| Article 7.1          | Articles 12.1-12.2    | Modified to reflect that Developers have already posted Security to cover costs of EPC Services and to reflect the facilities being constructed under the EPC Agreement.  |
| Article 7.2          | Articles 12.1-12.2    | Modified to reflect the facilities being constructed under the EPC Agreement and the use of, and any refund of, the posted Security under the agreement.  |
| Article 7.3          | Article 12.3          | Conforming.   |
| Article 7.4          | Article 12.4          | Modified to reflect that any Party could owe money to another Party.  |
|                      | Article 13            | Not included in EPC Agreement, as the “Emergencies” provisions are beyond the scope of this agreement, which terminates upon completion of the Common System Deliverability Upgrades and payment of final invoices and refund/release of Security.              |
| <b>Article 8</b>     | <b>Article 14</b>     | <b>Regulatory Requirements and Governing Law</b>  |
| Articles 8.1-8.2.3   | Articles 14.1-14.2.3  | Conforming.   |
| <b>Article 9</b>     | <b>Article 15</b>     | <b>Notices</b>  |
| Articles 9.1-9.3     | Articles 15.1-15.3    | Conforming.   |
|                      | Article 15.4          | Not included in the EPC Agreement, as notices for operation and maintenance are beyond the scope of this agreement, which terminates upon completion of the Common System Deliverability Upgrades and payment of final invoices and refund/release of Security. |
| <b>Article 10</b>    | <b>Article 16</b>     | <b>Force Majeure</b>  |
| Article 10.1         | Article 16.1          | Conforming.   |
| Article 10.2         | Article 16.2          | Modified to remove cross-reference to Article 4 of the Pro Forma LGIA, which is not included in the EPC Agreement.  |
| <b>Article 11</b>    | <b>Article 17</b>     | <b>Default</b>  |
| Articles 11.1-11.2   | Articles 17.1-17.2    | Conforming.   |
| <b>Article 12</b>    | <b>Article 18</b>     | <b>Indemnity, Consequential Damages, and Insurance</b>  |

| <b>EPC Agreement</b>  | <b>Pro Forma LGIA</b> | <b>Modifications Reflected in the EPC Agreement</b>   |
|-----------------------|-----------------------|---|
| Articles 12.1-12.2    | Articles 18.1-18.2    | Conforming, except (i) the EPC Agreement deletes the reference in Article 18.2 of the Pro Forma LGIA to liquidated damages, as Article 5.3 of the Pro Forma LGIA regarding liquidated damages was not included in the EPC Agreement because the Affected Transmission Owners will not be constructing the Common System Deliverability Upgrades under the Alternative Option or Negotiated Option in the Pro Forma LGIA, and (ii) to correct a reference in Section 12.1.2 to Indemnified Party, which was inadvertently changed to Indemnifying Party in the Pro Forma LGIA as part of recent modifications that the NYISO submitted, and were accepted, in Docket No. ER18-80-000. <sup>5</sup> |
| Articles 12.3-12.3.13 | Articles 18.3-18.3.14 | Revised to provide that only Affected Transmission Owners will maintain applicable insurance as they will be performing all work.   |
| <b>Article 13</b>     | <b>Article 19</b>     | <b>Assignment</b>   |
| Article 13.1          | Article 19.1          | Modified to remove reference to Attachment Facilities.  |
| <b>Article 14</b>     | <b>Article 20</b>     | <b>Severability</b>   |
| Article 14.1          | Article 20.1          | Modified to remove reference to construction options, which have been eliminated from the EPC Agreement as the Affected Transmission Owners have agreed to construct Common System Deliverability Upgrades.   |
| <b>Article 15</b>     | <b>Article 21</b>     | <b>Comparability</b>  |
| Article 15.1          | Article 21.1          | Conforming.   |
| <b>Article 16</b>     | <b>Article 22</b>     | <b>Confidentiality</b>  |
| Articles 16.1-16.13   | Articles 22.1-22.1.12 | Conforming.   |
| <b>Article 17</b>     | <b>Article 23</b>     | <b>Environmental Releases</b>   |
| Article 17.1          | Article 23.1          | Modified to provide that an Affected Transmission Owner, as the party constructing the Common System Deliverability Upgrades, is the party responsible for notifying the Developer of environmental releases.   |
| <b>Article 18</b>     | <b>Article 24</b>     | <b>Information Requirement</b>  |
| Article 18.1          | Article 24.1          | Modified to provide that an Affected Transmission Owner, as the party constructing the Common System Deliverability Upgrades, is the party responsible for submitting information about these facilities.   |
| Article 18.2          | Article 24.2          | Modified to reflect facilities being constructed under EPC Agreement and the time frame specified in the milestones.  |

<sup>5</sup> The Commission has previously accepted this change to the Pro Forma LGIA. *See, e.g., New York Independent System Operator, Inc. and Consolidated Edison Co. of New York, Inc., Letter Order*, Docket No. ER18-1161-000 (May 17, 2018).

| <b>EPC Agreement</b>         | <b>Pro Forma LGIA</b>        | <b>Modifications Reflected in the EPC Agreement</b>   |
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| Article 18.3                 | Article 24.3                 | Not included in the EPC Agreement, as updated information submissions are beyond the scope of this agreement, which terminates upon completion of the Common System Deliverability Upgrades and payment of final invoices and refund/release of Security.   |
| Article 18.4                 | Article 24.4                 | Modified to remove testing requirements for the Large Generating Facility, which are covered in the Interconnection Agreements.   |
| <b>Article 19</b>            | <b>Article 25</b>            | <b>Information Access and Audit Rights</b>  |
| Articles 19.1-19.2, 19.6     | Articles 25.1-25.2, 25.5     | Conforming.   |
| Article 19.3                 | Article 25.3                 | Modified to remove reference to party's action in Emergency State, which is beyond the scope of the EPC Agreement.  |
| Article 19.4-19.5            | Article 25.4                 | Modified to reflect facilities being constructed under EPC Agreement and to reflect that any Parties may issue an invoice.  |
| <b>Article 20</b>            | <b>Article 26</b>            | <b>Subcontractors</b>   |
| Articles 20.1-20.3           | Articles 26.1-26.3           | Conforming.   |
| <b>Article 21</b>            | <b>Article 27</b>            | <b>Disputes</b>   |
| Articles 21.1-21.5           | Articles 27.1-27.5           | Conforming, except (i) Article 21.2 modified to invoke the assistance of the FERC's Dispute Resolution Service to select a single arbitrator, (ii) Article 21.3 modified to reflect the use of a single arbitrator and facilities being constructed under EPC Agreement, and (iii) Article 21.4 modified to provide that each party would be responsible for a per capita share of the costs of the arbitrator. |
| <b>Article 22</b>            | <b>Article 28</b>            | <b>Representations, Warranties and Covenants</b>  |
| Articles 22.1, 22.1.3-22.1.4 | Articles 28.1, 28.1.3-28.1.4 | Conforming.   |
| Article 22.1.2               | Article 28.1.1               | Modified to reflect that Common System Deliverability Upgrades will be located in the State of New York.  |
| <b>Article 23</b>            | <b>Article 29</b>            | <b>Miscellaneous</b>  |



| <b>EPC Agreement</b>           | <b>Pro Forma LGIA</b>          | <b>Modifications Reflected in the EPC Agreement</b>  |
|--------------------------------|--------------------------------|--|
| Articles 23.1-23.7, 23.9-23.14 | Articles 29.1-29.7, 29.9-29.14 | Conforming, except Article 23.3 modified to remove reference to NYISO Standard Large Facility Interconnection Procedures, as all tariff references in the Agreement specify the applicable attachment to the OATT and not all such references are to sections of the NYISO Standard Large Facility Interconnection Procedures. |
| Article 23.8                   | Article 29.8                   | Modified to remove reference to interconnection service provided by the NYISO, which is covered in the Interconnection Agreements.   |
| Article 23.15                  | Article 29.15                  | Modified to reflect facilities being constructed under EPC Agreement.  |
| <b>Appendices</b>              | <b>Appendices</b>              |  |
| Appendix A                     | Appendices A and B             | Modified to describe EPC Services to be performed under EPC Agreement and provide milestones for performance of services.  |
| Appendix B                     | Appendix F                     | Conforming.  |
|                                | Appendices C, D, and E         | Not included in EPC Agreement, as requirements for Interconnection Details (Appendix C), Security Arrangement Details (Appendix D), and Commercial Operation Date (Appendix E) are either inapplicable to the EPC Agreement or are addressed in the Interconnection Agreements.  |