SERVICE AGREEMENT NO. 2774

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ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT   
 AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.   
 AND

EXCELSIOR ENERGY CENTER, LLC   
 AND

ROCHESTER GAS AND ELECTRIC CORPORATION   
 Dated as of July 10, 2023

(Sta 255 Substation Upgrades)



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ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

(“Agreement”) is made and entered into this this 10th day of July, 2023, by and among: (i)

Excelsior Energy Center, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Developer”), (ii) Rochester Gas and Electric Corporation, a   
corporation organized and existing under the laws of the State of New York (“Affected System Operator”); and (iii) the New York Independent System Operator, Inc., a not-for-profit   
corporation organized and existing under the laws of the State of New York (“NYISO”). The   
Developer, Affected System Operator or the NYISO each may be referred to as a “Party” or   
collectively referred to as the “Parties.”

RECITALS

WHEREAS, Developer is developing a solar generating facility identified as the Excelsior

Energy Center Project with NYISO Queue Position No. 721 (“Large Generating Facility”) that will interconnect to certain transmission facilities of the New York Power Authority (“NYPA”), the Connecting Transmission Owner, that are part of the New York State Transmission System operated by the NYISO;

WHEREAS, the Large Generating Facility will interconnect at NYPA’s new Byron Substation, and the interconnection will have certain impacts on the Affected System owned by the Affected System Operator;

WHEREAS, the Class Year Interconnection Facilities Study for Class Year 2019 requires that certain System Upgrade Facilities be constructed on the Affected System owned by Affected System Operator to enable the Developer to interconnect reliably the Large Generating Facility to the New York State Transmission System in a manner that meets the NYISO Minimum Interconnection Standard (“Affected System Upgrade Facilities”);

WHEREAS, Developer has accepted, and provided security to the Affected System Operator to cover, the costs identified in the Class Year Interconnection Facilities Study for Class Year 2019 for the Affected System Upgrade Facilities (“ASO Estimated Total Costs”);

WHEREAS, Developer and Affected System Operator desire to have Developer perform, and Developer is willing to perform, the engineering, procurement, and construction services   
required to construct the Affected System Upgrade Facilities (“EPC Services”) in accordance with the terms and conditions hereinafter set forth;

WHEREAS, Developer, Affected System Operator, and the NYISO have agreed to enter into   
this Agreement for the purpose of allocating the responsibilities for the performance and   
oversight of the EPC Services required to construct the Affected System Upgrade Facilities;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

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SERVICE AGREEMENT NO. 2774 ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the

meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that   
are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT,   
Appendix 1 of Section 32.5 of Attachment Z of the ISO OATT, Section 30.1 of Attachment X of   
the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, or the body of this   
Agreement.

Affected System shall mean the electric system of the Affected System Operator that is affected by the Large Generating Facility.

Affected System Operator shall have the meaning set forth in the introductory paragraph.

Affected System Upgrade Facilities shall have the meaning set forth in the recitals and shall consist of the System Upgrade Facilities described in Appendix A.

Affiliate shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization,   
directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority, including but not limited to Environmental Law.

Applicable Reliability Councils shall mean the NERC, the NPCC and the NYSRC.

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable   
Reliability Councils, and the Transmission District in which the Affected System Upgrade   
Facilities will be constructed, as those requirements and guidelines are amended and modified   
and in effect from time to time; provided that no Party shall waive its right to challenge the   
applicability or validity of any requirement or guideline as applied to it in the context of this   
Agreement.

ASO Estimated Total Costs shall have the meaning set forth in the recitals and shall be the costs for the engineering, procurement, and construction of the Affected System Upgrade   
Facilities identified in the Class Year Interconnection Facilities Study for Class Year 2019 as described in Appendix A.

Breach shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

Breaching Party shall mean a Party that is in Breach of this Agreement.

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Business Day shall mean Monday through Friday, excluding federal holidays.

Calendar Day shall mean any day including Saturday, Sunday or a federal holiday.

Completion Date shall mean the date on which the Developer has completed the EPC Services, as set forth in Appendix A.

Confidential Information shall mean any information that is defined as confidential by Article

16 of this Agreement.

Connecting Transmission Owner shall have the meaning set forth in the recitals.

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 11 of this Agreement.

Developer shall have the meaning set forth in the introductory paragraph.

Effective Date shall mean the date determined under Article 2.1 of this Agreement.

Environmental Law shall mean Applicable Laws and Regulations relating to pollution or protection of the environment or natural resources.

EPC Services shall have the meaning set forth in the recitals and shall consist of the services described in Appendix A.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq. (“FPA”).

FERC shall mean the Federal Energy Regulatory Commission (“Commission”) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war,   
insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or   
equipment, any order, regulation or restriction imposed by governmental, military or lawfully   
established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure   
event does not include acts of negligence or intentional wrongdoing by the Party claiming Force   
Majeure.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved   
by a significant portion of the electric industry during the relevant time period, or any of the   
practices, methods and acts which, in the exercise of reasonable judgment in light of the facts   
known at the time the decision was made, could have been expected to accomplish the desired   
result at a reasonable cost consistent with good business practices, reliability, safety and   
expedition. Good Utility Practice is not intended to be limited to the optimum practice, method,   
or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts   
generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental

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subdivision, legislature, rulemaking board, tribunal, or other governmental authority having   
jurisdiction over any of the Parties, their respective facilities, or the respective services they   
provide, and exercising or entitled to exercise any administrative, executive, police, or taxing   
authority or power; provided, however, that such term does not include Developer, NYISO,   
Affected System Operator, Connecting Transmission Owner, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or

included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

In-Service Date shall mean the date upon which the Affected System Upgrade Facilities are

energized consistent with the provisions of this Agreement, notice of which must be provided to the NYISO and the Affected System Operator in the form of Appendix C.

Interconnection Facilities Study shall mean a study conducted by NYISO or a third party

consultant for the Developer to determine a list of facilities (including Connecting Transmission   
Owner’s Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System   
Deliverability Upgrades as identified in the Interconnection System Reliability Impact Study),   
the cost of those facilities, and the time required to interconnect the Large Generating Facility   
with the New York State Transmission System or with the Distribution System. The scope of   
the study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

Interconnection Facilities Study Agreement (“Class Year Study Agreement”) shall mean the form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection   
Procedures for conducting the Interconnection Facilities Study.

Interconnection Request shall mean a Developer’s request, in the form of Appendix 1 to the   
Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to   
interconnect a new Large Generating Facility to the New York State Transmission System or to   
the Distribution System, or to materially increase the capacity of, or make a material   
modification to the operating characteristics of, an existing Large Generating Facility that is   
interconnected with the New York State Transmission System or with the Distribution System.

IRS shall mean the Internal Revenue Service.

Large Generator Interconnection Agreement (“LGIA”) shall mean the interconnection   
agreement for the Large Generating Facility among the NYISO, NYPA, and the Developer.

Large Generating Facility shall have the meaning set forth in the recitals.

Milestones shall mean the milestones for the performance of the EPC Services, as set forth in Appendix A.

NERC shall mean the North American Electric Reliability Council or its successor organization.

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New York State Transmission System shall mean the entire New York State electric

transmission system, which includes (i) the Transmission Facilities Under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with this Agreement or its performance.

NPCC shall mean the Northeast Power Coordinating Council or its successor organization.

NYISO Minimum Interconnection Standard - The reliability standard that must be met by   
any generation facility or Class Year Transmission Project that is subject to NYISO’s Large   
Facility Interconnection Procedures in Attachment X to the ISO OATT or the NYISO’s Small   
Generator Interconnection Procedures in Attachment Z, that is proposing to connect to the New   
York State Transmission System or Distribution System, to obtain ERIS. The Minimum   
Interconnection Standard is designed to ensure reliable access by the proposed project to the   
New York State Transmission System or to the Distribution System. The Minimum   
Interconnection Standard does not impose any deliverability test or deliverability requirement on   
the proposed interconnection.

NYSRC shall mean the New York State Reliability Council or its successor organization. Party or Parties shall have the meaning set forth in the introductory paragraph.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a   
Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and   
are otherwise substantially equivalent to those a Party would use to protect its own interests.

Security shall mean a bond, irrevocable letter of credit, parent company guarantee or other form   
of security from an entity with an investment grade rating, executed for the benefit of the   
Affected System Operator, meeting the commercially reasonable requirements of the Affected   
System Operator with which it is required to be posted pursuant to Article 6.2, and consistent   
with the Uniform Commercial Code of the jurisdiction identified in Article 8.2.1 of this   
Agreement.

Services Tariff shall mean the NYISO Market Administration and Control Area Tariff, as filed   
with the Commission, and as amended or supplemented from time to time, or any successor tariff   
thereto.

Standard Large Facility Interconnection Procedures (“Large Facility Interconnection Procedures” or “LFIP”) shall mean the interconnection procedures applicable to an   
Interconnection Request pertaining to a Large Generating Facility that are included in   
Attachment X of the ISO OATT.

System Upgrade Facilities shall mean the least costly configuration of commercially available   
components of electrical equipment that can be used, consistent with Good Utility Practice and   
Applicable Reliability Requirements, to make the modifications to the existing transmission   
system that are required to maintain system reliability due to: (i) changes in the system,

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including such changes as load growth and changes in load pattern, to be addressed in the form   
of generic generation or transmission projects; and (ii) proposed interconnections. In the case of   
proposed interconnection projects, System Upgrade Facilities are the modifications or additions   
to the existing New York State Transmission System that are required for the proposed project to   
connect reliably to the system in a manner that meets the NYISO Minimum Interconnection   
Standard.

Tariff shall mean the NYISO Open Access Transmission Tariff (“OATT”), as filed with the   
Commission, and as amended or supplemented from time to time, or any successor tariff.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION   
 Effective Date.

This Agreement shall become effective upon the date of execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Affected System Operator shall promptly file this Agreement with FERC upon execution. Developer shall reasonably cooperate with the NYISO and Affected System Operator with   
respect to the filing of this Agreement with FERC and provide any information reasonably   
requested by the NYISO and Affected System Operator needed for such filing.

Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect until the later of: (i) the Completion Date, and (ii) the date on which the final payment of all invoices issued under this Agreement have been made pursuant to Articles 7.1 and 7.3 and any remaining Security has been released or refunded pursuant to Article 7.2.

Termination.

Completion of Term of Agreement.

This Agreement shall terminate upon the completion of the term of the Agreement pursuant to Article 2.2.

Written Notice.

This Agreement may be terminated: (i) by all Parties agreeing in writing to terminate this Agreement, or (ii) by the NYISO and the Affected System Operator after giving the Developer ten (10) Calendar Days advanced written notice after the Large Generator Interconnection   
Agreement for the Large Generating Facility among the NYISO, NYPA, and Developer has been terminated and such notice of termination has been accepted by FERC.

Default.

Any Party may terminate this Agreement to the extent permitted under Article 11 and Article 21.

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 Compliance.

Notwithstanding Articles 2.3.1, 2.3.2, and 2.3.3, no termination of this Agreement shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

Termination Costs.

If this Agreement is terminated pursuant to Article 2.3.2 above, the Developer shall be

responsible for all costs that are the responsibility of the Developer under this Agreement that are   
incurred by the Developer or the other Parties through the date the Parties agree in writing to   
terminate this Agreement or through the date of the Developer’s receipt of a notice of   
termination. Such costs include any cancellation costs relating to orders or contracts concerning   
the EPC Services or Affected System Upgrade Facilities. In the event of termination, all Parties   
shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as   
a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or   
approved by FERC:

With respect to any portion of the EPC Services that have not yet been performed,   
the Developer shall, to the extent possible and with the Affected System Operator’s   
authorization, cancel any pending orders of, or return, any materials or equipment for, or   
contracts for construction of, the Affected System Upgrade Facilities; provided that in the event   
the Affected System Operator elects not to authorize such cancellation, Affected System   
Operator shall assume all payment obligations with respect to such materials, equipment, and   
contracts, and Developer shall deliver such material and equipment, and, if necessary, assign   
such contracts, to Affected System Operator as soon as practicable, at Affected System   
Operator’s expense.

Developer may, at its option, retain any portion of such materials or equipment that Affected System Operator chooses not to accept delivery of, in which case Developer shall be responsible for all costs associated with procuring such materials or equipment.

With respect to any portion of the EPC Services already performed pursuant to   
the terms of this Agreement, Developer shall be responsible for all costs associated with the   
removal, relocation or other disposition or retirement of such related materials, equipment, or   
facilities.

Survival.

This Agreement shall continue in effect after termination to the extent necessary to

provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Developer to have access to the lands of the Affected System   
Operator to disconnect, remove or salvage its own facilities and equipment.

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ARTICLE 3. EPC SERVICES

Performance of EPC Services.

Developer shall perform the EPC Services, as set forth in Appendix A hereto, using

Reasonable Efforts to complete the EPC Services by the Milestone dates set forth in Appendix A   
hereto. Developer shall not undertake any action which is inconsistent with the Affected System   
Operator’s standard safety practices, its material and equipment specifications, its design criteria   
and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the   
event Developer reasonably expects that it will not be able to complete the EPC Services by the   
specified dates, Developer shall promptly provide written notice to the Affected System Operator   
and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. The

NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC Services under this Agreement.

General Conditions Applicable to Developer’s Performance of the EPC Services.

Developer’s performance of the EPC Services is subject to the following conditions:

Developer shall engineer, procure equipment, and construct the Affected System   
Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and   
specifications provided in advance by the Affected System Operator as set forth in Appendix A;

Developer’s engineering, procurement and construction of the Affected System Upgrade Facilities shall comply with all requirements of law to which Affected System   
Operator would be subject in the engineering, procurement or construction of the Affected System Upgrade Facilities;

Affected System Operator shall review and approve the engineering design,   
equipment acceptance tests, and the construction of the Affected System Upgrade Facilities;

Prior to commencement of construction, Developer shall provide Affected System   
Operator and NYISO a schedule for construction of the Affected System Upgrade Facilities,   
and shall promptly respond to requests for information from Affected System Operator or   
NYISO;

At any time during construction, Affected System Operator shall have the right to   
gain unrestricted access to the Affected System Upgrade Facilities and to conduct inspections of   
the same;

At any time during construction, should any phase of the engineering, equipment   
procurement, or construction of the Affected System Upgrade Facilities not meet the standards

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and specifications provided by Affected System Operator, Developer shall be obligated to remedy deficiencies in that portion of the Affected System Upgrade Facilities;

Developer shall indemnify Affected System Operator and NYISO for claims

arising from Developer’s construction of Affected System Upgrade Facilities under procedures applicable to Article 12.1 Indemnity;

As soon as practicable after the Completion Date, Developer shall transfer control of Affected System Upgrade Facilities to Affected System Operator;

As soon as practicable after the Completion Date, unless the Developer and Affected System Operator otherwise agree, Developer shall transfer ownership of Affected System Upgrade Facilities to Affected System Operator;

Affected System Operator shall approve, and Affected System Operator shall accept for operation and maintenance the Affected System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 3.2;

Developer shall deliver to NYISO and Affected System Operator “as built”

drawings, information, and any other documents that are reasonably required by NYISO or

Affected System Operator to assure that the Affected System Upgrade Facilities are built to the standards and specifications required by Affected System Operator; and

Developer shall pay Affected System Operator the agreed upon amount of

$419,376.00 for the Affected System Operator to execute the responsibilities enumerated to

Affected System Operator under Article 3.2. Affected System Operator shall invoice Developer for this total amount to be divided on a monthly basis pursuant to Article 7.

Equipment Procurement.

Developer shall commence design of the Affected System Upgrade Facilities and procure necessary equipment in accordance with the Milestones set forth in Appendix A.

Construction Commencement.

Developer shall commence construction of the Affected System Upgrade Facilities in   
accordance with the Milestones set forth in Appendix A, which shall provide for the   
commencement of construction as soon as practicable after the following additional conditions   
are satisfied:

Approval of the appropriate Governmental Authority has been obtained, to the extent required, for the construction of a discrete aspect of the Affected System Upgrade   
Facilities; and

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Necessary real property rights and rights-of-way have been obtained, to the extent   
required, for the construction of a discrete aspect of the Affected System Upgrade Facilities.

Work Progress.

Developer will keep the Affected System Operator and NYISO advised periodically as to the progress of its respective design, procurement and construction efforts. Affected System Operator or NYISO may, at any time, request a progress report from the Developer.

Information Exchange.

As soon as reasonably practicable after the Effective Date, Developer and Affected

System Operator shall exchange information, and provide NYISO the same information,

regarding the design of the Affected System Upgrade Facilities and compatibility of the Affected System Upgrade Facilities with the New York State Transmission System, and shall work   
diligently and in good faith to make any necessary design changes. Developer shall inform the Affected System Operator and NYISO of any termination of the Large Generator   
Interconnection Agreement for the Large Generating Facility within ten (10) days of the   
termination of the Large Generator Interconnection Agreement.

Ownership of Affected System Upgrade Facilities.

Affected System Operator shall own the Affected System Upgrade Facilities.

Access Rights.

Upon reasonable notice and supervision by the Granting Party, and subject to any

required or necessary regulatory approvals, either the Affected System Operator or the

Developer (“Granting Party”) shall furnish to the other of those two Parties or the NYISO

(“Access Party”) at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable   
agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain   
ingress and egress needed for the performance of the EPC Services, including ingress or egress to construct, repair, test (or witness testing), inspect, replace or remove the Affected System   
Upgrade Facilities. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed   
from time to time, by the Granting Party and provided to the Access Party. The Access Party   
shall indemnify the Granting Party against all claims of injury or damage from third parties   
resulting from the exercise of the access rights provided for herein.

Reserved.

Permits.

NYISO, Developer, and Affected System Operator shall cooperate with each other in   
good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish

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the EPC Services in compliance with Applicable Laws and Regulations. With respect to this

paragraph, Affected System Operator shall provide permitting assistance to the Developer

comparable to that provided to the Affected System Operator’s own, or an Affiliate’s generation,   
if any.

Suspension.

Developer reserves the right, upon written notice to Affected System Operator and

NYISO, to suspend at any time all work associated with the construction and installation of the   
Affected System Upgrade Facilities required for only that Developer’s Large Generating Facility   
with the condition that the New York State Transmission System shall be left in a safe and   
reliable condition in accordance with Good Utility Practice and the safety and reliability criteria   
of Affected System Operator and NYISO. In such event, Developer shall be responsible for all   
reasonable and necessary costs and/or obligations in accordance with Attachment S to the ISO   
OATT including those which Affected System Operator (i) has incurred pursuant to this   
Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs   
incurred to perform such work as may be necessary to ensure the safety of persons and property   
and the integrity of the New York State Transmission System during such suspension and, if   
applicable, any costs incurred in connection with the cancellation or suspension of material,   
equipment and labor contracts which Affected System Operator cannot reasonably avoid;   
provided, however, that prior to canceling or suspending any such material, equipment or labor   
contract, Affected System Operator shall obtain Developer’s authorization to do so.

Affected System Operator shall invoice Developer for such costs pursuant to Article 7

and shall use due diligence to minimize its costs. In the event Developer suspends work required under this Agreement pursuant to this Article 3.11, and does not recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Affected System   
Operator and NYISO, if no effective date is specified.

Taxes.

Developer Payments Not Taxable.

The Developer and Affected System Operator intend that all payments or property

transfers made by Developer to Affected System Operator for the installation of the Affected

System Upgrade Facilities shall be non-taxable, either as contributions to capital, or as an

advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

Representations and Covenants.

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Developer represents

and covenants that (i) ownership of the electricity generated at the Developer’s Large Generating   
Facility will pass to another party prior to the transmission of the electricity on the New York

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State Transmission System, (ii) for income tax purposes, the amount of any payments and the   
cost of any property transferred to Affected System Operator for the Affected System Upgrade   
Facilities will be capitalized by Developer as an intangible asset and recovered using the straight-  
line method over a useful life of twenty (20) years, and (iii) any portion of the Affected System   
Upgrade Facilities that is a “dual-use intertie,” within the meaning of IRS Notice 88-129, is   
reasonably expected to carry only a de minimis amount of electricity in the direction of the   
Developer’s Large Generating Facility. For this purpose, “de minimis amount” means no more   
than 5 percent of the total power flows in both directions, calculated in accordance with the “5   
percent test” set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the   
relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Affected System Operator’s request, Developer shall provide Affected System

Operator with a report from an independent engineer confirming its representation in clause (iii),   
above. Affected System Operator represents and covenants that the cost of the Affected System   
Upgrade Facilities paid for by Developer will have no net effect on the base upon which rates are   
determined.

Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Affected System Operator.

Notwithstanding Article 3.12.1, Developer shall protect, indemnify and hold harmless   
Affected System Operator from the cost consequences of any current tax liability imposed   
against Affected System Operator as the result of payments or property transfers made by   
Developer to Affected System Operator under this Agreement, as well as any interest and   
penalties, other than interest and penalties attributable to any delay caused by Affected System   
Operator.

Affected System Operator shall not include a gross-up for the cost consequences of any   
current tax liability in the amounts it charges Developer under this Agreement unless (i) Affected   
System Operator has determined, in good faith, that the payments or property transfers made by   
Developer to Affected System Operator should be reported as income subject to taxation or (ii)   
any Governmental Authority directs Affected System Operator to report payments or property as   
income subject to taxation; provided, however, that Affected System Operator may require

Developer to provide security, in a form reasonably acceptable to Affected System Operator

(such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 3.12. Developer shall reimburse Affected System   
Operator for such costs on a fully grossed-up basis, in accordance with Article 3.12.4, within thirty (30) Calendar Days of receiving written notification from Affected System Operator of the amount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Affected System Operator upon request of the IRS, to keep these years open for audit or   
adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 3.12.

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 Tax Gross-Up Amount.

Developer’s liability for the cost consequences of any current tax liability under this

Article 3.12 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Developer will pay Affected System Operator, in addition to the amount paid for the Affected System Upgrade Facilities, an amount equal to (1) the current taxes imposed on Affected System Operator (“Current Taxes”) on the excess of (a) the gross income realized by Affected System Operator as a result of payments or property transfers made by   
Developer to Affected System Operator under this Agreement (without regard to any payments under this Article 3.12) (the “Gross Income Amount”) over (b) the present value of future tax   
deductions for depreciation that will be available as a result of such payments or property   
transfers (the “Present Value Depreciation Amount”), plus (2) an additional amount sufficient to permit the Affected System Operator to receive and retain, after the payment of all Current   
Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Affected System

Operator’s composite federal and state tax rates at the time the payments or property transfers are   
received and Affected System Operator will be treated as being subject to tax at the highest   
marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present Value   
Depreciation Amount shall be computed by discounting Affected System Operator’s anticipated   
tax depreciation deductions as a result of such payments or property transfers by Affected   
System Operator’s current weighted average cost of capital. Thus, the formula for calculating   
Developer’s liability to Affected System Operator pursuant to this Article 3.12.4 can be   
expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value Depreciation   
Amount))/(1 - Current Tax Rate). Developer’s estimated tax liability in the event taxes are   
imposed shall be stated in Appendix A, Affected System Upgrade Facilities.

Private Letter Ruling or Change or Clarification of Law.

At Developer’s request and expense, Affected System Operator shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Developer to Affected System Operator under this Agreement are subject to federal income taxation. Developer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Developer’s knowledge. Affected System Operator and Developer shall cooperate in good faith with respect to the submission of such request.

Affected System Operator shall keep Developer fully informed of the status of such

request for a private letter ruling and shall execute either a privacy act waiver or a limited power   
of attorney, in a form acceptable to the IRS, that authorizes Developer to participate in all   
discussions with the IRS regarding such request for a private letter ruling. Affected System   
Operator shall allow Developer to attend all meetings with IRS officials about the request and   
shall permit Developer to prepare the initial drafts of any follow-up letters in connection with the   
request.

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Subsequent Taxable Events.

If, within 10 years from the date on which the relevant Affected System Upgrade

Facilities are placed in service, (i) Developer Breaches the covenants contained in Article 3.12.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) this   
Agreement terminates and Affected System Operator retains ownership of the Affected System Upgrade Facilities, the Developer shall pay a tax gross-up for the cost consequences of any   
current tax liability imposed on Affected System Operator er, calculated using the methodology described in Article 3.12.4 and in accordance with IRS Notice 90-60.

Contests.

In the event any Governmental Authority determines that Affected System Operator’s   
receipt of payments or property constitutes income that is subject to taxation, Affected System   
Operator shall notify Developer, in writing, within thirty (30) Calendar Days of receiving   
notification of such determination by a Governmental Authority. Upon the timely written   
request by Developer and at Developer’s sole expense, Affected System Operator may appeal,   
protest, seek abatement of, or otherwise oppose such determination. Upon Developer’s written   
request and sole expense, Affected System Operator may file a claim for refund with respect to   
any taxes paid under this Article 3.12, whether or not it has received such a determination.   
Affected System Operator reserves the right to make all decisions with regard to the prosecution   
of such appeal, protest, abatement or other contest, including the selection of counsel and   
compromise or settlement of the claim, but Affected System Operator shall keep Developer   
informed, shall consider in good faith suggestions from Developer about the conduct of the   
contest, and shall reasonably permit Developer or an Developer representative to attend contest   
proceedings.

Developer shall pay to Affected System Operator on a periodic basis, as invoiced by

Affected System Operator, Affected System Operator’s documented reasonable costs of

prosecuting such appeal, protest, abatement or other contest, including any costs associated with   
obtaining the opinion of independent tax counsel described in this Article 3.12.7. The Affected   
System Operator may abandon any contest if the Developer fails to provide payment to the   
Affected System Operator within thirty (30) Calendar Days of receiving such invoice. At any   
time during the contest, Affected System Operator may agree to a settlement either with   
Developer’s consent or after obtaining written advice from nationally-recognized tax counsel,   
selected by Affected System Operator, but reasonably acceptable to Developer, that the proposed   
settlement represents a reasonable settlement given the hazards of litigation. Developer’s   
obligation shall be based on the amount of the settlement agreed to by Developer, or if a higher   
amount, so much of the settlement that is supported by the written advice from nationally-  
recognized tax counsel selected under the terms of the preceding sentence. The settlement   
amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of   
the current tax liability. The Affected System Operator may also settle any tax controversy   
without receiving the Developer’s consent or any such written advice; however, any such   
settlement will relieve the Developer from any obligation to indemnify Affected System   
Operator for the tax at issue in the contest (unless the failure to obtain written advice is

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attributable to the Developer’s unreasonable refusal to the appointment of independent tax counsel).

Refund.

In the event that (a) a private letter ruling is issued to Affected System Operator which   
holds that any amount paid or the value of any property transferred by Developer to Affected   
System Operator under the terms of this Agreement is not subject to federal income taxation, (b)   
any legislative change or administrative announcement, notice, ruling or other determination   
makes it reasonably clear to Affected System Operator in good faith that any amount paid or the   
value of any property transferred by Developer to Affected System Operator under the terms of   
this Agreement is not taxable to Affected System Operator, (c) any abatement, appeal, protest, or   
other contest results in a determination that any payments or transfers made by Developer to   
Affected System Operator are not subject to federal income tax, or (d) if Affected System   
Operator receives a refund from any taxing authority for any overpayment of tax attributable to   
any payment or property transfer made by Developer to Affected System Operator pursuant to   
this Agreement, Affected System Operator shall promptly refund to Developer the following:

(i) Any payment made by Developer under this Article 3.12 for taxes that is   
attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) Interest on any amounts paid by Developer to Affected System Operator for such taxes which Affected System Operator did not submit to the taxing authority, calculated in   
accordance with the methodology set forth in FERC’s regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date payment was made by Developer to the date Affected System Operator refunds such payment to Developer, and

(iii) With respect to any such taxes paid by Affected System Operator, any refund or   
credit Affected System Operator receives or to which it may be entitled from any Governmental   
Authority, interest (or that portion thereof attributable to the payment described in clause (i),   
above) owed to the Affected System Operator for such overpayment of taxes (including any   
reduction in interest otherwise payable by Affected System Operator to any Governmental   
Authority resulting from an offset or credit); provided, however, that Affected System Operator   
will remit such amount promptly to Developer only after and to the extent that Affected System   
Operator has received a tax refund, credit or offset from any Governmental Authority for any   
applicable overpayment of income tax related to the Affected System Upgrade Facilities.

The intent of this provision is to leave both the Developer and Affected System Operator, to the extent practicable, in the event that no taxes are due with respect to any payment for   
Affected System Upgrade Facilities hereunder, in the same position they would have been in had no such tax payments been made.

Taxes Other Than Income Taxes.

Upon the timely request by Developer, and at Developer’s sole expense, Affected System   
Operator shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal

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or state income tax) asserted or assessed against Affected System Operator for which Developer   
may be required to reimburse Affected System Operator under the terms of this Agreement.   
Developer shall pay to Affected System Operator on a periodic basis, as invoiced by Affected   
System Operator, Affected System Operator’s documented reasonable costs of prosecuting such   
appeal, protest, abatement, or other contest. Developer and Affected System Operator shall   
cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a   
prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by   
Developer to Affected System Operator for such taxes until they are assessed by a final, non-  
appealable order by any court or agency of competent jurisdiction. In the event that a tax   
payment is withheld and ultimately due and payable after appeal, Developer will be responsible   
for all taxes, interest and penalties, other than penalties attributable to any delay caused by   
Affected System Operator.

Tax Status.

Each Party shall cooperate with the other Parties to maintain the other Parties’ tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of Affected System Operator or Developer with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

Modification.

General.

If, prior to the In-Service Date, either the Developer or the Affected System Operator

proposes to modify the Affected System Upgrade Facilities, the Party proposing the modification shall provide to the NYISO at least ninety (90) Calendar Days in advance of the commencement of the work, or such shorter period upon which the Parties may agree, sufficient information for the NYISO to evaluate the impact of the proposed modification on the reliable interconnection of Developer’s Large Generating Facility to the New York State Transmission System. The   
NYISO’s agreement to the proposed modification shall not be unreasonably withheld,   
conditioned, or delayed if the proposed modification is reasonably related to the interconnection of the Large Generating Facility, will enable Developer’s Large Generating Facility to reliably interconnect to the New York State Transmission System, and will not impose additional costs to the Developer greater than the estimated cost for the Affected System Upgrade Facilities   
determined in accordance with Attachment S of the ISO OATT.

Standards.

Any additions, modifications, or replacements made to a Party’s facilities shall be

designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

Modification Costs.

Developer shall not be assigned the costs of any additions, modifications, or replacements that Affected System Operator makes to the Affected System Upgrade Facilities or the New

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York State Transmission System to facilitate the interconnection of a third party to the Affected System Upgrade Facilities or the New York State Transmission System, or to provide   
Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT.

ARTICLE 4. TESTING AND INSPECTION   
 Initial Testing and Modifications.

In accordance with the Milestones set forth in Appendix A, Developer shall test the

Affected System Upgrade Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Developer shall make any modifications to the facilities that are found to be necessary as a result of such testing. Developer shall bear the cost of all such testing and modifications.

Notice of Testing.

Developer shall notify the Affected System Operator and National Grid in advance of its performance of tests of the Affected System Upgrade Facilities.

ARTICLE 5. COMMUNICATIONS

No Annexation.

Any and all equipment placed on the premises of a Party during the term of this

Agreement shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

ARTICLE 6. PERFORMANCE OBLIGATIONS

EPC Services and Cost Responsibilities.

Developer shall perform the EPC Services described in Appendix A hereto and as

otherwise set forth by the terms of this Agreement at Developer’s sole expense up to the ASO Estimated Total Costs amount. The Developer’s and Affected System Operator’s respective responsibilities for the cost of Developer’s performance of the EPC Services above the ASO Estimated Total Costs amount shall be determined in accordance with Section 25.8.6 of   
Attachment S to the NYISO OATT.

Provision and Application of Security.

Developer has provided Affected System Operator with Security in the amount of the

ASO Estimated Total Costs for the Affected System Upgrade Facilities in accordance with

Attachment S to the ISO OATT. If the Developer: (i) does not pay an invoice issued by Affected   
System Operator pursuant to Article 7.1 within the timeframe set forth in Article 7.3 or (ii) does   
not pay any disputed amount into an independent escrow account pursuant to Article 7.4, the   
Affected System Operator may draw upon Developer’s Security to recover such payment. The

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Developer’s Security shall be reduced on a dollar-for-dollar basis for Developer’s payments made to the Affected System Operator for its performance of the EPC Services.

ARTICLE 7. INVOICE

General.

To the extent that any amounts are due to the Developer or Affected System Operator   
under this Agreement, including amounts due for the performance of EPC Services above the   
ASO Estimated Total Costs in accordance with Section 25.8.6 of Attachment S to the NYISO   
OATT, the Developer or Affected System Operator, as applicable, shall submit to the other   
Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall   
state the month to which the invoice applies and fully describe the services and equipment   
provided. The Developer and Affected System Operator may discharge mutual debts and   
payment obligations due and owing to each other on the same date through netting, in which case   
all amounts one Party owes to the other Party under this Agreement, including interest payments   
or credits, shall be netted so that only the net amount remaining due shall be paid by the owing   
Party. Within six months after the Completion Date, Developer or Affected System Operator, as   
applicable, shall provide a final invoice to the other Party of any remaining amounts due   
associated with the EPC Services.

Refund of Remaining Security/Cash and Overpayment Amount.

The Affected System Operator shall release or refund to the Developer any remaining   
portions of its Security or cash payment provided by the Developer pursuant to Article 6.2 and   
any amount the Developer has overpaid as described in Article 7.4 within 30 days of the later of:

(i) the Developer’s payment of any final invoice to the Affected System Operator, and (ii) Developer’s completion of the EPC Services.

Payment.

Invoices shall be rendered to the paying Party at the address specified in Appendix B

hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of   
receipt. All payments shall be made in immediately available funds payable to the other Party,   
or by wire transfer to a bank named and account designated by the invoicing Party. Payment of   
invoices will not constitute a waiver of any rights or claims the paying Party may have under this   
Agreement.

Disputes.

In the event of a billing dispute between Parties, the Party owed money shall continue to   
perform under this Agreement as long as the other Party: (i) continues to make all payments not   
in dispute; and (ii) pays to the Party owed money or into an independent escrow account the   
portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes   
money fails to meet these two requirements for continuation of service, then the Party owed   
money may provide notice to the other Party of a Default pursuant to Article 11. Within thirty

(30) Calendar Days after the resolution of the dispute, the Party that owes money to the other

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Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC’s Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 8. REGULATORY REQUIRMENTS AND GOVERNING LAW   
 Regulatory Requirements.

Each Party’s obligations under this Agreement shall be subject to its receipt of any

required approval or certificate from one or more Governmental Authorities in the form and

substance satisfactory to the applying Party, or the Party making any required filings with, or

providing notice to, such Governmental Authorities, and the expiration of any time period

associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require a Party to take any action that   
could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

Governing Law.

The validity, interpretation and performance of this Agreement and each of its

provisions shall be governed by the laws of the state of New York, without regard to its conflicts of law principles.

This Agreement is subject to all Applicable Laws and Regulations.

Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

ARTICLE 9. NOTICES

General.

Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to the other Parties and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Parties shall be effective when   
delivered and may be so given, tendered or delivered, by recognized national courier, or by   
depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the   
address set out in Appendix B hereto.

A Party may change the notice information in this Agreement by giving five (5) Business Days written notice prior to the effective date of the change.

Billings and Payments.

Billings and payments shall be sent to the addresses set out in Appendix B hereto.

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Alternative Forms of Notice.

Any notice or request required or permitted to be given by a Party to the other Parties and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix B hereto.

ARTICLE 10. FORCE MAJEURE

General.

Economic hardship is not considered a Force Majeure event. A Party shall not be

responsible or liable, or deemed, in Default with respect to any obligation hereunder, other than   
the obligation to pay money when due, to the extent the Party is prevented from fulfilling such   
obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an   
obligation to pay money when due) by reason of Force Majeure shall give notice and the full   
particulars of such Force Majeure to the other Parties in writing or by telephone as soon as   
reasonably possible after the occurrence of the cause relied upon. Telephone notices given   
pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall   
specifically state full particulars of the Force Majeure, the time and date when the Force Majeure   
occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall   
exercise due diligence to remove such disability with reasonable dispatch, but shall not be   
required to accede or agree to any provision not satisfactory to it in order to settle and terminate a   
strike or other labor disturbance.

ARTICLE 11. DEFAULT   
 General.

No Breach shall exist where such failure to discharge an obligation (other than the

payment of money) is the result of Force Majeure as defined in this Agreement or the result of an   
act or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give written   
notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days   
from receipt of the Breach notice within which to cure such Breach; provided however, if such   
Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall   
commence such cure within thirty (30) Calendar Days after notice and continuously and   
diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach   
notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

Right to Terminate.

If a Breach is not cured as provided in this Article 11.2, or if a Breach is not capable of

being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

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ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE   
 Indemnity.

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save

harmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and all

damages, losses, claims, including claims and actions relating to injury to or death of any person   
or damage to property, the alleged violation of any Environmental Law, or the release or   
threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses,   
court costs, attorney fees, and all other obligations by or to third parties (any and all of these a   
“Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of its   
obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the   
Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the   
gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the   
Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any   
Hazardous Substance.

Indemnified Party.

If a Party is entitled to indemnification under this Article 12 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 12.1.3, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

Indemnifying Party.

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party

harmless under this Article 12, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

Indemnity Procedures.

Promptly after receipt by an Indemnified Party of any claim or notice of the

commencement of any action or administrative or legal proceeding or investigation as to which   
the indemnity provided for in Article 12.1 may apply, the Indemnified Party shall notify the   
Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a   
Party’s indemnification obligation unless such failure or delay is materially prejudicial to the   
Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense   
thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the   
Indemnified Party. If the defendants in any such action include one or more Indemnified Parties   
and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be   
legal defenses available to it and/or other Indemnified Parties which are different from or   
additional to those available to the Indemnifying Party, the Indemnified Party shall have the right   
to select separate counsel to assert such legal defenses and to otherwise participate in the defense

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of such action on its own behalf. In such instances, the Indemnifying Party shall only be

required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action,   
suit or proceeding, the defense of which has been assumed by the Indemnifying Party.   
Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and   
control the defense of any such action, suit or proceedings if and to the extent that, in the opinion   
of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential   
imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of   
interest between the Indemnified Party and the Indemnifying Party, in such event the   
Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not   
settle or consent to the entry of any judgment in any action, suit or proceeding without the   
consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or   
delayed.

No Consequential Damages.

Other than the indemnity obligations set forth in Article 12.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary   
equipment or services, whether based in whole or in part in contract, in tort, including   
negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

Insurance.

Developer and Affected System Operator shall each, at its own expense, procure and

maintain in force throughout the period of this Agreement and until released by the other Parties,   
the following minimum insurance coverages, with insurance companies licensed to write   
insurance or approved eligible surplus lines carriers in the state of New York with a minimum   
A.M. Best rating of A or better for financial strength, and an A.M. Best financial size category of   
VIII or better:

Employers’ Liability and Workers’ Compensation Insurance providing

statutory benefits in accordance with the laws and regulations of New York State.

Commercial General Liability (“CGL”) Insurance including premises and

operations, personal injury, broad form property damage, broad form blanket contractual liability   
coverage products and completed operations coverage, coverage for explosion, collapse and   
underground hazards, independent contractors coverage, coverage for pollution to the extent   
normally available and punitive damages to the extent normally available using Insurance   
Services Office, Inc. Commercial General Liability Coverage (“ISO CG”) Form CG 00 01 04 13   
or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two Million

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Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

Comprehensive Automobile Liability Insurance for coverage of owned

and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

If applicable, the Commercial General Liability and Comprehensive

Automobile Liability Insurance policies should include contractual liability for work in

connection with construction or demolition work on or within 50 feet of a railroad, or a separate Railroad Protective Liability Policy should be provided.

Excess Liability Insurance over and above the Employers’ Liability,

Commercial General Liability and Comprehensive Automobile Liability Insurance coverages, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence and Twenty Million Dollars ($20,000,000) aggregate. The Excess policies should contain the same extensions listed under the Primary policies.

The Commercial General Liability Insurance, Comprehensive Automobile

Insurance and Excess Liability Insurance policies of Developer and Affected System Operator   
shall name the other Party, its parent, associated and Affiliate companies and their respective   
directors, officers, agents, servants and employees (“Other Party Group”) as additional insureds   
using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG

20 37 04 13 or equivalent to or better forms. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement   
against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in   
coverage or condition.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and non-contributory. Developer and Affected System Operator shall each be responsible for its respective deductibles or retentions.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for at least three (3) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Developer and Affected System Operator.

If applicable, Pollution Liability Insurance in an amount no less than

$7,500,000 per occurrence and $7,500,000 in the aggregate. The policy will provide coverage   
for claims resulting from pollution or other environmental impairment arising out of or in   
connection with work performed on the premises by the other party, its contractors and and/or   
subcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, third

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party bodily injury and property damage and remediation and will be written on an occurrence basis. The policy shall name the Other Party Group as additional insureds, be primary and contain a waiver of subrogation.

The requirements contained herein as to the types and limits of all

insurance to be maintained by the Developer and Affected System Operator are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

Within ninety (90) days following execution of this Agreement, and as

soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Developer and Affected System Operator shall each provide the other Party with a certificate of insurance for all insurance required to be   
maintained by the providing Party in this Agreement, executed by each insurer or by an   
authorized representative of each insurer.

Notwithstanding the foregoing, Developer and Affected System Operator

may each self-insure to meet the minimum insurance requirements of Articles 12.3.1 through

12.3.9 to the extent it maintains a self-insurance program; provided that, such Party’s senior debt   
is rated at investment grade, or better, by Standard & Poor’s and that its self-insurance program   
meets the minimum insurance requirements of Articles 12.3.1 through 12.3.9. In the event that   
a Party is permitted to self-insure pursuant to this Article 12.3.12, it shall notify the other Party   
that it meets the requirements to self-insure and that its self-insurance program meets the   
minimum insurance requirements in a manner consistent with that specified in Articles 12.3.1   
through 12.3.9 and provide evidence of such coverages. For any period of time that a Party’s   
senior debt is unrated by Standard & Poor’s or is rated at less than investment grade by Standard   
& Poor’s, such Party shall comply with the insurance requirements applicable to it under Articles

12.3.1 through 12.3.9.

Developer and Affected System Operator agree to report to each other in

writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

Subcontractors of each party must maintain the same insurance

requirements stated under Articles 12.3.1 through 12.3.9 and comply with the Additional Insured requirements herein. In addition, their policies must state that they are primary and non-  
contributory and contain a waiver of subrogation.

ARTICLE 13. ASSIGNMENT

Assignment.

This Agreement may be assigned by a Party only with the written consent of the other

Parties; provided that a Party may assign this Agreement without the consent of the other Parties   
to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal   
authority and operational ability to satisfy the obligations of the assigning Party under this   
Agreement; provided further that a Party may assign this Agreement without the consent of the

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other Parties in connection with the sale, merger, restructuring, or transfer of a substantial

portion or all of its assets, so long as the assignee in such a transaction directly assumes in

writing all rights, duties and obligations arising under this Agreement; and provided further that   
the Developer shall have the right to assign this Agreement, without the consent of the NYISO or   
Affected System Operator, for collateral security purposes to aid in providing financing for the   
Large Generating Facility, provided that the Developer will promptly notify the NYISO and   
Affected System Operator of any such assignment. Any financing arrangement entered into by   
the Developer pursuant to this Article will provide that prior to or upon the exercise of the   
secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the   
secured creditor, the trustee or mortgagee will notify the NYISO and Affected System Operator   
of the date and particulars of any such exercise of assignment right(s) and will provide the   
NYISO and Affected System Operator with proof that it meets the requirements of Articles 6.2   
and 12.3. Any attempted assignment that violates this Article is void and ineffective. Any   
assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party’s   
obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to   
assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 14. SEVERABILITY

If any provision in this Agreement is finally determined to be invalid, void or

unenforceable by any court or other Governmental Authority having jurisdiction, such

determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

ARTICLE 15. COMPARABILITY

The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

ARTICLE 16. CONFIDENTIALITY   
 Confidentiality.

Certain information exchanged by the Parties during the term of this Agreement shall   
constitute confidential information (“Confidential Information”) and shall be subject to this   
Article 16.

If requested by a Party receiving information, the Party supplying the information shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

Term.

During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 16, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

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Confidential Information.

The following shall constitute Confidential Information: (1) any non-public information that is treated as confidential by the disclosing Party and which the disclosing Party identifies as Confidential Information in writing at the time, or promptly after the time, of disclosure; or (2) information designated as Confidential Information by the NYISO Code of Conduct contained in Attachment F to the ISO OATT.

Scope.

Confidential Information shall not include information that the receiving Party can

demonstrate: (1) is generally available to the public other than as a result of a disclosure by the   
receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential   
basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party   
without restriction by a third party, who, to the knowledge of the receiving Party after due   
inquiry, was under no obligation to the disclosing Party to keep such information confidential;

(4) was independently developed by the receiving Party without reference to Confidential

Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act   
or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance   
with Article 16.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental   
Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any   
legal proceeding establishing rights and obligations under this Agreement. Information   
designated as Confidential Information will no longer be deemed confidential if the Party that   
designated the information as confidential notifies the other Party that it no longer is   
confidential.

Release of Confidential Information.

No Party shall release or disclose Confidential Information to any other person, except to   
its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees,   
consultants, or to parties who may be considering providing financing to or equity participation   
with Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis in   
connection with this Agreement, unless such person has first been advised of the confidentiality   
provisions of this Article 16 and has agreed to comply with such provisions. Notwithstanding   
the foregoing, a Party providing Confidential Information to any person shall remain primarily   
responsible for any release of Confidential Information in contravention of this Article 16.

Rights.

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Parties of   
Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

No Warranties.

By providing Confidential Information, no Party makes any warranties or representations   
as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party

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obligates itself to provide any particular information or Confidential Information to the other   
Parties nor to enter into any further agreements or proceed with any other relationship or joint   
venture.

Standard of Care.

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this Agreement or its regulatory requirements, including the ISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information it receives in accordance with the requirements of Attachment F to the ISO OATT.

Order of Disclosure.

If a court or a Government Authority or entity with the right, power, and apparent

authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories,

requests for production of documents, administrative order, or otherwise, to disclose Confidential   
Information, that Party shall provide the other Parties with prompt notice of such request(s) or   
requirement(s) so that the other Parties may seek an appropriate protective order or waive   
compliance with the terms of this Agreement. Notwithstanding the absence of a protective order   
or waiver, the Party may disclose such Confidential Information which, in the opinion of its   
counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to   
obtain reliable assurance that confidential treatment will be accorded any Confidential   
Information so furnished.

Termination of Agreement.

Upon termination of this Agreement for any reason, each Party shall, within ten (10)   
Calendar Days of receipt of a written request from the other Parties, use Reasonable Efforts to   
destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the   
other Parties) or return to the other Parties, without retaining copies thereof, any and all written   
or electronic Confidential Information received from the other Parties pursuant to this   
Agreement.

Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for   
another Party’s Breach of its obligations under this Article 16. Each Party accordingly agrees   
that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the   
first Party Breaches or threatens to Breach its obligations under this Article 16, which equitable   
relief shall be granted without bond or proof of damages, and the receiving Party shall not plead   
in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an   
exclusive remedy for the Breach of this Article 16, but shall be in addition to all other remedies   
available at law or in equity. The Parties further acknowledge and agree that the covenants

contained herein are necessary for the protection of legitimate business interests and are

reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential

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or punitive damages of any nature or kind resulting from or arising in connection with this Article 16.

Disclosure to FERC, its Staff, or a State.

Notwithstanding anything in this Article 16 to the contrary, and pursuant to 18 C.F.R.   
section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests   
information from one of the Parties that is otherwise required to be maintained in confidence   
pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information   
to FERC or its staff, within the time provided for in the request for information. In providing the   
information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,   
request that the information be treated as confidential and non-public by FERC and its staff and   
that the information be withheld from public disclosure. Parties are prohibited from notifying   
the other Parties to this Agreement prior to the release of the Confidential Information to the   
Commission or its staff. The Party shall notify the other Parties to the Agreement when it is   
notified by FERC or its staff that a request to release Confidential Information has been received   
by FERC, at which time the Parties may respond before such information would be made public,   
pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a   
confidential investigation shall be treated in a similar manner if consistent with the applicable   
state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise,   
resulting from that Party divulging Confidential Information pursuant to a FERC or state   
regulatory body request under this paragraph.

Required Notices Upon Requests or Demands for Confidential Information.

Except as otherwise expressly provided herein, no Party shall disclose Confidential

Information to any person not employed or retained by the Party possessing the Confidential

Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the   
disclosing Party to be required to be disclosed in connection with a dispute between or among   
the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the   
other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its   
obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any   
disclosures of a Party’s Confidential Information under this subparagraph, or if any third party or   
Governmental Authority makes any request or demand for any of the information described in   
this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and   
agrees to assert confidentiality and cooperate with the other Party in seeking to protect the   
Confidential Information from public disclosure by confidentiality agreement, protective order or   
other reasonable measures.

ARTICLE 17. DEVELOPER AND AFFECTED SYSTEM OPERATOR NOTICES OF   
 ENVIRONMENTAL RELEASES

Developer and Affected System Operator shall each notify the other Party, first orally and   
then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement   
activities, or any type of remediation activities related to the Affected System Upgrade Facilities,   
each of which may reasonably be expected to affect the other Parties. The notifying Party shall:

(i) provide the notice as soon as practicable, provided such Party makes a good faith effort to

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provide the notice no later than twenty-four hours after such Party becomes aware of the

occurrence; and (ii) promptly furnish to the other Parties copies of any publicly available reports filed with any Governmental Authorities addressing such events.

ARTICLE 18. INFORMATION REQUIREMENT   
 Information Acquisition.

Affected System Operator and Developer shall each submit specific information

regarding the electrical characteristics of their respective facilities to the other Party and to the NYISO as described below and in accordance with Applicable Reliability Standards.

Information Submission Regarding Affected System Upgrade Facilities.

The initial information submission by Affected System Operator shall occur no later than   
one hundred eighty (180) Calendar Days prior to Trial Operation of the Large Generating   
Facility and shall include New York State Transmission System information necessary to allow   
the Developer to select equipment and meet any system protection and stability requirements,   
unless otherwise mutually agreed to by the Developer and Affected System Operator. On a   
monthly basis, Developer shall provide the Affected System Operator and NYISO a status report   
on the construction and installation of the Affected System Upgrade Facilities, including, but not   
limited to, the following information: (1) progress to date; (2) a description of the activities since   
the last report; (3) a description of the action items for the next period; and (4) the delivery status   
of equipment ordered.

Information Submission by Developer.

Developer shall submit to Affected System Operator a completed copy of the Large

Generating Facility data requirements contained in Appendix 1 to the Standard Large Facility   
Interconnection Procedures. It shall also include any additional information provided to   
Affected System Operator for the Interconnection Facilities Study. Information in this   
submission shall be the most current Large Generating Facility design or expected performance   
data. Information submitted for stability models shall be compatible with NYISO standard   
models. If there is no compatible model, the Developer will work with a consultant mutually   
agreed to by the Parties to develop and supply a standard model and associated information.

If the Developer’s data is different from what was originally provided to Affected System   
Operator and NYISO and this difference may be reasonably expected to affect the other Parties’   
facilities or the New York State Transmission System, but does not require the submission of a   
new Interconnection Request, then NYISO will conduct appropriate studies to determine the   
impact on the New York State Transmission System based on the actual data submitted pursuant   
to this Article 18.3. Such studies will provide an estimate of any additional modifications to the   
New York State Transmission System or Affected System Upgrade Facilities based on the actual   
data and a good faith estimate of the costs thereof. The Developer shall not begin Trial   
Operation of the Large Generating Facility until such studies are completed. The Developer   
shall be responsible for the cost of any modifications required by the actual data, including the   
cost of any required studies.

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Information Supplementation.

Developer shall supplement its information submissions described above in this Article

18.4 with any and all “as built” information or “as tested” performance information that differs   
from the initial submissions or, alternatively, written confirmation that no such differences exist.

ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS

Information Access.

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting

Party”) information that is in the possession of the Disclosing Party and is necessary in order for   
the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the   
Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and   
responsibilities under this Agreement. The Parties shall not use such information for purposes   
other than those set forth in this Article 19.1 of this Agreement and to enforce their rights under   
this Agreement.

Reporting of Non-Force Majeure Events.

Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide   
necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information   
provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

Audit Rights.

Subject to the requirements of confidentiality under Article 16 of this Agreement, each   
Party shall have the right, during normal business hours, and upon prior reasonable notice to   
another Party, to audit at its own expense the other Party’s accounts and records pertaining to the other Party’s performance or satisfaction of its obligations under this Agreement. Such audit   
rights shall include audits of the other Party’s costs, and calculation of invoiced amounts. Any   
audit authorized by this Article shall be performed at the offices where such accounts and   
records are maintained and shall be limited to those portions of such accounts and records that   
relate to the Party’s performance and satisfaction of obligations under this Agreement. Each   
Party shall keep such accounts and records for a period equivalent to the audit rights periods   
described in Article 19.4 of this Agreement.

Audit Rights Periods.

Audit Rights Period for Construction-Related Accounts and Records.

Accounts and records related to the design, engineering, procurement, and construction of the Affected System Upgrade Facilities shall be subject to audit for a period of twenty-four

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months following the issuance of a final invoice in accordance with Article 7.1 of this Agreement.

Audit Rights Period for All Other Accounts and Records.

Accounts and records related to a Party’s performance or satisfaction of its obligations   
under this Agreement other than those described in Article 19.4.1 of this Agreement shall be   
subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights   
period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to   
such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit   
rights period shall be twenty-four months after the event for which the audit is sought.

Audit Results.

If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with   
those records from the audit which support such determination.

ARTICLE 20. SUBCONTRACTORS

General.

Nothing in this Agreement shall prevent a Party from utilizing the services of any

subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

Responsibility of Principal.

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Affected System Operator be   
liable for the actions or inactions of Developer or its subcontractors with respect to obligations of the Developer under Article 3 of this Agreement. Any applicable obligation imposed by this   
Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

No Limitation by Insurance.

The obligations under this Article 20 will not be limited in any way by any limitation of subcontractor’s insurance.

ARTICLE 21. DISPUTES   
 Submission.

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In the event any Party has a dispute, or asserts a claim, that arises out of or in connection   
with this Agreement or its performance (a “Dispute”), such Party shall provide the other Parties   
with written notice of the Dispute (“Notice of Dispute”). Such Dispute shall be referred to a   
designated senior representative of each Party for resolution on an informal basis as promptly as   
practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated   
representatives are unable to resolve the Dispute through unassisted or assisted negotiations   
within thirty (30) Calendar Days of the other Parties’ receipt of the Notice of Dispute, such   
Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in   
accordance with the arbitration procedures set forth below. In the event the Parties do not agree   
to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it   
may have in equity or at law consistent with the terms of this Agreement.

External Arbitration Procedures.

Any arbitration initiated under this Agreement shall be conducted before a single neutral   
arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten

(10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one   
arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall   
be knowledgeable in electric utility matters, including electric transmission and bulk power   
issues, and shall not have any current or past substantial business or financial relationships with   
any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the   
Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the   
arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration   
Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided,   
however, in the event of a conflict between the Arbitration Rules and the terms of this Article 21,   
the terms of this Article 21 shall prevail.

Arbitration Decisions.

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within

ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision   
and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the   
provisions of this Agreement and shall have no power to modify or change any provision of this   
Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the   
Parties, and judgment on the award may be entered in any court having jurisdiction. The   
decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the   
arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act   
or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) must also be   
filed with FERC if it affects jurisdictional rates, terms and conditions of service, or Affected   
System Upgrade Facilities.

Costs.

Each Party shall be responsible for its own costs incurred during the arbitration process   
and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit   
on the three member panel; or (2) one-third the cost of the single arbitrator jointly chosen by the   
Parties.

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 Termination.

Notwithstanding the provisions of this Article 21, any Party may terminate this

Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS   
 General.

Each Party makes the following representations, warranties and covenants:

Good Standing.

Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the State of New York; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

Authority.

Such Party has the right, power and authority to enter into this Agreement, to become a   
Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and   
binding obligation of such Party, enforceable against such Party in accordance with its terms,   
except as the enforceability thereof may be limited by applicable bankruptcy, insolvency,   
reorganization or other similar laws affecting creditors’ rights generally and by general equitable   
principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

No Conflict.

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such   
Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

Consent and Approval.

Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental   
Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 23. MISCELLANEOUS

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 Binding Effect.

This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

Conflicts.

If there is a discrepancy or conflict between or among the terms and conditions of this cover agreement and the Appendices hereto, the terms and conditions of this cover agreement shall be given precedence over the Appendices, except as otherwise expressly agreed to in   
writing by the Parties.

Rules of Interpretation.

This Agreement, unless a clear contrary intention appears, shall be construed and

interpreted as follows: (1) the singular number includes the plural number and vice versa; (2)

reference to any person includes such person’s successors and assigns but, in the case of a Party,   
only if such successors and assigns are permitted by this Agreement, and reference to a person in   
a particular capacity excludes such person in any other capacity or individually; (3) reference to   
any agreement (including this Agreement), document, instrument or tariff means such   
agreement, document, instrument, or tariff as amended or modified and in effect from time to   
time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to   
any Applicable Laws and Regulations means such Applicable Laws and Regulations as   
amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,   
including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated   
otherwise, reference to any Article, Section or Appendix means such Article of this Agreement   
or such Appendix to this Agreement, or such Section to the Standard Large Facility   
Interconnection Procedures or such Appendix to the Standard Large Facility Interconnection   
Procedures, as the case may be; (6) “hereunder”, “hereof’, “herein”, “hereto” and words of   
similar import shall be deemed references to this Agreement as a whole and not to any particular   
Article or other provision hereof or thereof; (7) “including” (and with correlative meaning   
“include”) means including without limiting the generality of any description preceding such   
term; and (8) relative to the determination of any period of time, “from” means “from and   
including”, “to” means “to but excluding” and “through” means “through and including”.

Compliance.

Each Party shall perform its obligations under this Agreement in accordance with

Applicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT and Good Utility Practice. To the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement for its compliance therewith. When any Party becomes aware of such a situation, it shall notify the other Parties promptly so that the Parties can discuss the amendment to this Agreement that is appropriate under the circumstances.

Joint and Several Obligations.

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Except as otherwise stated herein, the obligations of NYISO, Developer and Affected System Operator are several, and are neither joint nor joint and several.

Entire Agreement.

This Agreement, including all Appendices and Schedules attached hereto, constitutes the   
entire agreement between the Parties with reference to the subject matter hereof, and supersedes   
all prior and contemporaneous understandings or agreements, oral or written, between the Parties   
with respect to the subject matter of this Agreement. There are no other agreements,   
representations, warranties, or covenants which constitute any part of the consideration for, or   
any condition to, either Party’s compliance with its obligations under this Agreement.

No Third Party Beneficiaries.

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and permitted their assigns.

Waiver.

The failure of a Party to this Agreement to insist, on any occasion, upon strict

performance of any provision of this Agreement will not be considered a waiver of any

obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either   
Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a   
waiver with respect to any other failure to comply with any other obligation, right, duty of this   
Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

Headings.

The descriptive headings of the various Articles of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

Multiple Counterparts.

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

Amendment.

The Parties may by mutual agreement amend this Agreement, by a written instrument duly executed by all of the Parties.

Modification by the Parties.

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The Parties may by mutual agreement amend the Appendices to this Agreement, by a   
written instrument duly executed by all three of the Parties. Such an amendment shall become   
effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

Reservation of Rights.

NYISO and Affected System Operator shall have the right to make unilateral filings with   
FERC to modify this Agreement with respect to any rates, terms and conditions, charges,   
classifications of service, rule or regulation under section 205 or any other applicable provision   
of the Federal Power Act and FERC’s rules and regulations thereunder, and Developer shall have   
the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206   
or any other applicable provision of the Federal Power Act and FERC’s rules and regulations   
thereunder; provided that each Party shall have the right to protest any such filing by another   
Party and to participate fully in any proceeding before FERC in which such modifications may   
be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under   
sections 205 or 206 of the Federal Power Act and FERC’s rules and regulations thereunder,   
except to the extent that the Parties otherwise mutually agree as provided herein.

No Partnership.

This Agreement shall not be interpreted or construed to create an association, joint

venture, agency relationship, or partnership among the Parties or to impose any partnership

obligation or partnership liability upon any Party. No Party shall have any right, power or

authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

Other Transmission Rights.

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, or transmission congestion rights that the Developer shall be entitled to, now or in the future under any other agreement or tariff as a result of or otherwise associated with, the transmission capacity, if any, created by the Affected System Upgrade Facilities.

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SERVICE AGREEMENT NO. 2774

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals,   
each of which shall constitute and be an original effective Agreement between the Parties.

New York Independent System Operator,

Inc.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rochester Gas and Electric Corporation

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Excelsior Energy Center, LLC

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SERVICE AGREEMENT NO. 2774

APPENDICES

Appendix A

EPC Services

Appendix B

Addresses for Delivery of Notices and Billings

Appendix C

In-Service Date

SERVICE AGREEMENT NO. 2774

APPENDIX A

EPC SERVICES

1. Affected System Upgrade Facilities

The Class Year Interconnection Facilities Study for Class Year 2019 determined that the following Affected System Upgrade Facilities at the Affected System Operator’s Sta 255   
Substation are required in connection with Developer’s Large Generating Facility:

• GE L90 Relay: Differential line protection, with communication provided over   
 NYPA’s DH2 circuit optical ground wire (“OPGW”);

• SEL-411L Relay: Permissive overreaching transfer trip (“POTT”) scheme for system   
 B line protection with communication provided over direct fiber through National   
 Grid’s SONET system;

• Modified line protection relay settings will be required for the primary and secondary   
 relays;

• Testing and verification of the revised relay settings prior to energization will be

required and performed by Affected System Operator to meet its testing requirements prior to energization. Developer and Affected System Operator shall coordinate with NYPA as needed concerning any related testing and verifications of relay settings that NYPA may be performing pursuant to the Large Generator Interconnection   
Agreement for the Large Generating Facility; and

• Communication equipment upgrades to existing fiber panels and communication   
 paths or cables as necessary to complete the interconnection of the SUF to meet   
 NYISO, NYPA, and Affected System Operator requirements for protection and   
 communication; Developer and Affected System Operator shall coordinate with   
 NYPA concerning NYPA requirements.

Developer shall design, engineer, procure the required equipment, construct, test, and

commission the Affected System Upgrade Facilities in accordance with the applicable

requirements of Affected System Operator, and shall comply with Avangrid/Iberdrola Standards, to the extent not inconsistent with the terms of this Agreement or the NYISO OATT. The   
Affected System Operator will be responsible for project management and construction oversight with respect to the Affected System Upgrade Facilities.

2. ASO Estimated Total Costs

Developer has accepted, and has provided Security in the form of a letter of credit to the Affected System Operator to cover, the following ASO Estimated Total Costs identified in the Class Year Interconnection Facilities Study for Class Year 2019 pursuant to Section 25.8.2 of Attachment S of the NYISO OATT.

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Description Costs

Affected System Upgrade Facilities at Sta 255 Substation $219,471

Total $219,471

3. Milestones

Item Milestone Date Responsible Party

1. Kick off meeting of engineering of Complete Developer and

protection work element of Affected Affected System

System Upgrade Facilities (ASUF) Operator (ASO)

2. Developer provides engineering to January, 2024 Developer

ASO for review

3. ASO to approve engineering February, 2024 ASO

4. Complete Procurement July, 2024 Developer

5. Complete installation November, 2024 Developer

6. ASO approval of installation November, 2024 ASO

7. Testing of ASUF December, 2024 Developer and ASO

8. In-Service Date December, 2024 Developer

9. Completion Date December, 2024 Developer

10. Commercial Operation Date of February, 2025 Developer

Large Generating Facility

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APPENDIX B

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

Rensselaer, NY 12144   
Phone: (518) 356-6000

Email: interconnectionsupport@nyiso.com

Excelsior Energy Center, LLC:

Before Completion Date:

Attn: Patricia Vallejo

700 Universe Blvd., Mail Stop FGR/JB Juno Beach, FL 33408

Phone: (561) 691-2927

Patricia.vallejo@nee.com

Attn: José De Armas   
700 Universe Blvd.   
Juno Beach, FL 33408   
Phone: (561) 691-7274   
JoseDeArmas@nee.com

After Completion Date:

Current Business Manager

700 Universe Blvd., Mail Stop FEJ/JB Juno Beach, FL 33408

Phone: (561) 691-7248

Rochester Gas and Electric Corporation:

Rochester Gas and Electric Corporation   
Attn: Manager-Programs/Projects   
Electric Transmission Services   
PO Box 5224

Binghamton, NY 13902-5224 Phone: (607) 237-5533

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Billings and Payments:

Excelsior Energy Center, LLC: Before Completion Date:

Attn: Patricia Vallejo

700 Universe Blvd., Mail Stop FGR/JB Juno Beach, FL 33408

Phone: (561) 691-2927

Patricia.vallejo@nee.com

Attn: José De Armas   
700 Universe Blvd.   
Juno Beach, FL 33408   
Phone: (561) 691-7274   
JoseDeArmas@nee.com

After Completion Date:

Current Business Manager

700 Universe Blvd., Mail Stop FEJ/JB Juno Beach, FL 33408

Phone: (561) 691-7248

Rochester Gas and Electric Corporation:

Rochester Gas and Electric Corporation Attn: Mgr. Billing & Risk Management PO Box 5224

Binghamton, NY 13902-5224 Phone: (585) 484-6883   
Fax: (607) 762-8885

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APPENDIX C

IN-SERVICE DATE

[Date]

New York Independent System Operator, Inc. Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Rochester Gas and Electric Corporation   
Attn: Manager-Programs/Projects   
Electric Transmission Services   
PO Box 5224

Binghamton, NY 13902-5224 Phone: (607) 237-5533

Re: Excelsior Energy Center Affected System Upgrade Facilities

Dear :

On [Date] [Excelsior Energy Center, LLC] has completed the Affected System Upgrade Facilities. This letter confirms that [describe Affected System Upgrade Facilities] have commenced service, effective as of [Date plus one day].

Thank you.

[Signature]

[Developer’s Representative]

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