

Attachment C

-PUBLIC

SECOND AMENDED AND COMPOSITE AGREEMENT
BETWEEN
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
AND
THE NEW YORK POWER AUTHORITY
FOR THE OPERATION AND MAINTENANCE
OF THE FACILITIES ASSOCIATED WITH
ASTORIA ANNEX SUBSTATION
345 KV GAS-INSULATED SUBSTATION

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SECOND AMENDED AND COMPOSITE AGREEMENT (this “Second Composite Agreement”) made on the ____ day of ~~July~~January, 2014~~3~~ by and between Consolidated Edison Company of New York, Inc. (“Con Edison”), a corporation organized and existing under the law of the State of New York and having its principal place of business at 4 Irving Place in the City of New York, New York, and the New York Power Authority (“the Power Authority”), a corporate municipal instrumentality and political subdivision of the State of New York having an office at 123 Main Street in the City of White Plains, New York. Con Edison and the Power Authority are sometimes collectively referred to herein as the “Parties” and, individually, as a “Party”.

WHEREAS, Astoria Energy II LLC (“Astoria Energy II”) was responsible for the construction of an approximate 500 Megawatt second power block to the electric generating facility at 17-10 Steinway Street, Astoria, NY (the “Second Power Block”) pursuant to the easement agreement between Con Edison and Astoria Energy II dated July 2, 2009 all as more particularly described therein (the “Easement Grant”);

WHEREAS, Con Edison owns a certain parcel of real property in the City of New York, County of Queens, known as Tax Lot 1, in Block 850, on the Tax Map of the City of New York, County of Queens (“Con Edison Lands”);

WHEREAS, Astoria Energy II interconnected the Second Power Block to the Power Authority’s existing Q35L & Q35M 345 kV transmission lines, which start at “Con Edison’s East 13th Street Substation” (as defined in Article I) (and which have associated dielectric oil cooling lines that enter the “15th Street PURS” and the “15th Street Pressurization Plant” (both as defined in Exhibit A)) and then such transmission and dielectric lines travel under and across the East River and enter and extend under, through and across the Con Edison Lands to manhole 19717 (at which manhole, a portion of the dielectric oil cooling lines extend back onto the Power Authority Property to connect to the “Astoria PURS” and the “Astoria Pressurization Plant” (both as defined in Exhibit A) and, at which manhole, a new extension of the Q35L & Q35M 345 kV transmission lines (and the associated dielectric oil cooling lines) extend, under, through and across the Con Edison Lands (the “Extension”), and end at, and connect to, a new 345-kilovolt SF6 gas-insulated substation (the “Astoria Annex Substation”), constructed by Astoria Energy II on a portion of the Con Edison Lands pursuant to the Easement Grant; the Q 35L and Q 35M 345 kV transmission lines and the associated dielectric oil cooling lines between East 13th Street Substation and the Astoria Annex Substation, which includes the Extension, are hereinafter referred to collectively as the “Q35L & Q35M Transmission Lines”;

WHEREAS, on February 1, 2011, Con Edison and Power Authority entered into an Agreement relating to the operation and maintenance of the Astoria Annex Substation, as more particularly described therein (the “Original Agreement”);

WHEREAS, Astoria Energy II was to operate, monitor, inspect, repair, perform preventative, corrective and routine maintenance, testing, and protection system operations assessment to the Astoria Annex Substation and other transmission facilities until the “O&M Commencement Date” (as defined

in Section 2.1 of the Original Agreement), which was to be the later of March 1, 2011 or the first date that Power Authority satisfied all “Conditions Precedent” (as defined in Section 4.1 of the Original Agreement and Section 4.1(b) in this; ~~which Section 4.1 is partially updated by this Composite Agreement Second Composite Agreement and Revised First Amendment~~);

WHEREAS, at a certain point after its construction and prior to the O&M Commencement Date, Astoria Energy II transferred ownership of the Facility to Power Authority, so that the Power Authority was the owner of the Astoria Annex Substation, the Extension, and other transmission facilities and all of the equipment/facilities identified in Exhibit A, attached hereto and made a part hereof (“Equipment”); the Astoria Annex Substation, the Q35L and Q35M Transmission Lines and the Equipment are hereinafter referred to collectively as the “Facility,”

WHEREAS, the Facility did not include any portion of the overhead transmission line and related appurtenances which connect the Second Power Block to the first disconnect switch of the Astoria Annex Substation (“Astoria Energy II’s Generator Leads”); and

WHEREAS, after March 1, 2011, the Power Authority requested that Con Edison operate and maintain the Facility for the Power Authority pursuant to the terms and conditions of the Original Agreement, but prior to Power Authority’s satisfaction of those certain Conditions Precedent (as defined in Section 4.1 of the Original Agreement); and

WHEREAS, on June 23, 2011, the Original Agreement was amended by a First Amendment (“First Amendment”) wherein Con Edison agreed to commence “O&M Services” (as originally defined in Section 4.2 of the Original Agreement) prior to the satisfaction of the Conditions Precedent as defined in the Original Agreement and based upon both the substantive terms and conditions of the Original Agreement, as revised, amended and supplemented by the new terms of the First Amendment all as more particularly set forth in that First Amendment; ~~which is now the Composite Agreement, at, but not limited to, Section 4.2 and the terms and conditions of the Revised First Amendment;~~

WHEREAS, on April 25, 2012, the Parties entered into a Second Amendment to the Original Agreement (“Second Amendment”), all as more particularly described in the Second Amendment;

WHEREAS, pursuant to Section 205 of the Federal Power Act and 18 C.F.R. Section 35.12, Con Edison is required to file the Original Agreement, First Amendment and Second Amendment with the Federal Energy Regulatory Commission (“Commission”);

WHEREAS, pursuant to its Order No. 614, the Commission requires that any amendments to a filed agreement be integrated into the agreement prior to its filing, so that the filing consists of one composite agreement that includes all effective terms and excludes non-effective and superseded language;

WHEREAS, the Parties filed an Amended and Composite Agreement, dated January 2013 (“First Composite Agreement”) which intend to fully integrated the Second Amendment into this First Composite Agreement; but only partially integrated because some terms of the First Amendment ~~cannot be integrated without affecting the rights and obligations of the Parties, the Parties intend to integrate the First Amendment into this Composite Agreement into the First Composite Agreement to the extent possible and, accordingly, the Parties also filed to execute~~ a First Amendment to this Composite

~~Agreement~~ First Composite Agreement (“Revised First Amendment”) to cover the provisions of the First Amendment that ~~were cannot be~~ integrated;

WHEREAS, on June 6, 2014, the Commission conditionally accepted the First Composite Agreement and the Revised First Amendment, on the condition that ~~the Commission required the Parties to file a single, updated and amended and Second Composite Agreement with all superseded language removed~~;

WHEREAS, as with the First Composite Agreement and the Revised First Amendment, by filing this Second Composite Amendment the Parties have no intention to amend the substance of any of the terms of the Original Agreement, as revised, amended and supplemented by the First Amendment and, ~~or~~ the Second Amendment, but merely seek to comply with the Commission’s integration requirement by filing this Second Composite Agreement;

NOW THEREFORE, in consideration of the premises, mutual obligations and undertakings set forth herein, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

Whenever used in this Second Composite Agreement with initial capitalization, the following terms shall have the meanings specified in this Article. Terms used in this Second Composite Agreement with initial capitalization that are not defined in this Article shall have the meanings specified in this Second Composite Agreement.

“Applicable Legal Requirements” 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”, “Environmental Permits”, and “Permits” (each as defined herein). In the performance of the “O&M Services” (as defined in Section 4.2), Power Authority will comply with all New York City laws, rules and regulations that are applicable to the Power Authority and/or Con Edison. The Power Authority’s compliance with New York City laws, rules and regulations is for the purpose of safeguarding the health, safety and welfare of any persons, the Con Edison Lands and any improvements thereon or there under, and is not to be construed as submission by the Power Authority to jurisdiction by New York City over the Power Authority.

“Backfeed” shall mean the supplying or transporting of electrical energy from the Con Edison's transmission/distribution system to the Second Power Block.

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

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

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

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

“Con Edison Standards” means: all Con Edison instructions, specifications, rules, programs, guidelines, policies, practices, and procedures issued by Con Edison, both orally and in writing, in the ordinary course of its business, as may be amended from time to time.

“Con Edison’s East 13th Street Substation” shall mean the Con Edison substation and associated appurtenances between Avenue C and the FDR (East River) Drive and between 13th and 14th Streets in New York City, NY.

“Date of Energization” means the first date that any of the following Equipment is connected to the Con Edison transmission system (the “Energized Components”);

- a. The Extension (of the two 345 kV transmission feeders Q35L & Q35M) into the Astoria Annex Substation.
- b. All new 345 kV SF6 substation bus, circuit breakers and associated equipment associated with the new Astoria Annex Substation.
- c. All new 345 kV open air bus, circuit breakers and associated equipment associated with the Astoria Annex Substation.
- d. The relocated 345 kV Shunt Reactors (as defined in Exhibit A) in the Astoria Annex Substation.
- e. The overhead 345 kV generator leads connecting the new Astoria Annex Substation to the Second Power Block up to and including the generators’ synchronizing circuit breakers located in the generation plant site.
- f. Any other electrical equipment, including but not limited to, generator lead revenue meters.

“Environmental Laws” means: all current and future federal, state and local laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), Environmental Permits, and obligations and other requirements imposed by any “Governmental Authority” (as defined herein), including New York State Department of Environmental Conservation (“NYSDEC”) Technical Administrative Guidance Memoranda and other guidance documents issued or published by any Governmental Authority, in each case, relating to pollution, protection of the environment, natural resources, or protection of human health and safety from conditions in the environment, the presence, “Release” (as defined herein) of, threatened Release of, or exposure to, “Hazardous Substances” (as defined herein), or to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

“Environmental Liabilities” means: all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses, and costs, relating to environmental conditions or activities, including (i) Remediation costs, engineering costs, environmental consultant and expert fees, laboratory fees, permitting fees, investigation costs, defense costs, and reasonable attorneys’ fees and expenses; (ii) any claims, demands, and causes of action relating to or resulting

from any personal injury (including wrongful death), property damage (real or personal) or natural resource damage; and (iii) any penalties, fines or costs associated with the failure to comply with any Environmental Law.

“Environmental Permits” means: the permits, licenses, consents, approvals, manifests and other authorizations or certifications required by any Governmental Authority having jurisdiction with respect to Environmental Laws relating to the “Remediation” (as defined herein), construction, operations and activities of Con Edison and/or the Power Authority for the Facility and the Con Edison Lands.

“Good Industry Practice” means: any of the applicable acts, practices, rules, policies, regulations, or methods from time to time required by any “Governmental Authority” (defined below) or any organization with jurisdiction or authority in respect of the Con Edison Lands whether or not the party whose conduct is at issue is a member thereof, or by any other person acting pursuant to the authority of any such organization. If there are no such applicable acts, practices, rules, policies, regulations, or methods, then Good Industry Practice means: any of the applicable acts, practices, rules, policies regulations, or methods engaged in or approved by a significant portion of the electric utility industry in the United States at the relevant time, including, but not limited to, reliability, operating, planning, and engineering specifications, the Northeast Power Coordinating Council (“NPCC”), the North American Electric Reliability Corporation (“NERC”), the New York State Reliability Council (“NYSRC”), and the New York Independent System Operator (“NYISO”).

“Governmental Authority” means: any federal, state, or local government, or any court, board, agency, commission, office, or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise), specifically excluding the Power Authority, and in all cases whether now or hereafter in existence.

“Hazardous Substances” means: (i) any petroleum, petroleum products or byproducts, and all other regulated hydrocarbons (including without limitation, petrochemicals and crude oil), or any fraction thereof, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons, and other ozone-depleting substances; and (ii) any chemical, material, substance, product or waste (including thermal discharges and hazardous waste) that is prohibited, limited, or regulated by or pursuant to any Environmental Law.

“Manufacturer’s Specifications and Instructions” means: any written vendor /manufacturer standards, specifications, documents, manuals, handbooks, and instructions for all or any portion of the Facility provided by applicable vendor/manufacturer.

“NERC Reliability Standards” means: the reliability standards that are promulgated by the NERC, approved by the Federal Energy Regulatory Commission, and implemented by the NPCC, as may be amended from time to time.

“NPCC Criteria Requirements” or **“NPCC Directories”** means: the specific reliability requirements that are promulgated and implemented by the NPCC, for the design, operation and protection of the bulk power system, as may be amended from time to time.

“NPCC Regional Reliability Standards” means: the reliability standards that are promulgated and implemented by NPCC for the design, operation and protection of the bulk power system, as may be amended from time to time.

“Power Authority Property” means: except for the property interests covered by the Easement Grant, as may be amended from time to time, all property interests, both real and personal, at the Astoria Complex located at 31-01 20th Avenue, Astoria, New York 11105, which are owned by the Power Authority, including but not limited to Block 850, Lot 100 and those property interests within the Con Edison Lands.

“Permits” means: all certificates, permits, licenses, consents, approvals, and other governmental authorizations (other than Environmental Permits) relating primarily to construction, operations and activities of Con Edison and/or the Power Authority for the Facility and the Con Edison Lands.

“Power Authority’s Contractors” means: except for Con Edison, any and all of the Power Authority’s contractors, subcontractors, agents, invitees, and any other person or entity working for or acting on behalf of the Power Authority in connection with excluded services under this [Second](#) Composite Agreement or services outside the scope of this [Second](#) Composite Agreement.

“Preparatory Work and Services” shall have the meaning ascribed to it in Section 4.2.4

“Release” means: any actual or threatened release, spill, emission, emptying, escape, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching, or migration into the environment or within any building, structure, facility, or fixture and/or the exacerbation of any pre-existing condition of Hazardous Substances.

“Remediation” means: the investigation (including any feasibility studies or reports), cleanup, removal, abatement, transportation, disposal, treatment (including *in-situ* treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances and any Release(s), that may be required to satisfy Environmental Laws, in each case, including, without limitation, any closure, restoration or monitoring, operations and maintenance activities, including any engineering or institutional controls, that may be required by any Government Authority after the completion of such investigation, study, cleanup, removal, transportation, disposal, treatment, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Authority in connection with such investigation, cleanup, removal, transportation, disposal, treatment (including *in situ* treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that may be imposed pursuant to an Environmental permit or a consent order).

“Scope of Work” shall have the meaning ascribed to it in Section 4.2.5.

ARTICLE II

EFFECTIVE DATE, O&M COMMENCEMENT DATE, TERM AND TERMINATION

- 2.1 (a) **Effective Dates of the ~~Composite Agreement~~ Second Composite Agreement and the Revised First Amendment.** This Second Composite Agreement shall become effective on the “Commission Effective Date,” which shall be the date on which this Second Composite Agreement ~~and Revised First Amendment are~~ is accepted or deemed to be effective by the Commission.

The Parties hereby agree that ~~the~~ pursuant to the Commission’s conditional acceptance of the First Composite Agreement and Revised First Amendment, by order dated June 6, 2014, the First Composite Agreement and Revised First Amendment supersede the Original Agreement, First Amendment, ~~and~~ and Second Amendment and the First Composite Agreement and Revised First Amendment shall remain in effect until the “Commission Effective Date”. On and after the Commission Effective Date, ~~the Original Agreement, First Amendment, and Second Amendment~~ the First Composite Agreement and the Revised First Amendment shall no longer be of any force and effect and shall be superseded by ~~this~~ the Second Composite Agreement ~~and the Revised First Amendment~~.

The rights and obligations of the Parties that accrue prior to the Commission Effective Date shall be governed by the ~~Original Agreement, the First Amendment, and the Second Amendment, the First Composite Agreement and the Revised First Amendment~~. After the Commission Effective Date, the rights and obligations of the Parties shall be governed by this Second Composite Agreement, ~~as amended by the Revised First Amendment~~.

(b) **O&M Commencement Date.** Under the Original Agreement, Con Edison’s obligation to perform the “Scope of Work” as defined in Section 4.2.5 of the Original Agreement was not to commence until the later of: (i) March 1, 2011, or (ii) the first date that the Power Authority satisfies all of the “Conditions Precedent” (as defined in Section 4.1 of the Original Agreement) (“Original O&M Commencement Date”). However, ~~following because~~ Power Authority’s request ed that ~~Con Edison commence~~ “O&M Services” the Scope of Work (as originally defined in Section 4.2 of the Original Agreement) prior to the Power Authority’s satisfaction of the Conditions Precedent as defined in the Original Agreement, the Parties agreed to revise, amend and supplement the terms of the Original Agreement and subject to the terms and conditions of the Original Agreement as amended by the First Amendment, ~~Con Edison and accordingly, the Parties~~ agreed to change the Original O&M Commencement Date and commence O&M Services on June 23, 2011 (hereinafter the “O&M Commencement Date”). The O&M Services are now defined in Section 4.2 of this Second Composite Agreement ~~as amended by the Revised First Amendment~~.

(c) **Term of Agreement.** This ~~Second~~ Composite Agreement shall remain in effect for a period (the “Term”) of twenty (20) years from February 1, 2011 (which is the date the Original Agreement was executed and effective), with the option to extend for ten (10) year periods by

agreement of the Parties, unless this [Second](#) Composite Agreement is terminated prior to such time in accordance herewith.

2.2 Termination.

2.2.1 **Written Notice.** This [Second](#) Composite Agreement may be terminated, in whole or in part, by either Party upon at least one year advance written notice without liability to the other Party for any reason whatsoever, including its own convenience except that no such termination shall have any effect on, and neither Party shall be relieved of, any obligation or liability relating to or arising from this [Second](#) Composite Agreement prior to the effective date of such termination.

2.2.1 **End of Term Transition.** In the event that either Party, in whole or in part, terminates this [Second](#) Composite Agreement on written notice and/or assigns its rights and obligations under this [Second](#) Composite Agreement in accordance with the terms herein, and/or this [Second](#) Composite Agreement terminates pursuant to Article XVII - Default, then, at the Power Authority's sole cost and expense, Con Edison shall : (i) turn over test equipment to the Power Authority, and (ii) provide reasonable training to the Power Authority's proposed new operator, pursuant to a commercially reasonable schedule, as agreed upon by Con Edison and the Power Authority, (iii) turn over applicable data and procedures in accordance with and as permitted by the provisions of Article XXI – Confidentiality and (iv) turn over all Minor Spare Parts located within the Astoria Annex Substation to the Power Authority.

2.2.2 **Default.** Either Party may terminate this [Second](#) Composite Agreement in accordance with Article XVII Default.

2.3 **Survival.** This [Second](#) Composite Agreement shall continue in effect after termination to the extent necessary to provide for costs incurred hereunder; including final billings and payments pursuant to this Composite Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this [Second](#) Composite Agreement was in effect, and for survival of those provisions which specifically survive termination of this Composite Agreement, including, but not limited to, Article XII - Environmental Provisions, Article XIX, Indemnification, and Article XX – No Warranty/Disclaimers.

ARTICLE III REGULATORY COMPLIANCE

3.1 **NERC Reliability Standards Compliance.** NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements compliance shall be managed pursuant to the following:

- 3.1.1 The Power Authority represents and warrants that all previous entities owning or operating the Astoria Annex Substation from the Date of Energization to the O&M Commencement Date were registered with the NERC as Transmission Owners (TO) and, if required, as Transmission Operators (TOP).
- 3.1.2 The Power Authority further represents and warrants that all previous entities owning or operating the Astoria Annex Substation from the Date of Energization to the O&M Commencement Date have complied with all applicable regulatory requirements, including but not limited to the NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements, as may be amended from time to time, and the Power Authority agrees to provide Con Edison a written confirmation/certification that the Power Authority is in compliance as the Transmission Owner (TO) with any such regulatory requirements, including but not limited to the NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements.
- 3.1.3 It is expressly understood that the responsibility for managing compliance and the accountability for compliance violations and penalties, if any, related to all NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements applicable to the ownership or operation of the Astoria Annex Substation shall be the exclusive responsibility of the Power Authority, as a registered entity, until such time as Con Edison assumes that responsibility and accountability as the registered entity, as set forth in Section 3.1.4.
- 3.1.4 In accordance with Article XIX (Indemnification), the Power Authority will indemnify and hold Con Edison harmless, to the extent allowed by law, for all such NERC obligations and penalties, if any, until Con Edison performs the specific test or analysis required by each individual applicable NERC Reliability Standard, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements for the Astoria Annex Substation (hereinafter referred to as the "Compliance Transfer Periods"). It is expressly understood that each individual NERC Reliability Standard, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements contains a specific timeframe when such retesting or analysis must occur. After the Compliance Transfer Periods, Con Edison will assume the responsibility for managing compliance for the specific NERC Reliability Standard, NPCC Reliability Standards, NPCC Directories - and NPCC Criteria Requirements in question and the accountability for compliance violations and penalties, if any, for such individual applicable NERC Reliability Standard, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements. For the individual NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements that the Power Authority has responsibility for managing compliance, maintaining documentation, and the accountability for compliance violations and penalties, during the Compliance Transfer Periods, Con Edison shall provide the Power Authority with documentary

evidence required to demonstrate compliance, as identified and requested by the Power Authority, with any and all applicable NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements.

- 3.1.5 Con Edison agrees to provide Power Authority with all documentation that establishes compliance with any and all such NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements, after the Compliance Transfer Periods, and at predetermined time intervals. These intervals may be modified by the Power Authority, upon thirty (30) day notice.
- 3.1.6 Con Edison (and its third party agents) agrees to comply with all requirements applicable to any and all NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements, as may be amended from time to time, after the Compliance Transfer Periods.
- 3.1.7 **Management of Critical Infrastructure Protection (CIP) Standards:**
 - a. Prior to the O&M Commencement Date, NYPA will determine whether the Astoria Annex Substation is a Critical Asset and determine the existence of Critical Cyber Assets. If Power Authority determines that the Astoria Annex Substation is a Critical Asset with Critical Cyber Assets, then compliance required by CIP-003 through CIP-009 shall be applied and any required changes to the existing design and operation of the Facility shall be the Power Authority's sole responsibility and performed at the Power Authority's sole cost and expense. In addition, all such design and operational changes required to comply with the obligations of being a Critical Cyber Asset must be completed at least sixty (60) days prior to the O&M Commencement Date. After any and all design and operation changes are completed, Con Edison shall be required to adhere to Con Edison's policies and procedures, and Con Edison shall perform all functional activities related to NERC CIP compliance and shall provide the Power Authority with documentary evidence required to demonstrate compliance, as identified and requested by the Power Authority. After the Compliance Transfer Periods, Con Edison will assume responsibility for managing those protections, maintaining the required compliance evidence, and managing compliance audits in accordance with Con Edison's processes.
 - b. If the protections required by CIP-002 through CIP-009 are determined by Power Authority, in its sole discretion, to not be necessary until after the O&M Commencement Date, then at Power Authority's direction, Con Edison shall be responsible at Power Authority's sole cost and expense, for establishing and managing the protections required by CIP-002 through CIP-009, and all functional tasks related to NERC CIP Standards. NYPA, as the registered Transmission Owner for the Astoria Annex Substation, will retain responsibility for the determination of whether the Astoria Annex Substation is a Critical Asset and determining the

existence of Critical Cyber Assets. Any changes required to upgrade the Facility shall be at the Power Authority's sole cost and expense.

- 3.2 **Backfeed Requirements.** Prior to any Backfeed, and at the Power Authority's sole cost and expense, the Power Authority will ensure that appropriate revenue meters are installed at appropriate locations in the Facility and that Astoria Energy II has taken all appropriate steps to become a retail electric customer of Con Edison during backfeed.
- 3.3 **Energization Component Requirements.** Prior to the O&M Commencement Date, the Power Authority shall be solely responsible to insure that the use and/or operation of any or all of the Energized Components do not adversely impact the safe and reliable operation of the Con Edison's transmission systems. In addition, each Energized Component must meet all applicable regulatory requirements including but not limited to the NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements and any other regulations/requirements that govern the design and operation of the bulk electric/power systems
- 3.4 **Permits.** In accordance with Article VIII– Taxes/Permit Fees, the Power Authority shall be solely responsible pursuant to Applicable Legal Requirements and Good Industry Practice, at its sole cost and expense, to obtain, procure, maintain and update all rights, approvals, consents, Permits and Environmental Permits from Governmental Authority or otherwise, and any other items needed for or relating to the operation and maintenance of the Facility, the O&M Services, and the performance of any obligation of the Power Authority hereunder. Con Edison shall cooperate in good faith with the Power Authority in the processing of Permit and Environmental Permit applications that require signature on behalf of Con Edison or information available only to Con Edison, and, the Power Authority shall reimburse Con Edison for all reasonable out-of-pocket (*i.e.*, third party) expenses incurred by Con Edison.
- 3.5 **Survival:** The Parties obligations under this Article III shall survive the expiration or earlier termination of this Composite Agreement.

ARTICLE IV CONDITIONS PRECEDENT TO THE SCOPE OF WORK; O&M SERVICES; EXCLUDED/LIMITATIONS ON O&M SERVICES

4.1 Conditions Precedent to the Scope of Work. ~~Notwithstanding anything to the contrary in this Composite Agreement or the attachments hereto, Con Edison's obligations to perform the Scope of Work shall not commence unless and until all of the following conditions precedent are met to the good faith satisfaction of Con Edison ("Conditions Precedent"), and the Power Authority shall continue to adhere to the Conditions Precedent, as appropriate, throughout the Term of this Composite Agreement. (a)~~ As of the execution of the Original Agreement on February 1, 2011, Con Edison began its performance of certain Preparatory Work and Services as defined in Section 4.2 of this Second Composite Agreement while Con Edison was waiting for Power Authority to satisfy the Conditions Precedent to the Scope of Work. Sometime thereafter,

Power Authority ~~has~~ requested that Con Edison commence its obligation to perform the Scope of Work ~~as of June 24, 2011~~, notwithstanding that the Power Authority ~~was obligated to~~ did not fully meet the Conditions Precedent to Con Edison's good faith satisfaction prior to Con Edison's commencement of the Scope of Work. Accordingly, as of June 24, 2011, Con Edison commenced the Scope of Work, subject to certain revisions, amendments and modifications to the Original Agreement, which are now fully integrated into this Second Composite Agreement. Specifically, as of June 24, 2011, ~~The Parties agreed that there were and are~~ certain operational, environmental and commercial risks to the Parties, Astoria Energy II LLC and other third parties inherent in commencing Con Edison's obligations to perform the Scope of Work, ~~and starting the O&M Commencement Date~~, prior to the Power Authority fully meeting the Conditions Precedent to Con Edison's good faith satisfaction (collectively referred to herein as the "Risks"), which Risks relate to and include, but are not limited to,

- (i) accepting the Facility in accordance with Section 4.1.2 ~~herein~~;
- (ii) accepting the Shunt Reactors, which is precluded by; but is not limited to, the leaking nitrogen and oil condition of Shunt Reactor 2, incomplete maintenance records for the Shunt Reactors, an outstanding joint review of the maintenance records, and the lack of a design and installation of nitrogen alarms on the Shunt Reactors, ("Nitrogen Alarms");
- (iii) all proposed operators are not fully Trained, which could affect response time,
- ~~(iv) Power Authority's continuing and outstanding obligation to fully comply with Section 4.1.7 of the Composite Agreement "Con Edison's Knowledge of the Facility", by providing the information required therein in a useable format and/or in the required format; the documents received at the Astoria Annex Substation, and signed for turnover on June 16, 2011 are interim documents that will be used to facilitate Con Edison's performance of the O&M Services; these documents, however, do not fully satisfy Section 4.1.7~~

- 4.1 (b) Accordingly, as was set forth in the Revised First Amendment, notwithstanding any provision to the contrary contained in the First Composite Agreement or this the Revised First Amendment, or this Second Composite Agreement, including Con Edison's commencement of O&M Services prior to Power Authority's satisfaction of the Conditions Precedent to Con- Edison's good faith satisfaction, Power Authority hereby specifically acknowledges and assumes all risk arising from, relating to and/or connected with the Risks.

In addition, the Power Authority shall continue to adhere to the Conditions Precedent, as appropriate, throughout the Term of this Second Composite Agreement, and Power Authority shall provide to Con Edison (i) working and fully operational Nitrogen Alarms by August 1, 2011, and (ii) full compliance, in a useable format and/or in the required format, of Section 4.1.7 herein by September 21, 2011.

- 4.1.1 **Ownership.** The Power Authority shall be the titled owner and registered Transmission Owner (TO) of the Facility, and, the Grantee, as a successor and assign, to the Easement Grant in accordance with the terms of the Easement Grant.
- 4.1.2 **Accepting the Facility.** The Power Authority hereby acknowledges Con Edison's recommended use of its own services to perform all commissioning and testing of the Astoria Annex Substation prior to O&M Commencement Date and prior to the date that Astoria Energy II hired a third party agent to perform all testing and commissioning of the Astoria Annex Substation.
- 4.1.2.1 The Power Authority shall accept all components of the Facility from Astoria Energy II in accordance with Substation Operation (SSO) Specification 0100-0022/06 and E0- 4022 ("Acceptance Procedures"), attached hereto as (Appendix A & Appendix B respectively) and incorporated by reference herein, except that the information required to be "verified" therein shall be verified by Astoria Energy II, rather than "SSO". In the event that any additional work is required for the Power Authority to accept the Facility from Astoria Energy II in accordance with the Acceptance Procedure, the Power Authority, at its sole cost and expense, shall perform such required work in order for the Facility to meet the Acceptance Procedure requirements.
- 4.1.2.2 After the Power Authority accepts the Facility from Astoria Energy II, and prior to the O&M Commencement Date, Con Edison shall accept all components of the Facility from the Power Authority in accordance with the Acceptance Procedures and the "Additional Acceptance Requirements for the Shunt Reactors" as defined below and the terms herein.
- 4.1.2.3 Prior to Con Edison's acceptance of the Shunt Reactors, Power Authority shall, at its sole cost and expense, (i) comply with Con Edison Standard CE-ES-1003

(attached hereto as Appendix C), (ii) replace all U type bushings therein, (ii) reassemble the shunt reactors with all new gaskets, (iii) perform a dissolved gas in oil analysis (“DGOA”), which shall include but not be limited to, Con Edison and Power Authority’s joint review of any prior history of gassing, and (iv) perform a joint review of any maintenance records for the shunt reactors (the “Additional Acceptance Requirements for the Shunt Reactors”).

4.1.2.4 In the event that any additional work is required for Con Edison to accept the Facility from the Power Authority in accordance with the Acceptance Procedure and/or the Additional Acceptance Requirements for the Shunt Reactors, the Power Authority, at its sole cost and expense, shall perform any such work.

4.1.2.5 Con Edison shall not be obligated to accept the Shunt Reactors if Con Edison is not reasonably satisfied with Power Authority’s compliance with the Additional Acceptance Requirements for the Shunt Reactors. Except for the Shunt Reactors, Con Edison shall not be obligated to accept any other components of the Facility if Con Edison, in good faith, is not satisfied with the compliance of the Acceptance Procedure by either Astoria Energy II or the Power Authority. This process shall be repeated until such time as Con Edison accepts each component of the Facility from the Power Authority in accordance herein. As was set specifically forth in the Revised First Amendment and now restated in this Second Composite Agreement, at Power Authority’s request, Con Edison agreed to commence O&M Services notwithstanding that the Facility had not been accepted in accordance with the requirements of Sections 4.1.2.1 – Sections 4.1.2.5 herein

4.1.3 **Commissioning.** Prior to the O&M Commencement Date, all high voltage components of the Facility and their associated auxiliary equipment shall be fully commissioned.

4.1.4 **Inspection.** At least thirty (30) days prior to the O&M Commencement Date, Con Edison shall inspect the Facility to evaluate whether it was constructed and installed in accordance with the Easement Grant. In the event Con Edison determines that the Facility as constructed and installed does not comply with the Easement Grant, the Power Authority, at its sole cost and expense, shall perform such required work in order for the Facility to meet the Easement Grant requirements (“Additional Work”). Within thirty (30) days after notice from the Power Authority that the Additional Work has been completed, Con Edison shall re-inspect the Facility to confirm that the Facility complies with the Easement Grant. This process shall be repeated until such time as Con Edison determines that the Facility complies with the Easement Grant.

4.1.5 **SPCC Plan.** At least thirty (30) days prior to the O&M Commencement Date, the Power Authority shall provide Con Edison with a draft Spill Prevention, Control, and

Countermeasure (“SPCC”) Plan for Con Edison’s review and comment. Provisions relating to Con Edison’s implementation of the SPCC Plan, or any subsequent modification of implementation provisions, are subject to Con Edison’s approval.

- 4.1.6 **Certificate of Occupancy.** Prior to the O&M Commencement Date, Power Authority shall be required to provide Con Edison a valid temporary Certificate of Occupancy (“TCO”) issued by the New York City Department of Buildings and Power Authority shall be solely responsible, at its sole cost and expense, to renew such TCO until the Power Authority obtains, at its sole cost and expense, a permanent Certificate of Occupancy issued by the New York City Department of Buildings.
- 4.1.7 **Con Edison Knowledge of the Facility.** The Power Authority shall provide to Con Edison two hard copies and an electronic copy of any and all of (i) a System Description procedure, which shall be subject to Con Edison’s review and comment, (so that Con Edison may draft alarm response procedures); (ii) plans developed for operating and maintaining the Facility prior to the O&M Commencement Date for Con Edison’s reference only, (iii) plans developed for commissioning and testing of the Facility prior to O&M Commencement Date, including, but not limited to, archived configuration of the protection and automation system, configuration files of the relays, Intelligent Electronic Devices (“IEDs”) and Remote Terminal Units (“RTUs”), relay protection system setting sheets, baseline commissioning data for the Facility, including but not limited to, gas insulated switchgear (“GIS”), the reactors, disconnect switches and circuit breakers; (iv) approved commissioning data, (v) as-left settings files or configuration files for the protective relays, IEDs, RTUs, Human Machine Interface (HMI), IMUX, (vi) a Facility Plan/Physical Layout, (vii) two complete paper sets and an electronic copy (formatted for entry on Con Edison’s metaphase system) of as-built construction drawings, which shall also include, but not be limited to, the schematics and wiring prints for all relay protection, automation, ABB GIS, AC/DC load boards, emergency generator, back up design calculations, (viii) Manufacturer’s Specifications and Instructions for the Facility, including but not limited to the Shunt Reactors and the “PURS”(as defined in Exhibit A); and (ix) the Power Authority’s NERC Compliance criteria.
- 4.1.8 **Training.** At Con Edison’s request, the Power Authority shall be solely responsible to coordinate, provide and pay for all costs relating to operation, maintenance, reliability, troubleshooting, and modification training for supervisors, mechanics, operators and technicians in Con Edison’s Substation Operations Department who Con Edison anticipates to be working at any portion of the Facility (including but not limited to all Equipment listed in Appendix A).
- 4.1.9 **Preventative Maintenance Procedures.** At least sixty (60) days prior to the O&M Commencement Date, Con Edison shall provide the Power Authority a copy of its current preventative maintenance procedures (“PMP”) for the Facility, including but not

limited to CE-ES-1000 (attached hereto as Appendix D), which shall be subject to the Power Authority's review, comment, and approval. Con Edison and the Power Authority shall work in good faith to review and finalize the PMP ("Finalized PMP") at least 30 days prior to the O&M Commencement Date. The Power Authority has the final authority with regard to extending and/or reducing the periodicity of maintenance and testing beyond the time periods as long as it is consistent with all regulatory requirements, including but not limited to the NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements. The Power Authority retains the right but is not limited to request modifications to the Finalized PMP throughout the Term of this [Second](#) Composite Agreement on sixty (60) days prior written notice to Con Edison ("PMP Proposal").

4.1.9.1 The Parties shall work in good faith to review and finalize any PMP Proposal ("Updated PMP") within sixty (60) days of receipt of the PMP Proposal. The Power Authority has the final authority with regard to extending the periodicity of maintenance and/or testing beyond the time periods outlined in the Finalized PMP, or if there is no existing procedure for periodicity of maintenance and/or testing, any rejection of or modification to Con Edison's recommendations.

4.1.9.2 The Power Authority assumes all risk with regard to any modifications it requests and/or requires to the PMPs, the Finalized PMPs, the PMP Proposals and/or the Updated PMP, including, but not limited to, rejections of Con Edison's recommendations and/or any modifications to the PMPs, the Finalized PMPs, the PMP Proposals and/or the Updated PMP, notwithstanding any discussions and/or acceptance by Con Edison.

4.1.9.3 All Finalized PMPs and Updated PMPs shall be consistent with any and all Applicable Legal Requirements, including but not limited to the NERC Reliability Standards.

4.1.10 **Insurance.** The Power Authority will procure all insurance as required by Article XVIII- Insurance herein and fully pay all such premiums.

4.2 **O&M SERVICES.** The Preparatory Work and Services and the Scope of Work shall be referred to collectively in this [Second](#) Composite Agreement as the "O&M Services". Con Edison shall perform the O&M Services, at the Power Authority's sole cost and expense, in accordance with Con Edison Standards, which are consistent with, NERC Reliability Standards, NPCC Reliability Standards, NPCC Directories and NPCC Criteria Requirements, the Finalized PMPs, any Updated PMPs and the Power Authority's specific terms as set forth in Exhibit C,

with persons who are skilled and trained to perform the O&M Services to the Facility and its components.

- 4.2.1 In the event of a conflict between Con Edison Standards and either the Finalized PMPs, any Updated PMPs, and/or Power Authority's specific terms as set forth in Exhibit C, the Finalized PMPs, any Updated PMPs and/or Power Authority's specific terms as set forth in Exhibit C shall take precedence and control. In the event of a conflict between any Finalized PMP or any Updated PMPs and Power Authority's specific terms as set forth in Exhibit C, the Finalized PMPs or any Updated PMPs shall take precedence and control. In the event of a conflict between a Finalized PMP and any Updated PMP, the Updated PMP shall take precedence and control.

In the event that Con Edison subcontracts any portion of the O&M Services subject to the Power Authority's approval, and in accordance with Section 4.2.6, Con Edison shall provide such subcontractor(s) with any applicable Con Edison Standards, Finalized PMPs, Updated PMPs and as permitted by the provisions of Article XXI - Confidentiality.

- 4.2.2 **Access to and Use of the Power Authority Property.** The Power Authority hereby authorizes Con Edison (and any applicable subcontractor) to access and use any portion of the Power Authority Property required by Con Edison, upon reasonable notice to perform the O&M Services, except that no prior notice shall be required in cases of emergency, as determined in Con Edison's sole discretion. Such access and use shall be permitted 24 hours a day, 7 days a week, 365 days of the year. Con Edison and any applicable subcontractor will be required to comply with the Power Authority's site access requirements for security, escort and Power Authority shall cooperate with Con Edison and any applicable subcontractor to ensure Power Authority's compliance with the preceding sentence. In the event of emergency, Con Edison and/or its subcontractors must immediately notify the NYPA ECC.

- 4.2.3 **Best Available Retrofit Technology (BART).** Con Edison (and any applicable subcontractor) shall comply with 6 NYCRR Part 248 – Diesel Emissions Reduction Act and Best Available Retrofit Technology (BART).

4.2.3.1 All diesel-powered Heavy Duty Vehicles (HDVs), *greater than 8500 GVW*, owned by, operated by, or leased by Con Edison personnel and/or subcontractor(s) personnel and used in the performance of the O&M work, shall be powered by Ultra Low Sulfur Diesel Fuel (ULSD) and shall utilize BART.

- 4.2.3.2 Con Edison and any applicable subcontractor(s) shall submit proof of compliance with 6 NYCRR Part 248, including a complete HDV inventory/equipment list of all vehicles, equipment, etc. subject to review and

approval by the Authority for submission to the NYSDEC. Power Authority will provide to Con Edison an inventory template, which Con Edison, at its sole discretion, may choose to use. Con Edison shall be solely responsible for all such costs and expenses which resulting from violations and/or fines from the NYSDEC.

4.2.4 **Preparatory Work and Services.** Con Edison shall undertake all work reasonably required to prepare to accept responsibility for the Scope of Work prior to the O&M Commencement Date (the “Preparatory Work and Services”). The Preparatory Work and Services shall include, but not be limited to, Facility inspections, , acceptance of the Facility and any portions thereof, review of materials submitted by the Power Authority, manufacturers and vendors, preparing an Engineering Description of the Astoria Annex Substation, which shall include, but not be limited to, the automation design, the GIS, AC/DC load boards, emergency diesel generator, and the relay system design, training, preparing PMPs, review of the Power Authority’s submissions under this Composite Agreement, including but not limited to the comments to the PMPs, PMP Proposals, the SPCC plan, and initial inclusion, modification and maintenance of any and all drawing and design basis information in the Con Edison document control systems.

4.2.5 **Scope of Work.** Except as limited by the “Excluded Services/Limited Services” (as defined in Section 4.3) and subject to the “Conditions Precedent” (as defined in Section 4.1), commencing on the O&M Commencement Date, the “Scope of Work” shall mean that Con Edison shall be responsible to operate, monitor, inspect, and perform ordinary, preventative and corrective maintenance, testing, and protection system operations assessment to the Facility in accordance with the terms of this Composite Agreement.

In addition, because Power Authority did not fully meet the Conditions Precedent to Con Edison’s good faith satisfaction prior to the O&M Commencement Date, additional work and services for the Facility arising therefrom that were not contemplated by the First Composite Agreement shall be required for the Facility, namely, the close out of minor punch list items and the repair of the Shunt Reactors (except for the fire loop replacement on Shunt Reactor 2) (“Additional Work”). Accordingly, notwithstanding the provisions of Section 4.3.7, but in accordance with Sections 4.3.1- Sections 4.3.6, Con Edison shall perform the Additional Work as if the Additional Work was part of the original O&M Services, and in accordance with all the terms and conditions of the Second Composite Agreement. The Additional Work shall hereinafter be deemed to be part of the O&M Services. The Power Authority shall be solely responsible to pay for the Additional Work in accordance with all the terms and conditions of the Second Composite Agreement.

4.2.6 **Subcontracting.** At Power Authority’s sole cost and expense, Con Edison may subcontract any portion of the performance of the O&M Services without the prior written approval of the Power Authority as to the work to be subcontracted and/or the

subcontractor, which includes, but is not limited to, general maintenance of the Facility, landscaping, minor building repairs, except that Con Edison may not subcontract the portion of the O&M Services that involves operation of Equipment without the prior written approval of the Power Authority as to the work to be subcontracted and/or the subcontractor, except that Con Edison, in its sole discretion, may hire the manufacturer/vendor of any portion of the Facility, to perform O&M Services, including, but not limited to, periodic and corrective maintenance (one-off equipment/major equipment) of the Facility, and the Power Authority shall be solely responsible for all such costs and expenses.

- 4.2.7 **Operating Communications- Astoria Annex Substation/ Energy Control Center.** In accordance with Article V - Services and Utilities, the Power Authority shall install and maintain, at its sole cost and expense, two dedicated communication lines between the Astoria Annex Substation and the Con Edison Energy Control Center (“Con Edison ECC”) and such other communication lines as are necessary to operate any required fire detection and alarm systems. Con Edison shall maintain continuous communication 24 hours a day, 7 days a week, and 365 days of the year, only through the Con Edison ECC. Con Edison ECC shall notify the designated the Power Authority Energy Control Center (“NYPA ECC”) dispatcher, of any emergency situation at the Astoria Annex Substation as soon as practicable. In addition, the Power Authority shall install and maintain, at its sole cost and expense, a regular phone line for all outside calls. The Power Authority shall provide a Con Edison substation frequency band radio system for communication between the Astoria Annex Substation operators and the Con Edison ECC.

- 4.3 **EXCLUDED SERVICES/ LIMITED SERVICES:** Because the Original Agreement contemplated that Con Edison would be accepting a fully constructed, operational, fully tested and working Facility, the Parties specifically acknowledge and agree that for any work relating to the Facility (except for the Additional Work) that is currently in progress by a contractor (of any tier) hired by or on behalf of Power Authority, Astoria Energy II LLC, SNC Lavalin, (the “Construction and Commissioning Work”), at Power Authority’s sole cost, expense, and risk, Power Authority shall continue to have the Construction and Commissioning Work performed until any and all such Construction and Commissioning Work contracted for has been fully performed pursuant to the terms of any applicable contract. In addition, Power Authority shall be solely responsible and liable for any ensuing issues arising from or relating to the Construction and Commissioning Work and all such Construction and Commissioning Work and ensuing issues shall be deemed to be Excluded Services under the First Composite Agreement, as amended by this Revised First Amendment (and after the Effective Date, this Second Composite Agreement.)

- 4.3.1 **Construction Defects.** The O&M Services shall not include any operation, monitoring, inspection, preventative or corrective maintenance, testing, or protection system operations assessment relating to construction defects of the Facility, as reasonably determined by Con Edison, except Con Edison will take any immediate action necessary

to protect persons and property from harm. The Power Authority shall be solely responsible to promptly correct any such construction defects at its sole cost and expense.

- 4.3.2 **Capital Expenditures.** The O&M Services shall not include any operation, monitoring, inspection, preventative or corrective maintenance, testing, or protection system operations assessment that requires a capital expenditure, including but not limited to design changes in accordance with Section 4.3.3.
- 4.3.3 **Design Changes.** The Power Authority acknowledges that portions of the 15th Street and Astoria Pressurization Plants, 15th Street and Astoria PURS and Shunt Reactors are near end of service life and may require future capital upgrades. Con Edison shall use commercially reasonable efforts to perform corrective maintenance to such equipment; however, the Power Authority acknowledges that a capital expenditure may be required. In the event a design change is required, the Power Authority shall submit such design change to Con Edison for its review and comment. The Power Authority shall be solely responsible to pay for any costs relating to designing, constructing, installing and implementing the design change. This shall apply to any and all such design changes.
- 4.3.4 **Revenue Metering.** Maintenance and calibration of the revenue metering instrumentation, and Phase 1 Back-up Analog Telemetry equipment to the NYISO will be performed by the Power Authority. Con Edison shall be notified at least two business days prior to such scheduled calibrations and Con Edison reserves the right to witness the work pursuant to the Article XXII - Right to Inspect/Observe Testing.
- 4.3.5 **RTUs.** Con Edison shall operate and maintain the Power Authority's "Data and Control RTU" and the Power Authority's "Data Only RTU".
- 4.3.6 **Spare Parts.** The Power Authority assumes sole responsibility to purchase, procure, stock and restock any and all spare parts, including, but not limited to the "Major Spare Parts" listed in Exhibit D, so that there is at least one spare for each major component and other long lead items in use at the Facility at all times, and also including, but not limited to, minor spare parts and regular consumables ("Minor Spare Parts") as indicated in Exhibit D, and "Other Parts and Equipment" as defined in Section 4.3.6.2. Except for Minor Spare Parts and Other Parts and Equipment, both of which Con Edison shall maintain in the Astoria Annex Substation, the Power Authority shall be solely responsible to maintain any and all spare parts not stored at the Astoria Annex Substation. The Power Authority may ship the Minor Spare Parts and Other Parts and Equipment directly to Con Edison. All title and risk of loss to any Minor Spare Parts and Other Parts and Equipment shall remain with the Power Authority until delivery to the Astoria Annex Substation. Con Edison will review and use reasonable efforts to define the required Minor Spare Parts needed to support the day-to-day operation of the Facility.

4.3.6.1 The Power Authority shall be solely liable for any loss to any third party and/or any loss or failure to the Facility arising from or relating to any failure to procure and provide to Con Edison any and all spare parts, including Minor Spare Parts, on a timely basis. Without limiting the generality of the preceding sentence, in the event of an emergency, the Power Authority authorizes Con Edison to utilize any installed spares in the Facility, including circuit breakers and disconnect switches.

4.3.6.2 “Other Parts and Equipment” shall be any and all test equipment specified by Con Edison’s SSO Department. The Power Authority shall be solely responsible for all costs and expenses for the future repairs or replacement of the test equipment as required.

4.3.6.3 Con Edison may request, by written notice to the Power Authority, to modify the inventory of Minor Spare Parts and/or Other Parts and Equipment to be maintained at the Astoria Annex Substation, and the Power Authority shall respond in writing within thirty (30) days of its receipt of Con Edison’s request. In the event the Power Authority does not respond within the time provided, such request shall be deemed to be granted by the Power Authority.

4.3.6.4 All spare parts purchased by the Power Authority for the Facility shall be held at the Power Authority’s Warehouse in Astoria, for exclusive use on Facility equipment. Con Edison shall not use these items for Con Edison equipment unless Con Edison obtains the Power Authority’s prior written approval. If Con Edison uses any of the Power Authority spare parts for something other than the Facility, Con Edison must promptly replace such spare parts at its own cost. Con Edison shall be solely liable for any loss to any third party and/or any loss or failure to the Facility arising from or relating to the use of the spare parts by Con Edison. At Power Authority’s sole cost and expense, Con Edison assumes sole responsibility for maintaining the Minor Spare Parts and Other Parts and Equipment stored at the Astoria Annex Substation.

4.3.7 **Performance of Excluded Services/ Limited Services.** For any excluded or limited services, the Power Authority shall be solely responsible, at its sole cost and expense, to take such prompt action as may be required to ensure the continued regular operation of the Facility.

4.3.7.1 In the event that Con Edison chooses to perform work or to provide equipment or services which are not part of the O&M Services, it shall be at the Power Authority’s sole cost and expense and subject to a separate written agreement negotiated between the Parties.

4.3.7.2 In the event that the Power Authority hires a third party to perform work or to provide equipment or services to the Facility which are not part of the O&M Services, it shall be at the Power Authority's sole cost and expense. In addition, the Power Authority and the Power Authority Contractors shall comply with Con Edison's Standards, including but not limited to, Con Edison's "General Rules and Regulations," "General Instructions Governing Work on System Electrical Equipment" and the rules and procedures of Con Edison's SSO and STO Departments, including, but not limited to, a Con Edison employee holding all substation work permits and e-HASP requirements.

ARTICLE V SERVICES AND UTILITIES

- 5.1 Con Edison shall, subject to the terms and conditions of a separate License Agreement and/or amendment to the Easement Grant, in a form acceptable to Con Edison in its sole discretion, allow the Power Authority to use and occupy certain land at the Con Edison Lands, as preliminarily shown on the Survey, attached hereto as Exhibit E, as required to permit subsurface and/or aerial rights for telecommunications facilities, including phone lines and communication lines, water lines, for potable water protection, two (2) 27 kV feeder(s) for light and power, which shall be owned by Power Authority from the Y connection of the Con Edison System to the Astoria Annex Substation, power supply from the Power Authority's transformers to the PURS, and the extension of dielectric oil cooling lines for the Q35L & Q35M Transmission Lines. In obtaining the light and power for the Facility, Power Authority shall obtain and pay for unbundled delivery service from Con Edison. Con Edison shall provide the unbundled delivery service to the Power Authority under Con Edison's Delivery Service Rate Schedule, PASNY No. 4, as it may be revised or superseded from time to time. The charges for the Con Edison delivery services referenced herein shall be based on quantities of electricity that are delivered to the Facility and that are metered at the revenue meters. All such utility/services facilities shall be owned by the Power Authority and shall be maintained by Con Edison pursuant to the terms and conditions of this Composite Agreement.
- 5.2 Prior to the O&M Commencement Date, the Power Authority shall install, at its sole cost and expense, (i) its own water meter at the Astoria Annex Substation, (ii) its own revenue/electric meters for equipment in the Astoria Annex Substation, (iii) its own revenue/electric meter for the PURS and Pressurization Plants at the Power Authority Property associated with Q35L & Q35M Transmission Lines and (iv) at other locations as Con Edison reasonably requests for the Facility. On or before the O&M Commencement Date, ownership of all such revenue meters shall be transferred to Con Edison. The Power Authority shall establish accounts for any services/utilities, including services, specified in Section 5.1 as applicable, in its own name. The Power Authority shall be solely responsible to pay for any and all such services directly to the provider of such services.

ARTICLE VI COMPENSATION

6.1 **Costs and Expenses.** The Power Authority will reimburse Con Edison for all costs and expenses associated with its O&M Services, including, but not limited to, its Preparatory Work and Scope of Work and related services, equipment, materials, expenses, and any work, services, or materials Con Edison provides in an emergency without the Power Authority's request in accordance with Con Edison's accommodation services charges that are established in accordance with the Public Service Commission tariff, as such tariff may be amended or superseded. The accommodation services charges in effect as of the Effective Date of this [Second](#) Composite Agreement are included hereunder Appendix E. Upon request, Con Edison shall provide the Power Authority courtesy copies of its tariff prior to the O&M Commencement Date and upon the Power Authority's request thereafter.

6.1.1 Prior to the O&M Commencement Date, Con Edison will provide the Power Authority a good faith estimate of the anticipated costs and expenses for the Preparatory Work and Services, which is attached hereto as Exhibit F.

Prior to the O&M Commencement Date, Con Edison will provide the Power Authority a good faith estimate of the anticipated costs and expenses for the Scope of Work (on a monthly and/or annual basis), which shall assume ordinary operating conditions for the first calendar year of O&M Services. Following the first calendar year of its O&M Services, and not later than June 30 of each year thereafter, Con Edison shall endeavor to provide the Power Authority with a budget and work plan/schedule for the upcoming calendar year.

The parties agree that a good faith estimate of the anticipated operation and maintenance costs for the Astoria Annex Substation is Thirty Thousand Dollars (\$30,000) per month for the first ten years of the Term ("Initial Monthly Estimate"). The parties agree that the Initial Monthly Estimate is only an estimate and does not include any unanticipated, out of the ordinary expenses, or expenses relating to an emergency nor does it limit Power Authority's obligation in Section 6.1 to reimburse Con Edison for all costs and expenses associated with the O&M Services.

Power Authority acknowledges that any estimates, preliminary budget information, and/or budgets provided hereunder are subject to change due to various factors within or outside of Con Edison's control, including but not limited to, system conditions, storms, equipment failure, inadvertent failure to include costs, changes to Applicable Legal Requirements, and/or changes to the O&M Services as service progresses. Accordingly, notwithstanding Con Edison's provision of any estimate, preliminary budget information and/or budget, the Power Authority shall reimburse Con Edison for all of the costs and expenses that Con Edison incurs in providing the the O&M Services, which includes, but is not limited to, the cost of labor, materials, and third-party services.

For corrective maintenance and for system conditions, which may not be foreseeable, all labor hours are to be billed at the “Accommodation Billing Rate” (defined below).

6.1.2 Following the first calendar year of O&M Services, Con Edison shall endeavor to provide the Power Authority with a five (5) year work plan/schedule for the Facility for the upcoming five (5) years, including preliminary budgeting information.

6.2 **Labor.** Con Edison uses a fully-costed rate called an accommodation billing rate (“Accommodation Billing Rate”) to invoice outside customers for actual labor hours worked. The Accommodation Billing Rate includes, but is not limited to, vacations and other permitted absences (non-productive time), premium payments for overtime, allowance for pension and health insurance costs, payroll taxes and all other payroll related benefits, worker’s compensation insurance costs and administration costs. The Accommodation Billing Rate uses the internal “man-hour” rate as a basis for the above calculation. In addition, reasonable and customary administrative overheads (“A&G”) and gross receipt taxes are charged in accordance with established tariffs. Upon request, annually or with each change, Con Edison shall provide the Power Authority courtesy copies of the Accommodation Billing Rate schedules and the Fringe Benefits rate, as such rates may change from time to time. Con Edison’s A&G as approved in the New York State Public Service Commission Tariff (“NYS PSC Tariff”) is 4.0% and is subject to change.

6.2.1 In order to meet the Power Authority’s invoice scheduling constraints under other agreements between the Parties, Con Edison has historically invoiced the Power Authority using an equivalent accommodation rate by manually adding established provisions for overheads and indirects to the man-hour rate. This practice has been agreeable to both parties and is preferred in some cases because it allows for full disclosure of components of the Accommodation Rate.

6.2.2 During the term of this Composite Agreement, it is anticipated that Con Edison will implement a new invoicing software that will enable automated invoicing at Accommodation Billing Rates and it will no longer be necessary or feasible to continue the manual practice currently referenced in Section 6.2.1 above, to calculate equivalent rates. Upon implementation of this software, Con Edison will provide the Power Authority with a supplemental schedule that clearly identifies the various components of each Accommodation Billing Rate to a substantially similar level of detail that exists in the billing practices between the Parties as of the date of this Composite Agreement. Upon request, annually or with each change, Con Edison shall provide the Power Authority courtesy copies of this supplemental schedule.

6.3 **Materials.** Current replacement cost, actual invoice cost, or Con Edison Unit Cost as applicable, Con Edison’s stores and handling rate (if applicable) as approved in the NYS PSC Tariff is 14.50%. Upon request, Con Edison shall provide the Power Authority courtesy copies of the tariff. Con Edison’s rate for storage and handling is subject to change from time to time.

6.4 **Con Edison Vehicles.** Con Edison’s hourly accommodation billing rates in effect at the time of use.

- 6.5 **Other Equipment or Services.** Other equipment, services, janitorial services, grounds keeping, security, gate repair and other ancillary services, and any outside contractors required for performance of the work, Con Edison's actual cost or billing rates, as applicable, plus the A&G rate, if applicable, as such rates are changed from time to time.
- 6.6 **Con Edison Engineering and Design.** Hours taken to make initial inclusion, modification and maintenance of any and all drawing and design basis information in the Con Edison document control systems.
- 6.7 **Sales Taxes.** The Power Authority is exempt from New York State sales tax and vendors should be instructed to not include sales tax in their invoice charges.
- 6.8 **Equipment Failure.** In the event of equipment failure or any failure at the Facility, the Power Authority shall be solely responsible to pursue any applicable claims for warranty and/or reimbursement from the manufacturer, vendor, contractors who built the Facility or otherwise. The Power Authority shall not delay payment of a Con Edison invoice during the pendency of any such claim.

ARTICLE VII REPORTING AND INVOICING

- 7.1 Con Edison will submit invoices for O&M Services performed by Con Edison within thirty days following the end of each calendar month for the work performed and costs incurred during the month.
- 7.2 For the performance of any O&M Services that Con Edison typically tracks on its work management system (Maximo), Con Edison, by its Substation Operations Department, shall generate and electronically deliver to the Power Authority such Maximo reports within thirty (30) days after such work is performed. The Power Authority representative identified to receive these reports is Robert Schwabe, Robert.schwabe@nypa.gov, 914-287-3794.
- 7.3 Invoices, either on their face or by attachment, will show:
- 7.3.1 Direct charges; the cost of Con Edison labor, including hours worked; the cost of Con Edison supplied materials and supplies.
- 7.3.2 With regard to contracted services used, within ninety days after Con Edison receives the invoices and any other supporting documentation from the contractors, Con Edison shall provide the Power Authority the cost of contracted services used, including any invoices and other supporting documentation.
- 7.3.3 A&G overheads that are included in direct charges, including the rate applied and the calculation of the overhead amount.

- 7.3.4 Fringe Benefits overheads that are included in direct charges, including the rates applied and the calculation of the Fringe Benefit overhead components.
- 7.3.5 Invoices will be submitted to the Power Authority at the following address:

Accounts Payable Department

123 Main Street

White Plains, New York 10601

RE: Astoria Annex Substation

cc: SENY Transmission Asset Manager

- 7.4 With reasonable advance notice, the Power Authority will have the right, within two (2) years after charges have been invoiced, to examine Con Edison's books and records to verify the accuracy of the charges under this Composite Agreement.

ARTICLE VIII TAXES/PERMIT FEES

- 8.1 The rates and/or prices set forth in this [Second](#) Composite Agreement do not include any federal, state or local license, privilege, sales, use, excise, gross receipts, value added or other like taxes which may now or hereafter be applicable to, measured by or imposed upon the services, goods and/or materials furnished hereunder and/or any payment due or collected for such services, goods and/or materials. Con Edison will notify Vendors that the Power Authority is exempt from taxes; the Power Authority agrees to reimburse Con Edison for any such taxes which the Power Authority is responsible to pay. The rates and/or prices set forth in this [Second](#) Composite Agreement also do not include any charge or fee for any Permits, Environmental Permits, governmental or non-governmental authorizations, consents or permits, approvals that may be required in connection with any services, goods and/or materials furnished hereunder. The Power Authority agrees to pay any such charges and fees and to reimburse Con Edison for any such charges and fees which Con Edison is required to pay.

ARTICLE IX PAYMENT

- 9.1 Payment of each invoice will be due from the Power Authority within thirty (30) calendar days after receipt.
- 9.2 All payments shall be made in the form of immediately available funds by wire transfer to a bank account specified by Con Edison or in such other form as may be reasonably requested by Con Edison. The wired funds will be deemed timely paid if received by the bank by close of business on or before the due date of the payment.
- 9.3 All invoices that the Power Authority fails to pay when due will be subject to interest. Interest will be computed from the date payment was due at the rate specified in Section 2880 of the Public Authorities Law between the dates payment is due and is made. If the due date for any payment falls on a national or the Power Authority holiday or on a Saturday or Sunday, payment will be accepted as timely on the following business day; however, if payment is not received on the following business day, interest will be computed from the day payment was due, the Power Authority's Prompt Payment Policy attached hereto as Appendix F, as may be amended from time to time, shall apply. Upon the Power Authority's request, Con Edison shall provide the Power Authority with affidavits stating that the invoices for labor, equipment, services and materials have been paid in full. The Power Authority may withhold payment to Con Edison pending receipt of satisfactory affidavits.

ARTICLE X
WASTE MANAGEMENT

- 10.1 Within sixty (60) days of the effective date of this Composite Agreement, Con Edison shall submit a Waste Management Plan that identifies the routine maintenance wastes that are expected to be generated from O&M activities at the Astoria Annex Substation and the approximate frequency and quantities of such waste generation. Con Edison shall provide the name of a designated contact person for notification purposes for the management and handling of wastes from the Astoria Annex Substation. The Power Authority shall provide the name of a designated contact person for notifications regarding such waste.
- 10.2 The Power Authority shall be responsible for obtaining an EPA identification number for the Astoria Annex Substation, if required. Con Edison shall provide and execute any documents requested by the Power Authority in support of obtaining an EPA identification number for the Astoria Annex Substation operations.
- 10.3 Con Edison shall manage wastes generated from O&M activities in accordance with Environmental Laws. Only wastes generated from the Astoria Annex substation O&M operations may be stored on-site. Con Edison shall notify the Power Authority within seven (7) days of waste generation to enable the Power Authority to make the appropriate arrangements for off-site transportation and disposal of wastes. The Power Authority shall arrange for transportation and disposal of the waste within thirty (30) days of being notified by Con Edison of waste generation.
- 10.4 In the event of a scheduled maintenance activity that is expected to generate a large amount of waste that cannot be staged on-site due to space constraints, Con Edison shall notify the Power Authority at least thirty (30) days prior to the scheduled date, so that the Power Authority can make necessary arrangements for transportation and disposal of the waste. Wastes generated from this type of activity shall be coordinated with the Power Authority in such manner as to allow that shipment to be made using a Part 364 transporter to a the Power Authority-approved TSDF, and the Power Authority contact person to be present on-site at the time of shipment to sign the manifest, bill of lading, or other shipping paper.
- 10.5 Con Edison shall provide the Power Authority with the Hazardous Waste Emergency Response Preparedness information required in 6 NYCRR Part 372.2 (a) (8) (iii) (e), (emergency phone numbers, location of nearest fire extinguisher, spill kit, alarms, etc.) for the Astoria Annex Substation, and shall maintain a current and updated posting of this information on-site adjacent to the designated hazardous waste storage area, if required. Con Edison shall maintain spill kits and other emergency response equipment, if necessary, at the Astoria Annex Substation. In the event of a Release of hazardous waste, Con Edison shall take immediate action to contain and control the Release, and will promptly notify the Power Authority of the Release and the actions taken.

ARTICLE XI
STORM WATER MANAGEMENT FOR POST-CONSTRUCTION WATER QUALITY CONTROL

Notice of Intent (NOI) forms and Storm Water Pollution Prevention Plans (SWPPP) are prepared and submitted to NYSDEC for regulated facilities in order to obtain a NYSDEC SPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities (GP-0-06-002). Separate substations, those not associated with a steam electric generating facility, are not a designated regulated sector by NYSDEC and are therefore not required to obtain coverage nor prepare such documents. Additionally, there is no point source discharge of pollutants to Waters of the State or a Municipal Separate Storm Sewer System (MS4). Post construction storm water controls are achieved by passive measures (natural infiltration) for non-containment areas. Notwithstanding the foregoing, in the event of changes in Applicable Legal Requirements relating to storm water, non-point source, or point source discharges, Power Authority shall take all necessary steps to comply at its sole cost and expense.

ARTICLE XII
ENVIRONMENTAL PROVISIONS

12.1 Release Reporting Requirements:

(a) The Parties agree that in the event that either Party discovers on or about the Easement Area (as defined in the Easement Grant, as may be amended) or the Facility any condition or incident reasonably believed to trigger any of the reporting obligations set forth in Section 12.1 (b), the discovering Party shall use commercially reasonable efforts to provide relevant information as quickly as practicable to the other Party by telephone or email, followed by written confirmation.

(b) The Power Authority shall report to the proper Governmental Authorities any reportable Releases within the time required by applicable federal, state, local, and Environmental Laws, or Power Authority requirements, provided that if Con Edison is the discovering party, it provides the Power Authority with relevant information regarding such Release within sufficient time for the Power Authority to make such notification. In the event that Con Edison does not receive confirmation and documentation (e.g. by e-mail or facsimile) that the Power Authority has reported such reportable Release within the time required by applicable federal, state, local, and Environmental Laws, or Power Authority requirements, Con Edison may report such Release. If any penalties are assessed against Con Edison by a Governmental Authority due to the Power Authority's failure to report the Release within the time required under applicable Environmental Law, the Power Authority shall indemnify Con Edison for any such assessed penalties pursuant to Section 12.5 of this Composite Agreement.

(c) In the event that Con Edison discovers on or about the Easement Area or the Facility any condition or incident reasonably believed to trigger any of the reporting obligations set forth above, Con Edison shall promptly take all actions reasonably necessary to control and contain the release as are consistent with applicable federal, state, local, and Environmental Laws, or Power Authority requirements and the Spill Prevention, Control and Countermeasure Plan, and as necessary to safeguard the health, safety or welfare of any persons, the Con Edison Lands and any improvements thereon or

there under (including the Facility), from any such conditions. This Section 12.1 (c) does not change any rights or obligations of the Parties with respect to Remediation under Section 12.2.

12.2 Remediation:

(a) The Power Authority shall be responsible for the performance of any Remediation required under applicable federal, state, local, and Environmental Laws, or Power Authority requirements or as determined by any Governmental Authority, in order to address (i) the existence or suspected existence of Hazardous Substances in, on, or under the Easement Area that are discovered or encountered as a result of the [Additional Work, Risks](#), Power Authority's ownership or operation of the Facility or the performance of O&M Services under this [Second](#) Composite Agreement (each, a "Discovery"); and (ii) any Release or threatened Release in, on, under, over or migrating to, from or through the Con Edison Lands or the Facility caused by or relating to the Power Authority's ownership or operation of the Facility or the performance of the O&M Services under this [Second](#) Composite Agreement (the "Required Remediation"). The Power Authority shall promptly take all actions as are necessary to perform (a) Remediation of any such Release or Discovery, and (b) such other work as may be required by any Governmental Authority to safeguard the health, safety or welfare of any persons, the Con Edison Lands and any improvements thereon or there under (including the Facility), from any Release or threatened Release or Discovery. In the case any Remediation is required, the Power Authority shall be responsible for restoring the affected portion or portions of the Con Edison Lands, together with any and all affected soil and groundwater, to the functional and topographical condition that existed prior to the Release and Remediation, as well as to the condition required by Environmental Laws, and as necessary to satisfy the requirements of any Governmental Authority exercising jurisdiction with respect to the Con Edison Lands for such Release or Discovery.

(b) Any Remediation required to be performed by the Power Authority pursuant to Section 12.2 (a) above, may be performed by Con Edison if: (i) the Parties agree that Con Edison shall perform some or all of such Remediation; or (ii) Con Edison is required to perform the Remediation by a Governmental Authority.

(c) In the event that Con Edison performs any Required Remediation, the Power Authority shall pay to Con Edison 100% of all of its costs and expenses associated with such Remediation.

(d) In connection with any Required Remediation, the Party performing the Remediation shall provide the non-performing Party with copies of all work plans required by a Governmental Authority. In addition, the performing Party shall keep the non-performing Party apprised of the status of any such Remediation. The Parties will each use commercially reasonable efforts to cooperate with each other in order to minimize each Party's costs related to any Required Remediation necessary to satisfy applicable Environmental Law obligations and securing closure of any such obligations.

12.3 SPCC Plans:

(a) The Power Authority shall be responsible for: (i) Preparing, submitting and maintaining the SPCC Plan for the Facility as set forth in Section 4.1.4; (ii) Ensuring that the SPCC Plan is kept current with Environmental Laws; (iii) Assuring that the permanent oil containments comply with

Environmental Laws; and (iv) Conducting periodic inspections of the Facility to monitor compliance with the SPCC Plan.

(b) Con Edison shall be responsible for implementation of the SPCC Plan so long as Con Edison has had an opportunity to review and approve the implementation sections of the SPCC Plan as set forth in Section 4.1.4. Con Edison shall inspect potential spill areas on a weekly basis and keep a permanent log of such inspections which log will be available for inspection by the Power Authority.

12.4 Community Right to Know

(a) Chemical Inventory: Con Edison shall develop and maintain an inventory of all chemicals and hazardous substances, subject to reporting requirements under the Community Right To Know Law, stored or used at the facility by [insert date]. Con Edison shall notify the Power Authority within five (5) business days whenever a new such chemical or hazardous substance is brought on to the facility or whenever such chemical or hazardous substance is removed from the facility.

(b) Risk Management Plan: The Power Authority shall be responsible for:

- i. Preparing, submitting, and maintaining the Risk Management Plan (“RMP”) for the Facility in compliance with Environmental Laws; and
- ii. Conducting periodic inspections of the Facility to monitor compliance with the RMP.

At least thirty (30) days prior to the O&M Commencement Date, the Power Authority shall provide Con Edison with a draft RMP for Con Edison's review and comment. Provisions relating to Con Edison's implementation of the RMP, or any subsequent modification of implementation provisions, are subject to Con Edison's approval.

Con Edison shall be responsible for the implementation of the RMP so long as Con Edison has had an opportunity to review and approve the implementation sections of the RMP.

(c) Material Safety Data Sheets: The Power Authority shall obtain and submit Material Safety Data Sheets (“MSDS”) for any Extremely Hazardous Substance (“EHS”) present at the facility in an amount equal to or greater than its Threshold Planning Quantity (“TPQ”) or any OSHA hazardous substance present at the facility in an amount equal to or greater than 10,000 pounds to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the local fire department within three (3) months of their acquisition.

(d) Emergency Coordinator: The Power Authority shall appoint an Emergency Coordinator and shall notify the SERC and the LEPC of such appointment within 60 days of an EHS being present at the facility in an amount equal to or greater than such EHS's TPQ.

(e) Facility Inventory Forms and 209-U Forms: After the O&M Commencement Date, the Power Authority shall be responsible for the filing of all Facility Inventory Forms ("FIF"), 209-U forms and any other forms relating to the disclosure of hazardous substances that may be required under Applicable Law and for the payment of all associated filing fees, and shall provide: Con Edison with a copy of each such filing. Con Edison shall be responsible for providing Power Authority with information related to the chemical inventory under Con Edison's custody and control at the Facility in sufficient time to allow Power Authority to complete the required forms.

12.5 Environmental Indemnification:

(a) The Power Authority shall indemnify, defend, and hold harmless Con Edison, its affiliates and their respective directors, officers, shareholders, and employees (collectively, the "Con Edison Indemnified Parties") for any and all Environmental Liabilities arising out of or in connection with (i) the existence of or any actual or threatened Release or Discovery on, over, above, under or around the Easement Area and any migration of such Hazardous Substances on, to or through the Con Edison Lands; (ii) any initial control and containment of a Release in the Easement Area; (iii) Required Remediation; [\(iv\) the Additional Work](#), [\(v\) the Risks](#), and [\(vi\)](#) the transportation and disposal of any and all wastes from the Facility and the Easement Area, as well as any and all wastes subject to Required Remediation on the Con Edison Lands that occurs from the date of the Power Authority ownership of the Associated Equipment forward. This obligation shall include the burden and expense of defending all claims, suits and administrative proceedings and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against the Con Edison Indemnified Parties.

12.6 Environmental Notices:

(a) Except as expressly provided in this Article XII, all notices and other communications required or contemplated under this Article XII shall be in writing and shall be delivered by United States Postal Service, by Federal Express or other private courier service or hand delivered, or e-mailed to:

If to the New York Power Authority:

Name: John Kahabka
Address: 123 Main Street
White Plains, NY 10601-3170
E-mail: John.Kahabka@nypa.gov
Telephone: 914-681-6308

If to Con Edison:

Name: Con Edison SSO Manager

Address: Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, NY 10003
E-mail: Hudmana@coned.com
Telephone: 212-460-6564

- 12.7 Survival: The Parties obligations under this Article XII shall survive the termination or expiration of this Composite Agreement.

ARTICLE XIII

SF6 GAS EQUIPMENT

- 13.1 Certain Power Authority-owned equipment at the Facility will contain sulfur hexafluoride (“SF6”) gas (the “SF6 Gas Equipment”). During the construction or commissioning of the Facility, any leakage of SF6 gas from the equipment or otherwise, shall be calculated by the Power Authority’s vendor or contractor and reported to the proper Governmental Authority by the Power Authority. Prior to Con Edison’s acceptance of the Facility, the Power Authority will certify that all SF6 Gas Equipment is free of leaks and that any SF6 emissions that occurred during construction or commissioning of the Facility have been reported to the proper Governmental Authority. Con Edison shall have the right to conduct its own check of the equipment and Facility to ensure that the SF6 equipment has been delivered free of leaks. Con Edison shall report any leaks that are discovered to the Power Authority and Con Edison will be responsible for fixing the leaks.

- 13.2 Responsibilities of the Parties with respect to SF6 Gas Equipment

13.2.1.1 The Power Authority’s Responsibilities

As set forth in detail on Exhibit C, the Power Authority shall be responsible for: (i) supplying all equipment that is necessary to maintain, test and replace any SF6 Gas Equipment at the Facility; (ii) pursuant to Section 4.1.8 above, provide all training it requires for the handling of SF6 Gas Equipment to Con Edison personnel at the Power Authority’s sole cost and expense; and (iii) reporting to the proper Governmental Authorities all releases and losses of SF6 gas to the environment.

13.2.2 Con Edison’s Responsibilities

As set forth in detail on Exhibit C, Con Edison shall be responsible for (i) handling all SF6 gas and SF6 Gas Equipment at the Facility in a manner that minimizes releases; and (ii) for tracking SF6 gas usage and releases at the Facility; and (iii) for reporting such usage and releases of SF6 gas to the environment to the Power Authority. Con Edison will only permit personnel who are

the aware of the risks associated with SF6 gas and the need to minimize leaks and releases of SF6 gas to work on the SF6 Gas Equipment.

ARTICLE XIV COMPLIANCE MODIFICATIONS AND UPGRADES

- 14.1 In the event that the Facility requires any construction, alteration, modification to comply with Applicable Legal Requirements (“Compliance Modifications and Upgrades”), the Power Authority at its sole cost and expense, shall engineer, procure equipment, and perform the construction, alteration and modification for the Compliance Modifications and Upgrades in accordance with Good Utility Practice, Con Edison Standards and other reasonable conditions required by Con Edison.
- 14.2 The Power Authority shall provide for coordination for Con Edison review of plans, construction oversight, and reimbursement to Con Edison for all such costs and expenses.
- 14.3 The Power Authority shall deliver to Con Edison “as built” drawings, plans, information, and any other documents that are reasonably required by Con Edison, and provide, at the Power Authority’s sole cost and expense, all training to assure that Con Edison is equipped and prepared to perform the Scope of Work hereunder.
- 14.4 Con Edison shall approve and accept for operation and maintenance the Compliance Modifications and Upgrades to the extent engineered, procured, and constructed in accordance with this Article XIV- Compliance Modifications and Upgrades; thereafter, the Power Authority shall transfer operation and maintenance of the Compliance Modifications and Upgrades to Con Edison and operation and maintenance of such Compliance Modifications and Upgrades shall be included within Con Edison’s Scope of Work, except to the extent limited in writing by the Parties.

ARTICLE XV SUPERSEDEENCE

- 15.1 So long as this [Second](#) Composite Agreement shall remain in effect it supersedes any applicable, conflicting portions of the Astoria Unit 6 Operating Agreement dated January 9, 1981 and any subsequent amendments.

ARTICLE XVI FORCE MAJEURE

- 16.1 Except for obligations to make payments when due, each party shall be excused from performance under this [Second](#) Composite Agreement to the extent the party is prevented from or delayed in performing for any reason beyond its reasonable control, including, but not limited to, acts of God, acts or failures to act of any governmental authority or of the other party, accidents, strikes or other labor disputes, declared or undeclared wars, riots, inclement

weather, fires, floods, failures or delays of sources of supply and failures or delay in transportation.

ARTICLE XVII DEFAULT

- 17.1 **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 [Second](#) Composite Agreement or the result of an act or omission of the other Party. Upon a Breach, the non-Breaching Party 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.
- 17.2 **Right to Terminate.** If a Breach is not cured as provided in this Article XVII, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Party shall thereafter have the right to declare a Default and terminate this [Second](#) Composite Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not the Parties terminate this Composite Agreement, to recover from the Breaching 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 Composite Agreement.

ARTICLE XVIII INSURANCE

- 18.1 The Power Authority shall procure and maintain the following insurance at its own expense throughout the Term of this Composite Agreement, with at least the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Con Edison. Policy deductibles and/or self insured retentions on any insurance required by this Article XVIII shall be permitted only if such deductibles and/or self insured retentions are commensurate with Good Utility Practice. The Power Authority shall be required to notify Con Edison in writing of any increase in policy deductible and/or self insured retention at least thirty (30) days prior to the effective date of any such policy deductibles/self insured retention so that Con Edison can give the Power Authority notice of any objection(s). The parties shall work in good faith to resolve any such objection(s) to the proposed policy deductibles.
- 18.1.1 Commercial General Liability Insurance, including contractual liability (“CGL”) with limits of \$35,000,000 on a claims first made policy. The Authority may elect, at its option, to self insure the first \$2 million in coverage. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards.

The insurance policy or policies shall name Con Edison and Consolidated Edison, Inc. as additional insureds.

- 18.1.2 Comprehensive Automobile Liability Insurance (“CAL”), covering all owned, non-owned and hired automobiles used by the Contractor or any Subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.
- 18.1.3 Statutory workers’ compensation insurance as required by all applicable laws and employer’s liability insurance, including in respect of accidents and occupational diseases, with a limit of not less than \$1 million per accident for each person and a policy limit of not less than \$1 million for each occupational disease.
- 18.1.4 For all of the insurance required by this Article XVIII, except workers’ compensation and CAL, Power Authority shall name both Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds for the full specified limits required herein, and such insurance shall be primary and non-contributory coverage as to such additional insureds. All insurance policies of the Power Authority required herein shall include waivers of subrogation in favor of Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc.
- 18.1.5 Power Authority shall, or Power Authority cause Astoria Energy II to, procure and maintain Builders Risk Insurance, including boiler and machinery coverage, covering the Astoria Annex Substation on an all risk basis, including flood and earth movement coverage, on a full replacement cost value basis until final completion, successful testing and acceptance of the Second Power Block and the Astoria Annex Substation.
- 18.1.6 The Power Authority shall procure and maintain Property Insurance, including boiler and machinery coverage, covering the Astoria Annex Substation on an all risk basis, including flood and earth movement coverage, on a full replacement cost value basis to cover the Astoria Annex Substation for the Term of this Composite Agreement;
- 18.2 At least thirty (30) days prior to the O&M Commencement Date, the Power Authority shall furnish Con Edison with Certificate(s) of Insurance covering all required insurance, signed by the insurer or its authorized representative, certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverage’s enumerated in paragraph 18.1 above. Power Authority shall provide Con Edison with at least fifteen (15) days’ written notice prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage.
- 18.3 Con Edison shall have the right to require the Power Authority and, as applicable, to cause the Power Authority to request Power Authority’s Contractors to provide reasonable increases to

the policy limits of all CGL insurance and CAL insurance provided that no such increases shall be made within the first four (4) years of the Term of this Composite Agreement.

- 18.4 The Power Authority agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability (except for liability stemming from Con Edison's own sole gross negligence) or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the [Additional Work, Risks](#), O&M Services and/or this [Second](#) Composite Agreement.
- 18.5 For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Power Authority shall be deemed to have assumed tort liability for any injury to any Power Authority Contractors, Con Edison or any contractors hired by Con Edison arising out of the performance of the work, including injury caused by the partial or sole negligence of Con Edison (except for liability stemming solely from Con Edison's own gross negligence) and notwithstanding any statutory prohibition or limitation of Power Authority's obligations hereunder.
- 18.5.1 The Power Authority's Contractors shall be required to procure and maintain Workers' Compensation and Employer's Liability insurance, CAL with limits not less than \$1,000,000 per occurrence and CGL with limits not less than \$5,000,000 per occurrence and such insurance may be satisfied through primary and excess policies and must name Con Edison and Consolidated Edison Inc as additional insureds. The Power Authority's contractors and subcontractors must name Con Edison and Consolidated Edison Inc. as additional insured's. Con Edison's contractors and subcontractors hired for any portion of the performance of the O & M Services shall be required to procure and maintain Workers' Compensation and Employer's Liability insurance, CAL with limits not less than \$1,000,000 per occurrence and CGL with limits not less than \$5,000,000 per occurrence and such insurance may be satisfied through primary and excess policies and must name the Power Authority as an additional insured. Con Edison's and NYPA's contractors and subcontractors' insurance will be primary and non-contributory to any insurance carried by NYPA or the Con Edison or Consolidated Edison, Inc.. All insurance policies of the Power Authority's Contractors and Con Edison's contractors and subcontractors' shall include waivers of subrogation in favor of the Power Authority, Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc.
- 18.6 Certificates of insurance identifying the Insurance required by this Article XIX shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place, New York, NY 10003

Attention: Insurance/ Risk Manager's Department, 2nd Floor

New York the Power Authority

123 Main Street

White Plains, New York 10601

Attention: Insurance/Risk Management, 16th Floor

ARTICLE XIX INDEMNIFICATION, NO CONSEQUENTIAL DAMAGES, OUTAGES

- 19.1 **Indemnification/Limitation of Liability.** To the fullest extent permitted by law, the Power Authority shall indemnify, defend, and hold harmless Con Edison, its trustees, officers, employees, and agents (collectively, the “Protected Parties”) from and against any and all direct claims, actions, liabilities, damages, costs, and expenses (including without limitation attorney fees and other legal costs and expenses), whether based in contract, tort or otherwise, which are asserted, suffered, or incurred by any person or entity (including the Power Authority and the Protected Parties) and which arise from, relate to, or are connected with (i) the services, goods and/or materials furnished by Con Edison hereunder or performed by contractors hired by Con Edison, including, but not limited to, the O&M Services (ii) any act or omission of the Power Authority and/or the Power Authority’s Contractors, (iii) the Additional Work, (iv) the Risks as defined in the entire section 4.1-above. (iv) Compliance Modifications and Upgrades, and/or (vi) any and all violations of NERC Reliability Standards, NPCC Reliability Standards, FERC, NPCC Directories and/or NPCC Criteria Requirements that occurred prior to the O&M Commencement Date and/or during the Term, until Con Edison has assumed the obligation to comply with each individual NERC Reliability Standard, as provided for in section 3.1 herein, and (vi) a breach of this Second Composite Agreement by the Power Authority, including but not limited to, any breach of Power Authority’s warranties and representation contained herein .

To the fullest extent permitted by law, the Power Authority hereby irrevocably and unconditionally agrees to release and forever discharge the Protected Parties from any and all liability for any violations of NERC Reliability Standards, NPCC Reliability Standards, FERC, NPCC Directories and/or NPCC Criteria Requirements and to waive any and all rights to recover any costs, fines and/or penalties from the Protected Parties or any of them in the future for the period prior to Con Edison assuming the obligation to comply with such NERC Reliability Standards.

- 19.2 **No Consequential Damages.** To the fullest extent permitted by law, neither the Protected Parties nor the Power Authority shall be liable, whether in contract, tort (including negligence, gross negligence, and strict liability), or otherwise, for any special, indirect, incidental, or consequential damages (including but not limited to damage, loss, liability, costs, and expenses resulting from loss of use, loss of business or business opportunities, loss of profits or revenue, costs of capital, loss of goodwill, claims of customers, claims of unrelated companies and other third parties, cost of purchased or replacement power, and like items of special, indirect, incidental, or consequential loss and damage) asserted, suffered, or incurred by any person or

entity (including the Power Authority and the Protected Parties), which arise from, relate to or are connected with the services, goods and/or materials furnished by Con Edison hereunder regardless of whether or not such damages, loss, liability, costs or expenses are caused in whole or in part by the acts or omissions (including negligence, gross negligence or willful acts) of the Protected Parties or any of them. The damages referred to in this Paragraph 19.2 are hereinafter referred to as the "Consequential Losses." To the fullest extent permitted by law, the Power Authority hereby irrevocably and unconditionally agrees to release and forever discharge the Protected Parties from any and all liability for any Consequential Losses and to waive any and all rights to recover any Consequential Losses from the Protected Parties or any of them in the future. To the fullest extent permitted by law, the Protected Parties hereby irrevocably and unconditionally agree to release and forever discharge the Power Authority from any and all liability for any Consequential Losses and to waive any and all rights to recover any Consequential Losses from the Protected Parties or any of them in the future.

- 19.3 If a court of competent jurisdiction determines that any provision or application of any provision of 19.1 or 19.2 of this Article XIX is unenforceable, the cumulative liability of the Protected Parties with respect to anything done in connection therewith (whether such liability is based on contract, tort (including negligence, gross negligence, and strict liability) or otherwise, shall not exceed the price of the services, goods and/or materials on which such liability is based. If a court of competent jurisdiction determines that any provision 19.1 or 19.2 of this Article XIX or the preceding sentence of this Paragraph 19.3 is unenforceable, such court shall limit the operation of such provision so as to give it the effect intended to the fullest extent permitted by law.
- 19.4 **Manpower Limitations/ Con Edison Emergencies.** Con Edison's obligation to furnish the O&M Services shall, at all times (including, without limitation, during any period after which work has commenced to furnish such services, goods or materials), be subject to the availability of Con Edison personnel to furnish such services, goods or materials, taking into account the services, goods or materials to be furnished to the Power Authority and the need for Con Edison personnel to furnish services, goods or materials relative to Con Edison's electric, gas and/or steam systems, which availability shall be determined in the sole discretion of Con Edison. Without limitation of any provision of this [Second](#) Composite Agreement that excuses or limits liability, any failure or delay by Con Edison in furnishing any services, goods or materials due to such unavailability of Con Edison personnel (such unavailability being determined in the sole discretion of Con Edison) shall be excused and shall not give rise to any liability. Con Edison will endeavor to provide the Power Authority with such advance notice as may be practicable under the circumstances of the unavailability of its personnel as described in this Paragraph.
- 19.5 **Outages.** Since actual scheduled outages to perform work at the Facility are subject to NYISO approval, such approval is beyond the control of Con Edison, and Con Edison shall not in any fashion be liable to the Power Authority or any third parties for any delay in the NYISO's approval of such Facility scheduled outages. If an emergency situation (including without

limitation, a blackout or facility outage that could result in load loss) should occur on its system that would require diversion of the personnel performing the O&M Services, then such emergency will be deemed a Force Majeure event and treated in accordance with the Force Majeure provisions of this Composite Agreement. In addition, Con Edison will not be liable for any delay or NYISO outage denial that is related to the Power Authority's responsibilities under this [Second](#) Composite Agreement or otherwise. the Power Authority acknowledges and agrees that any outage may be cancelled by Con Edison on little or no notice, or for any reason whatsoever, with Con Edison having no liability

19.6 Coordination and Communication with the NYISO.

19.6.1 Removal of equipment from service and coordination of scheduled outages. All scheduled work at the Facility shall be scheduled utilizing Con Edison's Outage Scheduling System. Such outages will be coordinated by Con Edison Substation Operations' Planning Department. If regular and routine maintenance requires a full or partial outage of the Facility, Con Edison shall use reasonable efforts to schedule such work to reasonably coincide with planned plant or Facility outages. Con Edison shall notify the NYISO of all scheduled, forced or emergency outages at the Facility on behalf of the Power Authority as outlined in the Outage Scheduling Policy section of the NYISO Outage Scheduling Manual. Con Edison shall notify the Power Authority, either verbally or in writing, of all upcoming scheduled outage work at the Facility.

19.6.2 Generator Derates and Basepoints. Con Edison shall adhere to standard communication protocols between the NYISO and Astoria Energy II via the Con Edison Energy Control Center as established by the NYISO communication protocols for communication between generating facilities and the NYISO, as may be amended from time to time.

19.6.3 Additional Third Party Generators. At the point when the Power Authority reasonably determines that it is likely that a third party generator may interconnect to the Astoria Annex Substation, the Power Authority shall provide Con Edison prompt written notice of same and Con Edison shall be allowed to participate, at reasonable intervals, in the discussions between the Power Authority and any such third party Generator. In addition, at reasonable intervals, Power Authority shall provide written notice of the status of negotiations between the Power Authority and the proposed interconnection of any third party generator to the Astoria Annex Substation.

19.7 Notwithstanding anything to the contrary in this Article XIX, Power Authority and Con Edison agree that Article XII of this [Second](#) Composite Agreement, rather than Article XIX, shall govern the matters that are the subject of such Article XII in accordance with the terms set forth in Article XII.

19.8 The provisions and obligations of this Article XIX shall survive the expiration or earlier termination or of this [Second](#) Composite Agreement.

ARTICLE XX
NO WARRANTY/ DISCLAIMERS

- 20.1 Con Edison shall have no responsibility for any matter caused by the acts or omissions of others, including any improper installation, construction, testing, maintenance, repair, modification or operation of the Facility or any portion thereof on which Con Edison has rendered O&M Services.
- 20.2 ANY GOODS OR MATERIALS THAT MAY BE FURNISHED BY CON EDISON HEREUNDER ARE SOLD AS IS AND WHERE IS. Any description of the goods contained in any document relating to this sale is for reference purposes only and is not intended to be construed as a warranty relating to condition or completeness.
- 20.3 THE FOREGOING APPLICABLE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), ALL OF WHICH OTHER WARRANTIES ARE HEREBY DISCLAIMED.
- 20.4 Notwithstanding anything contained herein to the contrary, any inspection of the Facility or acceptance of the Facility by Con Edison, either before, during or after construction or installation thereof, does not constitute any representation, warranty, or assumption of liability by Con Edison, or any release of the Power Authority's obligations or warranties hereunder, or under the Easement Grant or any other contract, with respect to any aspect thereof whatsoever.
- 20.5 Approval by Con Edison of any document, plan, design, including but not limited to, SPCC plans, SWPPP, Permits, Environmental Permits, remediation plans, or any other item, shall not in any way release the Power Authority or the Power Authority's Contractors from its or their own responsibilities and obligations required by this [Second](#) Composite Agreement or otherwise, including but not limited to, Applicable Legal Requirements, Environmental Laws, Environmental Permits, Good Industry Practice, or other good and reasonable professional conduct, nor shall such approval by Con Edison constitute an assumption by Con Edison of any responsibility in any way, shape, or form.
- 20.6 All questions concerning interpretation of the Con Edison Standards shall be referred to the appropriate Con Edison Department, whose determination shall be conclusive.

ARTICLE XXI
CONFIDENTIALITY

- 21.1 All specifications, drawings, technical information, reports, estimates, preliminary budget information and budgets furnished by Con Edison and/or third parties retained by Con Edison

or the Power Authority in connection with this [Second](#) Composite Agreement are intended for the sole use of the Power Authority in determining the completeness of the work performed and for use in the continued operation and/or maintenance of the Facility. Except as required by law, disclosure by the Power Authority to third parties of documents created by Con Edison and/or third parties retained by Con Edison is prohibited without the prior written consent of Con Edison. All specifications, drawings, technical information and reports furnished by the Power Authority or its contractors in connection with this [Second](#) Composite Agreement are intended for the sole use of Con Edison in connection with its performance under this Composite Agreement. Disclosure by Con Edison of such documents to third parties is prohibited without the prior written consent of the Power Authority.

ARTICLE XXII

RIGHT TO INSPECT/ OBSERVE TESTING

- 22.1 The Power Authority shall notify Con Edison at least two (2) business days in advance of its maintenance and calibration of the revenue metering equipment, and Con Edison shall have the right to observe such work.
- 22.2 Con Edison may exercise these rights from time to time as it deems necessary upon reasonable notice to the Power Authority. The exercise or non-exercise by Con Edison of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Facility.
- 22.3 The Power Authority may exercise these rights from time to time as it deems necessary upon reasonable notice to Con Edison. The exercise or non-exercise by the Power Authority of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Facility (witness of testing or process management, i.e.; NERC, EPA, RGGI, etc.).

ARTICLE XXIII

ACCESS

- 23.1 **Access.** The Power Authority's or the Power Authority's Contractors' access to the Con Edison Lands and the Facility shall be subject to Con Edison's control and security requirements, including but not limited to identification cards, OSHA cards, etc..

ARTICLE XXIV

CHANGES

- 24.1 Con Edison reserves the right at any time to make changes to its O&M Services if such changes are not inconsistent with this [Second](#) Composite Agreement. Such changes may include increases in periodicity of the PMPs, changes to repair or service methodology, the number of personnel assigned, tool usage, repair or fabrication methods, supervision assigned and/or work hours and other similar changes.

ARTICLE XXV AMENDMENTS

- 25.1 No amendment to this [Second](#) Composite Agreement shall be valid or binding unless in writing and signed by authorized representatives of the Parties.

ARTICLE XXVI ASSIGNMENTS; SUCCESSORS

- 26.1 This [Second](#) Composite Agreement shall bind, and inure to benefit of, the respective successors and assigns of the parties hereto. This [Second](#) Composite Agreement may not be assigned or transferred by either party, in whole or in part, without the written consent of the other, not to be unreasonably withheld. Any purported assignment or transfer without such consent shall be void. It shall be a condition of any assignment that the assignee agree in writing to perform the obligations of the assignor under this [Second](#) e-Composite Agreement. Assignment shall not relieve the assignor of responsibility for the performance of its obligations or liabilities incurred prior to the date of assignment.

ARTICLE XXVII ENTIRE AGREEMENT

- 27.1 This [Second](#) Composite Agreement, as it may be amended in accordance with Article XXV hereof together with the Easement Grant, contains the entire agreement and understanding of the Parties with respect to the subject matter hereof. Except as provided in Section 2.1, any other prior or contemporaneous understandings oral or written affecting the subject matter of this [Second](#) Composite Agreement are merged into this [Second](#) Composite Agreement. [This Second Composite Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same instrument, it being understood that Con Edison and Power Authority need not sign the same counterpart. The Second Composite Agreement and any counterpart thereof may be delivered by fax or email and, if this Second Composite Agreement or any counterpart thereof is delivered by fax or email, they shall together with the signature\(s\) or copies of the signature\(s\) thereon, be treated for all purposes as originals that have been delivered.](#)

ARTICLE XXVIII CONFLICTING DOCUMENTS

- 28.1 **Conflicting Documents.** Solely with respect to the Parties' obligation with respect to this [Second](#) Composite Agreement, to the extent, if any, that this [Second](#) Composite Agreement and any specifications, plans, drawings and other documents that may be incorporated herein conflict with the Easement Grant, the terms of this [Second](#) Composite Agreement and any specifications, plans, drawings and other documents that may be incorporated herein shall take precedence and govern. All rights and remedies provided by this [Second](#) Composite

Agreement and the Easement Grant, shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law.

ARTICLE XXIX GOVERNING LAW; SEVERABILITY

- 29.1 This [Second](#) Composite Agreement shall be governed by and constructed in accordance with the laws of the State of New York. If any provision or portion thereof of this Composite Agreement, of the application thereof to any persons or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Composite Agreement, or the application of said provision or portion thereof to any other persons or circumstances, shall not be affected thereby, and each provision of this [Second](#) Composite Agreement shall be valid and enforceable to the fullest extent permitted by the law.

ARTICLE XXX HEADINGS

- 30.1 The Article and Section headings herein are for convenience and reference only, and in no way define or limit the scope and content of this [Second](#) Composite Agreement or in any way affect its provisions.

ARTICLE XXXI NO THIRD PARTY RIGHTS

- 31.1 Nothing in this [Second](#) Composite Agreement, express or implied, is intended to confer on any person, other than the parties hereto, their successors or assigns, any rights or remedies under or by reason of this [Second](#) Composite Agreement.

ARTICLE XXXII NOT PARTNERS

- 32.1 Con Edison shall be an independent contractor in the performance of the O&M Services hereunder. Nothing contained in this [Second](#) Composite Agreement shall be construed to make the parties partners or joint ventures or to render either party liable for the debts or obligations of the other. No right of supervision, inspection, requirement or approval or other provision of this [Second](#) Composite Agreement and no conduct of the parties shall be construed to create a relationship of principal and agents, partners or joint ventures between the parties, or joint employers of the Power Authority's Contractors.

ARTICLE XXXIII NOTICES

- 33.1 Except where otherwise specifically provided in this [Second](#) Composite Agreement, including but not limited to Article XII, Environmental Notices, any notice, demand or request required

or authorized by this [Second](#) Composite Agreement shall be in writing and will be deemed to have been duly given if mailed by United States registered or certified mail (return receipt requested), postage prepaid, if to Con Edison, to:

Consolidated Edison Company of New York, Inc.
4 Irving Place New York, New York 10003
Attention: Vice President Substation Operations
And: Vice President System & Transmission Operations

With a courtesy copy to:

Consolidated Edison Company of New York, Inc.
4 Irving Place New York, New York 10003
Attention: General Counsel

And if to the Power Authority, to:

New York Power Authority
Clark Energy Center
6520 Glass Factory Road
P/O Box 191
Marcy, NY 13403
Attention: ~~Senior~~ Vice President-Transmission

With a courtesy copy to:

New York Power Authority
123 Main Street
White Plains, New York 10601
Attention: General Counsel

The addresses and persons to be notified may be changed at any time by similar notice.

**ARTICLE XXXIV
WAIVER**

- 34.1 No delay or omission by either party to exercise any right or power accruing upon a non-compliance or failure of performance by the other party shall impair that right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach hereof or of any covenant or condition contained in this Second Composite Agreement.

IN WITNESS THEREOF, the parties have executed this Second Composite Agreement by their duly authorized representatives as of the date first written above.

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

By: _____
Name: Aubrey Braz
Title: Vice President Substations Operations

NEW YORK POWER AUTHORITY

By: _____
Name:
Title: ~~Senior~~ Vice President Transmission

Exhibit A:

List of Equipment* for O&M Services

1. Incoming dead-end structure with insulators, conductor, LA's and appurtenances
2. 4-breaker GIS ring bus with circuit breakers, disconnect switches, ground switches, bus work, CT's and PT's, LCC's, outdoor OH bushings for incoming and outgoing - GIS system includes a dedicated DC system for back-up operation
3. GIS enclosure/building with lighting and ventilation and any and all equipment installed in the GIS enclosure building.
4. Control building with lighting, HVAC, Fire detection system, two battery rooms, two relay rooms, two communication rooms, HMI room, rest rooms, utility closet, file room, electrical equipment rooms, and server room and any and all equipment installed in the control building.
5. Two 125 VDC DC systems including batteries, battery disconnects, chargers and DC load boards
6. Electrical rooms including two light and power transformers, secondary disconnects, AC load boards
7. Automation and telecommunication systems, protective relaying and control systems, SCADA equipment for Con Edison and the Power Authority with data acquisition to the Power Authority and control and data acquisition to Con Edison, and revenue metering equipment with communication to the Power Authority and Con Edison to include but not limited to:
 - a. Phase 1 Back-up Analog Telemetry equipment
 - b. Digital Fault Recording (DFR) equipment
 - c. Sequence of Events Recording (SER) equipment.
8. Emergency generator with transfer switch for back-up station power, with fuel storage
9. Two outdoor 345 kV 3-pole disconnect switches, with ground switches
10. Two 3-pole pothead stands for connection to 345 kV HPFF cables (Q35L & Q35M Transmission Lines), including diffusion chambers
11. 345 kV HPFF system cables, including all associated dielectric fluid cooling lines (Q35L & Q35M Transmission Lines) from pothead located at the Astoria Annex Substation to pothead located at Con Edison's East 13th Street Substation.
12. Six potheads at the Astoria Annex Substation, with associated two 3-pole pothead stands and six potheads and associated two 3-pole at East 13th Substation,

13. Two outdoor 345 kV 3-pole SF6 insulated, independent pole dead tank circuit breakers for isolating shunt reactors and their associated isolating disconnect switches and ground switches
14. AC resonant test set system
15. Two 345 kV oil-filled shunt reactors, with containment (“Shunt Reactors”)
16. Outdoor 345 kV bus system with support stands, insulators, support steel, etc.
17. Substation security system
18. Outdoor lighting
19. Grounding system
20. Low voltage power, control and instrument/signal cabling (please clarify this reference)
21. Security fencing, gates and card readers
22. Fire Wall between Shunt Reactors
23. 3.5-ton crane
24. The “15th Street PURS”, which shall mean the (i) Public Utility Regulating Stations that have associated packaged cooling and pressurizing units and their appurtenances located on Con Edison’s property bound by East 15th Street, Avenue C, East 16th Street and the FDR Drive in Manhattan (the “15th Street PURS Site”) and (ii) the East River Heat Exchanger Plant within the East River Generating Plant located on Con Edison’s property bound by East 15th Street, which includes the two fresh water cooling loops and heat exchangers, pumps, piping, motor control centers and substations associated with the East 15th Street Cooling Plant which is located inside Con Edison’s East River Generating Station.
25. The “Astoria PURS,” which shall mean the (i) Public Utility Regulating Stations that have associated packaged cooling and pressurizing units and their appurtenances and the associated fire suppression system located at the Con Edison Lands and/or the Power Authority Property and (ii) oil to heat air exchangers and appurtenances.
26. The 15th Street Pressurizing Plants, which shall mean three (3) packaged oil pressurizing units at the “15th Street PURS Site and their appurtenances.
27. The Astoria Pressurizing Plant, which shall mean one (1) packaged oil pressurizing unit located at the Con Edison Lands and/or the Power Authority Property and its appurtenances.
28. Emergency diesel generator with transfer switches for backup power at the Astoria PURS at the Power Authority property, with fuel storage.
29. The light and power transformers for back up electricity for the Astoria PURS at the Con Edison Lands and/or Power Authority Property

30. SF6 Gas cart
31. Lightning Protection for the Facility.
32. For Phase 1 of the Project, relays and associated panels.
33. For Phase 2 of the Project, (i) the addition of GIS equipment (ii) approximately one hundred fifty (150) total feet of 345KV, 3000 amps GIS bus (which will connect to existing GIS bus containing disconnect and ground switches); (iii) approximately 12 elbows, 3 misalignment joints, 3 gas/air bushings and required structures for bus and bushing supports; (iv) relays and associated panels, and (v) the contemplated additional and/or modified structural steel termination and accessories stand.
34. Surge Arrestors, if required and approved by Power Authority. (capability rating to be determined at the conclusion of an on-going technical switching surge analysis).
35. If required and approved by Power Authority, platforms to the GIS equipment view ports, gas pressure gauges, and related equipment.

* Regarding Equipment items 31-35, Con Edison and NYPA entered into a certain Interconnection Agreement (“Interconnection Agreement”) for the purpose of permitting a transmission connection between Con Edison’s 138kV Astoria East Substation and Power Authority’s Astoria Annex Substation (the “Project”). The Project will be undertaken in two phases. As a result of each phase of the Project, certain equipment and installations, as more particularly set forth immediately above, are and/or will be installed in, on or at the Astoria Annex (the “Additional Equipment”), and pursuant to the terms of the Interconnection Agreement, the Additional Equipment will be owned by Power Authority.

SF6 Equipment Tracking Cylinder Log

[illegible]

Exhibit C:

Power Authority Terms and Requirements

Terms Relating to the O&M Services

Pursuant to Power Authority's request, the Astoria Annex Substation shall be generally kept unstaffed and Con Edison shall provide any staffing at the Astoria Annex Substation for its O&M Services as required by Article IV of this Agreement.

Terms Relating to the Tracking and Reporting of SF6 Gas Usage and Emissions at the Facility

The Astoria Annex Substation will contain Sulfur Hexafluoride (SF6) gas. Due to the Power Authority's commitment to the Climate Registry and in anticipation of the Environmental Protection Agency's proposed mandatory gas reporting rule, the Power Authority recognizes the need to track the SF6 gas inventory, additions and losses of SF6 gas to the Power Authority equipment. Accordingly, Con Edison will be responsible for tracking the inventory, additions and losses of SF6 gas in the Power Authority equipment, in connection with the Astoria Annex Substation on the following terms and conditions:

1. Con Edison shall handle all SF6 gas and SF6 Gas Equipment in a manner to minimize releases.
2. Only personnel who are familiar with the risks and the need to minimize leaks and releases of SF6 gas will be permitted to work on SF6 Gas Equipment.
3. As provided in Section 4.1.7 above, the Power Authority shall provide to a selected group of Con Edison mechanics and supervisors training required by the Power Authority for personnel working with SF6 Gas Equipment.
4. Con Edison shall weigh the Power Authority-owned SF6 gas containing cylinders, using certified scales purchased by the Power Authority for Con Edison's use, by the end of the first quarter of the then current year to establish a beginning year weight.
5. Con Edison shall weigh the SF6 gas containing cylinders before and after each maintenance activity, and record the weights, and such additional information as is agreed between the Power Authority and Con Edison, in Con Edison's work management system, Maximo. The report will be presented in a form similar to the example attached as Exhibit B.
6. The Power Authority shall purchase and provide for Con Edison's use a weight scale that is accurate to within 1%. Thereafter, Con Edison shall be responsible for ensuring that the weight scale is re-calibrated according to the manufacturer's recommendations, or at least annually. In the event a new scale has to be purchased, it shall be at the Power Authority's sole cost and expense.

7. Con Edison shall submit to the Power Authority on a monthly basis the cylinder log(s) and a summary of the weight of SF6 gas added to and/or removed from the Power Authority equipment as recorded in the Maximo work management system. This submission is required by the 15th of the following month.
8. Subject to Con Edison's prior review and approval, the Power Authority shall provide inspection and maintenance specifications for the maintenance of the Power Authority-owned SF6 Gas Equipment which Con Edison will implement. Con Edison shall retain documentation recording any leaks found on the SF6 Gas Equipment.
9. The Power Authority shall purchase and provide the SF6 gas cart subject to Con Edison's prior review and approval, for exclusive use at the Power Authority's Facility or otherwise as specified by the Power Authority the Power Authority shall provide inspection and maintenance specifications for maintenance on the Power Authority-owned SF6 gas cart which Con Edison will implement.
10. To aid in the detection of leaks of SF6 gas from the Power Authority Gas Equipment, Con Edison shall be aware that the Power Authority owns and can and provide to Con Edison for use, an SF6 camera that is designed to function in indoor applications. The Power Authority will make this equipment available within 24 hours of a request. Con Edison will retain documentation evidencing that the gas SF6 Gas Equipment and cart is not leaking.
11. Con Edison shall ensure that all SF6 gas-containing spare equipment is kept under positive pressure and not leaking. If the positive pressure is from SF6 gas, these items will need to be part of the SF6 inventory.
12. Con Edison shall not intentionally or knowingly release SF6 gas to the atmosphere, except as necessary in connection with sampling for chemical analysis of the SF6 gas.
13. Monday through Friday, Con Edison shall notify the Power Authority within 24 hours of a release of more than 100 pounds of SF6 to the atmosphere by contacting: [the Power Authority to provide name, email and telephone number of contact person].
14. Alarms on all SF6 Gas Equipment will be connected to the Con Edison Energy Control Center and to the Power Authority Generating Station.
15. Con Edison shall submit to the Power Authority by January 31 of each given year, the sum total of SF6 gas added to the Power Authority-owned SF6 Gas Equipment during the preceding year. If no SF6 gas was added, that shall be stated explicitly on the submission.

Exhibit D:

“Minor Spare Parts”, “Major Spare Parts”, and “Other Parts and Equipment”

Minor Spare Parts:

Qty	Item	Model Number
2	Areva-Relay	P54621BD6N0550K
2	Areva-Relay	P14121BA6M0420J
1	SEL-Relay	0311L1HC03254X4XX
2	SEL-Relay	0311L13C03254X4XX
1	SEL-Relay	0311L1JC0325424XX
1	SEL-Relay	0311L1KC0325424XX
1	SEL-Relay	0387513X5H2X4X1
1	SEL-Relay	203203X344H4XX
2	SEL-Relay	2505324XX
3	RFL Relay	GARD 8000 6U CHASSIS 38- 150VDC OR 96-132VAC
3	RFL-Relay	IMUX 2000 T1 CHASSIS, CM-4 T1/E1
1	Rugged Com-Relay	RSG2300-T-DP-HI-HI-TX01-TX01-FXA01-FXA01
1	GE-Relay	C60-N03-HCH-F8F-H6E-M6T-PXX-UXX-WXX
1	GE-Relay	T60-N03-HCH-F8H-H6E-M6T-PXX-UXX-WXX
1	GE-Relay	B30-N03-HCH-F8H-H6E-L6T-NXX-SXX-UXX-WXXTO
1	Arbiter-Relay	1084B Option 10 & 27
1	Bitronics- Relay	Model # M87149Y9Y92101X

As of June 23, 2011, and per Section 4.3.6, the following is a list of additional Minor Spare Parts and Other Parts and Equipment, which is not all-inclusive, that are needed to operate and maintain the Astoria Annex Substation:

- Station sign-in sheets
- Station Logs/Operating Order Books
- Stop Tags
- “T1”, “T2” and sesame locks
- Eye wash solution for eye wash stations
- Maximo tags
- SF6 fitting/quick connect kit and regulator to add SF6 gas to GIS and circuit breakers

- SF6 cylinders on hand to gas equipment, if needed
- Flash lights (2) with charging stations
- Water cooler and bottled water
- Water for batteries
- Caution barrier tape
- Salt for snow
- Shovels, snow blower for snow removal
- Toilet paper, paper towels, soap, garbage bags, cleaning products, mops
- Printer paper, printer toner, paper, pens, staples
- Oil absorbent pads
- Drums for waste storage and disposal
- Light bulbs
- Fire extinguisher inspection tags
- Gasket, oring, desiccant kits for 345 kV HVB breakers

Major Spare Parts:

Qty	Item	Model Number
1	ABB Disconnect Earth Switch	ELK-TK3
1	ABB Disconnect Earthing Drive	ELK-BAE
1	GIS Air to Gas Bushing	
1	Spare CT	
		Type - GOG 1050 Cat.No. – LF125032-B BIL –
3	ABB/ASEA 345 kv Shunt Replacement Bushings	Year 1972

Major Spare Parts:

Qty	Item	Model Number
2	Support Insulators	
2	Barrier Insulators	
2	Density Monitors	
1	Pressure Relief Device	
	close and trip coils	
	control relays	
	indicating lights	
	any mechanism parts that may require replacement	
	circuit breaker contact assemblies	
	interrupter assemblies	
	piping or valve parts	
	spare o rings, etc	

	Any other items that could fail and need to be replaced on the midnight shift and not require any lead time	
1	SF6 couplings (dilo)	
3	orange blocking plate/ manual crank	
1	breaker drive shaft	
2	dc breaker motors	
3	circuit breaker density monitors	
1	Gas analyzer	
3	Compartment density monitors	
1	SF6 portable hand truck with regulator set up/ steel hose (dilo)	
1	Steel SF6 hoses	

As of June 23, 2011, and per Section 4.3.6, the following is a list of Additional Major Spare Parts, which is not all-inclusive, that are needed to operate and maintain the Astoria Annex Substation:

Poletti PURS unit:

One (1): IMO pump: GG3DNSJ

One (1): Motor: 50 hp, 326TS, 3500 rpm, 3 phase, 60Hz, 208V

Two (2): Coupling

15 St. PURS unit:

One (1) IMO skid replacement (which would upgrade the pump/motor in the event of failure).

Details of the replacement pumps/motors for the skid: 150 GPM, PG3DNJ-312 mounted on a steel, drip rimmed baseplate, coupling, guard, and a 75 hp, 1750 rpm, TEFC, Severe Duty 1.15 SF, 3 phase, 60 HZ, 480V.

The **new skid** (which would have an IMO pump, motor and coupling) and would be slid into place and piped in. Also note that the voltage at this location is 480 Volts, so the pumps/motors at 15 St are not interchangeable with the pumps/motors at Poletti PURS.

Other Parts and Equipment:

Qty	Item	Model Number
2	Doble F6150 Relay Test Set	
12	Megger PMM-1 Power Multimeter	
1	Vanguard CT-8000 Digital Circuit Breaker Analyzer	
2	Sorensen DC Power Supply	XHR Series 0-150V 0-7A
2	Vanguard EZCT	2000A
1	Qualitrol Sudden Pressure Test Kit	013-1
2	EXFO Multifunctional Loss Tester	FOT-933-12C-VFLFP5-EI-EUI-91
12	JDSU Test Set	FST-2209 T1
4	RFL FSU'S	107600-200 & associated null cables
1	PC-GC Automation Processor	CPR-041RD

EXHIBIT E:

Survey for Easement Agreement

EXHIBIT F:

Good Faith Estimate of Preparatory Work and Services

APPENDIX A

Con Edison SSO specification 0100-0022/06

APPENDIX B

**Con Edison Specification EO-4022 Testing of Acc Feeders Operating at 69kv
through 345kv**

APPENDIX C

Con Edison ES-1003 Installation and Test Specification for Oil Immersed Power Transformers, Reactors and Regulators

APPENDIX D

Con Edison ES-1000 Preventative Maintenance (PMP)

APPENDIX E

Con Edison 2010 Accommodation Services Charges

APPENDIX F

Power Authority Prompt Payment Policy