**SERVICE AGREEMENT NO. 2880**

**SERVICE AGREEMENT NO. 2880**

**STANDARD UPGRADE CONSTRUCTION AGREEMENT**

**AMONG THE**

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,**

**AND**

**NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID**

**AND**

**SITHE/INDPENDENCE POWER PARTNERS, L.P.**

**Dated as of March 12, 2025**

**Project Name:** Scriba-Volney Series Reactor Project

**Queue Position No(s):** 899

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**STANDARD UPGRADE CONSTRUCTION AGREEMENT**

**THIS STANDARD UPGRADE CONSTRUCTION AGREEMENT** (“Agreement”) is madeand entered into this 12th day of March 2025, by and among: Sithe/Independence PowerPartners, L.P., a limited partnership organized and existing under the laws of State of Delaware(“Interconnection Customer”), Niagara Mohawk Power Corporation d/b/a National Grid, acorporation organized and existing under the laws of State of New York (“System Owner”), andthe New York Independent System Operator, Inc., a not-for-profit corporation organized andexisting under the laws of the State of New York (“NYISO”). Interconnection Customer, theNYISO, or System Owner each may be referred to as a “Party” or collectively referred to as the“Parties.”

**RECITALS**

**WHEREAS,** Interconnection Customer wishes to develop a Transmission Project that willinterconnect to the New York State Transmission System in order to relieve local thermaloverloads under operating conditions identified on System Owner’s system;

**WHEREAS,** the Transmission Project was evaluated in the NYISO’s Transmission Interconnection Procedures located in Attachment P of the ISO OATT;

**WHEREAS,** the NYISO determined that certain Network Upgrade Facilities were required onthe System Owner’s system for the Transmission Project to connect reliably to the system in amanner that meets the NYISO Transmission Interconnection Standard;

**WHEREAS,** the NYISO has determined the cost estimate for the engineering, procurement, andconstruction of the Network Upgrade Facilities (together with Transmission Project costs, the“Upgrades Estimated Total Cost Amount”);

**WHEREAS,** Interconnection Customer and System Owner desire to have System Ownerperform, and System Owner is willing to perform, the engineering, procurement, andconstruction services (“Construction Services”) required to construct and place in service theTransmission Project and Upgrades (collectively, the “Upgrades”) in accordance with the termsand conditions hereinafter set forth; and

**WHEREAS**, Interconnection Customer, System Owner, and the NYISO have agreed to enterinto this Agreement for the purpose of allocating the responsibilities for the performance andoversight of the Construction Services required to construct the Upgrades;

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

**ARTICLE 1. DEFINITIONS**

Whenever used in this Agreement with initial capitalization, the following terms shall have themeanings specified in this Artic[le 1. Te](#br5)rms used in this Agreement with initial capitalization thatare not defined in this Artic[le 1](#br5) shall have the meanings specified in Section 1 of the OATT,

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Section 22.1 of Attachment P of the ISO OATT, the body of the Transmission InterconnectionProcedures, or the body of this Agreement.

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

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

**Applicable Reliability Councils** shall mean the Electric Reliability Organization, the NPCC and the NYSRC.

**Applicable Reliability Requirements** shall mean the NYSRC Reliability Rules, and othercriteria, standards and procedures, as described in Section 40.12.1.2 of this Attachment HH,applied when conducting the Cluster Baseline Assessment and the Cluster Project Assessment;provided that no Party shall waive its right to challenge the applicability or validity of anyrequirement or guideline as applied to it in the context of the Standard InterconnectionProcedures. The Applicable Reliability Requirements applied are those in effect when theparticular assessment is commenced.

**Applicable Reliability Standards** shall mean the requirements and guidelines of the ApplicableReliability Councils, and the Transmission District to which the Interconnection Customer’sTransmission Project is directly interconnected, as those requirements and guidelines areamended and modified and in effect from time to time; provided that no Party shall waive itsright to challenge the applicability or validity of any requirement or guideline as applied to it inthe context of this Agreement.

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

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

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

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

**Completion Date** shall mean the date on which, as applicable, the System Owner or Interconnection Customer has completed the Construction Services, as set forth in Appendix A.

**Confidential Information** shall mean any information that is defined as confidential by Article [15](#br27) of this Agreement.

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

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Artic[le 10](#br22) of this Agreement.

**Distribution System** shall mean the Connecting Transmission Owner’s facilities and equipmentused to distribute electricity that are subject to FERC jurisdiction, and are subject to theNYISO’s Standard Interconnection Procedures in Attachment HH under FERC Order Nos. 2003and/or 2006. The term Distribution System shall not include LIPA’s distribution facilities.

**Effective Date** shall mean the date on which this Agreement becomes effective in accordance with Artic[le 2.1](#br9) of this Agreement.

**Electric Reliability Organization (“ERO”)** shall mean the North American Electric Reliability Corporation or its successor organization.

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

**Facilities Study** shall mean the study conducted pursuant to Section 22.9 of Attachment P to theISO OATT to determine a list of facilities required to reliably interconnect the TransmissionProject (including Network Upgrade Facilities) as identified in the System Impact Study, the costof those facilities and the time required to interconnect the Transmission Project with the NewYork State Transmission System.

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

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

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

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

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**Governmental Authority** shall mean any federal, state, local or other governmental regulatoryor administrative agency, court, commission, department, board, or other governmentalsubdivision, legislature, rulemaking board, tribunal, or other governmental authority havingjurisdiction over any of the Parties, their respective facilities, or the respective services theyprovide, and exercising or entitled to exercise any administrative, executive, police, or taxingauthority or power; *provided, however*, that such term does not include InterconnectionCustomer, the NYISO, Affected Transmission Owner, Affected System Operator, ConnectingTransmission Owner, or any Affiliate thereof.

**Hazardous Substances** shall mean any chemicals, materials or substances defined as orincluded in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,”“hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,”“toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” orwords of similar meaning and regulatory effect under any applicable Environmental Law, or anyother chemical, material or substance, exposure to which is prohibited, limited or regulated byany applicable Environmental Law.

**In-Service Date** shall mean the date upon which the Upgrades are energized consistent with theprovisions of this Agreement, notice of which must be provided to the other Parties by, asapplicable, the Interconnection Customer or System Owner in the form of Appendix C.

**Interconnection Customer** shall mean the Transmission Developer for the Transmission Projectas defined in Attachment P to the ISO OATT. For purposes of this Agreement, theInterconnection Customer shall have the meaning set forth in the introductory paragraph.

**IRS** shall mean the Internal Revenue Service.

**ISO Services Tariff** shall mean the NYISO’s Market Administration and Control Area ServicesTariff, as filed with the Commission, and as amended or supplemented from time to time, or anysuccessor tariff thereto.

**ISO OATT** shall mean the NYISO’s Open Access Transmission Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

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

**Network Upgrade Facilities** shall mean the least costly configuration of commercially availablecomponents of electric equipment that can be used, consistent with good utility practice andApplicable Reliability Requirements, to make the modifications or additions to the New YorkState Transmission System that are required for the proposed Transmission Project to connectreliably to the system in a manner that meets the NYISO Transmission Interconnection Standard.

**New York State Transmission System** shall mean the entire New York State electrictransmission system, which includes (i) the Transmission Facilities under NYISO OperationalControl; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remainingtransmission facilities within the New York Control Area.

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**Notice of Dispute** shall mean a written notice of a dispute or claim pursuant to Artic[le 20](#br34) of this Agreement that arises out of or in connection with this Agreement or its performance.

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

**NYISO Tariffs** shall mean the ISO OATT and ISO Services Tariff.

**NYSRC** shall mean the New York State Reliability Council or its successor organization.

**Party or Parties** shall have the meaning set forth in the introductory paragraph.

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

**Standard Upgrade Construction Agreement** shall mean this Agreement.

**System Owner** shall mean, as applicable, the Affected System Operator, Affected TransmissionOwner, or Connecting Transmission Owner. For purposes of this Agreement, the System Ownershall be defined in the introductory paragraph.

**Transmission Interconnection Application** shall mean Transmission Developer’s request, inthe form of Appendix 1 to the Transmission Interconnection Procedures, to interconnect aTransmission Project to the New York State Transmission System.

**Transmission Interconnection Procedures (“TIP”)** shall mean the interconnection proceduresapplicable to a Transmission Interconnection Application pertaining to a Transmission Projectthat are included in Attachment P to the ISO OATT.

**Transmission Interconnection Studies** shall mean any of the following studies: the OptionalFeasibility Study, the System Impact Study, and the Facilities Study described in theTransmission Interconnection Procedures.

**Transmission Project** shall be the Transmission Developer’s proposed transmission facility orfacilities that collectively satisfy the definition of Transmission Project in Section 22.3.1 ofAttachment P of the NYISO OATT.

**Upgrades** shall have the meaning set forth in the recitals and shall be described in Appendix A.

**Upgrades Estimated Total Cost Amount** shall have the meaning set forth in the recitals, which costs are specified in Appendix A.

**ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION**

**2.1 Effective Date**.

This Agreement shall become effective upon the date of execution by the Parties, subjectto acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO,and if applicable, the System Owner, shall promptly file this Agreement with FERC upon

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execution, if required, in accordance with the requirements in the OATT. InterconnectionCustomer and System Owner shall reasonably cooperate with the NYISO with respect to thefiling of this Agreement with FERC and provide any information reasonably requested by theNYISO needed for such filing.

**2.2 Term of Agreement**.

Subject to the provisions of Article [2.3, thi](#br10)s Agreement shall remain in effect until thelater of: (i) the Completion Date, and (ii) the date on which the final payment of all invoicesissued under this Agreement have been made pursuant to Artic[les 6.1](#br20) a[nd 6.3](#br20) and any remainingSecurity has been released or refunded pursuant to Artic[le 6.2.](#br20)

**2.3 Termination**.

**2.3.1 Completion of Term of Agreement**.

This Agreement shall terminate upon the completion of the term of the Agreementpursuant to Artic[le 2.2.](#br10)

**2.3.2 Written Notice**.

This Agreement may be terminated by the mutual agreement in writing of all of theParties.

**2.3.3 Default**.

Any Party may terminate this Agreement to the extent permitted under Artic[le 10](#br22) andArtic[le 20.](#br34)

**2.3.4 Compliance**.

Notwithstanding Artic[les 2.3.1, 2.3.2, and 2.3.3, no ter](#br10)mination of this Agreement shallbecome effective until the Parties have complied with all Applicable Laws and Regulationsapplicable to such termination, including the filing with FERC of a notice of termination of thisAgreement, which notice has been accepted for filing by FERC.

**2.4 Termination Costs**.

If this Agreement is terminated pursuant to Article[s 2.3.2 or 2.3.3](#br10) above, theInterconnection Customer shall be responsible for all costs that are the responsibility of theInterconnection Customer under this Agreement that are incurred by the InterconnectionCustomer or other Parties through the date the Parties agree in writing to terminate theagreement. Such costs include any cancellation costs relating to orders or contracts concerningthe Construction Services or Upgrades. In the event of termination, all Parties shall usecommercially Reasonable Efforts to mitigate the costs, damages and charges arising as aconsequence of termination. Upon termination of this Agreement, unless otherwise ordered orapproved by FERC:

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**2.4.1** With respect to any portion of the Upgrades for which the System Owner orInterconnection Customer (the “Constructing Party”) are responsible for constructing orinstalling under this Agreement and that have not yet been constructed or installed, theConstructing Party shall, to the extent possible and with the other Party’s (*i.e*., the System Owneror Interconnection Customer, as applicable) authorization, cancel any pending orders of, orreturn, any materials or equipment for, or contracts for construction of, the Upgrades; providedthat in the event the other Party elects not to authorize such cancellation, the other Party shallassume all payment obligations with respect to such materials, equipment, and contracts, and theConstructing Party shall deliver such material and equipment, and, if necessary, assign suchcontracts, to the other Party as soon as practicable, at the other Party’s expense. To the extentthat the other Party has already paid the Constructing Party for any or all such costs of materialsor equipment not taken by the other Party, the Constructing Party shall promptly refund suchamounts to the other Party, less any costs, including penalties incurred by the Constructing Partyto cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.2** The Constructing Party may, at its option, retain any portion of such materialsor equipment that the other Party chooses not to accept delivery of, in which case theConstructing Party shall be responsible for all costs associated with procuring such materials orequipment.

**2.4.3** With respect to any portion of the Construction Services already performedpursuant to the terms of this Agreement, Interconnection Customer shall be responsible for allcosts associated with the removal, relocation or other disposition or retirement of such relatedmaterials, equipment, or facilities and such other expense actually incurred by System Owner toreturn its system to safe and reliable operation.

**2.5 Survival**.

This Agreement shall continue in effect after termination to the extent necessary toprovide for final billings and payments and for costs incurred hereunder; including billings andpayments pursuant to this Agreement; to permit the determination and enforcement of liabilityand indemnification obligations arising from acts or events that occurred while this Agreementwas in effect; and to permit Interconnection Customer and System Owner each to have access tothe lands of the other pursuant to this Agreement or other applicable agreements, to disconnect,remove or salvage its own facilities and equipment.

**2.6 No Annexation**.

Any and all equipment placed on the premises of a Party shall be and remain the propertyof the Party providing such equipment regardless of the mode and manner of annexation orattachment to real property, unless otherwise mutually agreed by the Party providing suchequipment and the Party receiving such equipment.

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**ARTICLE 3. CONSTRUCTION SERVICES**

**3.1 Performance of Construction Services**.

System Owner shall be responsible for performing the Construction Services. At SystemOwner’s sole discretion, System Owner may agree with Interconnection Customer forInterconnection Customer to perform such services. System Owner’s and InterconnectionCustomer’s respective obligations concerning the Construction Services shall be set forth inAppendix A hereto. System Owner and Interconnection Customer shall each use ReasonableEfforts to complete the Construction Services for which it has responsibility by the Milestonedates set forth in Appendix A hereto. The System Owner shall not be required to undertake anyaction which is inconsistent with the System Owner’s standard safety practices, its material andequipment specifications, its design criteria and construction procedures, its labor agreements,and Applicable Laws and Regulations. The NYISO has no responsibility, and shall have noliability, for the performance of any of the Construction Services under this Agreement.

**3.2 General Conditions Applicable to Interconnection Customer’s Performance of the**

**Construction Services**.

If System Owner and Interconnection Customer agree pursuant to Section 3.1 forInterconnection Customer to be responsible for the design, procurement, and/or construction ofany Upgrades as set forth in Appendix A, the following conditions apply:

**3.2.1** Interconnection Customer shall engineer, procure equipment, and constructthe Upgrades (or portions thereof) using Good Utility Practice and using standards andspecifications provided in advance by System Owner;

**3.2.2** Interconnection Customer’s engineering, procurement and construction of theUpgrades shall comply with all requirements of law to which System Owner would be subject inthe engineering, procurement or construction of the Upgrades;

**3.2.3** System Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Upgrades;

**3.2.4** Prior to the commencement of construction, Interconnection Customer shallprovide System Owner and NYISO a schedule for construction of the Upgrades, and shallpromptly respond to requests for information from System Owner or NYISO;

**3.2.5** At any time during construction, System Owner shall have the right to gain unrestricted access to the Upgrades and to conduct inspections of the same;

**3.2.6** At any time during construction, should any phase of the engineering,equipment procurement, or construction of the Upgrades not meet the standards andspecifications provided by System Owner, Interconnection Customer shall be obligated toremedy deficiencies in that portion of the Upgrades;

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**3.2.7** Interconnection Customer shall indemnify System Owner and NYISO forclaims arising from Interconnection Customer’s construction of Upgrades under proceduresapplicable to Artic[le 11.1](#br23) Indemnity;

**3.2.8** Interconnection Customer shall transfer control of Upgrades to System Owner;

**3.2.9** Unless Interconnection Customer and System Owner otherwise agree, Interconnection Customer shall transfer ownership of Upgrades to System Owner;

**3.2.10** System Owner shall approve and accept for operation and maintenance the Upgrades to the extent engineered, procured, and constructed in accordance with this Article [3.2;](#br12)

**3.2.11** Interconnection Customer shall deliver to NYISO and System Owner “asbuilt” drawings, information, and any other documents that are reasonably required by NYISO orSystem Owner to assure that the Upgrades are built to the standards and specifications requiredby System Owner; and

**3.2.12** Interconnection Customer shall pay the System Owner the agreed uponamount of [$ PLACEHOLDER] for the System Owner to execute the responsibilitiesenumerated to System Owner under Artic[le 3.2.](#br12) System Owner shall invoice InterconnectionCustomer for this total amount to be divided on a monthly basis pursuant to Artic[le 6.](#br20)

**3.3 Design and Equipment Procurement**.

If responsibility for construction of the Upgrades is to be borne by the System Owner,then the System Owner shall commence the design and procurement of the Upgrades for which itis responsible as soon as practicable after all of the following conditions are satisfied, unless theInterconnection Customer and System Owner otherwise agree in writing:

**3.3.1** NYISO has completed the Facilities Study for the Transmission Project;

**3.3.2** The NYISO has completed the required cost allocation analyses, andInterconnection Customer has accepted its Project Cost Allocation for the Upgrades inaccordance with the provisions of Attachment P of the ISO OATT.

**3.3.3** System Owner has received written authorization to proceed with design andprocurement of the Upgrades from the Interconnection Customer by the date specified inAppendix A hereto; and

**3.3.4** Interconnection Customer has provided Security to the System Owner for thedesign and procurement of the Upgrades in accordance with Article [5](#br19) by the date(s) specified inAppendix A hereto.

**3.4 Construction Commencement**.

System Owner shall commence construction of the Upgrades for which it is responsibleas soon as practicable after the following additional conditions are satisfied.

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**3.4.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

**3.4.2** Necessary real property rights and rights-of-way have been obtained, to the extent required, for the construction of a discrete aspect of the Upgrades;

**3.4.3** System Owner has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix A hereto; and

**3.4.4** Interconnection Customer has provided security to the System Owner for theconstruction of the applicable facilities in accordance with Artic[le 5.2](#br19) by the date(s) specified inAppendix A hereto.

**3.5 Work Progress**.

The Interconnection Customer and System Operator will keep each other, and NYISO,advised periodically as to the progress of its respective design, procurement and constructionefforts. Any Party may, at any time, request a progress report from the InterconnectionCustomer or System Owner.

**3.6 Information Exchange**.

As soon as reasonably practicable after the Effective Date, Interconnection Customer andSystem Owner shall exchange information, and provide NYISO the same information, regardingthe design of the Upgrades and compatibility of the Upgrades with the New York StateTransmission System and shall work diligently and in good faith to make any necessary designchanges.

**3.7 Ownership and Control of Upgrades**.

System Owner shall own the Upgrades as described in Appendix A. The SystemOwner’s and, if applicable, NYISO’s operational control of the Upgrades upon the completion ofthe facilities shall be described in Appendix A.

**3.8 Access Rights**.

Upon reasonable notice and supervision by the Granting Party, and subject to anyrequired or necessary regulatory approvals, either the System Owner or InterconnectionCustomer (“Granting Party”) shall furnish to the other of those two Parties (“Access Party”) atno cost any rights of use, licenses, rights of way and easements with respect to lands owned orcontrolled by the Granting Party, its agents (if allowed under the applicable agency agreement),or any Affiliate, that are necessary to enable the Access Party to obtain the ingress and egressrequired for the performance of the Construction Services, including to construct, repair, test (orwitness testing), inspect, replace or remove the Upgrades. In exercising such licenses, rights ofway and easements, the Access Party shall not unreasonably disrupt or interfere with normaloperation of the Granting Party’s business and shall adhere to the safety rules and proceduresestablished in advance, as may be changed from time to time, by the Granting Party and providedto the Access Party. The Access Party shall indemnify the Granting Party against all claims of

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injury or damage from third parties resulting from the exercise of the access rights provided forherein.

**3.9 Lands of Other Property Owners**.

If any part of the Upgrades will be installed on property owned by persons other than theInterconnection Customer or System Owner, the System Owner shall at InterconnectionCustomer’s expense use efforts, similar in nature and extent to those that it typically undertakesfor its own or affiliated generation, including use of its eminent domain authority, and to theextent consistent with state law, to procure from such persons any rights of use, licenses, rightsof way and easements that are necessary for the performance of the Construction Services uponsuch property by the System Owner or Interconnection Customer, including to construct, repair,operate, maintain, test (or witness testing), inspect, replace or remove the Upgrades.

**3.10 Permits**.

NYISO, Interconnection Customer, and System Owner shall cooperate with each other ingood faith in obtaining all permits, licenses and authorizations that are necessary to accomplishthe Construction Services in compliance with Applicable Laws and Regulations. With respect tothis paragraph, System Owner shall provide permitting assistance to the InterconnectionCustomer comparable to that provided to System Owner’s own, or an Affiliate’s generationfacilities, if any.

**3.11 Suspension**.

Interconnection Customer reserves the right, upon written notice to System Owner andNYISO, to suspend at any time all work by System Owner or Interconnection Customer, asapplicable, associated with the construction and installation of the Upgrades required for onlythat Interconnection Customer’s Transmission Project, with the condition that the New YorkState Transmission System shall be left in a safe and reliable condition in accordance with GoodUtility Practice and the safety and reliability criteria of System Owner and NYISO. In suchevent, such Interconnection Customer shall be responsible for all reasonable and necessary costsand/or obligations in accordance with Attachment P to the ISO OATT including those whichSystem Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incursas a result of the suspension of such work, including any costs incurred by System Owner toperform such work as may be necessary to ensure the safety of persons and property and theintegrity of the New York State Transmission System during such suspension and, if applicable,any costs incurred by System Owner in connection with the cancellation or suspension ofmaterial, equipment and labor contracts which System Owner cannot reasonably avoid;*provided, however*, that prior to canceling or suspending any such material, equipment or laborcontract, System Owner shall obtain such Interconnection Customer’s authorization to do so.

System Owner shall invoice Interconnection Customer for such costs pursuant toArticle [6](#br20) and shall use due diligence to minimize its costs. If Interconnection Customer suspendswork required under this Agreement pursuant to this Artic[le 3.11, a](#br15)nd has, as applicable, eithernot recommenced work or requested System Owner to recommence its work required under thisAgreement on or before the expiration of three (3) years following commencement of such

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suspension, this Agreement shall be deemed terminated. The three-year period shall begin on thedate the suspension is requested, or the date of the written notice to System Owner and NYISO,if no effective date is specified.

**3.12 Taxes**.

**3.12.1 Indemnification for Contributions in Aid of Construction**.

With regard only to payments made by Interconnection Customer to System Owner forthe installation of the Upgrades, System Owner shall not include a gross-up for income taxes inthe amounts it charges Interconnection Customer for the installation of the Upgrades unless(1) System Owner has determined, in good faith, that the payments or property transfers made byInterconnection Customer to System Owner should be reported as income subject to taxation, or(2) any Governmental Authority directs System Owner to report payments or property as incomesubject to taxation. Interconnection Customer shall reimburse System Owner for such costs on afully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days ofreceiving written notification from System Owner of the amount due, including detail about howthe amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of theten (10)-year testing period and the applicable statute of limitation, as it may be extended bySystem Owner upon request of the Internal Revenue Service, to keep these years open for auditor adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any relatedindemnification obligations as contemplated by this Article. Notwithstanding the foregoingprovisions of this Article [3.12.1, a](#br16)nd to the extent permitted by law, to the extent that the receiptof such payments by System Owner is determined by any Governmental Authority to constituteincome by System Owner subject to taxation, Interconnection Customer shall protect, indemnify,and hold harmless System Owner and its Affiliates, from all claims by any such GovernmentalAuthority for any tax, interest, and/or penalties associated with such determination. Uponreceiving written notification of such determination from the Governmental Authority, SystemOwner shall provide Interconnection Customer with written notification within thirty (30)Calendar Days of such determination and notification. System Owner, upon the timely writtenrequest by Interconnection Customer and at Interconnection Customer’s expense, shall appeal,protest, seek abatement of, or otherwise oppose such determination. System Owner reserves theright to make all decisions with regard to the prosecution of such appeal, protest, abatement orother contest, including the compromise or settlement of the claim; provided that System Ownershall cooperate and consult in good faith with Interconnection Customer regarding the conduct ofsuch contest. Interconnection Customer shall not be required to pay System Owner for the tax,interest, and/or penalties prior to the seventh (7th) Calendar Day before the date on whichSystem Owner (1) is required to pay the tax, interest, and/or penalties or other amount in lieuthereof pursuant to a compromise or settlement of the appeal, protest, abatement, or othercontest; (2) is required to pay the tax, interest, and/or penalties as the result of a final, nonappealable order by a Governmental Authority; or (3) is required to pay the tax, interest, and/orpenalties as a prerequisite to an appeal, protest, abatement, or other contest. In the event suchappeal, protest, abatement, or other contest results in a determination that System Owner is notliable for any portion of any tax, interest, and/or penalties for which Interconnection Customerhas already made payment to System Owner, System Owner shall promptly refund to

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Interconnection Customer any payment attributable to the amount determined to be non-taxable,plus any interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)) or other paymentsSystem Owner receives or which System Owner may be entitled with respect to such payment.Interconnection Customer shall provide System Owner with credit assurances sufficient to meetInterconnection Customer’s estimated liability for reimbursement of System Owner for taxes,interest, and/or penalties under this Artic[le 3.12.1.](#br16) Such estimated liability shall be stated inAppendix A.

To the extent that System Owner is a limited liability company and not a corporation, andhas elected to be taxed as a partnership, then the following shall apply: System Ownerrepresents, and the Parties acknowledge, that System Owner is a limited liability company and istreated as a partnership for federal income tax purposes. Any payment made by InterconnectionCustomer to System Owner for Upgrades is to be treated as an upfront payment. It is anticipatedby the Parties that any amounts paid by Interconnection Customer to System Owner for theUpgrades will be reimbursed to Interconnection Customer in accordance with the terms of thisAgreement, provided Interconnection Customer fulfills its obligations under this Agreement.

**3.12.2 Private Letter Ruling**.

At Interconnection Customer’s request and expense, System Owner shall file with theInternal Revenue Service a request for a private letter ruling as to whether any propertytransferred or sums paid, or to be paid, by Interconnection Customer to System Owner under thisAgreement are subject to federal income taxation. Interconnection Customer will prepare theinitial draft of the request for a private letter ruling and will certify under penalties of perjury thatall facts represented in such request are true and accurate to the best of InterconnectionCustomer’s knowledge. System Owner and Interconnection Customer shall cooperate in goodfaith with respect to the submission of such request.

**3.12.3 Other Taxes**.

Upon the timely request by Interconnection Customer, and at Interconnection Customer’ssole expense, System Owner shall appeal, protest, seek abatement of, or otherwise contest anytax (other than federal or state income tax) asserted or assessed against System Owner for whichInterconnection Customer may be required to reimburse System Owner under the terms of thisAgreement. Interconnection Customer shall pay to System Owner on a periodic basis, asinvoiced by System Owner, System Owner’s documented reasonable costs of prosecuting suchappeal, protest, abatement, or other contest. Interconnection Customer and System Owner shallcooperate in good faith with respect to any such contest. Unless the payment of such taxes is aprerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable byInterconnection Customer to System Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a taxpayment is withheld and ultimately due and payable after appeal, Interconnection Customer willbe responsible for all taxes, interest and penalties, other than penalties attributable to any delaycaused by System Owner. Each Party shall cooperate with the other Party to maintain eachParty’s tax status. Nothing in this Agreement is intended to adversely affect any Party’s tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishingbonds, as described in section 142(f) of the Internal Revenue Code.

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**3.13 Tax Status; Non-Jurisdictional Entities**.

**3.13.1 Tax Status**.

Each Party shall cooperate with the other Parties to maintain the other Parties’ tax status.Nothing in this Agreement is intended to adversely affect the tax status of any Party includingthe status of NYISO, or the status of System Owner with respect to the issuance of bondsincluding, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions ofthis Agreement, LIPA, NYPA and Consolidated Edison Company of New York, Inc. shall not berequired to comply with any provisions of this Agreement that would result in the loss of tax-exempt status of any of their Tax-Exempt Bonds or impair their ability to issue future tax-exemptobligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations ofthe Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc.,the interest on which is not included in gross income under the Internal Revenue Code.

**3.13.2 Tax Status**.

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA,from Commission jurisdiction with respect to the Commission’s exercise of the FPA’s generalratemaking authority.

**3.14 Modification**.

**3.14.1 General**.

If, prior to the In-Service Date, the System Owner proposes to modify the Upgrades, theSystem Owner must provide to the NYISO at least ninety (90) Calendar Days in advance of thecommencement of the work, or such shorter period upon which the Parties may agree, sufficientinformation for the NYISO to evaluate the impact of the proposed modification on, asapplicable: (i) the reliable interconnection of Interconnection Customer’s Transmission Projectto the New York State Transmission System or (ii) the reliability of the New York StateTransmission System due to the Transmission Project’s interconnection to another region’stransmission system. The NYISO’s agreement to the proposed modification shall not beunreasonably withheld, conditioned, or delayed if the proposed modification is reasonablyrelated to the interconnection of the Transmission Project and will enable InterconnectionCustomer’s Transmission Project to reliably interconnect to the New York State TransmissionSystem or ensure the reliability of the New York State Transmission System of the TransmissionProject’s interconnection to another region’s transmission system. If the cost of the modifiedUpgrades is greater than the estimated cost identified in the Facilities Study, the additional costwill be allocated in accordance with Sections 40.12.1.5.1 and 40.16.3 of Attachment HH of theISO OATT.

**3.14.2 Standards**.

Any additions, modifications, or replacements made to a Party’s facilities shall bedesigned, constructed and operated in accordance with this Agreement, NYISO requirements andGood Utility Practice.

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**3.14.3 Modification Costs**.

Interconnection Customer shall not be assigned the costs of any additions, modifications,or replacements that System Owner makes to the Upgrades or the New York State TransmissionSystem to facilitate the interconnection of a third party to the Upgrades or the New York StateTransmission System, or to provide Transmission Service to a third party under the ISO OATT,except in accordance with the cost allocation procedures in Attachment P of the ISO OATT.

**ARTICLE 4. TESTING AND INSPECTION**

**4.1 Initial Testing and Modifications**.

Prior to the In-Service Date of the Upgrades, the System Owner or InterconnectionCustomer, as specified in Appendix A, shall test the Upgrades to ensure their safe and reliableoperation. The Party responsible for constructing the Upgrades shall make any modifications tothe Upgrades that are found to be necessary as a result of such testing. Interconnection Customershall bear the cost of all such testing and modifications

**4.2 Right to Observe Testing**.

The Party performing the testing shall notify the other Parties in advance of itsperformance of tests of the Upgrades. Each of the other Parties shall have the right, at its ownexpense, to observe such testing.

**ARTICLE 5. PERFORMANCE OBLIGATIONS**

**5.1 Cost Responsibilities**.

Interconnection Customer and/or System Owner, as specified in Appendix A, shallperform the Construction Services at Interconnection Customer’s sole expense up to theUpgrades Estimated Total Cost Amount. Interconnection Customer’s and System Owner’srespective responsibilities for the cost of the Construction Services greater than the UpgradesEstimated Total Costs Amount shall be determined in accordance with Section 40.16.3 ofAttachment HH to the OATT.

**5.2 Provision and Application of Security**.

**5.2.1** If Interconnection Customer accepted its Project Cost Allocation and posted toSystem Owner the Security for its Upgrades at the conclusion of the Facilities Study, thenInterconnection Customer shall not be responsible for posting additional Security under thisAgreement. Interconnection Customer’s Security shall be subject to the requirements ofAttachment P to the ISO OATT.

**5.2.2** If Interconnection Customer was not required to post Security to the SystemOwner at the conclusion of the Facilities Study, then at least thirty (30) Calendar Days prior tothe System Owner’s commencement of the procurement, installation, or construction of adiscrete portion of the Upgrades as such portion(s) are detailed in the Milestones in Appendix A,Interconnection Customer shall provide System Owner, at Interconnection Customer’s option, a

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guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable toSystem Owner and is consistent with the Uniform Commercial Code of the jurisdiction identifiedin Artic[le 7.2](#br21) of this Agreement. Such security for payment shall be in an amount sufficient tocover the costs for Interconnection Customer’s share of constructing, procuring and installing theapplicable portion of the Upgrades, and shall be reduced on a dollar-for-dollar basis forpayments made to System Owner for these purposes.

In addition:

**5.2.2.1** The guarantee must be made by an entity that meets the commerciallyreasonable creditworthiness requirements of System Owner, and contains terms and conditionsthat guarantee payment of any amount that may be due from Interconnection Customer, up to anagreed-to maximum amount.

**5.2.2.2** The letter of credit must be issued by a financial institution reasonably acceptable to System Owner and must specify a reasonable expiration date.

**5.2.2.3** The surety bond must be issued by an insurer reasonably acceptable to System Owner and must specify a reasonable expiration date.

**ARTICLE 6. INVOICE**

**6.1 General**.

To the extent that any amounts are due to the Interconnection Customer or System Ownerunder this Agreement, the Interconnection Customer and System Owner, as applicable, shallsubmit to the other Party, on a monthly basis, invoices of amounts due for the preceding month.Each invoice shall state the month to which the invoice applies and fully describe the servicesand equipment provided. The Interconnection Customer and System Owner may dischargemutual debts and payment obligations due and owing to each other on the same date throughnetting, in which case all amounts one Party owes to the other Party under this Agreement,including interest payments or credits, shall be netted so that only the net amount remaining dueshall be paid by the owing Party.

**6.2 Final Invoice and Refund of Remaining Security/Overpayment Amount**.

Within one hundred eighty (180) Calendar Days of the Completion Date, InterconnectionCustomer or System Owner, as applicable, shall provide a final invoice to the other Party of anyremaining amounts due associated with the Construction Services. Within thirty (30) CalendarDays of the later of: (i) Interconnection Customer’s payment of any final invoice to the SystemOwner, and (ii) the completion of the Construction Services, System Owner shall release orrefund to the Interconnection Customer any remaining portions of its Security and any amountthat Interconnection Customer has overpaid under this Artic[le 6.](#br20)

**6.3 Payment**.

Invoices shall be rendered to the paying Party at the address specified in Appendix B hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of

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receipt. All payments shall be made in immediately available funds payable to the other Party,or by wire transfer to a bank named and account designated by the invoicing Party. Payment ofinvoices will not constitute a waiver of any rights or claims the paying Party may have under thisAgreement.

**6.4 Disputes**.

In the event of a billing dispute between Parties, the Party owed money shall continue toperform under this Agreement as long as the other Party: (i) continues to make all payments notin dispute; and (ii) pays to the Party owed money or into an independent escrow account theportion of the invoice in dispute, pending resolution of such dispute. If the Party that owesmoney fails to meet these two requirements for continuation of service, then the Party owedmoney may provide notice to the other Party of a Default pursuant to Artic[le 10. W](#br22)ithin thirty(30) Calendar Days after the resolution of the dispute, the Party that owes money to the otherParty shall pay the amount due with interest calculated in accord with the methodology set forthin FERC’s Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

**ARTICLE 7. REGULATORY REQUIREMENTS AND GOVERNING LAW**

**7.1 Regulatory Requirements**.

Each Party’s obligations under this Agreement shall be subject to its receipt of anyrequired approval or certificate from one or more Governmental Authorities in the form andsubstance satisfactory to the applying Party, or the Party making any required filings with, orproviding notice to, such Governmental Authorities, and the expiration of any time periodassociated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtainsuch other approvals. Nothing in this Agreement shall require a Party to take any action thatcould result in its inability to obtain, or its loss of, status or exemption under the Federal PowerAct or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory PoliciesAct of 1978, as amended.

**7.2 Governing Law**.

**7.2.1** The validity, interpretation and performance of this Agreement and each of itsprovisions shall be governed by the laws of the state of New York, without regard to its conflictsof law principles.

**7.2.2** This Agreement is subject to all Applicable Laws and Regulations.

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

**ARTICLE 8. NOTICES**

**8.1 General**.

Unless otherwise provided in this Agreement, any notice, demand or request required orpermitted to be given by a Party to the other Parties and any instrument required or permitted to

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be tendered or delivered by a Party in writing to the other Parties shall be effective whendelivered and may be so given, tendered or delivered, by recognized national courier, or bydepositing the same with the United States Postal Service with postage prepaid, for delivery bycertified or registered mail, addressed to the Party, or personally delivered to the Party, at theaddress set out in Appendix B hereto.

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

**8.2 Billings and Payments**.

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

**8.3 Alternative Forms of Notice**.

Any notice or request required or permitted to be given by a Party to the other Parties andnot required by this Agreement to be given in writing may be so given by telephone or email tothe telephone numbers and email addresses set out in Appendix B hereto.

**ARTICLE 9. FORCE MAJEURE**

Economic hardship is not considered a Force Majeure event. A Party shall not beresponsible or liable, or deemed, in Default with respect to any obligation hereunder, other thanthe obligation to pay money when due, to the extent the Party is prevented from fulfilling suchobligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than anobligation to pay money when due) by reason of Force Majeure shall give notice and the fullparticulars of such Force Majeure to the other Parties in writing or by telephone as soon asreasonably possible after the occurrence of the cause relied upon. Telephone notices givenpursuant to this Article shall be confirmed in writing as soon as reasonably possible and shallspecifically state full particulars of the Force Majeure, the time and date when the Force Majeureoccurred and when the Force Majeure is reasonably expected to cease. The Party affected shallexercise due diligence to remove such disability with reasonable dispatch, but shall not berequired to accede or agree to any provision not satisfactory to it in order to settle and terminate astrike or other labor disturbance.

**ARTICLE 10. DEFAULT**

**10.1 General**.

No Breach shall exist where such failure to discharge an obligation (other than thepayment of money) is the result of Force Majeure as defined in this Agreement or the result of anact or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give writtennotice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Daysfrom receipt of the Breach notice within which to cure such Breach; provided however, if suchBreach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shallcommence such cure within thirty (30) Calendar Days after notice and continuously anddiligently complete such cure within ninety (90) Calendar Days from receipt of the Breachnotice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

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**10.2 Right to Terminate**.

If a Breach is not cured as provided in this Article [10, or if](#br22) a Breach is not capable ofbeing cured within the period provided for herein, the non-Breaching Parties acting together shallthereafter have the right to declare a Default and terminate this Agreement by written notice atany time until cure occurs, and be relieved of any further obligation hereunder and, whether ornot those Parties terminate this Agreement, to recover from the defaulting Party all amounts duehereunder, plus all other damages and remedies to which they are entitled at law or in equity.The provisions of this Article will survive termination of this Agreement.

**ARTICLE 11. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

**11.1 Indemnity**.

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and saveharmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and alldamages, losses, claims, including claims and actions relating to injury to or death of any personor damage to property, the alleged violation of any Environmental Law, or the release orthreatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses,court costs, attorney fees, and all other obligations by or to third parties (any and all of these a“Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of itsobligations under this Agreement on behalf of the Indemnifying Party, except in cases where theIndemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by thegross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by theIndemnifying Party of any Environmental Law or the release by the Indemnifying Party of anyHazardous Substance.

**11.1.1 Indemnified Party**.

If a Party is entitled to indemnification under this Artic[le 11](#br23) as a result of a claim by athird party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceedunder Artic[le 11.1.3, to](#br23) assume the defense of such claim, such Indemnified Party may at theexpense of the Indemnifying Party contest, settle or consent to the entry of any judgment withrespect to, or pay in full, such claim.

**11.1.2 Indemnifying Party**.

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Partyharmless under this Artic[le 11, the a](#br23)mount owing to the Indemnified Party shall be the amount ofsuch Indemnified Party’s actual Loss, net of any insurance or other recovery.

**11.1.3 Indemnity Procedures**.

Promptly after receipt by an Indemnified Party of any claim or notice of thecommencement of any action or administrative or legal proceeding or investigation as to whichthe indemnity provided for in Artic[le 11.1](#br23) may apply, the Indemnified Party shall notify theIndemnifying Party of such fact. Any failure of or delay in such notification shall not affect a

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Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defensethereof with counsel designated by such Indemnifying Party and reasonably satisfactory to theIndemnified Party. If the defendants in any such action include one or more Indemnified Partiesand the Indemnifying Party and if the Indemnified Party reasonably concludes that there may belegal defenses available to it and/or other Indemnified Parties which are different from oradditional to those available to the Indemnifying Party, the Indemnified Party shall have the rightto select separate counsel to assert such legal defenses and to otherwise participate in the defenseof such action on its own behalf. In such instances, the Indemnifying Party shall only berequired to pay the fees and expenses of one additional attorney to represent an IndemnifiedParty or Indemnified Parties having such differing or additional legal defenses.

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

**11.2 No Consequential Damages**.

Other than the indemnity obligations set forth in Artic[le 11.1, in no eve](#br23)nt shall any Partybe liable under any provision of this Agreement for any losses, damages, costs or expenses forany special, indirect, incidental, consequential, or punitive damages, including but not limited toloss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporaryequipment or services, whether based in whole or in part in contract, in tort, includingnegligence, strict liability, or any other theory of liability; *provided, however*, that damages forwhich a Party may be liable to another Party under separate agreement will not be considered tobe special, indirect, incidental, or consequential damages hereunder.

**11.3 Insurance**.

The System Owner and, if applicable, Interconnection Customer shall, at its ownexpense, procure and maintain in force throughout the period of this Agreement and untilreleased by the other Parties, the following minimum insurance coverages, with insurancecompanies licensed to write insurance or approved eligible surplus lines carriers in the state ofNew York with a minimum A.M. Best rating of A or better for financial strength, and an A.M.Best financial size category of VIII or better:

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**11.3.1** Employers’ Liability and Workers’ Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

**11.3.2** Commercial General Liability (“CGL”) Insurance including premises andoperations, personal injury, broad form property damage, broad form blanket contractual liabilitycoverage products and completed operations coverage, coverage for explosion, collapse andunderground hazards, independent contractors coverage, coverage for pollution to the extentnormally available and punitive damages to the extent normally available using InsuranceServices Office, Inc. Commercial General Liability Coverage (“ISO CG”) Form CG 00 01 04 13or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two MillionDollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate combinedsingle limit for personal injury, bodily injury, including death and property damage.

**11.3.3** Comprehensive Automobile Liability Insurance for coverage of owned andnon-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with aminimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodilyinjury, including death, and property damage.

**11.3.4** If applicable, the Commercial General Liability and ComprehensiveAutomobile Liability Insurance policies should include contractual liability for work inconnection with construction or demolition work on or within 50 feet of a railroad, or a separateRailroad Protective Liability Policy should be provided.

**11.3.5** Excess Liability Insurance over and above the Employers’ Liability,Commercial General Liability and Comprehensive Automobile Liability Insurance coverages,with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrenceand Twenty Million Dollars ($20,000,000) aggregate. The Excess policies should contain thesame extensions listed under the Primary policies.

**11.3.6** The Commercial General Liability Insurance, Comprehensive AutomobileInsurance and Excess Liability Insurance policies of System Owner and, if applicable,Interconnection Customer shall name the other Party, its parent, associated and Affiliatecompanies and their respective directors, officers, agents, servants and employees (“Other PartyGroup”) as additional insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 0413 or CG 20 10 04 13 and CG 20 37 04 13 or equivalent to or better forms. All policies shallcontain provisions whereby the insurers waive all rights of subrogation in accordance with theprovisions of this Agreement against the Other Party Group and provide thirty (30) CalendarDays advance written notice to the Other Party Group prior to anniversary date of cancellation orany material change in coverage or condition.

**11.3.7** The Commercial General Liability Insurance, Comprehensive AutomobileLiability Insurance and Excess Liability Insurance policies shall contain provisions that specifythat the policies are primary and non-contributory. System Owner and, if applicable,Interconnection Customer shall each be responsible for its respective deductibles or retentions.

**11.3.8** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made

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Basis, shall be maintained in full force and effect for at least three (3) years after termination ofthis Agreement, which coverage may be in the form of tail coverage or extended reporting periodcoverage if agreed by the Interconnection Customer and System Owner.

**11.3.9** If applicable, Pollution Liability Insurance in an amount no less than$7,500,000 per occurrence and $7,500,000 in the aggregate. The policy will provide coveragefor claims resulting from pollution or other environmental impairment arising out of or inconnection with work performed on the premises by the other party, its contractors and and/orsubcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, thirdparty bodily injury and property damage and remediation and will be written on an occurrencebasis. The policy shall name the Other Party Group as additional insureds, be primary andcontain a waiver of subrogation.

**11.3.10** The requirements contained herein as to the types and limits of all insuranceto be maintained by the System Owner and, if applicable, Interconnection Customer are notintended to and shall not in any manner, limit or qualify the liabilities and obligations assumedby those Parties under this Agreement.

**11.3.11** Within thirty (30) Calendar Days following execution of this Agreement, andas soon as practicable after the end of each fiscal year or at the renewal of the insurance policyand in any event within ninety (90) Calendar Days thereafter, Interconnection Customer andSystem Owner, as applicable, shall provide certificate of insurance for all insurance required inthis Agreement, executed by each insurer or by an authorized representative of each insurer.

**11.3.12** Notwithstanding the foregoing, either of System Owner and, if applicable,Interconnection Customer may each self-insure to meet the minimum insurance requirements ofArtic[les 11.3.1](#br25) [through 11.3.9](#br26) to the extent it maintains a self-insurance program; provided that,such Party’s senior debt is rated at investment grade, or better, by Standard & Poor’s and that itsself-insurance program meets the minimum insurance requirements of Article[s 11.3.1](#br25) through

[11.3.9.](#br26) In the event that a Party is permitted to self-insure pursuant to this Artic[le 11.3.12, it](#br26)shall notify the other Party that it meets the requirements to self-insure and that its self-insuranceprogram meets the minimum insurance requirements in a manner consistent with that specifiedin Artic[les 11.3.1](#br25) [through 11.3.9](#br26) and provide evidence of such coverages. For any period oftime that a Party’s senior debt is unrated by Standard & Poor’s or is rated at less than investmentgrade by Standard & Poor’s, such Party shall comply with the insurance requirements applicableto it under Artic[les 11.3.1](#br25) [through 11.3.9.](#br26)

**11.3.13** Interconnection Customer and System Owner agree to report to each other inwriting as soon as practical all accidents or occurrences resulting in injuries to any person,including death, and any property damage arising out of this Agreement.

**11.3.14** Subcontractors of each party must maintain the same insurance requirementsstated under Artic[les 11.3.1](#br25) [through 11.3.9](#br26) and comply with the Additional Insured requirementsherein. In addition, their policies must state that they are primary and non-contributory andcontain a waiver of subrogation.

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**ARTICLE 12. ASSIGNMENT**

**12.1 Assignment**.

This Agreement may be assigned by a Party only with the written consent of the otherParties; provided that a Party may assign this Agreement without the consent of the other Partiesto any Affiliate of the assigning Party with an equal or greater credit rating and with the legalauthority and operational ability to satisfy the obligations of the assigning Party under thisAgreement; provided further that a Party may assign this Agreement without the consent of theother Parties in connection with the sale, merger, restructuring, or transfer of a substantialportion or all of its assets, so long as the assignee in such a transaction directly assumes inwriting all rights, duties and obligations arising under this Agreement; and provided further thatthe Interconnection Customer shall have the right to assign this Agreement, without the consentof the NYISO or System Owner, for collateral security purposes to aid in providing financing forthe Transmission Project, provided that the Interconnection Customer will promptly notify theNYISO and System Owner of any such assignment. Any financing arrangement entered into byInterconnection Customer pursuant to this Article will provide that prior to or upon the exerciseof the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement,the secured creditor, the trustee or mortgagee will notify the NYISO and System Owner of thedate and particulars of any such exercise of assignment right(s) and will provide the NYISO andSystem Owner with proof that it meets the requirements of Artic[les 5.2](#br19) and [11.3. Any a](#br24)ttemptedassignment that violates this Article is void and ineffective. Any assignment under thisAgreement shall not relieve a Party of its obligations, nor shall a Party’s obligations be enlarged,in whole or in part, by reason thereof. Where required, consent to assignment will not beunreasonably withheld, conditioned or delayed.

**ARTICLE 13. SEVERABILITY**

If any provision in this Agreement is finally determined to be invalid, void orunenforceable by any court or other Governmental Authority having jurisdiction, suchdetermination shall not invalidate, void or make unenforceable any other provision, agreement orcovenant of this Agreement.

**ARTICLE 14. COMPARABILITY**

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

**ARTICLE 15. CONFIDENTIALITY**

**15.1 Confidentiality**.

Certain information exchanged by the Parties during the term of this Agreement shallconstitute confidential information (“Confidential Information”) and shall be subject to thisArtic[le 15.](#br27)

If requested by a Party receiving information, the Party supplying the information shall provide in writing, the basis for asserting that the information referred to in this Article warrants

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confidential treatment, and the requesting Party may disclose such writing to the appropriateGovernmental Authority. Each Party shall be responsible for the costs associated with affordingconfidential treatment to its information.

**15.2 Term**.

During the term of this Agreement, and for a period of three (3) years after the expirationor termination of this Agreement, except as otherwise provided in this Artic[le 15, e](#br27)ach Partyshall hold in confidence and shall not disclose to any person Confidential Information.

**15.3 Confidential Information**.

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

**15.4 Scope**.

Confidential Information shall not include information that the receiving Party candemonstrate: (1) is generally available to the public other than as a result of a disclosure by thereceiving Party; (2) was in the lawful possession of the receiving Party on a non-confidentialbasis before receiving it from the disclosing Party; (3) was supplied to the receiving Partywithout restriction by a third party, who, to the knowledge of the receiving Party after dueinquiry, was under no obligation to the disclosing Party to keep such information confidential;(4) was independently developed by the receiving Party without reference to ConfidentialInformation of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful actor omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordancewith Artic[le 15.9](#br29) of this Agreement, Order of Disclosure, to be disclosed by any GovernmentalAuthority or is otherwise required to be disclosed by law or subpoena, or is necessary in anylegal proceeding establishing rights and obligations under this Agreement. Informationdesignated as Confidential Information will no longer be deemed confidential if the Party thatdesignated the information as confidential notifies the other Party that it no longer isconfidential.

**15.5 Release of Confidential Information**.

No Party shall release or disclose Confidential Information to any other person, except toits Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees,consultants, or to parties who may be considering providing financing to or equity participationwith Interconnection Customer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of theconfidentiality provisions of this Article [15](#br27) and has agreed to comply with such provisions.Notwithstanding the foregoing, a Party providing Confidential Information to any person shallremain primarily responsible for any release of Confidential Information in contravention of thisArtic[le 15.](#br27)

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**15.6 Rights**.

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

**15.7 No Warranties**.

By providing Confidential Information, no Party makes any warranties or representationsas to its accuracy or completeness. In addition, by supplying Confidential Information, no Partyobligates itself to provide any particular information or Confidential Information to the otherParties nor to enter into any further agreements or proceed with any other relationship or jointventure.

**15.8 Standard of Care**.

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

**15.9 Order of Disclosure**.

If a court or a Government Authority or entity with the right, power, and apparentauthority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories,requests for production of documents, administrative order, or otherwise, to disclose ConfidentialInformation, that Party shall provide the other Parties with prompt notice of such request(s) orrequirement(s) so that the other Parties may seek an appropriate protective order or waivecompliance with the terms of this Agreement. Notwithstanding the absence of a protective orderor waiver, the Party may disclose such Confidential Information which, in the opinion of itscounsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts toobtain reliable assurance that confidential treatment will be accorded any ConfidentialInformation so furnished.

**15.10 Termination of Agreement**.

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

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**15.11 Remedies**.

The Parties agree that monetary damages would be inadequate to compensate a Party foranother Party’s Breach of its obligations under this Artic[le 15. Ea](#br27)ch Party accordingly agreesthat the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if thefirst Party Breaches or threatens to Breach its obligations under this Article [15, whic](#br27)h equitablerelief shall be granted without bond or proof of damages, and the receiving Party shall not pleadin defense that there would be an adequate remedy at law. Such remedy shall not be deemed anexclusive remedy for the Breach of this Artic[le 15,](#br27) but shall be in addition to all other remediesavailable at law or in equity. The Parties further acknowledge and agree that the covenantscontained herein are necessary for the protection of legitimate business interests and arereasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequentialor punitive damages of any nature or kind resulting from or arising in connection with thisArtic[le 15.](#br27)

**15.12 Disclosure to FERC, its Staff, or a State**.

Notwithstanding anything in this Artic[le 15](#br27) to the contrary, and pursuant to 18 C.F.R.section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requestsinformation from one of the Parties that is otherwise required to be maintained in confidencepursuant to this Agreement or the OATT, the Party shall provide the requested information toFERC or its staff, within the time provided for in the request for information. In providing theinformation to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,request that the information be treated as confidential and non-public by FERC and its staff andthat the information be withheld from public disclosure. Parties are prohibited from notifyingthe other Parties to this Agreement prior to the release of the Confidential Information to theCommission or its staff. The Party shall notify the other Parties to the Agreement when it isnotified by FERC or its staff that a request to release Confidential Information has been receivedby FERC, at which time the Parties may respond before such information would be made public,pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting aconfidential investigation shall be treated in a similar manner if consistent with the applicablestate rules and regulations. A Party shall not be liable for any losses, consequential or otherwise,resulting from that Party divulging Confidential Information pursuant to a FERC or stateregulatory body request under this paragraph.

**15.13 Required Notices Upon Requests or Demands for Confidential Information**.

Except as otherwise expressly provided herein, no Party shall disclose ConfidentialInformation to any person not employed or retained by the Party possessing the ConfidentialInformation, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by thedisclosing Party to be required to be disclosed in connection with a dispute between or amongthe Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of theother Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill itsobligations under this Agreement, the OATT or the Services Tariff. Prior to any disclosures of aParty’s Confidential Information under this subparagraph, or if any third party or GovernmentalAuthority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees

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to assert confidentiality and cooperate with the other Party in seeking to protect the ConfidentialInformation from public disclosure by confidentiality agreement, protective order or otherreasonable measures.

**ARTICLE 16. INTERCONNECTION CUSTOMER AND SYSTEM OWNERNOTICES OF ENVIRONMENTAL RELEASES**

Interconnection Customer and System Owner shall notify the other Parties, first orallyand then in writing, of the release of any Hazardous Substances, any asbestos or lead abatementactivities, or any type of remediation activities related to the Upgrades, each of which mayreasonably be expected to affect the other Parties. The notifying Party shall: (i) provide thenotice as soon as practicable, provided such Party makes a good faith effort to provide the noticeno later than twenty-four hours after such Party becomes aware of the occurrence; and(ii) promptly furnish to the other Parties copies of any publicly available reports filed with anyGovernmental Authorities addressing such events.

**ARTICLE 17. INFORMATION REQUIREMENT**

**17.1 Information Acquisition**.

Interconnection Customer and System Owner shall each submit specific informationregarding the electrical characteristics of its facilities to the other Parties as described below andin accordance with Applicable Reliability Requirements.

**17.2 Information Submission Concerning the Upgrades**.

The initial information submission by System Owner shall occur as specified in theMilestones in Appendix A and shall include New York State Transmission System informationnecessary to allow the Interconnection Customer to select equipment for its Transmission Projectand meet any system protection and stability requirements, unless otherwise mutually agreed toby the Interconnection Customer and System Owner. On a monthly basis, System Owner andInterconnection Customer shall each provide the other Parties a status report on the constructionand installation of the Upgrades, including, but not limited to, the following information:(1) progress to date; (2) a description of the activities since the last report; (3) a description of theaction items for the next period; and (4) the delivery status of equipment ordered.

**17.3 Information Submission Concerning the Transmission Project**.

The updated information submission by the Interconnection Customer, includingmanufacturer information, shall occur as specified in the Milestones in Appendix A.Interconnection Customer shall submit a completed copy, if applicable, of the TransmissionProject data requirements contained in the Transmission Interconnection Application to theTransmission Interconnection Procedures. It shall also include any additional informationprovided to System Owner, as applicable, for the Facilities Study. Information in thissubmission shall be the most current Transmission Project design or expected performance data.Information submitted for stability models shall be compatible with NYISO standard models. Ifthere is no compatible model, the Interconnection Customer will work with a consultant mutuallyagreed to by the Parties to develop and supply a standard model and associated information.

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If the Interconnection Customer’s data is different from what was originally provided toSystem Owner and NYISO in its Transmission Interconnection Application and this differencemay be reasonably expected to affect the other Parties’ facilities or the New York StateTransmission System, but does not require the submission of a new TransmissionInterconnection Application, then Interconnection Customer will notify the NYISO and SystemOwner of such modifications.

**17.4 Information Supplementation**.

The Interconnection Customer and System Owner shall supplement its informationsubmissions described above in this Article [17](#br31) with any and all “as built” information or “astested” performance information that differs from the initial submissions or, alternatively, writtenconfirmation that no such differences exist.

**ARTICLE 18. INFORMATION ACCESS AND AUDIT RIGHTS**

**18.1 Information Access**.

Each Party (“Disclosing Party”) shall make available to another Party (“RequestingParty”) information that is in the possession of the Disclosing Party and is necessary in order forthe Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which theRequesting Party is responsible under this Agreement; and (ii) carry out its obligations andresponsibilities under this Agreement. The Parties shall not use such information for purposesother than those set forth in this Article [18.1](#br32) and to enforce their rights under this Agreement.

**18.2 Reporting of Non-Force Majeure Events**.

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

**18.3 Audit Rights**.

Subject to the requirements of confidentiality under Artic[le 15](#br27) of this Agreement, eachParty shall have the right, during normal business hours, and upon prior reasonable notice toanother Party, to audit at its own expense the other Party’s accounts and records pertaining to theother Party’s performance or satisfaction of its obligations under this Agreement. Such auditrights shall include audits of the other Party’s costs and calculation of invoiced amounts. Anyaudit authorized by this Article shall be performed at the offices where such accounts andrecords are maintained and shall be limited to those portions of such accounts and records thatrelate to the Party’s performance and satisfaction of obligations under this Agreement. EachParty shall keep such accounts and records for a period equivalent to the audit rights periodsdescribed in Artic[le 18.4](#br33) of this Agreement.

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**18.4 Audit Rights Periods**.

**18.4.1 Audit Rights Period for Construction-Related Accounts and Records**.

Accounts and records related to the design, engineering, procurement, and construction ofthe Upgrades shall be subject to audit for a period of twenty-four months following the issuanceof a final invoice in accordance with Artic[le 6.1](#br20) of this Agreement.

**18.4.2 Audit Rights Period for All Other Accounts and Records**.

Accounts and records related to a Party’s performance or satisfaction of its obligationsunder this Agreement other than those described in Artic[le 18.4.1](#br33) of this Agreement shall besubject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rightsperiod shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise tosuch cost obligations; and (ii) for an audit relating to all other obligations, the applicable auditrights period shall be twenty-four months after the event for which the audit is sought.

**18.5 Audit Results**.

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

**ARTICLE 19. SUBCONTRACTORS**

**19.1 General**.

Nothing in this Agreement shall prevent a Party from utilizing the services of anysubcontractor as it deems appropriate to perform its obligations under this Agreement; *provided,however*, that each Party shall require its subcontractors to comply with all applicable terms andconditions of this Agreement in providing such services and each Party shall remain primarilyliable to the other Parties for the performance of such subcontractor.

**19.2 Responsibility of Principal**.

The creation of any subcontract relationship shall not relieve the hiring Party of any of itsobligations under this Agreement. The hiring Party shall be fully responsible to the other Partiesfor the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had beenmade; *provided, however*, that in no event shall the NYISO or System Owner be liable for theactions or inactions of Interconnection Customer or its subcontractors with respect to obligationsof Interconnection Customer under Artic[le 3](#br12) of this Agreement. Any applicable obligationimposed by this Agreement upon the hiring Party shall be equally binding upon, and shall beconstrued as having application to, any subcontractor of such Party.

**19.3 No Limitation by Insurance**.

The obligations under this Artic[le 19](#br33) will not be limited in any way by any limitation of subcontractor’s insurance.

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**ARTICLE 20. DISPUTES**

**20.1 Submission**.

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

**20.2 External Arbitration Procedures**.

Any arbitration initiated under this Agreement shall be conducted before a single neutralarbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten(10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose onearbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shallbe knowledgeable in electric utility matters, including electric transmission and bulk powerissues, and shall not have any current or past substantial business or financial relationships withany party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of theParties an opportunity to be heard and, except as otherwise provided herein, shall conduct thearbitration in accordance with the Commercial Arbitration Rules of the American ArbitrationAssociation (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; *provided,however*, in the event of a conflict between the Arbitration Rules and the terms of this Artic[le 20,](#br34)the terms of this Artic[le 20](#br34) shall prevail.

**20.3 Arbitration Decisions**.

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision withinninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decisionand the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply theprovisions of this Agreement and shall have no power to modify or change any provision of thisAgreement in any manner. The decision of the arbitrator(s) shall be final and binding upon theParties, and judgment on the award may be entered in any court having jurisdiction. Thedecision of the arbitrator(s) may be appealed solely on the grounds that the conduct of thearbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Actor the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) must also befiled with FERC if it affects jurisdictional rates, terms and conditions of service, or Upgrades.

**20.4 Costs**.

Each Party shall be responsible for its own costs incurred during the arbitration processand for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit

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on the three member panel; or (2) one-third the cost of the single arbitrator jointly chosen by theParties.

**20.5 Termination**.

Notwithstanding the provisions of this Artic[le 20, a](#br34)ny Party may terminate thisAgreement in accordance with its provisions or pursuant to an action at law or equity. The issueof whether such a termination is proper shall not be considered a Dispute hereunder.

**ARTICLE 21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**21.1 General**.

Each Party makes the following representations, warranties and covenants:

**21.1.1 Good Standing**.

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

**21.1.2 Authority**.

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

**21.1.3 No Conflict**.

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

**21.1.4 Consent and Approval**.

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

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**ARTICLE 22. MISCELLANEOUS**

**22.1 Binding Effect**.

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

**22.2 Conflicts**.

If there is a discrepancy or conflict between or among the terms and conditions of thebody of this Agreement and the Appendices hereto, the terms and conditions of the body of thisAgreement shall be given precedence over the Appendices, except as otherwise expressly agreedto in writing by the Parties.

**22.3 Rules of Interpretation**.

This Agreement, unless a clear contrary intention appears, shall be construed andinterpreted as follows: (1) the singular number includes the plural number and vice versa;(2) reference to any person includes such person’s successors and assigns but, in the case of aParty, only if such successors and assigns are permitted by this Agreement, and reference to aperson in a particular capacity excludes such person in any other capacity or individually;(3) reference to any agreement (including this Agreement), document, instrument or tariff meanssuch agreement, document, instrument, or tariff as amended or modified and in effect from timeto time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference toany Applicable Laws and Regulations means such Applicable Laws and Regulations asamended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly statedotherwise, reference to any Article, Section or Appendix means such Article of this Agreementor such Appendix to this Agreement, or such Section to the Transmission InterconnectionProcedures or such Appendix to the Transmission Interconnection Procedures as the case maybe; (6) “hereunder,” “hereof,” “herein,” “hereto” and words of similar import shall be deemedreferences to this Agreement as a whole and not to any particular Article or other provisionhereof or thereof; (7) “including” (and with correlative meaning “include”) means includingwithout limiting the generality of any description preceding such term; and (8) relative to thedetermination of any period of time, “from” means “from and including,” “to” means “to butexcluding” and “through” means “through and including.”

**22.4 Compliance**.

Each Party shall perform its obligations under this Agreement in accordance withApplicable Laws and Regulations, Applicable Reliability Standards, the OATT and Good UtilityPractice. To the extent a Party is required or prevented or limited in taking any action by suchregulations and standards, such Party shall not be deemed to be in Breach of this Agreement forits compliance therewith. When any Party becomes aware of such a situation, it shall notify theother Parties promptly so that the Parties can discuss the amendment to this Agreement that isappropriate under the circumstances.

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**22.5 Joint and Several Obligations**.

Except as otherwise stated herein, the obligations of NYISO, Interconnection Customer,and System Owner are several, and are neither joint nor joint and several.

**22.6 Entire Agreement**.

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

**22.7 No Third Party Beneficiaries**.

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

**22.8 Waiver**.

The failure of a Party to this Agreement to insist, on any occasion, upon strictperformance of any provision of this Agreement will not be considered a waiver of anyobligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by any Partyof its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiverwith respect to any other failure to comply with any other obligation, right, duty of thisAgreement. Termination or Default of this Agreement for any reason by an InterconnectionCustomer shall not constitute a waiver of such Interconnection Customer’s legal rights to obtainCapacity Resource Interconnection Service and Energy Resource Interconnection Service fromthe NYISO and the relevant System Owner in accordance with the relevant InterconnectionAgreement and the provisions of the OATT. Any waiver of this Agreement shall, if requested,be provided in writing.

**22.9 Headings**.

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

**22.10 Multiple Counterparts**.

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

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**22.11 Amendment**.

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

**22.12 Modification by the Parties**.

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

**22.13 Reservation of Rights**.

NYISO and the System Owner shall have the right to make unilateral filings with FERCto modify this Agreement with respect to any rates, terms and conditions, charges, classificationsof service, rule or regulation under section 205 or any other applicable provision of the FederalPower Act and FERC’s rules and regulations thereunder, and Interconnection Customer shallhave the right to make a unilateral filing with FERC to modify this Agreement pursuant tosection 206 or any other applicable provision of the Federal Power Act and FERC’s rules andregulations thereunder; provided that each Party shall have the right to protest any such filing byanother Party and to participate fully in any proceeding before FERC in which suchmodifications may be considered. Nothing in this Agreement shall limit the rights of the Partiesor of FERC under sections 205 or 206 of the Federal Power Act and FERC’s rules andregulations thereunder, except to the extent that the Parties otherwise mutually agree as providedherein.

**22.14 No Partnership**.

This Agreement shall not be interpreted or construed to create an association, jointventure, agency relationship, or partnership among the Parties or to impose any partnershipobligation or partnership liability upon any Party. No Party shall have any right, power orauthority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be anagent or representative of, or to otherwise bind, any other Party.

**22.15 Other Transmission Rights**.

Notwithstanding any other provision of this Agreement, nothing herein shall be construedas relinquishing or foreclosing any rights, including but not limited to firm transmission rights,capacity rights, or transmission congestion rights that Interconnection Customer shall be entitledto, now or in the future under any other agreement or tariff as a result of or otherwise associatedwith, the transmission capacity, if any, created by the Upgrades.

**22.16 Modifications Related to NYISO’s Compliance with Order No. 2023**.

If, as part of the NYISO’s compliance proceeding at the Commission in response toOrder No. 2023, the Commission directs that the NYISO modify the *pro forma* StandardUpgrade Construction Agreement located in Appendix 16 of Attachment HH to the ISO OATT,the Parties shall amend and restate this Agreement to incorporate the modifications; *provided,*

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*however,* the Parties may agree to include in the amended and restated agreement non-conforming changes to any terms of the *pro forma* Standard Upgrade Construction Agreementthat have been modified to comply with the Commission’s order, which non-conformingmodifications must be filed with the Commission for its acceptance.

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

**New York Independent System Operator, Inc.**

By:

Name:

Title:

Date:

**Niagara Mohawk Power Corporation d/b/a National Grid**

By:

Name:

Title:

Date:

**Sithe/Independence Power Partners, L.P.**

By:

Name:

Title:

Date:

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**APPENDICES**

**Appendix A**

Construction Services

**Appendix B**

Addresses for Delivery of Notices and Billings

**Appendix C**

In-Service Date

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**APPENDIX A**

**CONSTRUCTION SERVICES**

**1. Upgrades**

System Owner will design, install, and implement the Upgrades set forth in thisAppendix A.

The Upgrades consist of the installation of a series reactor (4.9 Ohms (0.0041pu) on the345 kV Scriba-Volney Line 20 (“Line 20”) at System Owner’s Volney Substation, as well asUpgrades at System Owner’s Scriba Station and to Line 20, which will include the followingmajor electrical equipment and facilities to be designed, installed, and implemented by SystemOwner:

**A. Volney Substation**

Three (3) single phase 345kV series reactors will be installed between breakers R925 and R200 at System Owner’s Volney Substation.

*i. Site/Civil/Structure*

To accommodate the reactors, the substation yard will need to be expanded byapproximately 49,000 SF to the northeast. Due to the nature of the substation expansion, soilborings will be required for the foundation design. The location at which the station is beingexpanded is approximately 15’-20’ below the finish grade of the station at the lowest point. Fillwill be required to be imported to raise the grade. A new access road will be needed along theoutside of the station expansion for access to the transmission lines to the east of the station. Thestation expansion will exceed 1 acre and impact the existing drainage swale around the stationtherefore a SWPPP will be needed as well as new storm water remedial measures.

Civil and structural work at Connecting Transmission Owner’s Volney Substation will include installation of:

• three (3) galvanized steel A-frame takeoff structures with caisson foundations;

• one (1) galvanized steel motor operated disconnect switch support structure with

caisson foundation;

• one (1) galvanized steel 1-phase coupling capacitor voltage transformer

(“CCVT”) support structure with caisson foundation;

• three (3) galvanized steel security poles;

• miscellaneous steel on two (2) new A-frame structures required for the disconnect

switches;

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• additional bus supports with associated foundations; and• three (3) reinforced concrete pad foundations for the reactors. *ii. Primary Electrical*

The following primary electrical equipment shall be installed at the Volney Substation:

• three (3) 345 KV, 1200MVA, 13mH series reactors;• three (3) 345 KV 2000A, 3-phase motor operated disconnect switches;• approximately 1944 ft of 5” inch aluminum bus;• one (1) 345 KV, CCVT;

• one (1) 345 KV line tuner; and

• one (1) 345 kV, 3K amps, line trap.

The ground grid will be extended to accommodate the reactors and switches. SystemOwner will complete a lightning and ground grid study during final engineering to determine ifany additional protection is required.

*iii. Secondary Electrical*

a. Protection

Due to the addition of the series reactors, an additional CCVT needs to be installed inorder to maintain the power line carrier system currently used for the system ‘B’ protectionpackage. The existing RFL 9780 carrier used for permissive overreaching transfer trip (“POTT”)and direct transfer trip (“DTT”) will be modified to accommodate a dual coaxial line tuner byinstalling an external hybrid. Both line relay packages will be reset to accommodate the additionof the reactors.

System Owner will perform an area coordination study.

b. Controls and Integration

The existing remote terminal unit (“RTU”) is sufficient for the scope of the project. NewI/O points will be installed to accommodate the additions required. There is no available space inthe existing cabinet for the additional points therefore a new enclosure cabinet containing a newTelvent digital input card will be installed to the left of the existing RTU cabinets. RE-01Control Switch Relays (“CSRs”) with associated test switches will be installed for each of themotor-operated disconnect switches.

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c. Telecommunications

A There is no telecommunications scope as the powerline carrier (PLC) communicationssystem will be maintained.

**B. Scriba Station**

Line tuning will be required at Scriba Station.

**C. Line 20**

To accommodate installation of the series reactors at the Volney Substation, the sectionof Line 20 from structure 74 into System Owner’s Volney Substation must be reconductored asdepicted in Appendix B. Reconductoring this section of line will require:

• removal of approximately 510 circuit feet (1,530 linear feet) of 2167 ACSR 72/7 KIWI” and 510 linear feet of 7/16” shield wire between Volney Substation and Structure #74 on LN20 circuit; and

• installation of approximately 310 circuit feet (930 linear feet) of 2167 ACSR 72/7

“KIWI” and 310 linear feet of 7/16” EHS Steel shield wire.

**2. Upgrades Estimated Total Cost Amount**

Interconnection Customer has accepted, and has provided Security to the System Ownerto cover, the following Upgrades Estimated Total Costs identified in the Facilities Study for theUpgrades: $8,759,800.

The cost estimates provided in this report are in 2022 dollars and are based on the resultsof this study and assumptions listed below. Any modifications to the project, as defined hereinand in the FSA, may impact the study results and associated cost estimates and/or schedule.

The estimates provided herein exclude the following, as applicable:

• discussions of issued interconnection study;

• negotiation and execution of agreements;

• overall project sales tax;

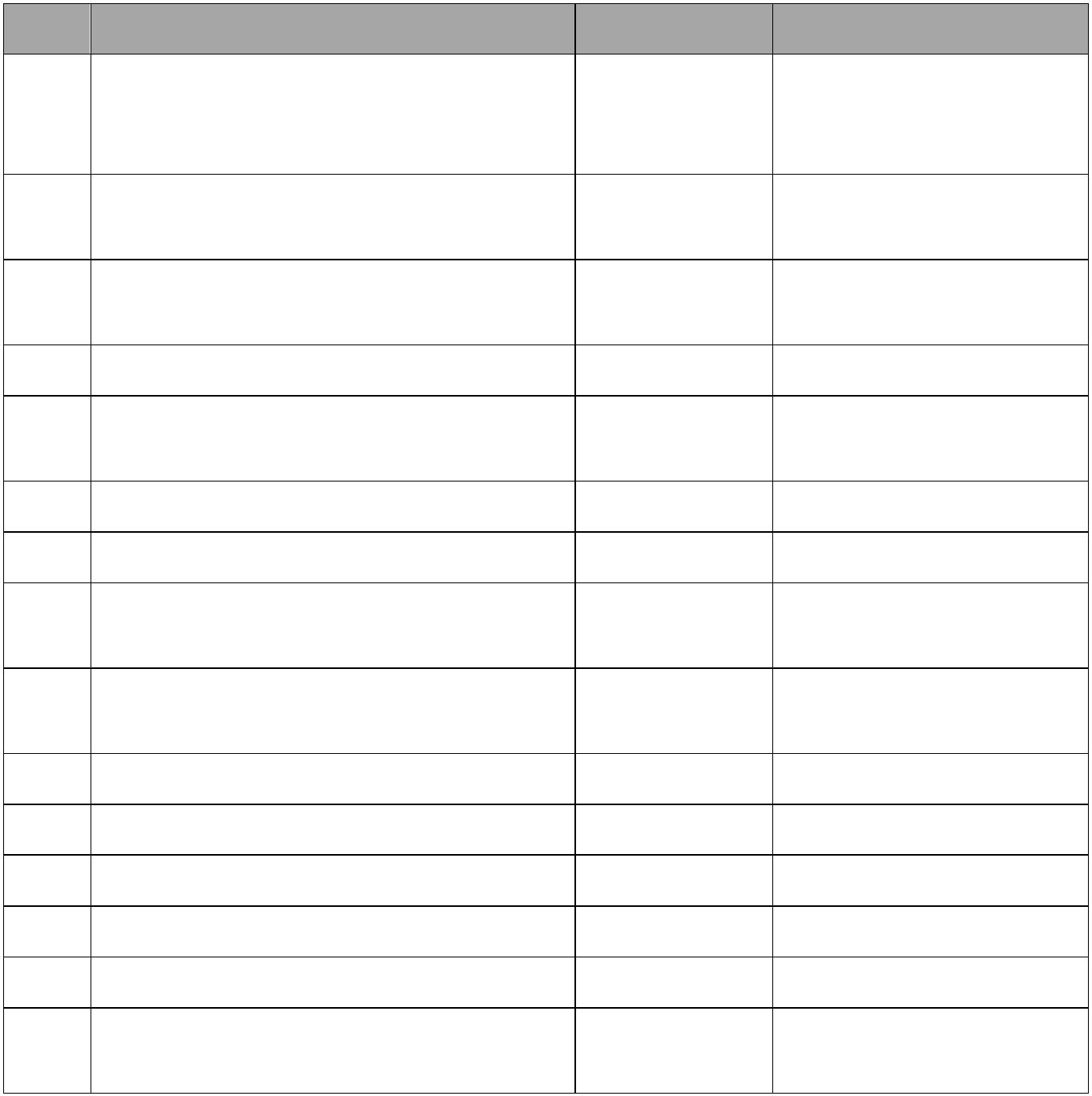
• property acquisition;

• property taxes;

• future operation and maintenance costs;

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• recurring monthly communications circuits’ charges;

• allowance for funds used during construction (AFUDC) assuming Interconnection

Customer upfront payment;

• adverse field conditions such as water, weather, and Interconnection Customer

electrical equipment obstructions; or

• the cost of any temporary construction service.

**3. Milestones**

**Item Milestone Date Responsible Party**

1. Execute EPC Agreement Completed System Owner/Interconnection

Customer/NYISO

|  |  |  |  |
| --- | --- | --- | --- |
|  | 2. Provide initial prepayment/security  for engineering and procurement |  | Completed Interconnection  Customer |
|  | 3. Issue written authorization to proceed  with engineering |  | Completed Interconnection  Customer |

4. Project initiation Completed System Owner

|  |  |  |  |
| --- | --- | --- | --- |
|  | 5. Project management level kickoff  meeting |  | Completed System  Owner/Developer |

6. Start engineering Completed System Owner

7. Start procurement Completed System Owner

|  |  |  |  |
| --- | --- | --- | --- |
|  | 8. Provide remainder of Transmission  Project Security |  | 03/2025 Developer |

9. Complete engineering 03/2025 System Owner/Developer

10. Start construction 08/2025 System Owner

11. Complete procurement 02/2025 System Owner

12. Complete construction and testing 03/2026 System Owner

13. In-Service Date 03/2026 System Owner

14. Complete as-builts 07/2026 System Owner

|  |  |  |  |
| --- | --- | --- | --- |
|  | 15. Complete project closeout and final  invoicing |  | 10/2026 System Owner |

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**4. Security**

Interconnection Customer has provided $3,558,200 in cash as security for its Project CostAllocation for Network Upgrade Facilities. Interconnection Customer has also provided$2,900,000 in cash as security for Transmission Project costs under an Engineering andProcurement Agreement with System Owner.

Interconnection Customer is responsible for providing an additional $2,301,600 in security forthe remainder of its Transmission Project costs. Interconnection Customer has agreed to providethe remaining Security under this Agreement in the form of cash. Any excess funds of theEstimated Total Cost Amount will be returned to Interconnection Customer within ten (10)business days following completion.

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**APPENDIX B**

**ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

**Notices:**

NYISO:

New York Independent System Operator, Inc.Attn: Vice President, System and Resource Planning10 Krey Boulevard Rensselaer, NY 12144 Phone: (518) 356-6000

Email: interconnectionsupport@nyiso.com

System Owner:

Niagara Mohawk Power Corporation d/b/a National Grid

Attn: Vishal Ahirrao, Director, Customer Energy Integration and Commercial Services, NY

2 Hanson Place 12th FloorBrooklyn, NY 11217 Fax: (781) 907-3002

Email: Vishal.Ahirrao@nationalgrid.com

Interconnection Customer:

Sithe Independence Power Partners, L.P.Ben Elliott, SVP Renewables / Battery Storage / Fossil OperationsVistra Corp.

6555 Sierra Drive Irving, TX 75039

Email: ben.elliott@vistracorp.com lume.compliance@vistracorp.com

**Billings and Payments:**

System Owner:

Niagara Mohawk Power Corporation d/b/a National Grid

Attn: Vishal Ahirrao, Director, Customer Energy Integration and Commercial Services, NY

2 Hanson Place 12th FloorBrooklyn, NY 11217 Phone: (781) 907-3002

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Interconnection Customer:

Sithe Independence Power Partners, L.P.Attn: Plant Manager 76 Independence Way Oswego, NY 13126 Phone: (315) 349-5117

Email: eric.pahl@vistracorp.com

With copy to:

Ben Elliott, SVP Renewables / Battery Storage / Fossil OperationsVistra Corp.

6555 Sierra Drive Irving, TX 75039

Email: ben.elliott@vistracorp.com lume.compliance@vistracorp.com

**Alternative Forms of Delivery of Notices (telephone, facsimile or email):**

NYISO:

New York Independent System Operator, Inc.Attn: Vice President, System and Resource Planning10 Krey Boulevard Rensselaer, NY 12144 Phone: (518) 356-6000

Email: interconnectionsupport@nyiso.com

System Owner:

Niagara Mohawk Power Corporation d/b/a National Grid

Attn: Vishal Ahirrao, Director, Customer Energy Integration and Commercial Services, NY

2 Hanson Place 12th FloorBrooklyn, NY 11217 Fax: (781) 907-3002

Email: Vishal.Ahirrao@nationalgrid.com

Interconnection Customer:

Sithe Independence Power Partners, L.P.Ben Elliott, SVP Renewables / Battery Storage / Fossil OperationsVistra Corp.

6555 Sierra Drive Irving, TX 75039

Email: ben.elliott@vistracorp.com

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lume.compliance@vistracorp.com

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**APPENDIX C**

**IN-SERVICE DATE**

[Date]

New York Independent System Operator, Inc.Attn: Vice President, System and Resource Planning10 Krey Boulevard Rensselaer, NY 12144

Niagara Mohawk Power Corporation d/b/a National Grid

Attn: Vishal Ahirrao, Director, Customer Energy Integration and Commercial Services, NY

12 Hanson Place, 12th FloorBrooklyn, NY 11217

Sithe Independence Power Partners, L.P.Ben Elliott, SVP Renewables / Battery Storage / Fossil OperationsVistra Corp.

6555 Sierra Drive

Re: Scriba-Volney Series Reactor Project UpgradesDear :

On [**Date**] [**System Owner/Interconnection Customer**] has completed the Upgrades. Thisletter confirms that [**describe Upgrades**] have commenced service, effective as of [**Date plusone day**].

Thank you.

[**Signature**]

[**Interconnection Customer’s/System Owner’s Representative**]

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