

**SERVICE AGREEMENT NO. 2603**

**SERVICE AGREEMENT NO. 2603**

**TRANSMISSION PROJECT**

**INTERCONNECTION**

**AGREEMENT**

**AMONG THE**

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

**AND**

**NEW YORK POWER  
AUTHORITY**

**AND**

**NEXTERA ENERGY TRANSMISSION NEW  
YORK, INC.**

**Dated as of February 26, 2021**

**(Empire State Line Project)**

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## **SERVICE AGREEMENT NO. 2603**

### **TRANSMISSION PROJECT INTERCONNECTION AGREEMENT**

**THIS TRANSMISSION PROJECT INTERCONNECTION AGREEMENT** (“Agreement”) is made and entered into this 26th day of February, 2021, by and among NextEra Energy Transmission New York, Inc., a corporation organized and existing under the laws of the State of New York (“Transmission Developer” with a Transmission Project), the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“NYISO”), and the New York Power Authority, a corporate municipal instrumentality organized and existing under the laws of the State of New York (“Connecting Transmission Owner”). Transmission Developer, the NYISO, or Connecting Transmission Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

#### **RECITALS**

**WHEREAS**, NYISO operates the New York State Transmission System and Connecting Transmission Owner owns certain facilities included in the New York State Transmission System;

**WHEREAS**, Transmission Developer intends to construct, own, and operate a Transmission Project described in Appendix C to this Agreement that will interconnect to the New York State Transmission System;

**WHEREAS**, portions of the Transmission Project will interconnect to the New York State Transmission System at facilities owned and operated by the Connecting Transmission Owner;

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

**WHEREAS**, Transmission Interconnection Studies determined that certain Network Upgrade Facilities were required on the Connecting Transmission Owner’s system for the Transmission Project to connect reliably to the system in a manner that meets the NYISO Transmission Interconnection Standard; and

**WHEREAS**, Transmission Developer, NYISO, and Connecting Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Transmission Project with the Connecting Transmission Owner’s facilities included in the New York State Transmission System;

**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 the

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - Joint IA among NYISO NYPA and NextEra meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT,

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Section 22.1 of Attachment P of the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, the body of the Transmission Interconnection Procedures, or the body of this Agreement.

**Affected System** shall mean an electric system other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Operator** shall mean the entity that operates an Affected System.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachment P, Attachment X, Attachment Z, or Attachment S to the ISO OATT.

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

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

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

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Transmission Developer’s Transmission Project is directly interconnected, as those requirements and guidelines are amended and modified and in effect from time to time; provided that no Party shall waive its right to challenge the applicability or validity of any requirement or guideline as applied to it in the context of this Agreement.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Transmission Interconnection Studies by the NYISO, Connecting Transmission Owner, or the Transmission Developer, as described in Section 22.6.1 of the Transmission Interconnection Procedures.

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

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



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

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

**Confidential Information** shall mean any information that is defined as confidential by Article 22 of this Agreement.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point(s) of Interconnection, and (iii) is a Party to this Agreement. For purposes of this Agreement, the Connecting Transmission Owner is defined in the introductory paragraph.

**Control Area** shall mean an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the Generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the Load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain Operating Reserves in accordance with Good Utility Practice. A Control Area must be certified by the NPCC.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 17 of this Agreement.

**Development Agreement** shall mean the agreement executed between the NYISO and the Transmission Developer concerning the development of the Transmission Project, dated June 29, 2019, as it may be amended from time to time.

**Effective Date** shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

**Emergency** shall mean any abnormal condition or situation which the Connecting Transmission Owner, Transmission Developer, or NYISO, in their sole discretion, deems imminently likely to endanger life or property, or adversely affect or impair the New York State Transmission System, Connecting Transmission Owner's electrical system, Transmission Project, or the electrical or transmission systems of others to which they are directly or indirectly connected, which requires immediate automatic or manual action to correct. Such an abnormal system condition or situation includes, without limitation, overloading or potential overloading (exceeding thermal limits of pre- and post-contingency), excessive voltage drop, exceeding voltage limits as defined by the NYISO, Transmission Developer, or Connecting Transmission Owner, load shedding, voltage reduction, operating reserve deficiencies, frequency deviations,

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over-generation or other non-normal conditions. Economic hardship of a Party will not  
constitute an “Emergency.”

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**Emergency State** shall mean the condition or state that the New York State Power System is in when an abnormal condition occurs that requires automatic or immediate manual action to prevent or limit loss of the New York State Transmission System or Generators that could adversely affect the reliability of the New York State Power System.

**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 of the NYISO OATT to determine a list of facilities required to reliably interconnect the Transmission Project (including Network Upgrade Facilities) as identified in the System Impact Study, the cost of those facilities, and the time required to interconnect the Transmission Project with the New York State Transmission System.

**Facilities Study Agreement** shall mean the agreement described in Section 22.9.1 of Attachment P of the NYISO OATT for conducting the Facilities Study.

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

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

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

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

**Governmental Authority** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Developer, NYISO, Affected Transmission Owner, Connecting Transmission Owner, or any Affiliate thereof.





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

**Initial Synchronization Date(s)** shall mean the date(s) upon which the Transmission Project and Network Upgrade Facilities, as applicable, are initially synchronized with the New York State Transmission System and upon which Trial Operation begins, which date(s) shall be set forth in the milestones table in Appendix B. The Connecting Transmission Owner or Transmission Developer, as applicable, must provide notice of the Initial Synchronization Date(s) to the other Parties in the form of Appendix E-1 to this Agreement.

**In-Service Date(s)** shall mean the date(s) upon which the Transmission Project and Network Upgrade Facilities, as applicable, are energized consistent with the provisions of this Agreement and available to provide Transmission Service under the NYISO’s Tariffs, which date(s) shall be set forth in the milestones table in Appendix B. The Connecting Transmission Owner or Transmission Developer, as applicable, must provide notice of the In-Service Date(s) to the other Parties in the form of Appendix E-2 to this Agreement.

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

**Metering Equipment** shall mean all metering equipment installed or to be installed at the Transmission Project pursuant to this Agreement, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

**Metering Points** shall mean the location(s) identified by the NYISO for any Metering Equipment associated with the Transmission Project that are required for the Transmission Project to provide zonal or subzonal metering data.

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

**Network Upgrade Facilities** shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to the New York State Transmission System that are required for the proposed Transmission Project to connect reliably to the system in a manner that meets the NYISO Transmission Interconnection Standard. For purposes of this Agreement, the Network Upgrade Facilities are described in Appendix A of this Agreement.

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

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - Joint IA among NYISO NYPA and NextEra transmission system, which includes (i) the Transmission Facilities Under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

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

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

**NYISO Transmission Interconnection Standard** shall mean the reliability standard that must be met by any Transmission Project proposing to connect to the New York State Transmission System. The standard is designed to ensure reliable access by the proposed project to the New York State Transmission System.

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

**Operating Agreement** shall mean the Operating Agreement that the Transmission Developer is required to enter into with the NYISO concerning the operation of its transmission facilities in accordance with the requirements in Section 31.1.7.3 of Attachment Y of the OATT, as such agreement may be amended from time to time.

**Party or Parties** shall mean NYISO, Connecting Transmission Owner, or Transmission Developer or any combination of the above.

**Point(s) of Change of Ownership** shall mean the point(s), as set forth in Appendix C to this Agreement, where the Transmission Developer's Transmission Project connect to the Connecting Transmission Owner's system.

**Point(s) of Interconnection** shall mean the point(s), as set forth in Appendix C to this Agreement, where the Transmission Developer's Transmission Project connect to the New York State Transmission System.

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

**Security** shall mean a bond, irrevocable letter of credit, parent company guarantee or other form of security from an entity with an investment grade rating, executed for the benefit of the Connecting Transmission Owner, meeting the commercially reasonable requirements of the Connecting Transmission Owner with which it is required to be posted pursuant to Article 11.4, and consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1 of this Agreement.

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

**System Impact Study** shall mean the study conducted pursuant to Section 22.8 of Attachment P of the NYISO OATT that evaluates the impact of the proposed Transmission Project on the safety and reliability of the New York State Transmission System and, if applicable, and Affected System, to determine what Network Upgrade Facilities are needed for the proposed



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Transmission Project to connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard.

**System Impact Study Agreement** shall mean the agreement described in Section 22.8.1 of Attachment P of the NYISO OATT for conducting the System Impact Study.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Transmission Project and (2) protect the Transmission Project from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

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

**Transmission Developer** shall mean an entity that proposes to interconnect its Transmission Project to the New York State Transmission System in compliance with the NYISO Transmission Interconnection Standard. For purposes of this Agreement, the Transmission Developer is defined in the introductory paragraph.

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

**Transmission Interconnection Procedures (“TIP”)** shall mean the interconnection procedures applicable to a Transmission Interconnection Application pertaining to a Transmission Project that are included in Attachment P of the NYISO OATT.

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

**Transmission Project** shall mean the Transmission Developer’s proposed transmission facility or facilities that collectively satisfy the definition of Transmission Project in Section 22.3.1 of Attachment P of the NYISO OATT. For purposes of this Agreement, the Transmission Project is described in Appendix C of this Agreement.

**Transmission Project Interconnection Agreement** shall mean this interconnection agreement applicable to the interconnection of the Transmission Project to the New York State Transmission System.

**Trial Operation** shall mean the period(s) during which Connecting Transmission Owner or Transmission Developer, as applicable, is engaged in on-site test operations and commissioning of the Transmission Project or Network Upgrade Facilities prior to the In-Service Date.



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

#### **2.1 Effective Date.**

This Agreement shall become effective upon execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.

#### **2.2 Term of Agreement.**

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of fifty (50) years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter.

#### **2.3 Termination.**

##### **Written Notice.**

##### **2.3.1.1 Written Notice of Termination**

This Agreement may be terminated: (i) by any Party after giving the other Parties ninety (90) Calendar Days advance written notice following the termination of the Development Agreement prior to the completion of its term, subject to the suspension requirements in Article 2.3.1.2 below; or (ii) by the mutual agreement in writing of all Parties.

##### **2.3.1.2 Suspension Period for Project Transfer**

2.3.1.2.1 If the Development Agreement is terminated prior to the completion of its term and the NYISO exercises its right under the Development Agreement and the Tariff to request that a developer other than the Transmission Developer complete the Transmission Project, this Agreement shall be suspended. The suspension period will last until either: (i) the NYISO issues a written determination that the Transmission Project cannot be transferred to another developer and will not proceed, or (ii) the Transmission Developer completes the assignment of this Agreement to a new developer selected by the NYISO as set forth in Article 2.3.1.2.3. During the suspension period, the running of any advanced notice of termination time period pursuant to Article 2.3.1.1 will be paused. The Agreement shall not be terminated during the suspension period without the written agreement of all Parties.

2.3.1.2.2 During the suspension period, the Transmission Developer and Connecting Transmission Owner shall suspend all work associated with the construction and installation of the Network Upgrade Facilities required for only that Transmission Developer under this Agreement with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. In such event, Transmission Developer



New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - Joint IA among NYISO NYPA and NextEra shall be responsible for all reasonable and necessary costs and/or obligations in accordance with this Agreement, including those which Connecting Transmission Owner (i) has incurred pursuant

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to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Connecting Transmission Owner cannot reasonably avoid; *provided, however*, that prior to canceling or suspending any such material, equipment or labor contract, Connecting Transmission Owner shall obtain Transmission Developer's authorization to do so, which authorization shall not unreasonably be withheld, conditioned or delayed.

2.3.1.2.3 If, pursuant to its Tariff, the NYISO selects a new developer to complete the Transmission Project, Transmission Developer shall coordinate with the new developer concerning the assignment of this Agreement to the new developer pursuant to the assignment requirements in Article 19 of this Agreement. All liabilities under this Agreement existing prior to such transfer shall remain with the Transmission Developer, unless otherwise agreed upon by the Transmission Developer and the new developer as part of their good faith negotiations regarding the transfer.

### **Default.**

Any Party may terminate this Agreement in accordance with Article 17.

### **Compliance.**

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

## **2.4 Termination Costs.**

If a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the Transmission Developer shall be responsible for all costs that are the responsibility of the Transmission Developer under this Agreement that are incurred by the Transmission Developer or the other Parties through the date, as applicable, of the other Parties' receipt of a Party's notice of termination or of the Parties' mutual agreement to terminate the agreement. Such costs include any cancellation costs relating to orders or contracts. In the event of termination by the Transmission Developer, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

With respect to any portion of the Network Upgrade Facilities that have not yet been constructed or installed, but that is being relied upon by other projects in the manner described in Article 11.5 of this Agreement, Transmission Developer shall forfeit any remaining Security in accordance with the requirements in Article 11.5.



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With respect to any portion of the Network Upgrade Facilities that has not yet been constructed or installed and is not being relied upon by other projects in the manner described in Article 11.5 of this Agreement, the Connecting Transmission Owner shall to the extent possible and with Transmission Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Transmission Developer elects not to authorize such cancellation, Transmission Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Connecting Transmission Owner shall deliver such material and equipment, and, if necessary, assign such contracts, to Transmission Developer as soon as practicable, at Transmission Developer's expense. To the extent that Transmission Developer has already paid Connecting Transmission Owner for any or all such costs of materials or equipment not taken by Transmission Developer, Connecting Transmission Owner shall promptly refund such amounts to Transmission Developer, less any costs, including penalties incurred by the Connecting Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts.

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

With respect to any portion of the Network Upgrade Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Transmission Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

**2.5 Disconnection.**

Upon termination of this Agreement, Transmission Developer and Connecting Transmission Owner will take all appropriate steps to disconnect the Transmission Developer's Transmission Project from the New York State Transmission System and to perform such work as may be necessary to ensure that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. All costs required to effectuate such disconnection shall be borne by the Transmission Developer, unless such termination resulted from the Connecting Transmission Owner's Default of this Agreement.

**2.6 Survival.**

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement and Transmission Developer's satisfaction of the Security requirements in Article 11.5; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Transmission Developer and Connecting Transmission Owner each to have

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access to the lands of the other pursuant to this Agreement or other applicable agreements, to  
disconnect, remove or salvage its own facilities and equipment.

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### **ARTICLE 3. REGULATORY FILINGS**

NYISO and Connecting Transmission Owner shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Transmission Developer to contain Confidential Information shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT. If the Transmission Developer has executed this Agreement, or any amendment thereto, the Transmission Developer shall reasonably cooperate with NYISO and Connecting Transmission Owner with respect to such filing and to provide any information reasonably requested by NYISO and Connecting Transmission Owner needed to comply with Applicable Laws and Regulations.

### **ARTICLE 4. SCOPE OF SERVICE**

#### **4.1 Interconnection of Transmission Facilities.**

The Transmission Developer's Transmission Project and the Connecting Transmission Owner's transmission system shall interconnect at the Points of Interconnection set forth in Appendix C of this Agreement in accordance with the terms and conditions of this Agreement.

#### **4.2 No Transmission Delivery Service.**

The execution of this Agreement does not constitute a request for, nor agreement to provide, any Transmission Service under the ISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery.

#### **4.3 No Other Services.**

The execution of this Agreement does not constitute a request for, nor agreement to provide Energy, any Ancillary Services or Installed Capacity under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

### **ARTICLE 5. NETWORK UPGRADE FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION**

#### **5.1 Network Upgrade Facilities.**

Unless otherwise mutually agreed to by Transmission Developer and Connecting Transmission Owner, Transmission Developer shall select the In-Service Date and Initial Synchronization Date of the Network Upgrade Facilities, and such dates shall be set forth in Appendix B hereto. The Connecting Transmission Owner's and Transmission Developer's respective obligations to design, procure, construct, install, and own the Network Upgrade Facilities shall be set forth in Appendix A hereto. The Connecting Transmission Owner and Transmission Developer shall each use Reasonable Efforts to complete the Network Upgrade Facilities for which it has construction responsibility by the dates set forth in Appendix B hereto. The Connecting Transmission Owner shall not be required to undertake any action which is

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inconsistent with its standard safety practices, its material and equipment specifications, its  
design criteria and construction procedures, its labor agreements, and Applicable Laws and

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Regulations. In the event the Connecting Transmission Owner reasonably expects that it will not be able to complete the Network Upgrade Facilities for which it has construction responsibility by the specified dates, the Connecting Transmission Owner shall promptly provide written notice to the Transmission Developer and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

### 5.2 General Conditions Applicable to Network Upgrade Facilities Constructed by Transmission Developer.

Where Transmission Developer has assumed responsibility for the design, procurement and construction of the Network Upgrade Facilities as set forth in Appendix A, the following conditions apply:

Transmission Developer shall engineer, procure equipment, and construct the Network Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Connecting Transmission Owner;

Transmission Developer's engineering, procurement and construction of the Network Upgrade Facilities shall comply with all requirements of law to which Connecting Transmission Owner would be subject in the engineering, procurement or construction of the Network Upgrade Facilities. Transmission Developer agrees to comply with all applicable provisions of Section 220 of the New York Labor Law ("Section 220"), as it may be amended from time to time. Pursuant to the requirements of Section 220, Transmission Developer agrees that, for work performed on Network Upgrade Facilities (i.e. "public work"):

- (a) Each laborer, workman or mechanic shall be paid no less than prevailing wage as defined in Section 220,
- (b) The filing of payrolls shall be made in a manner consistent with subdivision three-a (3(a)) of Section 220; this is a condition precedent to payment of any sums due and owing to any person for work done upon the project, and
- (c) No laborer, worker or mechanic shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life and property.<sup>1</sup>

Connecting Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Network Upgrade Facilities;

Prior to commencement of construction, Transmission Developer shall provide to Connecting Transmission Owner and NYISO a schedule for construction of the Network



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Transmission Developer reserves its rights set forth in Section 220 to obtain dispensation permitting laborers, workers and mechanics to work additional hours or days per week.

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Upgrade Facilities, and shall promptly respond to requests for information from Connecting Transmission Owner or NYISO;

At any time during construction, Connecting Transmission Owner shall have the right to gain unrestricted access to the Network Upgrade Facilities and to conduct inspections of the same;

At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Network Upgrade Facilities not meet the standards and specifications provided by Connecting Transmission Owner, the Transmission Developer shall be obligated to remedy deficiencies in that portion of the Network Upgrade Facilities;

Transmission Developer shall indemnify Connecting Transmission Owner and NYISO for claims arising from the Transmission Developer's construction of Network Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;

Transmission Developer shall transfer control of Network Upgrade Facilities to the Connecting Transmission Owner;

Unless the Transmission Developer and Connecting Transmission Owner otherwise agree, Transmission Developer shall transfer ownership of the Network Upgrade Facilities to Connecting Transmission Owner;

Connecting Transmission Owner shall approve and accept for operation and maintenance the Network Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 5.2;

Transmission Developer shall deliver to NYISO and Connecting Transmission Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Connecting Transmission Owner to assure that the Network Upgrade Facilities are built to the standards and specifications required by Connecting Transmission Owner; and

The Transmission Developer shall be responsible for the costs that Connecting Transmission Owner incurs in executing the responsibilities enumerated to Connecting Transmission Owner under Article 5.2. The Connecting Transmission Owner shall invoice Transmission Developer for such costs pursuant to Article 12.

### **5.3 Equipment Procurement.**

The Connecting Transmission Owner shall commence design of the Network Upgrade Facilities for which it has construction responsibility, as set forth in Appendix A, and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Transmission Developer and Connecting Transmission Owner otherwise agree in writing:



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NYISO and Connecting Transmission Owner have completed the Facilities Study pursuant to the Facilities Study Agreement;

The NYISO has completed the required cost allocation analyses, and Transmission Developer has provided Security to the Connecting Transmission Owner in accordance with Article 11.4 by the date specified in Appendix B hereto; and

The Connecting Transmission Owner has received written authorization to proceed with design and procurement from the Transmission Developer by the date specified in Appendix B hereto.

### **5.4 Construction Commencement.**

The Connecting Transmission Owner shall commence construction of the Network Upgrade Facilities for which it is responsible as soon as practicable after the following additional conditions are satisfied:

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

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

The Connecting Transmission Owner has received written authorization to proceed with construction from the Transmission Developer by the date specified in Appendix B hereto; and

The Transmission Developer has provided Security to the Connecting Transmission Owner in accordance with Article 11.4 by the dates specified in Appendix B hereto.

### **5.5 Work Progress.**

The Transmission Developer and Connecting Transmission Owner will keep each other, and NYISO, advised periodically as to the progress of their respective design, procurement and construction efforts of the Transmission Project and the Network Upgrade Facilities. Any Party may, at any time, request a progress report from the Transmission Developer or Connecting Transmission Owner.

### **5.6 Information Exchange.**

As soon as reasonably practicable after the Effective Date, the Transmission Developer and Connecting Transmission Owner shall exchange information, and provide NYISO the same information, regarding the design and compatibility of the Transmission Project and Network Upgrade Facilities and the compatibility of the Transmission Project and Network Upgrade

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### **5.7 Network Upgrade Facilities**

Transmission Developer shall submit initial and final specifications for the Network Upgrade Facilities for which it is responsible pursuant to Appendix A to Connecting Transmission Owner and NYISO for review and comments pursuant to the dates set forth in Appendix B. Connecting Transmission Owner and NYISO shall review such specifications to ensure that the Network Upgrade Facilities are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO and comment on such specifications pursuant to the dates set forth in Appendix B. All specifications provided hereunder shall be deemed to be Confidential Information.

The review of Transmission Developer's final specifications by Connecting Transmission Owner and NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Transmission Project or Network Upgrade Facilities. Transmission Developer shall make such changes to the Network Upgrade Facilities as may reasonably be required by Connecting Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the Network Upgrade Facilities are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO.

Transmission Developer and Connecting Transmission Owner shall design and construct the Network Upgrade Facilities for which each is responsible pursuant to Appendix A in accordance with Good Utility Practice. Transmission Developer and Connecting Transmission Owner shall each deliver to the other Parties pursuant to the dates set forth in Appendix B "asbuilt" drawings, information and documents for the Network Upgrade Facilities.

The Connecting Transmission Owner shall transfer operational control of the Network Upgrade Facilities to the NYISO upon completion of such facilities.

### **5.8 Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, the Connecting Transmission Owner and Transmission Developer ("Granting Party") shall each furnish to the other Parties ("Access Party") at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the Point(s) of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Transmission Project and Network Upgrade Facilities with the New York State Transmission System; (ii) operate and maintain the Transmission Project, Network Upgrade Facilities, and the New York State Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access



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Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

### **5.9 Lands of Other Property Owners.**

If any part of the Network Upgrade Facilities is to be installed on property owned by persons other than Transmission Developer or Connecting Transmission Owner, the Connecting Transmission Owner agrees, to the extent consistent with applicable law, at Transmission Developer's expense to use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Network Upgrade Facilities upon such property. Notwithstanding the previous sentence, the Connecting Transmission Owner's exercise of powers and rights to acquire real property or any rights in real property, pursuant to this Article 5.9, is subject to the provisions of the New York Public Authorities Law (or any amendments thereto), including Section 1007.

### **5.10 Permits.**

NYISO, Connecting Transmission Owner and Transmission Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Connecting Transmission Owner shall provide permitting assistance to the Transmission Developer comparable to that provided to the Connecting Transmission Owner's own, or an Affiliate's, generation or transmission facilities, if any.

### **5.11 Suspension.**

Transmission Developer reserves the right, upon written notice to Connecting Transmission Owner and NYISO, to suspend at any time all work by Transmission Developer and Connecting Transmission Owner associated with the construction and installation of the Network Upgrade Facilities required for only that Transmission Developer under this Agreement with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. If the suspension will impact the Transmission Developer's ability to meet any Advisory Milestones or Critical Path Milestones in the Development Agreement, Transmission Developer shall notify the NYISO in accordance with the requirements in Article 3.3 of the Development Agreement. NYISO reserves the right, upon written notice to Transmission Developer and Connecting Transmission Owner, to require the suspension of all work by Transmission Developer and Connecting Transmission Owner associated with the engineering, procurement, and/or construction services under this Agreement if the NYISO terminates the Development Agreement pursuant to Article 8 of the Development Agreement.





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In the event of suspension under this Article 5.11, Transmission Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with the ISO OATT and the Facilities Study report including those which Connecting Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Connecting Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Connecting Transmission Owner shall obtain Transmission Developer's authorization to do so.

Connecting Transmission Owner shall invoice Transmission Developer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Transmission Developer suspends work by the Transmission Developer and Connecting Transmission Owner required under this Agreement pursuant to this Article 5.11, and has not informed the Parties that it is recommencing its work and requested Connecting Transmission Owner to recommence its work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date of the written notice required under this Article 5.11 or the date specified in the written notice of suspension.

### **5.12 Taxes.**

#### **Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Connecting Transmission Owner.**

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

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

#### **Tax Gross-Up Amount.**

Transmission Developer's liability for the cost consequences of any current tax liability under this Article 5.12 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Transmission Developer will pay Connecting

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Transmission Owner, in addition to the amount paid for the Network Upgrade Facilities, an amount equal to (1) the current taxes imposed on Connecting Transmission Owner (“Current Taxes”) on the excess of (a) the gross income realized by Connecting Transmission Owner as a result of payments or property transfers made by Transmission Developer to Connecting Transmission Owner under this Agreement (without regard to any payments under this Article 5.12) (the “Gross Income Amount”) over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the “Present Value Depreciation Amount”), plus (2) an additional amount sufficient to permit the Connecting Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Connecting Transmission Owner’s composite federal and state tax rates at the time the payments or property transfers are received and Connecting Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present Value Depreciation Amount shall be computed by discounting Connecting Transmission Owner’s anticipated tax depreciation deductions as a result of such payments or property transfers by Connecting Transmission Owner’s current weighted average cost of capital. Thus, the formula for calculating Transmission Developer’s liability to Connecting Transmission Owner pursuant to this Article 5.12.2 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$ . Transmission Developer’s estimated liability in the event taxes are imposed shall be stated in Appendix A, Network Upgrade Facilities.

### **Private Letter Ruling or Change or Clarification of Law.**

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

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



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**Refund.**

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

(i) Any payment made by Transmission Developer under this Article 5.12 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

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

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

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

**Taxes Other Than Income Taxes.**

Upon the timely request by Transmission Developer, and at Transmission Developer's sole expense, Connecting Transmission Owner shall appeal, protest, seek abatement of, or

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otherwise contest any tax (other than federal or state income tax) asserted or assessed against Connecting Transmission Owner for which Transmission Developer may be required to reimburse Connecting Transmission Owner under the terms of this Agreement. Transmission Developer shall pay to Connecting Transmission Owner on a periodic basis, as invoiced by Connecting Transmission Owner, Connecting Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Transmission Developer and Connecting Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Transmission Developer to Connecting Transmission 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 tax payment is withheld and ultimately due and payable after appeal, Transmission Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Connecting Transmission Owner. [REDACTED]

### **5.13 Tax Status; Non-Jurisdictional Entities.**

#### **Tax Status.**

Each Party shall cooperate with the other Parties to maintain the other Parties' tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of any Connecting Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, Connecting Transmission Owner shall not be required to comply with any provisions of this Agreement that would result in the loss of tax-exempt status of any of its Tax-Exempt Bonds or impair its ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of Connecting Transmission Owner, the interest on which is not included in gross income under the Internal Revenue Code.

#### **Non-Jurisdictional Entities**

Connecting Transmission Owner does not waive its exemption, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority. [REDACTED]

### **5.14 Modification.**

#### **General.**

If, prior to the In-Service Date of the Transmission Project or Network Upgrade Facilities, either the Transmission Developer or Connecting Transmission Owner proposes to modify the Transmission Project or Network Upgrade Facilities, they must inform the other Parties of the proposed modification and must satisfy the requirements for such modifications in



(i) Section 22.5.4 of Attachment P to the NYISO OATT, and (ii) the Development Agreement.

The Transmission Developer shall be responsible for the cost of any such additional modifications, including the cost of studying the materiality and impact of the modification.

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Following the In-Service Date of the Transmission Project or Network Upgrade Facilities, either the Transmission Developer or Connecting Transmission Owner may undertake modifications to its facilities covered by this Agreement. If either the Transmission Developer or Connecting Transmission Owner plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party, and to NYISO, sufficient information regarding such modification so that the other Party and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the transmission of electricity at the Point(s) of Interconnection. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of construction regarding such work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

### **Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

### **Modification Costs.**

Transmission Developer or Connecting Transmission Owner, as applicable, shall not be assigned the costs of any additions, modifications, or replacements that the other Party makes to the New York State Transmission System to facilitate the interconnection of a third party to the New York State Transmission System, or to provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT.

## **ARTICLE 6. TESTING AND INSPECTION**

### **6.1 Pre-In Service Date Testing and Modifications.**

Prior to the In-Service Date of the Transmission Project or Network Upgrade Facilities, as applicable, the Connecting Transmission Owner or Transmission Developer, as specified in Appendix A, shall test the Transmission Project and Network Upgrade Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Transmission Developer and Connecting Transmission Owner shall each make any modifications to its facilities that are found to be necessary as a result of such testing. Transmission Developer shall bear the cost of all such testing and modifications. Transmission Developer and Connecting Transmission Owner shall coordinate with NYISO prior to performing the testing of the Transmission Project and Network Upgrade Facilities and prior to the facilities entering into service.



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### **6.2 Post-In-Service Date Testing and Modifications.**

Transmission Developer and Connecting Transmission Owner shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the Transmission Project with the New York State Transmission System in a safe and reliable manner. Transmission Developer and Connecting Transmission Owner shall each have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

### **6.3 Right to Observe Testing.**

Transmission Developer and Connecting Transmission Owner shall each notify the other Party, and the NYISO, in advance of its performance of tests of the Transmission Project and Network Upgrade Facilities. The other Party, and the NYISO, shall each have the right, at its own expense, to observe such testing.

### **6.4 Right to Inspect.**

Transmission Developer and Connecting Transmission Owner shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Transmission Developer and Connecting Transmission Owner. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT.

## **ARTICLE 7. METERING**

### **7.1 General.**

Transmission Developer shall procure and install Metering Equipment at any Metering Points identified by the NYISO prior to any operation of the Transmission Project. Transmission Developer shall own, operate, test, maintain, and, if directed by the NYISO, relocate such Metering Equipment in accordance with ISO Procedures, as such requirements are amended from time to time. Transmission Developer shall provide the NYISO and Connecting Transmission Owner, as applicable, with metering data in accordance with the metering requirements set forth in this Agreement, the Operating Agreement (including Section 2.05,

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reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

### **7.2 Check Meters.**

Connecting Transmission Owner, at its option and expense, may install and operate, on its premises and on its side of the Points of Interconnection, one or more check meters to check Transmission Developer's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.4 below. The installation, operation and maintenance thereof shall be performed entirely by Connecting Transmission Owner in accordance with Good Utility Practice.

### **7.3 Standards.**

Transmission Developer shall install, calibrate, and test revenue quality Metering Equipment including potential transformers and current transformers in accordance with ISO Procedures, as such requirements are amended from time to time.

### **7.4 Testing of Metering Equipment.**

Transmission Developer shall inspect and test all of its Metering Equipment upon installation and at least once every two (2) years thereafter. If required by ISO Procedures, Transmission Developer shall, at its own expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Developer shall give reasonable notice of the time when any inspection or test shall take place, and NYISO and Connecting Transmission Owner may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Transmission Developer's expense in order to provide accurate metering. Transmission Developer and NYISO shall address the loss of meter data or meter data anomalies in accordance with ISO Procedures. The NYISO shall reserve the right to review all associated metering equipment installation on the Transmission Developer's or Connecting Transmission Owner's property at any time.

### **7.5 Metering Data.**

At Transmission Developer's expense, the metered data shall be telemetered to one or more locations designated by NYISO and Connecting Transmission Owner. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy at the Metering Points.

## **ARTICLE 8. COMMUNICATIONS**

### **8.1 Transmission Developer Obligations.**

Transmission Developer shall maintain satisfactory operating communications, including providing analog and digital real-time telemetry, with Connecting Transmission Owner and NYISO in accordance with the requirements in this Agreement, the Operating Agreement

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(including Section 2.05, *Local Control Center, Metering and Telemetry*), NYISO Tariffs, and ISO Procedures, as such requirements are amended from time to time. Transmission Developer shall provide standard voice line, dedicated voice line and facsimile communications at its control center for the Transmission Project through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Transmission Developer shall also provide the dedicated data circuit(s) necessary to provide Transmission Developer data to Connecting Transmission Owner and NYISO as set forth in Appendix D hereto. The data circuit(s) shall extend from the Transmission Project to the location(s) specified by Connecting Transmission Owner and NYISO. Any required maintenance of such communications equipment shall be performed by Transmission Developer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

### **8.2 Remote Terminal Unit.**

Prior to the Initial Synchronization Date of the Transmission Project, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Transmission Developer, or by Connecting Transmission Owner at Transmission Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Connecting Transmission Owner and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Connecting Transmission Owner and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by that other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

### **8.3 No Annexation.**

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

## **ARTICLE 9. OPERATIONS**

### **9.1 General.**

Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards. Connecting Transmission Owner or Transmission Developer,



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as applicable, shall provide the NYISO with notifications of all of its power system equipment

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additions or modifications in accordance with ISO Procedures, including the NYISO's Reliability Analysis Data Manual (Manual 24).

### **9.2 NYISO and Connecting Transmission Owner Obligations.**

Connecting Transmission Owner and NYISO shall cause the New York State Transmission System to be operated, maintained and controlled in a safe and reliable manner in accordance with this Agreement and the NYISO Tariffs. Connecting Transmission Owner and NYISO may provide operating instructions to Transmission Developer consistent with this Agreement, NYISO procedures and Connecting Transmission Owner's operating protocols and procedures as they may change from time to time. Connecting Transmission Owner and NYISO will consider changes to their respective operating protocols and procedures proposed by Transmission Developer.

### **9.3 Transmission Developer Obligations.**

Transmission Developer shall at its own expense operate, maintain and control the Transmission Project in a safe and reliable manner and in accordance with this Agreement, the NYISO Tariffs, ISO Procedures, and the Operating Agreement. Transmission Developer shall operate the Transmission Project in accordance with NYISO and Connecting Transmission Owner requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

### **9.4 Reserved.**

### **9.5 Outages and Interruptions.**

#### **Outages.**

##### **9.5.1.1 Outage Authority and Coordination.**

Transmission Developer and Connecting Transmission Owner may each, in accordance with NYISO procedures and Good Utility Practice and in coordination with the other Party, remove from service any of its respective Transmission Project facilities or Network Upgrade Facilities that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency or Emergency State, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both the Transmission Developer and the Connecting Transmission Owner. In all circumstances either Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

##### **9.5.1.2 Outage Schedules.**



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The Transmission Developer or Connecting Transmission Owner, as applicable and pursuant to ISO Procedures, shall post scheduled outages of its respective transmission facilities on the NYISO OASIS.

### **9.5.1.3 Outage Restoration.**

If an outage on the Transmission Project or Network Upgrade Facilities adversely affects the other Party's operations or facilities, the Party that owns the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns the facility that is out of service shall provide the other Party and NYISO, to the extent such information is known, information on the nature of the Emergency or Emergency State, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

**Interruption of Service.** If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO, Connecting Transmission Owner, or Transmission Developer may require the Connecting Transmission Owner or Transmission Developer to interrupt the transmission of electricity if such transmission of electricity could adversely affect the ability of NYISO and, as applicable, Connecting Transmission Owner or Transmission Developer to perform such activities as are necessary to safely and reliably operate and maintain the New York State Transmission System. The following provisions shall apply to any interruption permitted under this Article 9.5.2:

**9.5.2.1** The interruption shall continue only for so long as reasonably necessary under Good Utility Practice;

**9.5.2.2** When the interruption must be made under circumstances which do not allow for advance notice, NYISO, Connecting Transmission Owner, or Transmission Developer shall notify, as applicable, Transmission Developer or Connecting Transmission Owner by telephone as soon as practicable of the reasons for the curtailment or interruption, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

**9.5.2.3** Except during the existence of an Emergency or Emergency State, when the interruption can be scheduled without advance notice, NYISO, Connecting Transmission Owner, or Transmission Developer shall notify, as applicable, Transmission Developer or Connecting Transmission Owner in advance regarding the timing of such scheduling and of the expected duration. The Parties shall coordinate with each other using Good Utility Practice to schedule the interruption during periods of least impact to Transmission Developer, the Connecting Transmission Owner and the New York State Transmission System;

**9.5.2.4** The Parties shall cooperate and coordinate with each other to the extent

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**System Protection and Other Control Requirements.**

**9.5.3.1 System Protection Facilities.** Transmission Developer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Transmission Project. Connecting Transmission Owner shall install at Transmission Developer's expense any System Protection Facilities that may be required on the New York State Transmission System as a result of the interconnection of the Transmission Project.

**9.5.3.2** The protection facilities of both the Transmission Developer and Connecting Transmission Owner shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

**9.5.3.3** The Transmission Developer and Connecting Transmission Owner shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.

**9.5.3.4** The protective relay design of the Transmission Developer and Connecting Transmission Owner shall each incorporate the necessary test switches to perform the tests required in Article 6 of this Agreement. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Transmission Developer's Transmission Project.

**9.5.3.5** The Transmission Developer and Connecting Transmission Owner will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice, NERC and NPCC criteria.

**9.5.3.6** Prior to the In-Service Dates of the Network Upgrade Facilities and Transmission Project, the Transmission Developer and Connecting Transmission Owner shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, the Transmission Developer and Connecting Transmission Owner shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

**Requirements for Protection.**

In compliance with NPCC requirements and Good Utility Practice, Transmission Developer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Transmission Project to any short circuit occurring on the New York State Transmission System not otherwise isolated by Connecting Transmission Owner's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Such

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protective equipment shall include, without limitation, a disconnecting device or switch with  
load-interrupting capability located between the Transmission Project and the New York State

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Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Transmission Developer and Connecting Transmission Owner. Transmission Developer shall be responsible for protection of the Transmission Project and Transmission Developer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Transmission Developer shall be solely responsible to disconnect the Transmission Project and Transmission Developer's other equipment if conditions on the New York State Transmission System could adversely affect the Transmission Project.

### **Power Quality.**

Neither the facilities of Transmission Developer nor the facilities of Connecting Transmission Owner shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

### **9.6 Switching and Tagging Rules.**

The Transmission Developer and Connecting Transmission Owner shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a nondiscriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

### **9.7 Disturbance Analysis Data Exchange.**

The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Transmission Project or the New York State Transmission System by gathering and providing access to any information relating to any disturbance, including information from disturbance recording equipment, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

## **ARTICLE 10. MAINTENANCE**

### **10.1 Connecting Transmission Owner Obligations.**

Connecting Transmission Owner shall maintain its transmission facilities, including the Network Upgrade Facilities, in a safe and reliable manner and in accordance with this Agreement.

### **10.2 Transmission Developer Obligations.**



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Transmission Developer shall maintain its Transmission Project in a safe and reliable  
manner and in accordance with this Agreement.

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### **10.3 Coordination.**

The Transmission Developer and Connecting Transmission Owner shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Transmission Project and Network Upgrade Facilities. The Transmission Developer and Connecting Transmission Owner shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance, in accordance with NYISO procedures.

### **10.4 Secondary Systems.**

The Transmission Developer and Connecting Transmission Owner shall each cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of Transmission Developer or Connecting Transmission Owner's facilities and equipment which may reasonably be expected to impact the other Party. The Transmission Developer and Connecting Transmission Owner shall each provide advance notice to the other Party, and to NYISO, before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

### **10.5 Operating and Maintenance Expenses.**

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Transmission Developer shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Transmission Project. The Connecting Transmission Owner shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Network Upgrade Facilities.

## **ARTICLE 11. PERFORMANCE OBLIGATION**

### **11.1 Transmission Project.**

Transmission Developer shall design, procure, construct, install, own and/or control the Transmission Project described in Appendix C hereto, at its sole expense.

### **11.2 Network Upgrade Facilities.**

Connecting Transmission Owner and Transmission Developer shall design, procure, construct, and install the Network Upgrade Facilities as specified in Appendix A hereto. Connecting Transmission Owner shall own and control the Network Upgrade Facilities.



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### **11.3 Special Provisions for Affected Systems.**

For the re-payment of amounts advanced to Affected System Operator for Network Upgrade Facilities, the Transmission Developer and Affected System Operator shall enter into an agreement that provides for such re-payment, but only if responsibility for the cost of such Network Upgrade Facilities is not to be allocated in accordance with the Facilities Study report. The agreement shall specify the terms governing payments to be made by the Transmission Developer to the Affected System Operator as well as the re-payment by the Affected System Operator.

### **11.4 Provision of Security.**

Within thirty (30) Calendar Days of the Effective Date of this Agreement, Transmission Developer shall provide Connecting Transmission Owner with Security in the amount of the cost estimate for the Network Upgrade Facilities, in accordance with Section 22.9.3 of Attachment P of the ISO OATT, as documented in the Facilities Study report. This amount is set forth in Appendix A of this Agreement. If the Transmission Developer: (i) does not pay an invoice issued by the Connecting Transmission Owner pursuant to Article 12.1 within the timeframe set forth in Article 12.3 or (ii) does not pay any disputed amount into an independent escrow account pursuant to Article 12.4, the Connecting Transmission Owner may draw upon Transmission Developer's Security to recover such payment. The Security shall be reduced on a dollar-for-dollar basis for payments made to Connecting Transmission Owner for the purpose of constructing, procuring, and installing the Network Upgrade Facilities.

In addition:

**11.4.1** The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of Connecting Transmission Owner, and contains terms and conditions that guarantee payment of the Security amount set forth in Appendix A of this Agreement.

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

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

### **11.5 Forfeiture of Security.**

The Security that the Transmission Developer provides the Connecting Transmission Owner in accordance with Article 11.4 of this Agreement shall be irrevocable and shall be subject to forfeiture in the event that the Transmission Developer subsequently terminates or abandons development of the Transmission Project. Any Security provided by the Transmission Developer to the Connecting Transmission Owner shall be subject to forfeiture to the extent necessary to defray the cost of: (1) Network Upgrade Facilities required for other Transmission

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Developers whose Transmission Project interconnection studies included the Transmission  
Developer's Transmission Project and Network Upgrade Facilities in their base cases; and (2)

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System Upgrade Facilities and System Deliverability Upgrade Facilities required for projects for which the Transmission Project and Network Upgrade Facilities were included in their Annual Transmission Reliability Assessment and/or Class Year Deliverability Study, as applicable. If Transmission Developer's Security is subject to forfeiture to defray the costs of an affected upgrade pursuant to this Article 11.5 and the Security is not in a form that can be readily drawn on by the Connecting Transmission Owner to defray the costs of the affected upgrade, Transmission Developer shall negotiate in good faith with the Connecting Transmission Owner to replace the Security with cash or an alternative form of Security that can be readily drawn on by Connecting Transmission Owner up to the amount required to satisfy Transmission Developer's Security obligations under this Agreement, including defraying the costs of the affected upgrade. Connecting Transmission Owner shall only be responsible for using Transmission Developer's Security to defray the costs of an affected upgrade to the extent Transmission Developer has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on to defray such costs.

### **11.6 Network Upgrade Facility Costs**

██████████ If the actual cost of Network Upgrade Facilities is less than the agreed-to and secured amount, Transmission Developer is responsible only for the actual cost figure.

If the actual cost of Network Upgrade Facilities is greater than the agreed-to and secured amount because other projects have been expanded, accelerated, otherwise modified or terminated, Transmission Developer is responsible only for the agreed-to and secured amount for the Network Upgrade Facilities. The additional cost is covered by the developers of the modified projects, or by the drawing on the cash that has been paid and the Security that has been posted for terminated projects, depending on the factors that caused the additional cost. Such forfeitable Security from other developers will be drawn on only as needed for this purpose, and only to the extent that the terminated project associated with that Security has caused additional cost and that the developer of the terminated project has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on.

If the actual cost of the Network Upgrade Facilities is greater than the agreed-to and secured amount for reasons other than those set forth in Article 11.6.2, Transmission Developer will pay the additional costs to Connecting Transmission Owner as such costs are incurred. Disputes between Transmission Developer and Connecting Transmission Owner concerning costs in excess of the agreed-to and secured amount will be resolved by the parties in accordance with the terms and conditions of Article 27.

### **11.7 Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, the Connecting Transmission Owner may propose to recover line outage costs associated with the installation of Network Upgrade Facilities on a case-by-case basis.



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### **ARTICLE 12. INVOICE**

#### **12.1 General.**

The Transmission Developer and Connecting Transmission Owner shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Transmission Developer and Connecting Transmission Owner may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts one Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

#### **12.2 Final Invoice and Refund of Remaining Security.**

Within six months after completion of the construction of Network Upgrade Facilities, Connecting Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrade Facilities and shall set forth such costs in sufficient detail to enable Transmission Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Connecting Transmission Owner shall refund to Transmission Developer any amount by which the actual payment by Transmission Developer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice. Following the later of the completion of the construction of the Network Upgrade Facilities and Transmission Developer's payment of any final invoice issued under this Article 12.2, Connecting Transmission Owner shall refund to the Transmission Developer any remaining portions of its Security, except as set forth in Article 11.5. Connecting Transmission Owner shall provide Transmission Developer with the refunded amount within thirty (30) Calendar Days of the Parties' satisfaction of the requirements in this Article 12.2.

#### **12.3 Payment.**

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

#### **12.4 Disputes.**

In the event of a billing dispute between Connecting Transmission Owner and Transmission Developer, Connecting Transmission Owner shall continue to perform under this Agreement as long as Transmission Developer: (i) continues to make all payments not in dispute; and (ii) pays to Connecting Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Transmission Developer



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fails to meet these two requirements for continuation of service, then Connecting Transmission  
Owner may provide notice to Transmission Developer of a Default pursuant to Article 17.

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Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

### **ARTICLE 13. EMERGENCIES**

#### **13.1 Obligations.**

Each Party shall comply with the Emergency State procedures of NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee. Transmission Developer and Connecting Transmission Owner agree to coordinate with NYISO to develop procedures that will address the operations of the Transmission Project during Emergency conditions.

#### **13.2 Notice.**

Each Party shall notify the other Parties promptly when it becomes aware of an Emergency or Emergency State that affects, or may reasonably be expected to affect, the Transmission Project or the New York State Transmission System. To the extent information is known, the notification shall describe the Emergency or Emergency State, the extent of the damage or deficiency, the expected effect on the operation of Transmission Developer's or Connecting Transmission Owner's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

#### **13.3 Immediate Action.**

Unless, in Transmission Developer's reasonable judgment, immediate action is required, Transmission Developer shall obtain the consent of Connecting Transmission Owner, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Transmission Project in response to an Emergency or Emergency State either declared by NYISO, Connecting Transmission Owner or otherwise regarding New York State Transmission System.

#### **13.4 NYISO, Transmission Developer, and Connecting Transmission Owner Authority.**

Consistent with ISO Procedures, Good Utility Practice, and this Agreement, any Party may take whatever actions with regard to the New York State Transmission System it deems necessary during an Emergency or Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission System, (iii) limit or prevent damage, and (iv) expedite restoration of service. Transmission Developer and Connecting Transmission Owner shall use Reasonable Efforts to assist the other in such actions.



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### **13.5 Limited Liability.**

No Party shall be liable to another Party for any action it takes in responding to an Emergency or Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

## **ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW**

### **14.1 Regulatory Requirements.**

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Transmission Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

### **14.2 Governing Law.**

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

This Agreement is subject to all Applicable Laws and Regulations.

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

## **ARTICLE 15. NOTICES**

### **15.1 General.**

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

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



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### **15.2 Billings and Payments.**

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

### **15.3 Alternative Forms of Notice.**

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

### **15.4 Operations and Maintenance Notice.**

Transmission Developer and Connecting Transmission Owner shall each notify the other Party, and NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

## **ARTICLE 16. FORCE MAJEURE**

**16.1** Economic hardship is not considered a Force Majeure event.

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

## **ARTICLE 17. DEFAULT**

### **17.1 General.**

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



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### **17.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 17, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

## **ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **18.1 Indemnity.**

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

#### **Indemnified Party.**

If a Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

#### **Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

#### **Indemnity Procedures.**

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



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commencement of any action or administrative or legal proceeding or investigation as to which  
the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the  
Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a

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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 defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

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

### **18.2 No Consequential Damages.**

Other than the indemnity obligations set forth in Article 18.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

### **18.3 Insurance.**

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



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

Commercial General Liability ("CGL") Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available using Insurance Services Office, Inc. Commercial General Liability Coverage ("ISO CG") Form CG 00 01 04 13 or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

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

If applicable, the Commercial General Liability and Comprehensive Automobile Liability Insurance policies should include contractual liability for work in connection with construction or demolition work on or within 50 feet of a railroad, or a separate Railroad Protective Liability Policy should be provided.

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

The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of Transmission Developer and Connecting Transmission Owner shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG 20 37 04 13 or equivalent to or better forms. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and non-contributory. Transmission Developer and Connecting Transmission Owner shall each be responsible for its respective deductibles or retentions.



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

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

The requirements contained herein as to the types and limits of all insurance to be maintained by the Transmission Developer and Connecting Transmission Owner are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

Within ten (10) days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Transmission Developer and Connecting Transmission Owner shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

Notwithstanding the foregoing, Transmission Developer and Connecting Transmission Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.1 through 18.3.9 to the extent it maintains a self-insurance program; provided that, such Party's senior debt is rated at investment grade, or better, by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.1 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.12, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Articles 18.3.1 through 18.3.9 and provide evidence of such coverages. For any period of time that a Party's senior debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9.

Transmission Developer and Connecting Transmission Owner agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

Subcontractors of each party must maintain the same insurance requirements stated under Articles 18.3.1 through 18.3.9 and comply with the Additional Insured



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requirements herein. In addition, their policies must state that they are primary and noncontributory and contain a waiver of subrogation.

### **ARTICLE 19. ASSIGNMENT**

This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Transmission Developer shall have the right to assign this Agreement, without the consent of the NYISO or Connecting Transmission Owner, for collateral security purposes to aid in providing financing for the Transmission Project, provided that the Transmission Developer will promptly notify the NYISO and Connecting Transmission Owner of any such assignment. Any financing arrangement entered into by the Transmission Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Connecting Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Connecting Transmission Owner with proof that it meets the requirements of Articles 11.4 and 18.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

### **ARTICLE 20. SEVERABILITY**

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

### **ARTICLE 21. COMPARABILITY**

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

### **ARTICLE 22. CONFIDENTIALITY**

#### **22.1 Confidentiality.**



Certain information exchanged by the Parties during the term of this Agreement shall constitute confidential information (“Confidential Information”) and shall be subject to this Article 22.

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

### **22.2 Term.**

During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

### **22.3 Confidential Information.**

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

### **22.4 Scope.**

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 22.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

### **22.5 Release of Confidential Information.**

No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be considering providing financing to or equity participation with Transmission Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions.



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remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

### **22.6 Rights.**

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

### **22.7 No Warranties.**

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.

### **22.8 Standard of Care.**

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

### **22.9 Order of Disclosure.**

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

### **22.10 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 to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written

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### **22.11 Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

### **22.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

### **22.13 Required Notices Upon Requests or Demands for Confidential Information**

Except as otherwise expressly provided herein, no Party shall disclose Confidential Information to any person not employed or retained by the Party possessing the Confidential Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or

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Governmental Authority makes any request or demand for any of the information described in  
this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and

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agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

### **ARTICLE 23. TRANSMISSION DEVELOPER AND CONNECTING TRANSMISSION OWNER NOTICES OF ENVIRONMENTAL RELEASES**

Transmission Developer and Connecting Transmission Owner shall each notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Transmission Project or Network Upgrade Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

### **ARTICLE 24. INFORMATION REQUIREMENT**

#### **24.1 Information Acquisition.**

Connecting Transmission Owner and Transmission Developer shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as described below and in accordance with Applicable Reliability Standards.

#### **24.2 Information Submission Concerning the Network Upgrade Facilities.**

The initial information submission by Connecting Transmission Owner shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation of the Network Upgrade Facilities and shall include New York State Transmission System information necessary to allow the Transmission Developer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Transmission Developer and Connecting Transmission Owner. On a quarterly basis Connecting Transmission Owner and Transmission Developer shall each provide the other Parties a status report on the construction and installation of the Network Upgrade Facilities for which it has construction responsibility pursuant to Appendix A, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

#### **24.3 Updated Information Submission Concerning the Transmission Project.**

The updated information submission by the Transmission Developer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation of the Transmission Project. Transmission Developer shall submit a completed copy of the Transmission Project data requirements contained in Appendix 1 to the Transmission Interconnection Procedures. It shall also include any additional information



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Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Transmission Developer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Transmission Developer's data is different from what was originally provided to Connecting Transmission Owner and NYISO pursuant to a Transmission Interconnection Study agreement among Connecting Transmission Owner, NYISO and Transmission Developer and this difference may be reasonably expected to affect the other Parties' facilities or the New York State Transmission System, but does not require the submission of a new Transmission Interconnection Application, then NYISO will conduct appropriate studies to determine the impact on the New York State Transmission System based on the actual data submitted pursuant to this Article 24.3. Such studies will provide an estimate of any additional modifications to the New York State Transmission System or Network Upgrade Facilities based on the actual data and a good faith estimate of the costs thereof. The Transmission Developer shall not begin Trial Operation for the Transmission Project until such studies are completed. The Transmission Developer shall be responsible for the cost of any modifications required by the actual data, including the cost of any required studies.

### **24.4 Information Supplementation.**

Prior to the In-Service Date, the Transmission Developer and Connecting Transmission Owner shall supplement their information submissions described above in this Article 24 with any and all "as-built" Transmission Project and Network Upgrade Facilities information or "astested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Transmission Developer shall conduct tests on the Transmission Project as required by Good Utility Practice.

Subsequent to the In-Service Date, the Transmission Developer shall provide Connecting Transmission Owner and NYISO any information changes concerning the Transmission Project due to equipment replacement, repair, or adjustment. Connecting Transmission Owner shall provide the Transmission Developer and NYISO any information changes concerning the Network Upgrade Facilities due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Connecting Transmission Owner substation that may affect the Transmission Project's equipment ratings, protection or operating requirements. The Transmission Developer and Connecting Transmission Owner shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

## **ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS**

### **25.1 Information Access.**

Each Party ("Disclosing Party") shall make available to another Party ("Requesting Party") information that is in the possession of the Disclosing Party and is necessary in order for the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the

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Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes

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other than those set forth in this Article 25.1 of this Agreement and to enforce their rights under this Agreement.

### **25.2 Reporting of Non-Force Majeure Events.**

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

### **25.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 22 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party’s accounts and records pertaining to the other Party’s performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party’s costs, calculation of invoiced amounts, and each Party’s actions in an Emergency or Emergency State. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to the Party’s performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4 of this Agreement.

### **25.4 Audit Rights Periods.**

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

Accounts and records related to the design, engineering, procurement, and construction of the Network Upgrade Facilities shall be subject to audit for a period of twenty-four months following Connecting Transmission Owner’s issuance of a final invoice in accordance with Article 12.2 of this Agreement.

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

Accounts and records related to a Party’s performance or satisfaction of its obligations under this Agreement other than those described in Article 25.4.1 of this Agreement shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.



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### **25.5 Audit Results.**

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

## **ARTICLE 26. SUBCONTRACTORS**

### **26.1 General.**

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

### **26.2 Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Connecting Transmission Owner be liable for the actions or inactions of the Transmission Developer or its subcontractors with respect to obligations of the Transmission Developer under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

### **26.3 No Limitation by Insurance.**

The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 27. DISPUTES**

### **27.1 Submission.**

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



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### **27.2 External Arbitration Procedures.**

Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

### **27.3 Arbitration Decisions.**

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

### **27.4 Costs.**

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

### **27.5 Termination.**

Notwithstanding the provisions of this Article 27, any Party may terminate this Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

## **ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **28.1 General.**

Each Party makes the following representations, warranties and covenants:





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**Good Standing.**

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

**Authority.**

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

**No Conflict.**

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

**Consent and Approval.**

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

**ARTICLE 29. MISCELLANEOUS**

**29.1 Binding Effect.**

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

**29.2 Conflicts.**

If there is a discrepancy or conflict between or among the terms and conditions of this cover agreement and the Appendices hereto, the terms and conditions of this cover agreement

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - Joint IA among NYISO NYPA and NextEra shall be given precedence over the Appendices, except as otherwise expressly agreed to in writing by the Parties.

## **SERVICE AGREEMENT NO. 2603**

### **29.3 Rules of Interpretation.**

This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this Agreement or such Appendix to this Agreement, or such Section to the Transmission Interconnection Procedures or such Appendix to the Transmission Interconnection Procedures, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

### **29.4 Compliance.**

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

### **29.5 Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Transmission Developer and Connecting Transmission Owner are several, and are neither joint nor joint and several.

### **29.6 Entire Agreement.**

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



## **SERVICE AGREEMENT NO. 2603**

### **29.7 No Third Party Beneficiaries.**

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

### **29.8 Waiver.**

The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or Default of this Agreement for any reason by the Transmission Developer shall not constitute a waiver of the Transmission Developer's legal rights to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and Connecting Transmission Owner in accordance with the provisions of the ISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

### **29.9 Headings.**

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

### **29.10 Multiple Counterparts.**

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

### **29.11 Amendment.**

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

### **29.12 Modification by the Parties.**

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

### **29.13 Reservation of Rights.**

NYISO and Connecting Transmission Owner shall have the right to make unilateral filings with FERC to modify this Agreement with respect to any rates, terms and conditions,

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - Joint IA among NYISO NYPA and NextEra charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and

## **SERVICE AGREEMENT NO. 2603**

Transmission Developer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

### **29.14 No Partnership.**

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

### **29.15 Other Transmission Rights.**

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





**SERVICE AGREEMENT NO. 2603**

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

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

By:

Name: \_\_\_\_\_

Title:

Date:

**New York Power Authority**

By:

Date:

Name: \_\_\_\_\_

Title:

Date:

**NextEra Energy Transmission New York, Inc.**

By:

Name: \_\_\_\_\_

Title:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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## **SERVICE AGREEMENT NO. 2603**

### **APPENDICES**

#### **Appendix A**

Network Upgrade Facilities

#### **Appendix B**

Milestones

#### **Appendix C**

Interconnection Details

#### **Appendix D**

Security Arrangements Details

#### **Appendix E-1**

Initial Synchronization Date

#### **Appendix E-2**

In-Service Date

#### **Appendix F**

Addresses for Delivery of Notices and Billings

## SERVICE AGREEMENT NO. 2603

### APPENDIX A

#### NETWORK UPGRADE FACILITIES

##### 1. Network Upgrade Facilities

###### A. Network Upgrade Facilities for Connecting Transmission Owner's Transmission System

The Transmission Project will interconnect to the New York State Transmission System at existing transmission facilities owned and operated by the Connecting Transmission Owner. The Facilities Study identified Network Upgrade Facilities required to reliably interconnect the Transmission Project to the Connecting Transmission Owner's system as detailed below and depicted in Figure A-2.

The Connecting Transmission Owner's and Transmission Developer's specific responsibilities concerning the performance of the engineering, design, procurement, construction, installation, testing, and commissioning of the Network Upgrade Facilities are provided in Section 2 of Appendix A. To the extent not inconsistent with the terms of this Agreement or the NYISO OATT, the design of all Network Upgrade Facilities electrical, civil, structural, and mechanical systems and components must comply with Connecting Transmission Owner's "Design Criteria for Developer Connection to the New York Power Authority Transmission System" (<https://www.nypa.gov/-/media/nypa/documents/document-library/transmission/design-criteria-developer-connection-nypa-trans-system.pdf>). The Connecting Transmission Owner's design criteria include the applicable NERC Reliability Standards and NPCC Directories (including those NERC Standards and NPCC Directories in effect or approved at the time of construction and that will be applicable to the Network Upgrade Facilities once they are placed in service).

The Network Upgrade Facilities are as follows.

#### **[CONTAINS CEII - SECTION 1.A.i REMOVED FROM PUBLIC VERSION]**

- ii. *Connecting the two Connecting Transmission Owner-Owned 345 kV Lines in and out of the Transmission Developer's New Dysinger Switchyard (Lines NS1-38, NH2, and SH1-39)*

The Transmission Developer will split both the existing lines (NS1-38 and NH2) on both sides of existing lattice single circuit 345 kV structure #25-4 utilizing a total of four steel single pole angle dead-end structures, then re-route the conductor and shield wires on each side of the new steel monopoles for both circuits to the north on a total of six new steel single pole single circuit structures and three new steel single pole double circuit structures to the new Dysinger Switchyard. Figure A-1 shows the location and proposed structure names of this work. The Transmission Developer will also be responsible for reconfiguring the jumpers in between structures #25-6 and 25-7 on the northern line (NS1-38) to reconnect the existing tap separation.

This work will include the following major electrical and physical equipment:

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- Install four (4) new single circuit, single steel pole dead-end structures (ND1\_25/4, DH1\_25/4G, ND2\_25/4, and DH2\_25/4G) designed to Connecting Transmission Owner's standards;
- Install two (2) new double circuit, single steel pole dead-end structures (ND2-25/4A & DH2-25/4F and ND2-25/4C & DH2-25/4D) designed to Connecting Transmission Owner's standards;
- Install one (1) new double circuit, single steel pole tangent structure (ND2-25/4B & DH2-25/4E) designed to Connecting Transmission Owner's standards;
- Install four (4) new single circuit, single steel pole tangent structures (ND1-25/4A, ND1-25/4B, DH1-25/4E, and DH1-25/4F) designed to Connecting Transmission Owner's standards;
- Install two (2) new single circuit, single pole dead-end structures (ND1-25/4C and DH1-25/4D) designed to Connecting Transmission Owner's standards;
- String approximately 8,000 circuit feet of (2 bundle/phase) 795kcmil 26/7 stranded aluminum-conductor steel-reinforced ("ACSR") "Drake" conductor on circuits ND1, ND2, DH1, and DH2 from tap structures ND1-25/4, ND2-25/4, DH1-25/4G, and DH2-25/4G up to Dysinger Switchyard;
- String approximately 10,000 total feet of an optical ground wire from existing structure ND2-24/1 termination through the angle structure 25/4 and up to the H-frame in the Dysinger Switchyard;
  - The OPGW fiber shall be landed in a splice box located on the H-frame in the Dysinger Switchyard;
  - All-dielectric self-supporting ("ADSS") cable will be used to route the OPGW from the splice box to the underground cable trench within the Dysinger yard to the control building connection and fiber distribution panel located in the Dysinger control building;
- Structure DH2-25/4G will be installed and existing OPGW will be terminated and routed down DH2-25/4G to a splice box;
  - There will be (2) separate fiber paths from the terminations on each side of this structure to the Dysinger Switchyard:
    - Fiber Path 1 - Approximately 2000' of new OPGW will be installed from the angle structure DH2/25/4G to the H-frame at the Dysinger Switchyard where the OPGW will be terminated. ADSS cable will be used from the splice box to the fiber distribution panel located in the Dysinger Switchyard; and
    - Fiber Path 2 - Approximately 2000' of underground fiber cable will be routed from the structure splice box to the Dysinger Switchyard carrying fibers that will support the SONET ring;
- Install a communication cabinet with a fiber distribution panel for the termination of the incoming fibers;
- String approximately 4,000 total feet of an overhead ground wire on circuits ND1 and DH1 from structures ND1-25/4 and DH1-25/4G up to the Dysinger Switchyard;
- Remove two (2) existing lattice structures and foundations - existing structure numbers

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NS1 25-4 and NR1 25-4 - which structures shall be disassembled and cataloged for long  
term storage;

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- Remove the existing insulators and hardware assemblies on six (6) single pole structures within the New York State Electric & Gas Corporation right-of-way;
- Splice new 795 kcmil 26/7 “Drake” conductor between NR1 25/6 and 25/7 structures in accordance with Connecting Transmission Owner’s standards; and
- Cross Transmission Developer’s new 345 kV line under Connecting Transmission Owner’s 345 kV lines SH1-39 and NH2 (future DH1 and DH2);
  - The proposed 345 kV transmission line will transition and cross underneath the Connecting Transmission Owner’s existing 345 kV lines to Station 255.
  - The OPGW will be terminated on both structures on either end of the Connecting Transmission Owner’s right of way and will be buried to provide continuous connection.

Transmission line nomenclatures for current configuration, after Station 255 commissioning, and after Dysinger Switchyard commissioning are shown in the table below:

Current Configuration	Line 1	Niagara-Somerset NS1-38	Somerset-Station 255 SH1-39	Station 255- Station 80 HR1
	Line 2	Niagara-Station 255 NH2		Station 255- Station 80 HR2
After Dysinger switchyard commissioning	Line 1	Niagara-Dysinger ND1	Dysinger-Station 255 DH1	Station 255- Station 80 HR1
	Line 2	Niagara-Dysinger ND2	Dysinger-Station 255 DH2	Station 255- Station 80 HR2

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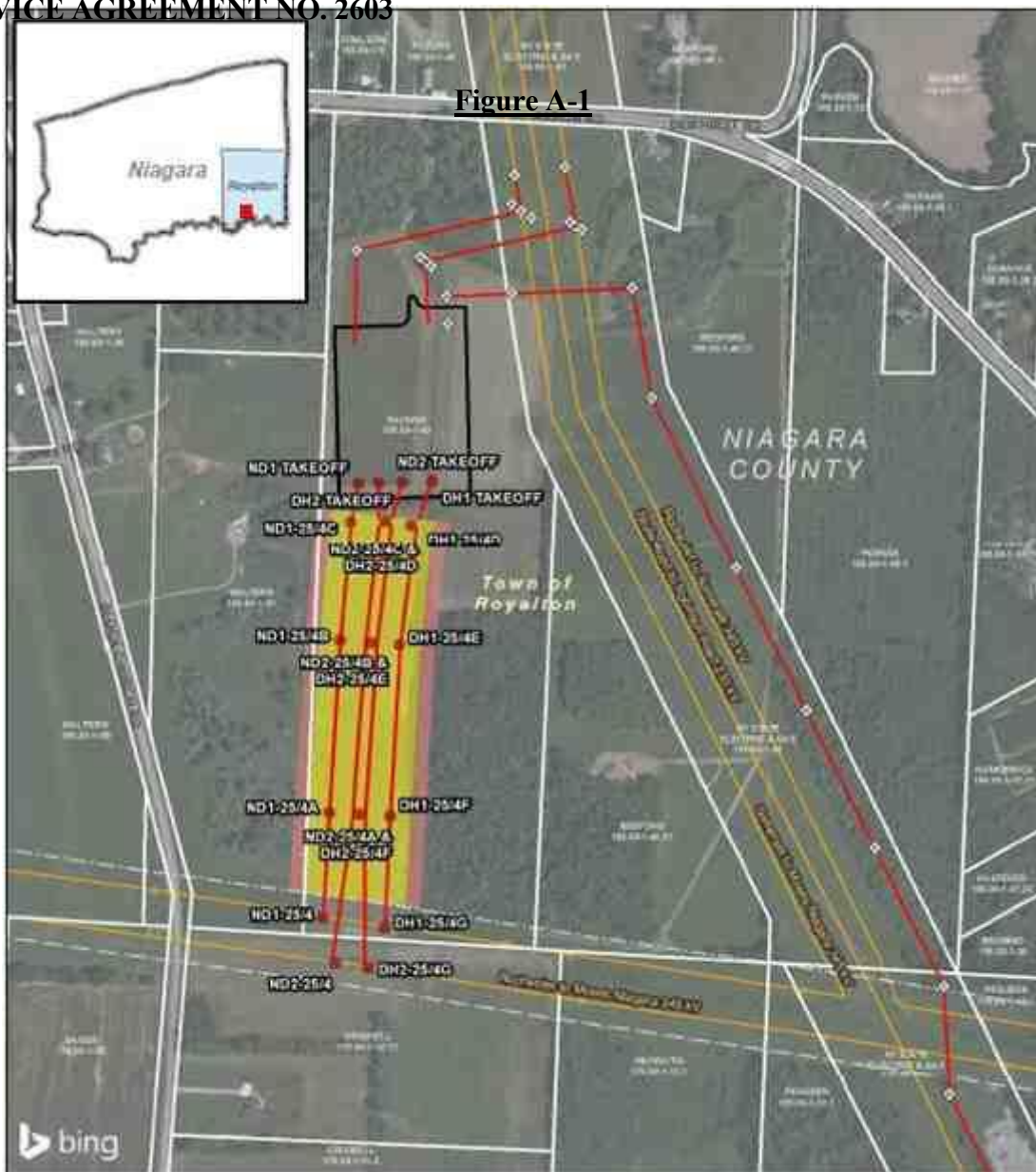


Figure A-1

During final detailed engineering, Transmission Developer must coordinate with Connecting Transmission Owner’s engineering and operations personnel to ensure clearances and design details allow for Connecting Transmission Owner’s operating practices and safety guidelines to maintain minimum approach distances and safe work conditions. Connecting Transmission Owner will require confirmation that all clearances will be met as specified in the National Electric Safety Code (“NESC”). Initial station offsets for conductors and shield wires must be as specified in the NESC. A design criteria report shall include reference to specific sections and the basis for the design and computer models used. This will be used to establish

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final sag and tensions. After initial baseline design and configurations are derived, the circuits  
need to be analyzed for live line work activities. Clearances from phase-to-phase and phase-to-

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ground shall include a depiction of clearance with the appropriate live line envelope from the NESC. Transitional conductor and bundle assemblies will be designed to not limit approach from the ground and the use of carts and ladders for mid span activities or prohibit the ability for any aerial activities. Clearance evaluations need to include infrastructure upgrades, including road and pad construction configurations for crew live line working tools including trucks, trailers and heavy equipment including cranes and buckets for maintenance, repairs and operation of the shield wires. The plan should minimize regrading of existing surfaces where the lines turn towards the substation.

The removal, disposal and potential sale of any Connecting Transmission Owner assets must be in compliance with Connecting Transmission Owner's procedures and standards including, but not limited to, the New York State Public Authorities Law. Unless otherwise instructed by Connecting Transmission Owner, Transmission Developer shall, in coordination with Connecting Transmission Owner, be responsible for the removal, disposal and sale of any Connecting Transmission Owner assets. Connecting Transmission Owner shall be paid the entire salvage value of any Connecting Transmission Owner assets sold reduced only by the cost of removal for salvage. If costs of removal or disposal exceed the salvage value, any and all removal or disposal costs shall be the responsibility of Transmission Developer.

Transmission Developer shall adhere to all federal, state, and local government, health & safety rules and regulations. Transmission Developer shall adhere to all Connecting Transmission Owner environmental, health & safety requirements and procedures concerning waste handling, pollution prevention, resource protection and worker safety to be provided by the Connecting Transmission Owner as part of Connecting Transmission Owner's Division 1 specifications. Project design criteria and specifications incorporating the Connecting Transmission Owner's environmental, health & safety standards shall be subject to review and acceptance by Connecting Transmission Owner.

### **B. Network Upgrade Facilities for NYSEG's Transmission System**

Portions of the Transmission Project will also interconnect to the New York State Transmission System at existing transmission facilities owned and operated by New York State Electric & Gas Corporation ("NYSEG"), which is also a Connecting Transmission Owner for the Transmission Project. The Facilities Study identified certain Network Upgrade Facilities required to reliably interconnect the Transmission Project to NYSEG's system. These include:

- Upgrading the Erie St. 115 kV substation terminal to Depew;
- Upgrading the Stolle Road to Roll Road 115 kV terminal equipment;
- Upgrading line protection systems at Somerset/Kintigh Substation;
- Upgrading line protection systems at Stolle Road;
- Connecting two NYSEG 345kV Lines #NS1-38 and #SH1-39 into new Transmission Project 345 kV Dysinger Switchyard; and
- Connecting the Connecting Transmission Owner-owned Stolle Rd. to Five Mile 345 kV Line #29 into East Stolle Rd. Substation.

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The Transmission Developer, NYSEG, and the NYISO will enter into a separate Transmission Project Interconnection Agreement concerning the interconnection of the Transmission Project to NYSEG’s facilities and the related Network Upgrade Facilities.

**C. Affected System Upgrade Facilities**

The Transmission Interconnection Studies for the Transmission Project identified Rochester Gas and Electric Corporation (“RG&E”) and Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) as Affected System Operators, which systems are impacted by the Transmission Project. The Facilities Studies conducted for the Transmission Project identified certain Network Upgrade Facilities required for these Affected Systems.

The Facilities Studies identified the following work on RG&E’s transmission facilities:

- Add a new 100 Mvar shunt reactor at its Rochester Station 80 345 kV Substation; and
- Upgrade line protection systems at its Station 255 Substation.

This work will be performed in accordance with the terms of an engineering, procurement, and construction agreement by and among the NYISO, Transmission Developer, and RG&E.

The Facilities Studies identified the following work on National Grid’s transmission facilities:

- Modifications to its Five Mile Station, including updates to its protection, controls & integration, and telecommunications equipment; and
- Integrate the Transmission Developer’s New Dysinger Station into Affected System Operator’s SONET ring use for line protection.

This work will be performed in accordance with the terms of an engineering, procurement, and construction agreement by and among the NYISO, Transmission Developer, and National Grid.

**2. Connecting Transmission Owner’s and Transmission Developer’s Responsibilities Concerning Network Upgrade Facilities**

**A. Upgrading Line Protection Systems at Connecting Transmission Owner’s Niagara 345 kV Substation.**

<b>TASK</b>	<b>RESPONSIBLE PARTY</b>
Protection application document	Transmission Developer develops, Connecting Transmission Owner approves
High level sketches	Connecting Transmission Owner
Drawing identification, create drawing list, obtain drawing clones	Connecting Transmission Owner
Drawing package	Transmission Developer

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Finalize drawing package (Professional Engineer (“PE”) Sealed Issued For Construction (“IFC”) Drawings)	Connecting Transmission Owner
Final drawing package approved	Transmission Developer
Develop bill of materials and bid specification	Transmission Developer/ Connecting Transmission Owner
Procurement of equipment	Transmission Developer
Relay setting calculations	Connecting Transmission Owner
NPCC Directory 4 presentation and approval	Transmission Developer / Connecting Transmission Owner support
NYISO & Utilities Technology Council frequency selection application	Transmission Developer
Program relay settings	Connecting Transmission Owner
Perform test settings	Connecting Transmission Owner
Construction/installation	Connecting Transmission Owner
Testing and commissioning	Connecting Transmission Owner
Trial Operations	Transmission Developer

**B. Connecting the two Connecting Transmission Owner-Owned 345 kV Lines in and out of the Transmission Developer’s New Dysinger Switchyard (Lines NS1-38, NH2, and SH1-39)**

<b>TASK</b>	<b>RESPONSIBLE PARTY</b>
30% design	Transmission Developer develops, Connecting Transmission Owner approves
70% design	Transmission Developer develops, Connecting Transmission Owner approves
100% design	Transmission Developer develops, Connecting Transmission Owner approves
Issue Professional Engineer Sealed, Issue For Construction Drawings	Transmission Developer
Engineering, Procurement, and Construction Request For Proposals & contract execution	Transmission Developer
Procurement of equipment	Transmission Developer
Obtain Connecting Transmission Owner’s permits for construction work on Connecting Transmission Owner’s easements	Transmission Developer applies, Connecting Transmission Owner approves
Construction	Transmission Developer

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Testing & commissioning	Transmission Developer
Trial Operations	Transmission Developer
Finalize Construction Turnover Package/Engineering Turnover Package documents	Transmission Developer
Grant transmission line easement and danger tree rights	Transmission Developer

**3. Cost Estimates for Network Upgrade Facilities on Connecting Transmission Owner’s System**

Description	Estimated Cost
Upgrading line protection systems at Niagara Substation	\$595,000
Loop two Connecting Transmission Owner 345 kV lines in/out of new Dysinger Switchyard	\$9,094,000
<b>Total</b>	<b>\$9,689,000</b>

**4. Security**

Transmission Developer will provide Connecting Transmission Owner Security in the amount of \$9,689,000 in the form of a Letter of Credit.

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**SERVICE AGREEMENT NO. 2603**

**Figure A-2**

**[CONTAINS CEII - THIS PAGE REMOVED FROM PUBLIC VERSION]**

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**APPENDIX B**

**MILESTONES**

<b>Milestone</b>	<b>Date</b>	<b>Responsible Party</b>
1. Development of project plan	Completed	Transmission Developer/Connecting Transmission Owner
2. Project kick-off meeting	Completed	Transmission Developer/Connecting Transmission Owner
3. Execute interconnection agreement	-	Transmission Developer/Connecting Transmission Owner
4. Approval of project plan	Loop Connecting Transmission	Completed
5. Environmental Monitoring & Construction Plan approval	Owner's 345 kV lines: 30% design	Completed
6. Loop Connecting Transmission Owner's 345 kV lines: 30% design	procurement of equipment	Completed
7. Loop Connecting Transmission Owner's 345 kV lines: 70% design		3/9/2021
8. Upgrade Niagara Substation protection: drawing package		3/19/2021
9. Upgrade Niagara Substation protection: procurement of equipment		4/29/2021
10. Upgrade Niagara Substation protection: finalize package		5/12/2021
11. Loop Connecting Transmission Owner's 345 kV Lines: Engineering, Procurement, & Construction Request For Proposals contract execution		5/18/2021
12. Loop Connecting Transmission Owner's 345 kV lines: 100% design		6/16/2021
13. Loop Connecting Transmission Owner's 345 kV lines: construction start		7/1/2021
14.		9/10/2021





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	<b>Milestone</b>	<b>Date</b>	<b>Responsible Party</b>
15.	Upgrade Niagara Substation protection: program and test relay settings	9/24/2021	Connecting Transmission Owner
16.	Upgrade Niagara Substation protection: protection application document	12/1/2021	Transmission Developer
17.	Upgrade Niagara Substation protection: preliminary sketches	12/14/2021	Connecting Transmission Owner
18.	Upgrade Niagara Substation protection: construction start	1/27/2022	Connecting Transmission Owner
19.	Submit testing and commissioning plan to NYISO	2/1/2022	Transmission Developer/Connecting Transmission Owner
20.	Upgrade Niagara Substation protection: testing and commissioning	3/21/2022	Connecting Transmission Owner
21.	Loop Connecting Transmission Owner 345 kV lines: testing and commissioning	3/21/2022	Transmission Developer
22.	Upgrade Niagara Substation protection: Initial Synchronization Date	3/25/2022	Connecting Transmission Owner
23.	Loop Connecting Transmission Owner 345 kV lines: Initial Synchronization Date	3/25/2022	Transmission Developer/Connecting Transmission Owner
24.	Upgrade Niagara Substation protection: In-Service Date	4/1/2022	Connecting Transmission Owner
25.	Loop Connecting Transmission Owner 345 kV Lines: In-Service Date	4/1/2022	Transmission Developer/Connecting Transmission Owner
26.	Transmission Project: testing and commissioning	4/1/2022	Transmission Developer
27.	Transmission Project: Initial Synchronization Date	4/3/2022	Transmission Developer/Connecting Transmission Owner
28.	Transmission Project: In-Service Date	4/4/2022	Transmission Developer/Connecting Transmission Owner



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The following notes apply to all work performed as required by this Agreement or by Connecting Transmission Owner:

- A. Connecting Transmission Owner work durations do not include holiday work; if a Connecting Transmission Owner's holiday occurs during an event on these milestones, then effected dates shall be extended day-for-day.
- B. All Connecting Transmission Owner outage durations necessary to interconnect Transmission Developer's project are dependent on favorable weather conditions where the work is being performed. Unfavorable weather conditions may extend the length of such outage durations.
- C. Transmission system emergencies take precedence over all work and could significantly impact the schedule and durations.
- D. Connecting Transmission Owner schedules its resources months in advance, and its ability to reschedule manpower is limited by resource allocation to other Connecting Transmission Owner projects and tasks. If Transmission Developer misses a scheduled milestone that directly affects performance of a Connecting Transmission Owner's milestone, performance or completion of Connecting Transmission Owner's relevant milestone may be delayed until the Connecting Transmission Owner can reschedule its manpower to work on the assigned task.
- E. The Closeout/Turnover Package shall consist of the following: As-built drawings, Punchlist, Record Drawings, all equipment, Quality Assurance/Quality Control installation, commissioning, Engineer of Record Professional Engineer certification, color markup of design, drawings and warranties, and all documentation necessary for demonstrating compliance with applicable NERC Reliability Standards and NPCC directories.

To the extent not inconsistent with the terms of this Agreement or the NYISO OATT, Transmission Developer shall be responsible for all fines and penalties imposed on Connecting Transmission Owner by a Governmental Authority or Applicable Reliability Council directly caused by Transmission Developer action or inaction relating to, and occurring prior to the transfer of care, custody, and control by Transmission Developer to the Connecting Transmission Owner of, the Network Upgrade Facilities.

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## SERVICE AGREEMENT NO. 2603

### APPENDIX C

#### INTERCONNECTION DETAILS

##### 1. Description of the Transmission Project

The Transmission Project was submitted by the Transmission Developer and evaluated in the NYISO's Public Policy Transmission Planning Process to address the Western New York Public Policy Transmission Need identified by the New York Public Service Commission. The NYISO Board of Directors selected the Transmission Project as the more efficient and cost-effective transmission solution to the Western New York Public Policy Transmission Need on October 17, 2017. The Transmission Developer will develop the Transmission Project in accordance with the terms of the Development Agreement.

The Transmission Project will be located in the West Region (Zone A) of New York State and includes the following new facilities that will be constructed, owned, and operated by the Transmission Developer:

- The proposed Q#545A's Dysinger 345 kV switchyard with a breaker-and-a-half configuration, located in Niagara County;
- The proposed Q#545A's East Stolle Rd. 345 kV switchyard with a ring-bus configuration, located in Erie County;
- A new overhead ("OH") 20.6 mile long 345 kV transmission line between Dysinger and East Stolle Rd. switchyards, which line: (i) will be a double bundle of 795MCM 26/7 ACSR conductor and rated 1357/1410/1410 MVA, and will be constructed utilizing the existing transmission right-of-way owned by NYSEG (existing Transmission Owner); • In addition to proposed OH construction, the line will consist of approximately 2,000 linear feet underground transmission line construction at New York State Thruway Authority ("NYSTA") crossing;
  - This section of line shall be rated to meet or exceed the defined overhead rating above;
  - The cable is expected to consist of two (2) 5000 kcmil XLPE cables per phase; • A new OH 345 kV transmission line of approximately 1,350 feet between new East Stolle Rd. and Stolle Rd. substations;
- A 700 MVA phase angle regulator ("PAR") and bypass switch at the new Dysinger 345 kV switchyard to control the flow of the new proposed line; and
- A 30 MVAR shunt reactor on the proposed 345 kV line at the East Stolle Rd. 345 kV substation.

##### 2. Description of the Points of Interconnection and Points of Change of Ownership

The Point of Interconnection ("POI") and Point of Change in Ownership ("PCO") are identified in the table below. The physical POI/PCO shall be where the transmission line compression dead end on the first structure outside of the substation attaches to the conductor. POI/PCO are also shown in Figure C-1 below. The POI and PCO are the same location since the

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Transmission Project will not require any Connecting Transmission Owner’s Attachment Facilities. The POI/PCO locations are:

<b>Transmission Line</b>	<b>Line # Designation</b>	<b>Structure Number where POI/PCO Is Located</b>	<b>Structure Description where POI/PCO Is Located</b>	<b>Description of Change in Ownership</b>
Niagara to Dysinger	NS1-38 (future ND1)	ND1-25/4C	First structure outside of Dysinger switchyard	Transmission Developer ownership will begin at the insulators, and go into the Dysinger Switchyard.
Niagara to Dysinger	NH2 (future ND2)	ND2-25/4C & DH2-25/4D	First structure outside of Dysinger switchyard	Transmission Developer ownership will begin at the insulators, and go into the Dysinger Switchyard.
Dysinger to Station 255	SH1-39 (future DH1)	DH1-25/4D	First structure outside of Dysinger switchyard	Transmission Developer ownership will begin at the insulators, and go into the Dysinger Switchyard.
Dysinger to Station 255	NH2 (future DH2)	ND2-25/4C & DH2-25/4D	First structure outside of Dysinger switchyard	Transmission Developer ownership will begin at the insulators, and go into the Dysinger Switchyard.

**3. Ownership/Control/Maintenance Responsibilities of Network Upgrade Facilities**

<b>Network Upgrade Facility</b>	<b>Appendix A Item</b>	<b>Ownership</b>	<b>Control</b>	<b>Operation &amp; Maintenance</b>
<i>Upgrading Line Protection Systems at Connecting Transmission Owner’s 345 kV Niagara Substation</i>	1.A.i	Connecting Transmission Owner	Connecting Transmission Owner	Connecting Transmission Owner
<i>Connecting the two Connecting Transmission Owner-Owned 345 kV Lines in and out of the Transmission Developer’s New Dysinger Switchyard (Lines NS1, NR2, NH-2 and SH1-39)</i>	1.A.ii	Connecting Transmission Owner	Connecting Transmission Owner / Transmission Developer	Connecting Transmission Owner

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## **SERVICE AGREEMENT NO. 2603**

### **4. Transmission Developer Operating Requirements**

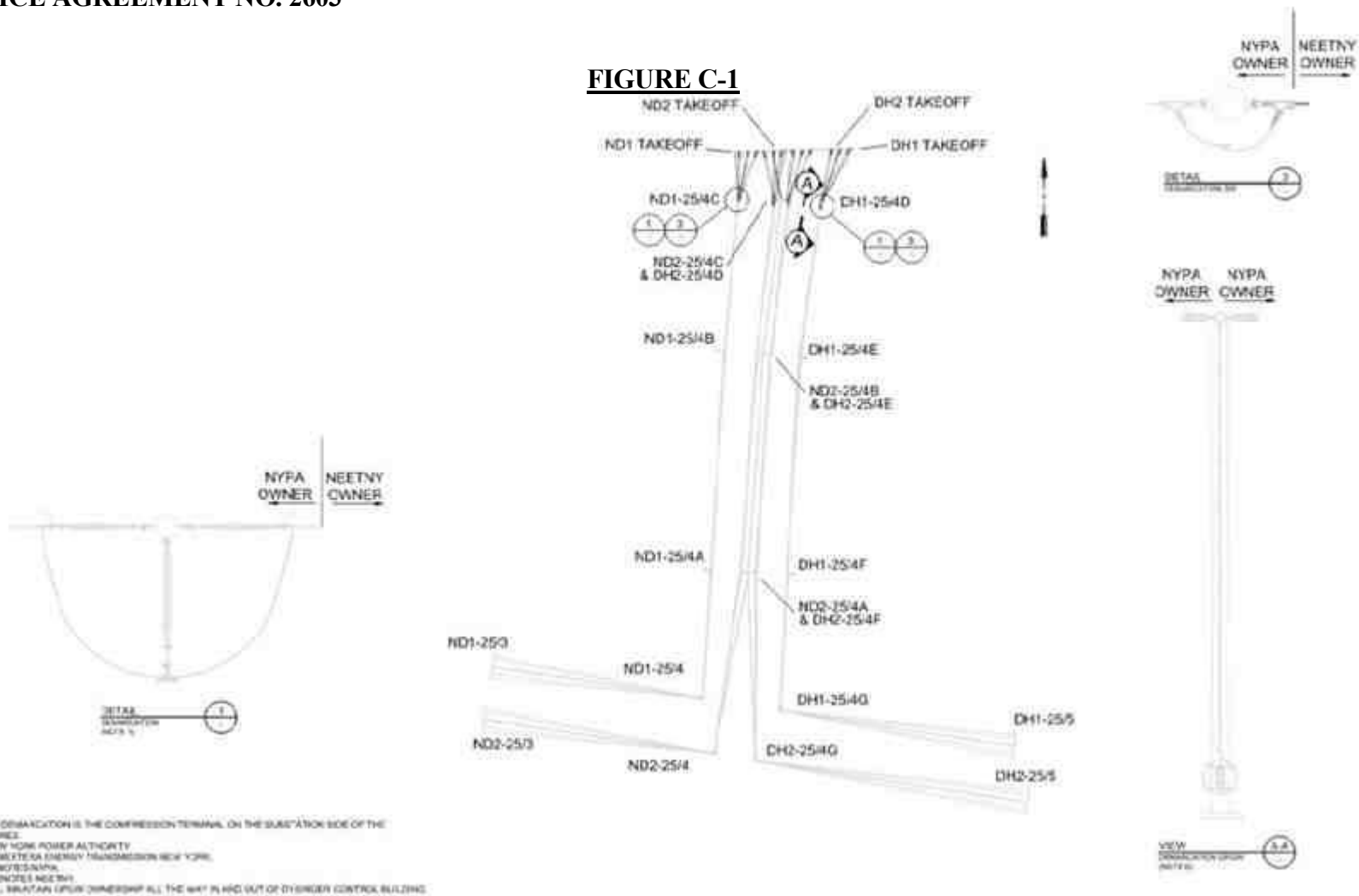
(a) Transmission Developer must comply with all applicable NYISO tariffs and procedures, as amended from time to time.

(b) Transmission Developer and Connecting Transmission Owner will enter into and comply with the terms of NYPA/NextEra Operating Coordination Agreements, as amended from time to time, to the extent not inconsistent with the terms of this Agreement or the NYISO OATT.

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**SERVICE AGREEMENT NO. 2603**

**FIGURE C-1**



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## **SERVICE AGREEMENT NO. 2603**

### **APPENDIX D**

#### **SECURITY ARRANGEMENTS DETAILS**

Infrastructure security of New York State Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day New York State Transmission System reliability and operational security. The Commission will expect the NYISO, all Transmission Owners, all Transmission Developers and all other Market Participants to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

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**SERVICE AGREEMENT NO. 2603**

**APPENDIX E-1**

**INITIAL SYNCHRONIZATION DATE**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

[Sr Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076  
Phone: (518) 287 6301]

[NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408  
Phone: (561) 694-4831  
info@empirestateline.com]

Re: [Transmission Project/Network Upgrade Facilities]

Dear :

On [Date] [Transmission Developer/Connecting Transmission Owner] initially synchronized the [describe Transmission Project/Network Upgrade Facilities]. This letter confirms [Transmission Developer/Connecting Transmission Owners]'s Initial Synchronization Date was [specify].

Thank you.

[Signature]

[Connecting Transmission Owner/Transmission Developer Representative]

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**SERVICE AGREEMENT NO. 2603**

**APPENDIX E-2**

**IN-SERVICE DATE**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

[Sr Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076  
Phone: (518) 287 6301]

[NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408  
Phone: (561) 694-4831  
info@empirestateline.com]

Re: \_\_\_\_\_ [Transmission Project/Network Upgrade Facilities]

Dear \_\_\_\_\_:

On [Date] [Connecting Transmission Owner/Transmission Developer] has completed Trial Operation of [describe Transmission Project/Network Upgrade Facilities]. This letter confirms that [describe Transmission Project/Network Upgrade Facilities] [has/have] commenced service, effective as of [Date plus one day].

Thank you.

[Signature]

[Connecting Transmission Owner/Transmission Developer Representative]

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**SERVICE AGREEMENT NO. 2603**

**APPENDIX F**

**ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

**Notices:**

NYISO:

Before In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

After In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

Connecting Transmission Owner:

Sr Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076  
Phone: (518) 287 6301  
Fax: (518) 287 6356

Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408

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## **SERVICE AGREEMENT NO. 2603**

### **Billings and Payments:**

#### Connecting Transmission Owner:

Sr Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076  
Phone: (518) 287 6301

Or

Wire payments to:  
New York Power Authority  
Operating Fund c/o  
J.P. Morgan Chase N.A.  
ABA No. 021000021  
Account No. 573-804206

#### Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408

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

#### NYISO:

Before In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: [interconnectionsupport@nyiso.com](mailto:interconnectionsupport@nyiso.com)

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**SERVICE AGREEMENT NO. 2603**

After In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: [interconnectionsupport@nyiso.com](mailto:interconnectionsupport@nyiso.com)

Connecting Transmission Owner:

Sr Vice President Power Supply  
New York Power Authority  
Blenheim-Gilboa Power Project  
397 Power Plant Access Road  
Gilboa, NY 12076  
Phone: (518) 287 6301  
Fax: (518) 287 6356  
[Brian.Saez@nypa.gov](mailto:Brian.Saez@nypa.gov)

Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408  
Phone: (561) 694-4831  
[Johnbinh.vu@nexteraenergy.com](mailto:Johnbinh.vu@nexteraenergy.com)  
[info@empirestateline.com](mailto:info@empirestateline.com)

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**Service Agreement No. 2628**

**SERVICE AGREEMENT NO. 2628**  
**OPERATING AGREEMENT**  
**BETWEEN THE**  
**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**  
**AND**  
**NEXTERA ENERGY TRANSMISSION NEW YORK, INC.**  
**Dated as of May 25, 2021**

Service Agreement No. 2628

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## **OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** (“Agreement”) is made and entered into this 25th day of May, 2021, by and between NextEra Energy Transmission New York, Inc., a non-incumbent transmission owner organized and existing as a corporation under the laws of the State of New York (“NTO”), and the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“ISO”). The NTO and the ISO each may be referred to as a “Party” or collectively referred to as the “Parties.”

### **WITNESSETH:**

**WHEREAS**, the ISO is an independent system operator that is responsible under its Open Access Transmission Tariff (“ISO OATT”) and its Market Administration and Control Area Services Tariff (“ISO Services Tariff”) as they may be amended from time to time (collectively, “ISO Tariffs”), and the ISO Related Agreements, filed with and accepted by the Federal Energy Regulatory Commission (“Commission”), for providing non-discriminatory, open access transmission service, maintaining reliability, performing system planning, and administering competitive wholesale markets for energy, capacity, and ancillary services in New York State;

**WHEREAS**, the NTO is the owner of certain transmission facilities specified herein that are integrated with the NYS Transmission System and the NTO has fiduciary responsibilities to its investors to assure, among other things, the receipt of adequate revenues to maintain its transmission facilities, a reasonable rate of return on its transmission facilities, and to provide for recovery of the capital invested in its transmission facilities;



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**WHEREAS**, the NTO has executed, along with this Agreement, the Independent System Operator Agreement (“ISO Agreement”) and has executed a Service Agreement(s) as a Transmission Owner for purposes of the ISO Tariffs;

**WHEREAS**, the ISO will exercise ISO Operational Control over certain of the NTO’s transmission facilities classified as “NTO Transmission Facilities Under ISO Operational Control”;

**WHEREAS**, the NTO and ISO have agreed to enter into this Agreement for the purpose of the NTO authorizing the ISO to exercise, and the ISO assuming, ISO Operational Control over the NTO Transmission Facilities Under ISO Operational Control in accordance with the requirements set forth in this Agreement, the ISO Tariffs, and the ISO Related Agreements, as applicable;

**WHEREAS**, the NTO will continue to own and be responsible for the physical operation, modification and maintenance of its NTO Transmission Facilities Under ISO Operational Control; and

**WHEREAS**, the ISO OATT will provide for the payment by Transmission Customers for Transmission Service at rates designed to enable the NTO to recover its revenue requirement to the extent allowed, accepted, or approved by FERC;

**WHEREAS**, the ISO has a comprehensive planning process for reliability needs that includes the Reliability Planning Process and the Short-Term Reliability Process, and each Transmission Owner, including the NTO, will participate in this planning process as described in the ISO OATT;





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**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties do hereby agree with each other, for themselves and their successors and assigns, as follows:



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## **ARTICLE 1.0: DEFINITIONS**

### **1.01 Capitalized Terms**

Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the definitions contained in Article 1 of the ISO Agreement, as it existed on the date this Agreement is signed by the Parties. Those definitions contained in Article 1 of the ISO Agreement are hereby incorporated by reference in their entirety into this Agreement; *provided, however,* that an NTO shall be a Transmission Owner for purposes of the ISO Tariffs and this Agreement notwithstanding the definition of Transmission Owner contained in the ISO Agreement related to the ownership of 100 circuit miles of transmission in New York State and becoming a signatory to the ISO/TO Agreement. Modifications to such definitions in the ISO Agreement shall apply to this Agreement only if the Parties to this Agreement agree in writing pursuant to Section 6.14 below.



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## **ARTICLE 2.0: RESPONSIBILITIES OF THE NTO**

### **2.01 Transmission Facilities**

The NTO owns certain transmission facilities over which the ISO will have day-to-day operational control to maintain these facilities in a reliable state, as defined by the Reliability Rules and all other applicable reliability rules, standards and criteria, and in accordance with the ISO Tariffs, ISO Related Agreements and ISO Procedures (“ISO Operational Control”). These NTO facilities shall be classified as “NTO Transmission Facilities Under ISO Operational Control,” and are listed in Appendix A-1 of this Agreement. The NTO also will be responsible for providing notification to the ISO with respect to actions related to certain other transmission facilities. These facilities shall be classified as “NTO Transmission Facilities Requiring ISO Notification,” and are listed in Appendix A-2 of this Agreement. Transmission facilities may be added to, or deleted from, the lists of facilities provided in Appendices A-1 and A-2 herein by mutual written agreement of the ISO and the NTO owning and controlling such facilities. Currently listed facilities will be posted on the ISO’s OASIS.

### **2.02 Transmission System Operation**

The NTO shall be responsible for ensuring that all actions related to the operation, maintenance and modification of its facilities that are designated as NTO Transmission Facilities Under ISO Operational Control and NTO Transmission Facilities Requiring ISO Notification are performed in accordance with the terms of this Agreement, all Reliability Rules and all other applicable reliability rules, standards and criteria, all operating instructions, ISO Tariffs, and ISO Procedures.

### **2.03 Local Area Transmission System Facilities**

Transmission system facilities not designated as NTO Transmission Facilities Under ISO  
Operational Control or as NTO Transmission Facilities Requiring ISO Notification shall be

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collectively known as “Local Area Transmission System Facilities” and are listed in Appendix A-3 of this Agreement. Transmission facilities may be added to, or deleted from, the list of facilities provided in Appendix A-3 herein by mutual written agreement of the ISO and the NTO owning and controlling such facilities. The NTO shall have sole responsibility for the operation of its Local Area Transmission System Facilities, provided, however, that such operation shall comply with all Reliability Rules and ISO Tariffs as applicable, and all other applicable reliability rules, standards and criteria, and shall not compromise the reliable and secure operation of the NYS Transmission System. The NTO shall promptly comply to the extent practicable with a request from the ISO, or from the Transmission Owner(s) to which its facilities are interconnected (“Interconnecting Transmission Owner(s)” or “ITO(s)”), to take action with respect to coordination of the operation of its Local Area Transmission System Facilities.

### **2.04 Safe Operations**

Notwithstanding any other provision of this Agreement, an NTO may take, or cause to be taken, such action with respect to the operation of its facilities as it deems necessary to maintain Safe Operations. To ensure Safe Operations, the local operating rules of the ITO(s) shall govern the connection and disconnection of generation with NTO transmission facilities. Safe Operations include the application and enforcement of rules, procedures and protocols that are intended to ensure the safety of personnel operating or performing work or tests on transmission facilities.

### **2.05 Local Control Center, Metering and Telemetry**



The NTO shall operate, pursuant to ISO Tariffs, ISO Procedures, Reliability Rules and all other applicable reliability rules, standards and criteria on a twenty-four (24) hour basis, a suitable local control center(s) with all equipment and facilities reasonably required for the ISO

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to exercise ISO Operational Control over NTO Transmission Facilities Under ISO Operational Control, and for the NTO to fulfill its responsibilities under this Agreement. The NTO shall maintain the local control center(s), as well as suitable backup operations, consistent with the Reliability Rules and all other applicable reliability rules, standards and criteria to permit the ISO, as the Transmission Operator, to meet its obligations. All NTO system operators in real-time communication with the ISO or responsible for directing real-time actions on NTO Transmission Facilities Under ISO Operational Control shall be required to maintain a NERC Transmission Operator or Reliability Operator certificate. Operation of the NYS Power System is a cooperative effort coordinated by the ISO control center in conjunction with local control centers and will require the exchange of all reasonably necessary information. The NTO shall maintain Supervisory Control and Data Acquisition (“SCADA”) systems and provide the ISO with SCADA information on facilities listed in Appendices A-1 and A-2 herein as well as on generation and merchant transmission resources interconnected to the NTO’s transmission facilities pursuant to the ISO OATT.

The NTO shall provide metering data for its transmission facilities to the ISO, unless other parties are authorized by the appropriate regulatory authority to provide metering data. The NTO shall collect and submit to the ISO billing quality metering data and any other information for its transmission facilities required by the ISO for billing purposes. The NTO shall provide to the ISO the telemetry and other operating data from generation and merchant transmission resources interconnected to its transmission facilities that the ISO requires for the operation of the NYS Power System. The NTO will establish and maintain a strict code of conduct to prevent such information from reaching any unauthorized person or entity.



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## **2.06 Security Constrained Unit Commitment Adjustments**

The NTO shall coordinate with its ITO(s) as applicable regarding any request for commitment of additional Generators. If, following coordination among the NTO and its ITO(s), an additional resource(s) needs to be committed to ensure local area reliability, the NTO, or the ITO(s) at the NTO's request, may request commitment of additional Generators (including specific output level(s)). The ISO will use Supplemental Resource Evaluation ("SRE"), pursuant to ISO Tariffs and ISO Procedures, to fulfill a request from the NTO or ITO(s), as appropriate, for additional units.

## **2.07 Design, Maintenance and Rating Capabilities**

The NTO shall comply with the provisions of this Agreement, all Reliability Rules and all other applicable reliability rules, standards and criteria, ISO Procedures, and Good Utility Practice with respect to the design, maintenance and rating the capabilities of NYS Transmission System facilities.

## **2.08 Maintenance Scheduling**

The NTO shall schedule maintenance of its facilities designated as NTO Transmission Facilities Under ISO Operational Control and schedule any outages (other than forced transmission outages) of said transmission system facilities in accordance with outage schedules approved by the ISO. The NTO shall comply with maintenance schedules coordinated by the ISO, pursuant to this Agreement, for NTO Transmission Facilities Under ISO Operational Control. The NTO shall be responsible for providing notification of maintenance schedules to the ISO for NTO Transmission Facilities Requiring ISO Notification. The NTO shall provide notification of maintenance schedules to affected Transmission Owners for NTO Transmission Facilities Requiring ISO Notification and Local Area Transmission Facilities pursuant to Section



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## **2.09 NERC Registration**

The NTO shall register or enter into agreement with a NERC registered entity for all required NERC functions applicable to the NTO, that may include, without limitation, those functions designated by NERC to be: “Transmission Owner” and “Transmission Planner” and “Transmission Operator.” The Parties agree to negotiate in good faith the compliance obligations for the NERC functions applicable to, and to be performed by, each Party with respect to the NTO’s facilities. Notwithstanding the foregoing, the ISO shall register for the “Transmission Operator” function for all NTO Transmission Facilities under ISO Operational Control identified in Appendix A-1 of this Agreement.

## **2.10 Investigations and Restoration**

The NTO shall promptly conduct investigations of equipment malfunctions and failures and forced transmission outages in a manner consistent with applicable FERC, PSC, NRC, NERC, NPCC and NYSRC rules, principles, guidelines, standards and requirements, ISO Procedures and Good Utility Practice. The NTO shall supply the results of such investigations to the NYSRC, the ISO, and, pursuant to Section 3.5.3 of the ISO Services Tariff, the other Transmission Owners. Following a total or partial system interruption, restoration shall be coordinated between the ISO control center and local control centers. The local control centers shall have the authority, in coordination with the ISO, to restore the system and to re-establish service if doing so would minimize the period of service interruption. The NTO shall determine the level of resources to be applied to restore facilities to service following a failure, malfunction, or forced transmission outage.

## **2.11 Information and Support**

The NTO shall obtain from the ISO, and the ISO shall provide to the NTO, the necessary information and support services to comply with their obligations under this Article.

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## **2.12 Performance of Obligation by Third Parties**

The NTO may arrange for one or more third parties to perform its responsibilities under this Agreement; *provided, however*, that the NTO shall require each such third party to agree in writing to comply with all applicable terms and conditions of this Agreement; *provided, further*, that in all cases the NTO shall be responsible for the acts and omissions of each such third party to the same extent as if such acts and omissions were made by the NTO or its employees, and such use of a third party shall not relieve the NTO of its responsibilities under this Agreement. Notwithstanding the foregoing, the NTO shall have the right to assign this entire Agreement pursuant to the terms of Article 4.0 hereof.

## **2.13 Comprehensive Planning Process for Reliability Needs**

- a. Notwithstanding any provision, including Section 3.08(e) contained in this Agreement, the NTO acknowledges its obligations described in the ISO's Reliability Planning Process set forth in Attachment Y of the ISO OATT and in the Short-Term Reliability Process set forth in Attachment FF of the ISO OATT, that arise when the ISO designates the NTO as a "Responsible Transmission Owner," pursuant to Section 31.2.4.3 of the ISO OATT or Attachment FF of the ISO OATT, to address a reliability need(s) related to the transmission facilities that the NTO owns and that are subject to this Agreement.
- b. The NTO's obligations described in Section 2.13(a) above shall be subject to the full recovery in wholesale rates on a current basis by the NTO, in accordance with the rate mechanism set forth in Section 6.10 of the ISO OATT (Rate Schedule 10) or Section 6.16 of the ISO OATT (Rate Schedule 16), of all reasonably incurred



costs, including a reasonable return on investment and any applicable regulatory incentives, related to the preparation of a proposal for, and the development,

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construction, operation, and maintenance of, regulated transmission projects undertaken, or caused to be undertaken, by the NTO to meet a reliability need identified in the ISO's Reliability Planning Process or Short-Term Reliability Process as a result of being designated as the Responsible Transmission Owner, including those regulated transmission projects that were subsequently determined by the ISO not to be necessary to meet a reliability need or that cannot be completed because of the failure to obtain necessary federal, state, or local authorizations or for any other circumstance beyond the NTO's reasonable control;

- c. The NTO's obligations described in Section 2.13(a) above shall be further conditioned on:
1. The recovery of transmission-related costs in rates, as provided for in Section 2.13(b) above, will include, but not be limited to, all reasonable costs related to (i) obtaining or attempting to obtain all federal, state and local authorizations necessary for completion of the project included in the Comprehensive Reliability Plan and (ii) acquiring or attempting to acquire all necessary real property rights for such project;
  2. The receipt by the NTO of all federal, state, and local authorizations necessary for completion of the regulated transmission project and acquisition by the NTO of all necessary property rights; and
  3. The right of the NTO to request any incentives available under regulatory policies related to investments in transmission projects as part of any filing under rates as provided for in Section 2.13(b) above.



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- d. Nothing contained in Section 2.13 of this Agreement shall limit the right of the NTO to protest, comment on, or engage in litigation before FERC, the New York Public Service Commission, or any court with respect to proposed changes to the Reliability Planning Process.



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## **ARTICLE 3.0: RESPONSIBILITIES OF THE ISO**

### **3.01 Operation and Coordination**

The ISO shall direct the operation of, coordinate the maintenance scheduling of, and coordinate the planning of certain facilities of the NYS Power System, including coordination with the control center(s) maintained by or on behalf of the NTO, in accordance with the Reliability Rules and all other applicable reliability rules, standards and criteria, as follows:

- a. Administering Control Area operations of the NYS Power System;
- b. Performing balancing of Generation and Load while ensuring the safe, reliable and efficient operation of the NYS Power System;
- c. Exercising ISO Operational Control over certain facilities of the NYS Power System under normal operating conditions and system Emergencies to maintain system reliability;
- d. Coordinating the NYS Power System equipment outages and maintenance and maintaining the safety and short term reliability of the NYS Power System; and
- e. Conducting the Reliability Planning Process in accordance with Attachment Y of the ISO OATT and the Short-Term Reliability Process in accordance with Attachment FF of the ISO OATT.

### **3.02 Tariff Administration and Performance of Responsibilities Under ISO Related Agreements**

The ISO shall (a) administer the ISO OATT, the ISO Services Tariff and the ISO Agreement in accordance with their provisions as they may be amended from time to time, and (b) shall comply with the provisions of this Agreement, the ISO/TO Agreement, the NYSRC Agreement and the ISO/NYSRC Agreement.



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### **3.03 Granting of Authority**

The ISO responsibilities set forth in Article 3 of this Agreement, are granted by the NTO to the ISO only so long as each of the conditions set forth below is met and continues to be met throughout the term of this Agreement:

- a. The ISO fully implements all Reliability Rules and all other applicable reliability rules, standards and criteria including, without limitation, using all reasonable efforts to require all Market Participants to maintain applicable levels of Installed Capacity and Operating Capacity, consistent with the ISO OATT, the ISO Services Tariff, all Reliability Rules and all other applicable reliability rules, standards and criteria;
- b. The ISO has a FERC-accepted transmission tariff(s) and rate schedules which provide(s) for full recovery of the transmission revenue requirement of the NTO to the extent allowed, accepted or approved by FERC;
- c. The ISO does not act in violation of lawful PSC or FERC Orders;
- d. The ISO does not have a financial interest in any commercial transaction involving the use of the NYS Power System or any other electrical system except to the limited extent required for the ISO to be the single counterparty to market transactions in accordance with the credit requirements for organized wholesale electric markets set forth in Commission Order Nos. 741 and 741-A as codified in 18 C.F.R. § 35.47 (2011) or successor provisions;
- e. The ISO distributes revenues from the collection of transmission charges to the NTO in a timely manner; and
- f. The ISO enforces and complies with the creditworthiness and collection standards





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### **3.04 Collection and Billing**

The ISO shall facilitate and/or perform the billing and collection of revenues related to services provided by the ISO pursuant to the terms of the ISO OATT and the ISO Services Tariff.

### **3.05 Proposed Material Modifications to the NYS Power System**

Pursuant to the requirements of applicable provisions of the ISO OATT, ISO Related Agreements and ISO Procedures, the ISO shall evaluate the impact of any proposed material modification to the NYS Power System. Any proposed material modification to the NTO's facilities must satisfy the requirements of applicable provisions of the ISO OATT, NYSRC and ISO/NYSRC Agreements, ISO Procedures, and this Agreement. In the event of a dispute regarding the impact of the proposed modification, the ISO or the NTO may refer the issue for resolution pursuant to procedures set forth in Article 11 of the ISO Services Tariff, as such procedures may be amended from time to time.

### **3.06 OASIS**

The ISO shall maintain the OASIS for the New York Control Area.

### **3.07 NERC Registration**

If and to the extent any of the NTO's facilities are NERC jurisdictional facilities, the ISO will register for certain NERC functions applicable to those NTO facilities. Such functions may include, without limitation, those functions designated by NERC to be "Reliability Coordinator" and "Balancing Authority" and "Transmission Planner" and "Planning Coordinator." The Parties agree to negotiate in good faith the compliance obligations for the NERC functions applicable to, and to be performed by, each Party with respect to the NTO's facilities.

Notwithstanding the foregoing, the ISO shall register for the "Transmission Operator" function



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for all NTO Transmission Facilities under ISO Operational Control identified in Appendix A-1 of this Agreement.

### **3.08 NTO's Reserved Rights**

Notwithstanding any other provision of this Agreement with the exception of Section 2.13 above, the NTO shall retain all of the rights set forth in this Section; provided, however, that such rights shall be exercised in a manner consistent with the NTO's rights and obligations under the Federal Power Act and the Commission's rules and regulations thereunder. This Section is not intended to reduce or limit any other rights of the NTO as a signatory to this Agreement or any of the ISO Related Agreements or under an ISO Tariff.

- a. The NTO shall have the right at any time unilaterally to file pursuant to Section 205 of the Federal Power Act to change the ISO OATT, a Service Agreement under the ISO OATT, or the ISO Agreement to the extent necessary: (i) to recover all of its reasonably incurred costs, plus a reasonable return on investment related to services under the ISO OATT and (ii) to accommodate implementation of, and changes to, an NTO's retail access program.
- b. Nothing in this Agreement shall restrict any rights, to the extent such rights exist:
  - (i) of the NTO that is a party to a merger, acquisition or other restructuring transaction to make filings under Section 205 of the Federal Power Act with respect to the reallocation or redistribution of revenues among Transmission Owners or the assignment of its rights or obligations, to the extent the Federal Power Act requires such filings; or
  - (ii) of the NTO to terminate its participation in the ISO pursuant to Section 3.02 of the ISO Agreement or Article 6 of this

Agreement, notwithstanding any effect its withdrawal from the ISO may have on the distribution of transmission revenues among other Transmission Owners.

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- c. The NTO retains all rights that it otherwise has incident to its ownership of its assets, including, without limitation, its transmission facilities including, without limitation, the right to build, acquire, sell, merge, dispose of, retire, use as security, or otherwise transfer or convey all or any part of its assets, including, without limitation, the right to amend or terminate the NTO's relationship with the ISO in connection with the creation of an alternative arrangement for the ownership and/or operation of its transmission facilities on an unbundled basis (e.g., a transmission company), subject to necessary regulatory approvals and to any approvals required under applicable provisions of this Agreement.
- d. The obligation of the NTO to expand or modify its transmission facilities in accordance with the ISO OATT shall be subject to the NTO's right to recover, pursuant to appropriate financial arrangements contained in Commission-accepted tariffs or agreements, all reasonably incurred costs, plus a reasonable return on investment, associated with constructing and owning or financing such expansions or modifications to its facilities.
- e. Except as provided in Section 2.13 above, the responsibilities granted to the ISO under this Agreement shall not expand or diminish the responsibilities of the NTO to modify or expand its transmission system, nor confer upon the ISO the authority to direct the NTO to modify or expand its transmission system.
- f. The NTO shall have the right to construct (or cause to be constructed), invest in, and own any regulated transmission facilities that the ISO determines are required to meet a reliability need identified by the Reliability Planning Process or the Short-Term Reliability Process, so long as the appropriate regulatory agency(ies)



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has granted its approval. The costs associated with any such transmission facilities shall be recovered in rates as provided for in Section 2.13(b) above and the ISO OATT.

- g. The NTO shall have the right to adopt and implement procedures it deems necessary to protect its electric facilities from physical damage or to prevent injury or damage to persons or property.
- h. The NTO retains the right to take whatever actions it deems necessary to fulfill its obligations under local, state or federal law.
- i. Nothing in this Agreement shall be construed as limiting in any way the rights of the NTO to make any filing with the PSC.
- j. Notwithstanding anything to the contrary in this Agreement, no amendment to any provision of this Section may be adopted without the agreement of the NTO.

### **3.09 Retention of Non-Transferred Obligations**

Any and all other rights and responsibilities of the NTO related to the ownership or operation of its transmission assets or to its rights to withdraw its assets from ISO control, that have not been specifically transferred to the ISO under this Agreement or otherwise addressed under this Agreement, will remain with the NTO.





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#### **ARTICLE 4.0: ASSIGNMENT**

##### **4.01 Assignments by the NTO or the ISO**

This Agreement cannot be assigned by the ISO. This Agreement may be assigned by the NTO including, without limitation, to any entity(ies) in connection with a merger, consolidation, reorganization or change in the organizational structure of the assigning Party, provided that the surviving entity(ies) agree, in writing, to be bound by the terms of this Agreement.



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## **ARTICLE 5.0: LIMITATION OF LIABILITY AND INDEMNIFICATION**

### **5.01 Limitations of Liability**

Except as otherwise provided under the ISO OATT, the NTO shall not be liable (whether based on contract, indemnification, warranty, tort, strict liability or otherwise) to the ISO, any Market Participant, any third party or other party for any damages whatsoever, including without limitation, special, indirect, incidental, consequential, punitive, exemplary or direct damages resulting from any act or omission in any way associated with this Agreement, except to the extent the NTO is found liable for gross negligence or intentional misconduct, in which case the NTO shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages. Nothing in this Section will excuse an NTO from an obligation to pay for services provided to the NTO by the ISO or to pay any deficiency payments, penalties, or sanctions imposed by the ISO under the ISO OATT or the ISO Services Tariff. The ISO shall not be liable to the NTO or any other party for any damages resulting from any act or omission in any way associated with this Agreement, except to the extent provided for under the ISO OATT.

### **5.02 Additional Limitations of Liability**

Except as otherwise provided under the ISO OATT, the NTO shall not be liable for any indirect, consequential, exemplary, special, incidental or punitive damages including, without limitation, lost revenues or profits, the cost of replacement power or the cost of capital, even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy. The ISO shall not be liable to the NTO or any other party for any damages resulting from any act or omission in any way associated with this Agreement, except to the extent provided for under the ISO OATT.



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### **5.03 Indemnification**

Each Party shall at all times indemnify, save harmless and defend the other Party, including their directors, officers, employees, trustees, and agents, or each of them, from and against all claims, demands, losses, liabilities, judgments, damages (including, without limitation, any consequential, incidental, direct, special, indirect, exemplary or punitive damages and economic costs), and related costs and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by the Party in any actions or proceedings between the Party and a Market Participant, or any other third party) arising out of or related to the ISO's or the NTO's acts or omissions related in any way to the NTO's ownership or operation of its transmission facilities when such acts or omissions are either (1) pursuant to or consistent with ISO Procedures or direction; or (2) in any way related to the NTO's or the ISO's performance under the ISO OATT, the ISO Services Tariff, the ISO Agreement, the ISO/NYSRC Agreement, NYSRC Agreement, or this Agreement; *provided, however*, that the NTO shall not have any indemnification obligation under this Section 5.02 with respect to any loss to the extent the loss results from the gross negligence or intentional misconduct of the ISO; *provided, further*, that the ISO shall not have any indemnification obligation under this Section 5.02 with respect to any loss except to the extent the loss results from the gross negligence or intentional misconduct of the ISO.

### **5.04 Force Majeure**

Each Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this

Agreement, except the obligation to pay any amount when due, arising out of or from any act, omission, or circumstance occasioned by or in consequence of any act of God, labor disturbance,

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failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment or by any other cause or causes beyond such Party's reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the ISO or any party to the ISO Agreement. Nothing contained in this Article shall relieve any entity of the obligations to make payments when due hereunder or pursuant to a Service Agreement. Any party claiming a force majeure event shall use reasonable diligence to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected party.

### **5.05 Claims by Employees and Insurance**

Each Party shall be solely responsible for and shall bear all of the costs of claims by its own employees, contractors, or agents arising under and covered by, any workers' compensation law. Each Party shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement.

### **5.06 Survival**

The provisions of this Article, "Limitations of Liability and Indemnification" shall survive the termination or expiration of this Agreement or the ISO Tariffs.





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## **ARTICLE 6.0: OTHER PROVISIONS**

### **6.01 Term and Termination for Cause**

This Agreement shall become effective upon the execution of this Agreement by the NTO and the ISO and on the later of: (i) the date on which FERC, the PSC and any other regulatory agency having jurisdiction accepts this agreement without condition or material modification and grants all approvals needed to place the NTO's facilities in service, including, without limitation, any approvals required under Section 70 of the Public Service Law and Section 203 of the FPA; or (ii) on such later date specified by FERC. Without waiving or limiting any of its other rights under this Article, if the NTO determines that any of the conditions set forth in Section 3.03 hereof is not being met or ceases to be in full force and effect the NTO may terminate this Agreement, withdraw from the ISO Agreement and the ISO Tariffs, and withdraw its assets from the ISO's control and administration on ninety (90) days prior written notice to the ISO and FERC. Such notice shall identify the condition or conditions set forth in Section 3.03 that have not been met or no longer are in full force and effect; provided, however, that prior to the filing of such notice, the ISO shall be advised of the specific condition or conditions that are no longer in full force and effect, and the ISO shall have the opportunity to restore the effectiveness of the condition or conditions identified within a thirty (30) day period. If the effectiveness of the condition or conditions is not restored within thirty (30) days, the NTO may file a notice of termination with the ISO and FERC; provided, however, that if the ISO demonstrates that it has made a good faith effort but has been unable to restore the effectiveness of the condition or conditions within the thirty (30) day period, the ISO shall be provided an additional thirty (30) day period to restore the effectiveness of the condition or conditions and

the NTO may not file the notice of termination until the expiration of the second thirty (30) day period. The NTO's termination of this Agreement under this Section shall be effective ninety

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(90) days after the filing of the notice of termination unless FERC finds that such termination of the NTO is contrary to the public interest, as that standard has been judicially construed under the Mobile-Sierra doctrine. However, the NTO may withdraw the notice or extend the termination date. Nothing in this section shall be construed as a voluntary undertaking by the NTO to remain a Party to this Agreement after the expiration of its notice of termination.

**6.02 Termination by Election**

The NTO may terminate this Agreement, withdraw from the ISO Agreement and the ISO Tariffs, and withdraw its assets from the ISO control and administration upon ninety (90) days written notice to the ISO Board and FERC. Such termination and withdrawal shall be effective unless FERC finds that such termination and withdrawal is contrary to the public interest, as that standard has been judicially construed under the Mobile-Sierra doctrine. Any modification to this Article shall provide the NTO with the right to terminate this Agreement pursuant to the unmodified provisions of this Article, within ninety (90) days of the effective date of such modification.

**6.03 Obligations after Termination**

- a. Following termination of this Agreement, a Party shall remain liable for all obligations arising hereunder prior to the effective date of termination, including all obligations accrued prior to the effective date, imposed on the Party by this Agreement or the ISO Tariffs or other ISO Related Agreements.
- b. Termination of this Agreement shall not relieve the NTO of any continuing obligation it may have under the ISO Tariffs and ISO Related Agreements, unless the NTO also withdraws from the ISO Tariffs or ISO Related Agreements.



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#### **6.04 Winding Up**

Any provision of this Agreement that expressly or by implication comes into or remains in force following the termination of this Agreement shall survive such termination. The surviving provisions shall include, but shall not be limited to: (i) those provisions necessary to permit the orderly conclusion, or continuation pursuant to another agreement, of transactions entered into prior to the termination of this Agreement, (ii) those provisions necessary to conduct final billing, collection, and accounting with respect to all matters arising hereunder, and (iii) the indemnification and limitation of liability provisions as applicable to periods prior to such termination. The ISO and the terminating NTO shall have an obligation to make a good faith effort to agree upon a mutually satisfactory termination plan. Such plan shall have among its objectives an orderly termination. The plan shall address, to the extent necessary, the allocation of any costs directly related to the termination by the NTO.

#### **6.05 Confidentiality**

- A. Party Access. Each Party shall supply information to the other Party as required by this Agreement. Information shall be treated as Confidential Information under this Agreement if (i) it has been clearly marked or otherwise designated as “Confidential information” by the Party supplying the information, or (ii) it is information designated as Confidential Information by applicable provisions of the ISO Tariffs; *provided, however*, Confidential Information does not include information: (i) in the public domain or that has been previously publicly disclosed without violation of this Agreement, (ii) required by law to be publicly submitted or disclosed (with notice to the other Party), or (iii) necessary to be divulged in an action to enforce this Agreement.



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Notwithstanding anything in this Section to the contrary, the NTO shall not have a right hereunder to receive or review any documents, data or other information of another Market Participant or the ISO, including documents, data or other information provided to the ISO, to the extent such documents, data or information have been designated as confidential pursuant to the procedures specified in the ISO Tariffs or to the extent that they have been designated as confidential by such other Market Participant; *provided, however*, that the NTO may receive and review any composite documents, data and other information that may be developed based on such confidential documents, data or information if the composite does not disclose any individual Market Participant's confidential data or information.

- B. Required Disclosure. The ISO shall treat any Confidential Information it receives from the NTO in accordance with applicable provisions of the ISO Tariffs. If the NTO receives Confidential Information from the ISO, it shall hold such information in confidence, employing at least the same standard of care to protect the Confidential Information obtained from the ISO as it employs to protect its own Confidential Information. Each Party shall not disclose the other Party's Confidential Information to any third party or to the public without prior written authorization of the Party providing the information; *provided, however*, if the ISO is required by applicable law, or in the course of administrative or judicial proceedings, or subpoena, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section, the ISO will do so in accordance with applicable provisions of the ISO Tariffs. And if the NTO is required by applicable law, or in the course of administrative or judicial proceedings, or subpoena, to disclose information that is otherwise required to be





## Service Agreement No. 2628

maintained in confidence pursuant to this Section, the NTO may make disclosure of such information; provided, however, that as soon as the NTO learns of the disclosure requirement and prior to making such disclosure, the NTO shall notify the ISO of the requirement and the terms thereof and the ISO may, at its sole discretion and cost, assert any challenge to or defense against the disclosure requirement and the NTO shall cooperate with the ISO to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. Each Party shall cooperate with the Other Party to obtain proprietary or confidential treatment of such information by the person to whom such information is disclosed prior to any such disclosure.

### **6.06 Governing Law; Jurisdiction**

The interpretation and performance of this Agreement shall be in accordance with and shall be controlled by the laws of the State of New York as though this Agreement is made and performed entirely in New York. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the Federal or State courts of the State of New York, the Parties consent to the exclusive jurisdiction and venue of said courts.

### **6.07 Headings**

The section headings herein are for convenience and reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions. Whenever the terms hereto, hereunder, herein or hereof are used in this Agreement, they shall be construed as referring to this entire Agreement, rather than to any individual section, subsection or sentence.



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#### **6.08 Mutual Agreement**

Nothing in this Agreement is intended to limit the Parties' ability to mutually agree upon taking a course of action different than that provided for herein; provided that doing so will not adversely affect any other Parties' rights under this Agreement.

#### **6.09 Contract Supremacy**

In the case of a conflict between the express terms of this Agreement and the terms of the ISO Agreement, the express terms of this Agreement shall prevail.

#### **6.10 Additional Remedies**

The Parties agree that remedies at law will be inadequate to protect the interests of the NTO and that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the ISO in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that the NTO shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or an ISO Tariff by the ISO, and specific performance to enforce specifically the terms and provisions thereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which the NTO is entitled at law or in equity.

#### **6.11 No Third Party Rights**

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

#### **6.12 Not Partners**

Nothing contained in this Agreement shall be construed to make the Parties partners or joint venturers or to render either Party liable for the debts or obligations of the other Party.



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### **6.13 Waiver**

Any waiver at any time of the rights of either Party as to any default or failure to require strict adherence to any of the terms herein, on the part of the other Party to this Agreement or as to any other matters arising hereunder shall not be deemed a waiver as to any default or other matter subsequently occurring.

### **6.14 Modification**

This Agreement is subject to change under Section 205 of the Federal Power Act, as that section may be amended or superseded, upon the mutual written agreement of the Parties. Absent mutual agreement of the Parties, it is the intent of this Section 6.14 that, to the maximum extent permitted by law, the terms and conditions set forth in Sections 2.01, 2.13, 3.03, 3.08, 3.09, 4.01, 5.01, 5.02, 5.03, 5.04, 5.05, 5.06, 6.01, 6.02, 6.09 and 6.14 of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting sua sponte on behalf of either Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner; subject only to an express finding by the Commission that such change is required under the public interest standard under the Mobile-Sierra doctrine. Any other provision of this Agreement may be changed pursuant to a filing with FERC under Section 206 of the Federal Power Act and a finding by the Commission that such change is just and reasonable.

### **6.15 Counterparts**

This Agreement may be executed in counterparts, neither one of which needs to be executed by both Parties, and this Agreement shall be binding upon both Parties with the same force and effect as if both Parties had signed the same document, and each such signed counterpart shall constitute an original of this Agreement.



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IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in its corporate name by its proper officers as of the date first written above.

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

By: \_\_\_\_\_

Name: Rick Gonzales

Title: Chief Operating Officer

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

**NextEra Energy Transmission New York, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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





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**APPENDIX A-1**

**LISTING OF NTO TRANSMISSION FACILITIES  
UNDER ISO OPERATIONAL CONTROL\***

<b>EQUIPMENT NAME</b>	<b>FROM BUS NAME</b>	<b>FROM BUS KV</b>	<b>TO BUS NAME</b>	<b>TO BUS KV</b>
LINE SEGMENT # ND1 <sup>±</sup>	NIAGARA	345	DYSINGER	345
LINE SEGMENT # ND2 <sup>±</sup>	NIAGARA	345	DYSINGER	345
LINE SEGMENT # DH1 <sup>±</sup>	DYSINGER	345	STATION 255	345
LINE SEGMENT # DH2 <sup>±</sup>	DYSINGER	345	STATION 255	345
LINE # DES1	DYSINGER	345	EAST STOLLE RD	345
LINE # STL1 <sup>±</sup>	EAST STOLLE RD	345	STOLLE RD	345
LINE # 38 <sup>±</sup>	DYSINGER	345	KINTIGH	345
LINE # 39 <sup>±</sup>	DYSINGER	345	KINTIGH	345
LINE # 29 <sup>±</sup>	EAST STOLLE RD	345	FIVE MILE	345
PAR	DYSINGER	345		
SR REACT	EAST STOLLE RD	345		

\* The transmission facilities listed in this Appendix A-1 that are not in-service as of the effective date of this Agreement will be completed and placed in service by the NTO in accordance with the applicable development agreement entered into by the parties concerning such facilities. If, subsequent to the execution of this Agreement, there are any material changes to the transmission facilities listed in this Appendix A-1, the NTO and ISO shall update this Appendix A-1 in accordance with Section 2.01 of this Agreement.

<sup>±</sup> The NTO owns a portion of the transmission facility.


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**APPENDIX A-2**

**LISTING OF NTO TRANSMISSION FACILITIES  
REQUIRING ISO NOTIFICATION**



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**APPENDIX A-3**

**LISTING OF NTO LOCAL AREA TRANSMISSION SYSTEM FACILITIES**



**SERVICE AGREEMENT NO. 2634**

**TRANSMISSION PROJECT**

**INTERCONNECTION AGREEMENT**

**AMONG THE**

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

**AND**

**NEW YORK STATE ELECTRIC & GAS CORPORATION**

**AND**

**NEXTERA ENERGY TRANSMISSION NEW YORK, INC.**

**Dated as of July 14, 2021**

**(Empire State Line Project)**



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Appendices

## **TRANSMISSION PROJECT INTERCONNECTION AGREEMENT**

**THIS TRANSMISSION PROJECT INTERCONNECTION AGREEMENT** (“Agreement”) is made and entered into this 14th day of July, 2021, by and among NextEra Energy Transmission New York, Inc., a corporation organized and existing under the laws of the State of New York (“Transmission Developer” with a Transmission Project), the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“NYISO”), and New York State Electric & Gas Corporation a corporation organized and existing under the laws of the State of New York (“Connecting Transmission Owner”). Transmission Developer, the NYISO, or Connecting Transmission Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

### **RECITALS**

**WHEREAS**, NYISO operates the New York State Transmission System and Connecting Transmission Owner owns certain facilities included in the New York State Transmission System;

**WHEREAS**, Transmission Developer intends to construct, own, and operate a Transmission Project described in Appendix C to this Agreement that will interconnect to the New York State Transmission System;

**WHEREAS**, portions of the Transmission Project will interconnect to the New York State Transmission System at facilities owned and operated by the Connecting Transmission Owner;

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

**WHEREAS**, Transmission Interconnection Studies determined that certain Network Upgrade Facilities were required on the Connecting Transmission Owner’s system for the Transmission Project to connect reliably to the system in a manner that meets the NYISO Transmission Interconnection Standard; and

**WHEREAS**, Transmission Developer, NYISO, and Connecting Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Transmission Project with the Connecting Transmission Owner’s facilities included in the New York State Transmission System;

**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 the meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT,

Section 22.1 of Attachment P of the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, the body of the Transmission Interconnection Procedures, or the body of this Agreement.

**Affected System** shall mean an electric system other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

**Affected System Operator** shall mean the entity that operates an Affected System.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachment P, Attachment X, Attachment Z, or Attachment S to the ISO OATT.

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

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

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

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Transmission Developer’s Transmission Project is directly interconnected, as those requirements and guidelines are amended and modified and in effect from time to time; provided that no Party shall waive its right to challenge the applicability or validity of any requirement or guideline as applied to it in the context of this Agreement.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Transmission Interconnection Studies by the NYISO, Connecting Transmission Owner, or the Transmission Developer, as described in Section 22.6.1 of the Transmission Interconnection Procedures.

**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.

**Confidential Information** shall mean any information that is defined as confidential by Article 22 of this Agreement.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point(s) of Interconnection, and (iii) is a Party to this Agreement. For purposes of this Agreement, the Connecting Transmission Owner is defined in the introductory paragraph.

**Control Area** shall mean an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the Generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the Load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain Operating Reserves in accordance with Good Utility Practice. A Control Area must be certified by the NPCC.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 17 of this Agreement.

**Development Agreement** shall mean the agreement executed between the NYISO and the Transmission Developer concerning the development of the Transmission Project, dated June 29, 2019, as it may be amended from time to time.

**Effective Date** shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

**Emergency** shall mean any abnormal condition or situation which the Connecting Transmission Owner, Transmission Developer, or NYISO, in their sole discretion, deems imminently likely to endanger life or property, or adversely affect or impair the New York State Transmission System, Connecting Transmission Owner's electrical system, Transmission Project, or the electrical or transmission systems of others to which they are directly or indirectly connected, which requires immediate automatic or manual action to correct. Such an abnormal system condition or situation includes, without limitation, overloading or potential overloading (exceeding thermal limits of pre- and post-contingency), excessive voltage drop, exceeding voltage limits as defined by the NYISO, Transmission Developer, or Connecting Transmission Owner, load shedding, voltage reduction, operating reserve deficiencies, frequency deviations, over-generation or other non-normal conditions. Economic hardship of a Party will not constitute an "Emergency."

**Emergency State** shall mean the condition or state that the New York State Power System is in when an abnormal condition occurs that requires automatic or immediate manual action to prevent or limit loss of the New York State Transmission System or Generators that could adversely affect the reliability of the New York State Power System.

**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 of the NYISO OATT to determine a list of facilities required to reliably interconnect the Transmission Project (including Network Upgrade Facilities) as identified in the System Impact Study, the cost of those facilities, and the time required to interconnect the Transmission Project with the New York State Transmission System.

**Facilities Study Agreement** shall mean the agreement described in Section 22.9.1 of Attachment P of the NYISO OATT for conducting the Facilities Study.

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

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

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

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

**Governmental Authority** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Developer, NYISO, Affected Transmission Owner, Connecting Transmission Owner, or any Affiliate thereof.



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

**Initial Synchronization Date(s)** shall mean the date(s) upon which the Transmission Project and Network Upgrade Facilities, as applicable, are initially synchronized with the New York State Transmission System and upon which Trial Operation begins, which date(s) shall be set forth in the milestones table in Appendix B. The Transmission Developer must provide notice of the Initial Synchronization Date(s) to the other Parties in the form of Appendix E-1 to this Agreement.

**In-Service Date(s)** shall mean the date(s) upon which the Transmission Project and Network Upgrade Facilities, as applicable, are energized consistent with the provisions of this Agreement and available to provide Transmission Service under the NYISO’s Tariffs, which date(s) shall be set forth in the milestones table in Appendix B. The Transmission Developer must provide notice of the In-Service Date(s) to the other Parties in the form of Appendix E-2 to this Agreement.

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

**Metering Equipment** shall mean all metering equipment installed or to be installed at the Transmission Project pursuant to this Agreement, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

**Metering Points** shall mean the location(s) identified by the NYISO for any Metering Equipment associated with the Transmission Project that are required for the Transmission Project to provide zonal or subzonal metering data.

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

**Network Upgrade Facilities** shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to the New York State Transmission System that are required for the proposed Transmission Project to connect reliably to the system in a manner that meets the NYISO Transmission Interconnection Standard. For purposes of this Agreement, the Network Upgrade Facilities are described in Appendix A of this Agreement.

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

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

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

**NUF Estimated Total Costs** shall be the costs for the engineering, procurement, and construction of the Network Upgrade Facilities, which costs were identified in the Facilities Study and are specified in Appendix A.

**NYISO Transmission Interconnection Standard** shall mean the reliability standard that must be met by any Transmission Project proposing to connect to the New York State Transmission System. The standard is designed to ensure reliable access by the proposed project to the New York State Transmission System.

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

**Operating Agreement** shall mean the Operating Agreement that the Transmission Developer is required to enter into with the NYISO concerning the operation of its transmission facilities in accordance with the requirements in Section 31.1.7.3 of Attachment Y of the OATT, as such agreement may be amended from time to time.

**Party or Parties** shall mean NYISO, Connecting Transmission Owner, or Transmission Developer or any combination of the above.

**Point(s) of Change of Ownership** shall mean the point(s), as set forth in Appendix C to this Agreement, where the Transmission Developer's Transmission Project connect to the Connecting Transmission Owner's system.

**Point(s) of Interconnection** shall mean the point(s), as set forth in Appendix C to this Agreement, where the Transmission Developer's Transmission Project connect to the New York State Transmission System.

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

**Security** shall mean a bond, irrevocable letter of credit, parent company guarantee or other form of security from an entity with an investment grade rating, executed for the benefit of the Connecting Transmission Owner, meeting the commercially reasonable requirements of the Connecting Transmission Owner with which it is required to be posted pursuant to Article 11.4, and consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1 of this Agreement.

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

**System Impact Study** shall mean the study conducted pursuant to Section 22.8 of Attachment P of the NYISO OATT that evaluates the impact of the proposed Transmission Project on the safety and reliability of the New York State Transmission System and, if applicable, and Affected System, to determine what Network Upgrade Facilities are needed for the proposed Transmission Project to connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard.

**System Impact Study Agreement** shall mean the agreement described in Section 22.8.1 of Attachment P of the NYISO OATT for conducting the System Impact Study.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Transmission Project and (2) protect the Transmission Project from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

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

**Transmission Developer** shall mean an entity that proposes to interconnect its Transmission Project to the New York State Transmission System in compliance with the NYISO Transmission Interconnection Standard. For purposes of this Agreement, the Transmission Developer is defined in the introductory paragraph.

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

**Transmission Interconnection Procedures (“TIP”)** shall mean the interconnection procedures applicable to a Transmission Interconnection Application pertaining to a Transmission Project that are included in Attachment P of the NYISO OATT.

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

**Transmission Project** shall mean the Transmission Developer’s proposed transmission facility or facilities that collectively satisfy the definition of Transmission Project in Section 22.3.1 of Attachment P of the NYISO OATT. For purposes of this Agreement, the Transmission Project is described in Appendix C of this Agreement.

**Transmission Project Interconnection Agreement** shall mean this interconnection agreement applicable to the interconnection of the Transmission Project to the New York State Transmission System.

**Trial Operation** shall mean the period(s) during which Transmission Developer is engaged in on-site test operations and commissioning of the Transmission Project or Network Upgrade Facilities prior to the In-Service Date.

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

### **2.1 Effective Date.**

This Agreement shall become effective upon execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.

### **2.2 Term of Agreement.**

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of twenty five (25) years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter.

### **2.3 Termination.**

#### **2.3.1 Written Notice.**

##### **2.3.1.1 Written Notice of Termination**

This Agreement may be terminated: (i) by any Party after giving the other Parties ninety (90) Calendar Days advance written notice following the termination of the Development Agreement prior to the completion of its term, subject to the suspension requirements in Article 2.3.1.2 below; or (ii) by the mutual agreement in writing of all Parties.

##### **2.3.1.2 Suspension Period for Project Transfer**

2.3.1.2.1 If the Development Agreement is terminated prior to the completion of its term and the NYISO exercises its right under the Development Agreement and the Tariff to request that a developer other than the Transmission Developer complete the Transmission Project, this Agreement shall be suspended. The suspension period will last until either: (i) the NYISO issues a written determination that the Transmission Project cannot be transferred to another developer and will not proceed, or (ii) the Transmission Developer completes the assignment of this Agreement to a new developer selected by the NYISO as set forth in Article 2.3.1.2.3. During the suspension period, the running of any advanced notice of termination time period pursuant to Article 2.3.1.1 will be paused. The Agreement shall not be terminated during the suspension period without the written agreement of all Parties.

2.3.1.2.2 During the suspension period, the Transmission Developer and Connecting Transmission Owner shall suspend all work associated with the construction and installation of the Network Upgrade Facilities required for only that Transmission Developer under this

Agreement with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. In such event, Transmission Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with this Agreement, including those which Connecting Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Connecting Transmission Owner cannot reasonably avoid; *provided, however*, that prior to canceling or suspending any such material, equipment or labor contract, Connecting Transmission Owner shall obtain Transmission Developer's authorization to do so, which authorization shall not unreasonably be withheld, conditioned or delayed.

2.3.1.2.3 If, pursuant to its Tariff, the NYISO selects a new developer to complete the Transmission Project, Transmission Developer shall coordinate with the new developer concerning the assignment of this Agreement to the new developer pursuant to the assignment requirements in Article 19 of this Agreement. All liabilities under this Agreement existing prior to such transfer shall remain with the Transmission Developer, unless otherwise agreed upon by the Transmission Developer and the new developer as part of their good faith negotiations regarding the transfer.

### **2.3.2 Default.**

Any Party may terminate this Agreement in accordance with Article 17.

### **2.3.3 Compliance.**

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

## **2.4 Termination Costs.**

If a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the Transmission Developer shall be responsible for all costs that are the responsibility of the Transmission Developer under this Agreement that are incurred by the Transmission Developer or the other Parties through the date, as applicable, of the other Parties' receipt of a Party's notice of termination or of the Parties' mutual agreement to terminate the agreement. Such costs include any cancellation costs relating to orders or contracts. In the event of termination by the Transmission Developer, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

**2.4.1** With respect to any portion of the Network Upgrade Facilities that have not yet been constructed or installed, but that is being relied upon by other projects in the manner described in Article 11.5 of this Agreement, Transmission Developer shall forfeit any remaining Security in accordance with the requirements in Article 11.5.

**2.4.2** With respect to any portion of the Network Upgrade Facilities that has not yet been constructed or installed and is not being relied upon by other projects in the manner described in Article 11.5 of this Agreement, the Connecting Transmission Owner shall to the extent possible and with Transmission Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Transmission Developer elects not to authorize such cancellation, Transmission Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Connecting Transmission Owner shall deliver such material and equipment, and, if necessary, assign such contracts, to Transmission Developer as soon as practicable, at Transmission Developer's expense. To the extent that Transmission Developer has already paid Connecting Transmission Owner for any or all such costs of materials or equipment not taken by Transmission Developer, Connecting Transmission Owner shall promptly refund such amounts to Transmission Developer, less any costs, including penalties incurred by the Connecting Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.3** Connecting Transmission Owner may, at its option, retain any portion of such materials, equipment, or facilities that Transmission Developer chooses not to accept delivery of, in which case Connecting Transmission Owner shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

**2.4.4** With respect to any portion of the Network Upgrade Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Transmission Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

## **2.5 Disconnection.**

Upon termination of this Agreement, Transmission Developer and Connecting Transmission Owner will take all appropriate steps to disconnect the Transmission Developer's Transmission Project from the New York State Transmission System and to perform such work as may be necessary to ensure that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. All costs required to effectuate such disconnection shall be borne by the Transmission Developer, unless such termination resulted from the Connecting Transmission Owner's Default of this Agreement.

## **2.6 Survival.**

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement and Transmission Developer's satisfaction of the Security

requirements in Article 11.5; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Transmission Developer and Connecting Transmission Owner each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

### **ARTICLE 3. REGULATORY FILINGS**

NYISO and Connecting Transmission Owner shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Transmission Developer to contain Confidential Information shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT. If the Transmission Developer has executed this Agreement, or any amendment thereto, the Transmission Developer shall reasonably cooperate with NYISO and Connecting Transmission Owner with respect to such filing and to provide any information reasonably requested by NYISO and Connecting Transmission Owner needed to comply with Applicable Laws and Regulations.

### **ARTICLE 4. SCOPE OF SERVICE**

#### **4.1 Interconnection of Transmission Facilities**

The Transmission Developer's Transmission Project and the Connecting Transmission Owner's transmission system shall interconnect at the Points of Interconnection set forth in Appendix C of this Agreement in accordance with the terms and conditions of this Agreement.

#### **4.2 No Transmission Delivery Service.**

The execution of this Agreement does not constitute a request for, nor agreement to provide, any Transmission Service under the ISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery.

#### **4.3 No Other Services.**

The execution of this Agreement does not constitute a request for, nor agreement to provide Energy, any Ancillary Services or Installed Capacity under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff").

### **ARTICLE 5. NETWORK UPGRADE FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION**

#### **5.1 Network Upgrade Facilities.**

Unless otherwise mutually agreed to by Transmission Developer and Connecting Transmission Owner, Transmission Developer shall select the In-Service Date and Initial

Synchronization Date of the Network Upgrade Facilities, and such dates shall be set forth in Appendix B hereto. Transmission Developer shall design, procure, construct, and install the Network Upgrade Facilities as described in Appendix A hereto. Transmission Developer shall use Reasonable Efforts to complete the Network Upgrade Facilities by the dates set forth in Appendix B hereto. The Connecting Transmission Owner shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Developer reasonably expects that it will not be able to complete the Network Upgrade Facilities by the specified dates, Transmission Developer shall promptly provide written notice to the Connecting Transmission Owner and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

## **5.2 General Conditions Applicable to Network Upgrade Facilities Constructed by Transmission Developer.**

As Transmission Developer is responsible for the design, procurement and construction of the Network Upgrade Facilities as set forth in Appendix A, the following conditions apply:

**5.2.1** Transmission Developer shall engineer, procure equipment, and construct the Network Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided by the Connecting Transmission Owner;

**5.2.2** Transmission Developer's engineering, procurement and construction of the Network Upgrade Facilities shall comply with all requirements of law to which Connecting Transmission Owner would otherwise have been subject in the engineering, procurement or construction of the Network Upgrade Facilities;

**5.2.3** Connecting Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Network Upgrade Facilities;

**5.2.4** Prior to commencement of construction, Transmission Developer shall provide to Connecting Transmission Owner and NYISO a schedule for construction of the Network Upgrade Facilities, and shall promptly respond to requests for information from Connecting Transmission Owner or NYISO;

**5.2.5** At any time during construction, Connecting Transmission Owner shall have the right to gain unrestricted access to the Network Upgrade Facilities and to conduct inspections of the same;

**5.2.6** At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Network Upgrade Facilities not meet the standards and specifications provided by Connecting Transmission Owner, the Transmission Developer shall be obligated to remedy deficiencies in that portion of the Network Upgrade Facilities to Connecting Transmission Owner's satisfaction;



**5.2.7** Transmission Developer shall indemnify Connecting Transmission Owner and NYISO for claims arising from the Transmission Developer's construction of Network Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;

**5.2.8** Transmission Developer shall transfer control of Network Upgrade Facilities to the Connecting Transmission Owner as specified in Appendix C;

**5.2.9** Transmission Developer shall transfer ownership of the Network Upgrade Facilities to Connecting Transmission Owner as specified in Appendix C;

**5.2.10** Connecting Transmission Owner shall approve and accept for operation and maintenance the Network Upgrade Facilities as specified in Appendix C, to the extent engineered, procured, and constructed in accordance with this Article 5.2;

**5.2.11** Transmission Developer shall deliver to NYISO and Connecting Transmission Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Connecting Transmission Owner to assure that the Network Upgrade Facilities are built to the standards and specifications required by Connecting Transmission Owner; and

**5.2.12** The Transmission Developer shall be responsible for the costs that Connecting Transmission Owner incurs in executing the responsibilities enumerated to Connecting Transmission Owner under Article 5.2. The Connecting Transmission Owner shall invoice Transmission Developer for such costs pursuant to Article 12.

### **5.3 Equipment Procurement.**

The Transmission Developer shall commence design of the Network Upgrade Facilities and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Transmission Developer and Connecting Transmission Owner otherwise agree in writing:

**5.3.1** NYISO and Connecting Transmission Owner have completed the Facilities Study pursuant to the Facilities Study Agreement; and

**5.3.2** The NYISO has completed the required cost allocation analyses, and Transmission Developer has provided Security to the Connecting Transmission Owner in accordance with Article 11.4 by the date specified in Appendix B hereto.

### **5.4 Construction Commencement.**

The Transmission Developer shall commence construction of the Network Upgrade Facilities as soon as practicable after the following additional conditions are satisfied:

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

**5.4.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Network Upgrade Facilities; and

**5.4.3** The Transmission Developer has provided Security to the Connecting Transmission Owner in accordance with Article 11.4 by the dates specified in Appendix B hereto.

## **5.5 Work Progress.**

The Transmission Developer will keep the NYISO and Connecting Transmission Owner advised periodically as to the progress of the design, procurement and construction efforts of the Transmission Project and Network Upgrade Facilities. The NYISO and Connecting Transmission Owner may, at any time, request a progress report from the Transmission Developer.

## **5.6 Information Exchange.**

As soon as reasonably practicable after the Effective Date, the Transmission Developer and Connecting Transmission Owner shall exchange information, and provide NYISO the same information, regarding the design and compatibility of the Transmission Project and Network Upgrade Facilities and the compatibility of the Transmission Project and Network Upgrade Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.

## **5.7 Network Upgrade Facilities**

Transmission Developer shall submit initial and final specifications for the Network Upgrade Facilities to Connecting Transmission Owner and NYISO for review and comments pursuant to the dates set forth in Appendix B. Connecting Transmission Owner and NYISO shall review such specifications to ensure that the Network Upgrade Facilities are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO and comment on such specifications pursuant to the dates set forth in Appendix B. All specifications provided hereunder shall be deemed to be Confidential Information.

The review of Transmission Developer's final specifications by Connecting Transmission Owner and NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Transmission Project or Network Upgrade Facilities. Transmission Developer shall make such changes to the Network Upgrade Facilities as may reasonably be required by Connecting Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the Network Upgrade Facilities are compatible with the technical specifications, operational control, and safety requirements of the Connecting Transmission Owner and NYISO.

The Transmission Developer shall design and construct the Network Upgrade Facilities in accordance with Good Utility Practice and the Connecting Transmission Owner's standards and specifications. Transmission Developer shall deliver to the Connecting Transmission Owner

and NYISO pursuant to the dates set forth in Appendix B “as-built” drawings, information and documents for the Network Upgrade Facilities.

The Connecting Transmission Owner shall transfer operational control of the Network Upgrade Facilities to the NYISO upon completion of such facilities.

## **5.8 Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, the Connecting Transmission Owner and Transmission Developer (“Granting Party”) shall each furnish to the other Parties (“Access Party”) at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the Point(s) of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Transmission Project and Network Upgrade Facilities with the New York State Transmission System; (ii) operate and maintain the Transmission Project, Network Upgrade Facilities, and the New York State Transmission System; and (iii) disconnect or remove the Access Party’s facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

## **5.9 Lands of Other Property Owners.**

If any part of the Network Upgrade Facilities is to be installed on property owned by persons other than Transmission Developer or Connecting Transmission Owner, the Connecting Transmission Owner agrees, to the extent permitted by applicable law, at Transmission Developer’s expense to use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Network Upgrade Facilities upon such property.

## **5.10 Permits.**

NYISO, Connecting Transmission Owner and Transmission Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Connecting Transmission Owner shall provide permitting assistance to the Transmission Developer comparable to that provided to the Connecting Transmission Owner’s own, or an Affiliate’s, generation or transmission facilities, if any.

## **5.11 Suspension.**

Transmission Developer reserves the right, upon written notice to Connecting Transmission Owner and NYISO, to suspend at any time all work by Transmission Developer and Connecting Transmission Owner associated with the construction and installation of the Network Upgrade Facilities required for only that Transmission Developer under this Agreement with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Connecting Transmission Owner and NYISO. If the suspension will impact the Transmission Developer's ability to meet any Advisory Milestones or Critical Path Milestones in the Development Agreement, Transmission Developer shall notify the NYISO in accordance with the requirements in Article 3.3 of the Development Agreement. NYISO reserves the right, upon written notice to Transmission Developer and Connecting Transmission Owner, to require the suspension of all work by Transmission Developer and Connecting Transmission Owner associated with the engineering, procurement, and/or construction services under this Agreement if the NYISO terminates the Development Agreement pursuant to Article 8 of the Development Agreement.

In the event of suspension under this Article 5.11, Transmission Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with the ISO OATT and the Facilities Study report including those which Connecting Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Connecting Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Connecting Transmission Owner shall obtain Transmission Developer's authorization to do so.

Connecting Transmission Owner shall invoice Transmission Developer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Transmission Developer suspends work by the Transmission Developer and Connecting Transmission Owner required under this Agreement pursuant to this Article 5.11, and has not informed the Parties that it is recommencing its work and requested Connecting Transmission Owner to recommence its work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date of the written notice required under this Article 5.11 or the date specified in the written notice of suspension.

## **5.12 Taxes.**

### **5.12.1 Transmission Developer Payments Taxable.**

The Transmission Developer and Connecting Transmission Owner intend that all payments or property transfers made by Transmission Developer to Connecting Transmission

Owner for the installation of the Network Upgrade Facilities shall be taxable as contributions in aid of construction.

### **5.12.2 Tax Gross-Up Amount.**

Transmission Developer's liability for the cost consequences of any current tax liability under this Article 5.12 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Transmission Developer will pay Connecting Transmission Owner, in addition to the amount paid for the Network Upgrade Facilities, an amount equal to (1) the current taxes imposed on Connecting Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Connecting Transmission Owner as a result of payments or property transfers made by Transmission Developer to Connecting Transmission Owner under this Agreement (without regard to any payments under this Article 5.12) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Connecting Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Connecting Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Connecting Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Connecting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Connecting Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Transmission Developer's liability to Connecting Transmission Owner pursuant to this Article 5.12.2 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$ . Transmission Developer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Network Upgrade Facilities.

### **5.12.3 Refund.**

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

(i) Any payment made by Transmission Developer under this Article 5.12 for taxes that is attributable to the amount determined to be taxable, together with interest thereon,

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

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

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

#### **5.12.4 Taxes Other Than Income Taxes.**

Upon the timely request by Transmission Developer, and at Transmission Developer's sole expense, Connecting Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Connecting Transmission Owner for which Transmission Developer may be required to reimburse Connecting Transmission Owner under the terms of this Agreement. Transmission Developer shall pay to Connecting Transmission Owner on a periodic basis, as invoiced by Connecting Transmission Owner, Connecting Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Transmission Developer and Connecting Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Transmission Developer to Connecting Transmission 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 tax payment is withheld and ultimately due and payable after appeal, Transmission Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Connecting Transmission Owner.

## **5.13 Tax Status; Non-Jurisdictional Entities.**

### **5.13.1 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 including the status of NYISO, or the status of any Connecting Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

## **5.14 Modification.**

### **5.14.1 General.**

If, prior to the In-Service Date of the Transmission Project or Network Upgrade Facilities, either the Transmission Developer or Connecting Transmission Owner proposes to modify the Transmission Project or Network Upgrade Facilities, they must inform the other Parties of the proposed modification and must satisfy the requirements for such modifications in (i) Section 22.5.4 of Attachment P to the NYISO OATT, and (ii) the Development Agreement. The Transmission Developer shall be responsible for the cost of any such additional modifications, including the cost of studying the materiality and impact of the modification.

Following the In-Service Date of the Transmission Project or Network Upgrade Facilities, either the Transmission Developer or Connecting Transmission Owner may undertake modifications to its facilities covered by this Agreement. If either the Transmission Developer or Connecting Transmission Owner plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party, and to NYISO, sufficient information regarding such modification so that the other Party and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the transmission of electricity at the Point(s) of Interconnection. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of construction regarding such work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

### **5.14.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

### **5.14.3 Modification Costs.**

Transmission Developer or Connecting Transmission Owner, as applicable, shall not be assigned the costs of any additions, modifications, or replacements that the other Party makes to the New York State Transmission System to facilitate the interconnection of a third party to the

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

## **ARTICLE 6. TESTING AND INSPECTION**

### **6.1 Pre-In Service Date Testing and Modifications.**

Prior to the In-Service Date of the Transmission Project or Network Upgrade Facilities, as applicable, the Connecting Transmission Owner shall test the Network Upgrade Facilities and Transmission Developer shall test the Transmission Project to ensure their safe and reliable operation. Similar testing may be required after initial operation. Transmission Developer and Connecting Transmission Owner shall each make any modifications to its facilities that are found to be necessary as a result of such testing. Transmission Developer shall bear the cost of all such testing and modifications. Transmission Developer and Connecting Transmission Owner shall coordinate with NYISO prior to performing the testing of the Transmission Project and Network Upgrade Facilities and prior to the facilities entering into service.

### **6.2 Post-In-Service Date Testing and Modifications.**

Transmission Developer and Connecting Transmission Owner shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the Transmission Project with the New York State Transmission System in a safe and reliable manner. Transmission Developer and Connecting Transmission Owner shall each have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

### **6.3 Right to Observe Testing.**

Transmission Developer and Connecting Transmission Owner shall each notify the other Party, and the NYISO, in advance of its performance of tests of the Transmission Project and Network Upgrade Facilities. The other Party, and the NYISO, shall each have the right, at its own expense, to observe such testing.

### **6.4 Right to Inspect.**

Transmission Developer and Connecting Transmission Owner shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Transmission Developer and Connecting Transmission Owner. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement



or confirmation of any element or condition of the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the ISO OATT.

## **ARTICLE 7. METERING**

### **7.1 General.**

Transmission Developer shall procure and install Metering Equipment at any Metering Points identified by the NYISO prior to any operation of the Transmission Project. Transmission Developer shall own, operate, test, maintain, and, if directed by the NYISO, relocate such Metering Equipment in accordance with ISO Procedures, as such requirements are amended from time to time. Transmission Developer shall provide the NYISO and Connecting Transmission Owner, as applicable, with metering data in accordance with the metering requirements set forth in this Agreement, the Operating Agreement (including Section 2.05, *Local Control Center, Metering and Telemetry*), the NYISO Tariffs, and ISO Procedures, as such requirements are amended from time to time. Transmission Developer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

### **7.2 Check Meters.**

Connecting Transmission Owner, at its option and expense, may install and operate, on its premises and on its side of the Points of Interconnection, one or more check meters to check Transmission Developer's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.4 below. The installation, operation and maintenance thereof shall be performed entirely by Connecting Transmission Owner in accordance with Good Utility Practice.

### **7.3 Standards.**

Transmission Developer shall install, calibrate, and test revenue quality Metering Equipment including potential transformers and current transformers in accordance with ISO Procedures, as such requirements are amended from time to time.

### **7.4 Testing of Metering Equipment.**

Transmission Developer shall inspect and test all of its Metering Equipment upon installation and at least once every two (2) years thereafter. If required by ISO Procedures, Transmission Developer shall, at its own expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Developer shall give reasonable notice of the time when any inspection or test shall take place, and NYISO may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Transmission Developer's expense in order

to provide accurate metering. Transmission Developer and NYISO shall address the loss of meter data or meter data anomalies in accordance with ISO Procedures. The NYISO shall reserve the right to review all associated metering equipment installation on the Transmission Developer's or Connecting Transmission Owner's property at any time.

## **7.5 Metering Data.**

At Transmission Developer's expense, the metered data shall be telemetered to one or more locations designated by NYISO. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy at the Metering Points.

## **ARTICLE 8. COMMUNICATIONS**

### **8.1 Transmission Developer Obligations.**

Transmission Developer shall maintain satisfactory operating communications, including providing analog and digital real-time telemetry, with Connecting Transmission Owner and NYISO in accordance with the requirements in this Agreement, the Operating Agreement (including Section 2.05, *Local Control Center, Metering and Telemetry*), NYISO Tariffs, and ISO Procedures, as such requirements are amended from time to time. Transmission Developer shall provide standard voice line, dedicated voice line and facsimile communications at its control center for the Transmission Project through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Transmission Developer shall also provide the dedicated data circuit(s) necessary to provide Transmission Developer data to Connecting Transmission Owner and NYISO as set forth in Appendix D hereto. The data circuit(s) shall extend from the Transmission Project to the location(s) specified by Connecting Transmission Owner and NYISO. Any required maintenance of such communications equipment shall be performed by Transmission Developer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

### **8.2 Remote Terminal Unit.**

Prior to the Initial Synchronization Date of the Transmission Project, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Transmission Developer, or by Connecting Transmission Owner at Transmission Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Connecting Transmission Owner and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Connecting Transmission Owner and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that

require the attention and/or correction by that other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

### **8.3 No Annexation.**

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

## **ARTICLE 9. OPERATIONS**

### **9.1 General.**

Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards. Connecting Transmission Owner or Transmission Developer, as applicable, shall provide the NYISO with notifications of all of its power system equipment additions or modifications in accordance with ISO Procedures, including the NYISO's Reliability Analysis Data Manual (Manual 24).

### **9.2 NYISO and Connecting Transmission Owner Obligations.**

Connecting Transmission Owner and NYISO shall cause the New York State Transmission System to be operated, maintained and controlled in a safe and reliable manner in accordance with this Agreement and the NYISO Tariffs. Connecting Transmission Owner and NYISO may provide operating instructions to Transmission Developer consistent with this Agreement, NYISO procedures and Connecting Transmission Owner's operating protocols and procedures as they may change from time to time. Connecting Transmission Owner and NYISO will consider changes to their respective operating protocols and procedures proposed by Transmission Developer.

### **9.3 Transmission Developer Obligations.**

Transmission Developer shall at its own expense operate, maintain and control the Transmission Project and the Network Upgrade Facilities specified in Appendix C in a safe and reliable manner and in accordance with this Agreement, the NYISO Tariffs, ISO Procedures, and the Operating Agreement. Transmission Developer shall operate the Transmission Project and the Network Upgrade Facilities specified in Appendix C in accordance with NYISO and Connecting Transmission Owner requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

## **9.4 Reserved.**

## **9.5 Outages and Interruptions.**

### **9.5.1 Outages.**

#### **9.5.1.1 Outage Authority and Coordination.**

Transmission Developer and Connecting Transmission Owner may each, in accordance with NYISO procedures and Good Utility Practice and in coordination with the other Party, remove from service any of its respective Transmission Project facilities or Network Upgrade Facilities that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency or Emergency State, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both the Transmission Developer and the Connecting Transmission Owner. In all circumstances either Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

#### **9.5.1.2 Outage Schedules.**

The Transmission Developer or Connecting Transmission Owner, as applicable and pursuant to ISO Procedures, shall post scheduled outages of its respective transmission facilities on the NYISO OASIS.

#### **9.5.1.3 Outage Restoration.**

If an outage on the Transmission Project or Network Upgrade Facilities adversely affects the other Party's operations or facilities, the Party that owns the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns the facility that is out of service shall provide the other Party and NYISO, to the extent such information is known, information on the nature of the Emergency or Emergency State, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

**9.5.2 Interruption of Service.** If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO, Connecting Transmission Owner, or Transmission Developer may require the Connecting Transmission Owner or Transmission Developer to interrupt the transmission of electricity if such transmission of electricity could adversely affect the ability of NYISO and, as applicable, Connecting Transmission Owner or Transmission Developer to perform such activities as are necessary to safely and reliably operate and maintain the New York State Transmission System. The following provisions shall apply to any interruption permitted under this Article 9.5.2:

**9.5.2.1** The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

**9.5.2.2** When the interruption or reduction must be made under circumstances which do not allow for advance notice, NYISO, Connecting Transmission Owner, or Transmission Developer shall notify, as applicable, Transmission Developer or Connecting Transmission Owner by telephone as soon as practicable of the reasons for the curtailment or interruption, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

**9.5.2.3** Except during the existence of an Emergency or Emergency State, when the interruption can be scheduled without advance notice, NYISO, Connecting Transmission Owner, or Transmission Developer shall notify, as applicable, Transmission Developer or Connecting Transmission Owner in advance regarding the timing of such scheduling and of the expected duration. The Parties shall coordinate with each other using Good Utility Practice to schedule the interruption during periods of least impact to Transmission Developer, the Connecting Transmission Owner and the New York State Transmission System;

**9.5.2.4** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Transmission Project, Network Upgrade Facilities, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

### **9.5.3 System Protection and Other Control Requirements.**

**9.5.3.1 System Protection Facilities.** Transmission Developer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Transmission Project. Connecting Transmission Owner shall install at Transmission Developer's expense any System Protection Facilities that may be required on the New York State Transmission System as a result of the interconnection of the Transmission Project.

**9.5.3.2** The protection facilities of both the Transmission Developer and Connecting Transmission Owner shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

**9.5.3.3** The Transmission Developer and Connecting Transmission Owner shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.

**9.5.3.4** The protective relay design of the Transmission Developer and Connecting Transmission Owner shall each incorporate the necessary test switches to perform the tests required in Article 6 of this Agreement. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Transmission Developer's Transmission Project.

**9.5.3.5** The Transmission Developer and Connecting Transmission Owner will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice, NERC and NPCC criteria.

**9.5.3.6** Prior to the In-Service Dates of the Transmission Project and Network Upgrade Facilities, as applicable, the Transmission Developer and Connecting Transmission Owner shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, the Transmission Developer and Connecting Transmission Owner shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

#### **9.5.4 Requirements for Protection.**

In compliance with NPCC requirements and Good Utility Practice, Transmission Developer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Transmission Project to any short circuit occurring on the New York State Transmission System not otherwise isolated by Connecting Transmission Owner's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Transmission Project and the New York State Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Transmission Developer and Connecting Transmission Owner. Transmission Developer shall be responsible for protection of the Transmission Project and Transmission Developer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Transmission Developer shall be solely responsible to disconnect the Transmission Project and Transmission Developer's other equipment if conditions on the New York State Transmission System could adversely affect the Transmission Project.

#### **9.5.5 Power Quality.**

Neither the facilities of Transmission Developer nor the facilities of Connecting Transmission Owner shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

#### **9.6 Switching and Tagging Rules.**

The Transmission Developer and Connecting Transmission Owner shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's

activities. Such switching and tagging rules shall be developed on a nondiscriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

### **9.7 Disturbance Analysis Data Exchange.**

The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Transmission Project or the New York State Transmission System by gathering and providing access to any information relating to any disturbance, including information from disturbance recording equipment, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

## **ARTICLE 10. MAINTENANCE**

### **10.1 Connecting Transmission Owner Obligations.**

Connecting Transmission Owner shall maintain its transmission facilities, including the Network Upgrade Facilities it owns as specified in Appendix C, in a safe and reliable manner and in accordance with this Agreement.

### **10.2 Transmission Developer Obligations.**

Transmission Developer shall maintain its Transmission Project and the Network Upgrade Facilities it owns as specified in Appendix C in a safe and reliable manner and in accordance with this Agreement.

### **10.3 Coordination.**

The Transmission Developer and Connecting Transmission Owner shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Transmission Project and Network Upgrade Facilities. The Transmission Developer and Connecting Transmission Owner shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance, in accordance with NYISO procedures.

### **10.4 Secondary Systems.**

The Transmission Developer and Connecting Transmission Owner shall each cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of Transmission Developer or Connecting Transmission Owner's facilities and equipment which may reasonably be expected to impact the other Party. The Transmission Developer and Connecting Transmission Owner shall each provide advance notice to the other Party, and to

NYISO, before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

#### **10.5 Operating and Maintenance Expenses.**

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Transmission Developer shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Transmission Project and the Network Upgrade Facilities it owns as specified in Appendix C. The Connecting Transmission Owner shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Network Upgrade Facilities it owns as specified in Appendix C.

### **ARTICLE 11. PERFORMANCE OBLIGATION**

#### **11.1 Transmission Project.**

Transmission Developer shall design, procure, construct, install, own and/or control the Transmission Project described in Appendix C hereto, at its sole expense.

#### **11.2 Network Upgrade Facilities.**

Transmission Developer shall design, procure, construct, and install the Network Upgrade Facilities as specified in Appendix A hereto. Connecting Transmission Owner or Transmission Developer, as applicable, shall own, operate, maintain, and control the Network Upgrade Facilities as specified in Appendix C.

#### **11.3 Reserved.**

#### **11.4 Provision of Security.**

Within thirty (30) Calendar Days of the Effective Date of this Agreement, Transmission Developer shall provide Connecting Transmission Owner with Security for the Network Upgrade Facilities in the amount set forth in Appendix A of this Agreement. If the Transmission Developer: (i) does not pay an invoice issued by the Connecting Transmission Owner pursuant to Article 12.1 within the timeframe set forth in Article 12.3 or (ii) does not pay any disputed amount into an independent escrow account pursuant to Article 12.4, the Connecting Transmission Owner may draw upon Transmission Developer's Security to recover such payment. The Security shall be reduced on a dollar-for-dollar basis for payments made to Connecting Transmission Owner for the purpose of constructing, procuring, and installing the Network Upgrade Facilities.

In addition:



**11.4.1** The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of Connecting Transmission Owner, and contains terms and conditions that guarantee payment of the Security amount set forth in Appendix A of this Agreement.

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

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

## **11.5 Forfeiture of Security.**

The Security that the Transmission Developer provides the Connecting Transmission Owner in accordance with Article 11.4 of this Agreement shall be irrevocable and shall be subject to forfeiture in the event that the Transmission Developer subsequently terminates or abandons development of the Transmission Project. Any Security provided by the Transmission Developer to the Connecting Transmission Owner shall be subject to forfeiture to the extent necessary to defray the cost of: (1) Network Upgrade Facilities required for other Transmission Developers whose Transmission Project interconnection studies included the Transmission Developer's Transmission Project and Network Upgrade Facilities in their base cases; and (2) System Upgrade Facilities and System Deliverability Upgrade Facilities required for projects for which the Transmission Project and Network Upgrade Facilities were included in their Annual Transmission Reliability Assessment and/or Class Year Deliverability Study, as applicable. If Transmission Developer's Security is subject to forfeiture to defray the costs of an affected upgrade pursuant to this Article 11.5 and the Security is not in a form that can be readily drawn on by the Connecting Transmission Owner to defray the costs of the affected upgrade, Transmission Developer shall negotiate in good faith with the Connecting Transmission Owner to replace the Security with cash or an alternative form of Security that can be readily drawn on by Connecting Transmission Owner up to the amount required to satisfy Transmission Developer's Security obligations under this Agreement, including defraying the costs of the affected upgrade. Connecting Transmission Owner shall only be responsible for using Transmission Developer's Security to defray the costs of an affected upgrade to the extent Transmission Developer has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on to defray such costs.

## **11.6 Network Upgrade Facility Costs**

**11.6.1** If the actual cost of Network Upgrade Facilities is less than the NUF Estimated Total Costs amount, Transmission Developer is responsible only for the actual cost figure.

**11.6.2** If the actual cost of Network Upgrade Facilities is greater than the NUF Estimated Total Costs amount because other projects have been expanded, accelerated, otherwise modified or terminated, Transmission Developer is responsible only for the agreed-to and secured amount for the Network Upgrade Facilities. The additional cost is covered by the developers of the modified projects, or by the drawing on the cash that has been paid and the Security that has been posted for terminated projects, depending on the factors that caused the additional cost.

Such forfeitable Security from other developers will be drawn on only as needed for this purpose, and only to the extent that the terminated project associated with that Security has caused additional cost and that the developer of the terminated project has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on.

**11.6.3** If the actual cost of the Network Upgrade Facilities is greater than the NUF Estimated Total Costs amount for reasons other than those set forth in Article 11.6.2, Transmission Developer will pay the additional costs to Connecting Transmission Owner to the extent such costs are prudently incurred. Disputes between Transmission Developer and Connecting Transmission Owner concerning costs in excess of the agreed-to and secured amount will be resolved by the parties in accordance with the terms and conditions of Article 27.

### **11.7 Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, the Connecting Transmission Owner may propose to recover line outage costs associated with the installation of Network Upgrade Facilities on a case-by-case basis.

## **ARTICLE 12. INVOICE**

### **12.1 General.**

The Transmission Developer and Connecting Transmission Owner shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Transmission Developer and Connecting Transmission Owner may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts one Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

### **12.2 Final Invoice and Refund of Remaining Security.**

Within six months after completion of the construction of Network Upgrade Facilities, Connecting Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrade Facilities and shall set forth such costs in sufficient detail to enable Transmission Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Connecting Transmission Owner shall refund to Transmission Developer any amount by which the actual payment by Transmission Developer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice. Following the later of the completion of the construction of the Network Upgrade Facilities and Transmission Developer's payment of any final invoice issued under this Article 12.2, Connecting Transmission Owner shall refund to the Transmission Developer any remaining portions of its Security, except as set forth in Article 11.5. Connecting Transmission Owner shall provide Transmission Developer with the refunded amount within thirty (30) Calendar Days of the Parties' satisfaction of the requirements in this Article 12.2.

### **12.3 Payment.**

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

### **12.4 Disputes.**

In the event of a billing dispute between Connecting Transmission Owner and Transmission Developer, Connecting Transmission Owner shall continue to perform under this Agreement as long as Transmission Developer: (i) continues to make all payments not in dispute; and (ii) pays to Connecting Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Transmission Developer fails to meet these two requirements for continuation of service, then Connecting Transmission Owner may provide notice to Transmission Developer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 13. EMERGENCIES**

### **13.1 Obligations.**

Each Party shall comply with the Emergency State procedures of NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee. Transmission Developer and Connecting Transmission Owner agree to coordinate with NYISO to develop procedures that will address the operations of the Transmission Project during Emergency conditions.

### **13.2 Notice.**

Each Party shall notify the other Parties promptly when it becomes aware of an Emergency or Emergency State that affects, or may reasonably be expected to affect, the Transmission Project or the New York State Transmission System. To the extent information is known, the notification shall describe the Emergency or Emergency State, the extent of the damage or deficiency, the expected effect on the operation of Transmission Developer's or Connecting Transmission Owner's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

### **13.3 Immediate Action.**

Unless, in Transmission Developer's reasonable judgment, immediate action is required, Transmission Developer shall obtain the consent of Connecting Transmission Owner, such

consent to not be unreasonably withheld, prior to performing any manual switching operations at the Transmission Project in response to an Emergency or Emergency State either declared by NYISO, Connecting Transmission Owner or otherwise regarding New York State Transmission System.

#### **13.4 NYISO, Transmission Developer, and Connecting Transmission Owner Authority.**

Consistent with ISO Procedures, Good Utility Practice, and this Agreement, any Party may take whatever actions with regard to the New York State Transmission System it deems necessary during an Emergency or Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission System, (iii) limit or prevent damage, and (iv) expedite restoration of service. Transmission Developer and Connecting Transmission Owner shall use Reasonable Efforts to assist the other in such actions.

#### **13.5 Limited Liability.**

No Party shall be liable to another Party for any action it takes in responding to an Emergency or Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

### **ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW**

#### **14.1 Regulatory Requirements.**

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Transmission Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

#### **14.2 Governing Law.**

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

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

**14.2.3** 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 15. NOTICES**

### **15.1 General.**

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

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

### **15.2 Billings and Payments.**

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

### **15.3 Alternative Forms of Notice.**

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

### **15.4 Operations and Maintenance Notice.**

Transmission Developer and Connecting Transmission Owner shall each notify the other Party, and NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

## **ARTICLE 16. FORCE MAJEURE**

**16.1** Economic hardship is not considered a Force Majeure event.

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

## **ARTICLE 17. DEFAULT**

### **17.1 General.**

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

### **17.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 17, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

## **ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **18.1 Indemnity.**

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

#### **18.1.1 Indemnified Party.**

If a Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, to assume the defense of such claim, such Indemnified Party may at the

expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

### **18.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

### **18.1.3 Indemnity Procedures.**

Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

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

## **18.2 No Consequential Damages.**

Other than the indemnity obligations set forth in Article 18.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary

equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

### **18.3 Insurance.**

Transmission Developer and Connecting Transmission Owner shall each, at its own expense, procure and maintain in force throughout the period of this Agreement and until released by the other Parties, the following minimum insurance coverages, with insurers authorized to do business in the state of New York and rated “A- (minus) VII” or better by A.M. Best & Co. (or if not rated by A.M. Best & Co., a rating entity acceptable to the NYISO):

**18.3.1** Workers' Compensation and Employers' Liability Insurance providing statutory benefits in accordance with the laws and regulations of New York State under NCCI Coverage Form No. WC 00 00 00, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO; *provided, however*, if the Transmission Project will be located in part outside of New York State, Developer shall maintain such Employers' Liability Insurance coverage with a minimum limit of One Million Dollars (\$1,000,000).

**18.3.2** Commercial General Liability Insurance — under ISO Coverage Form No. CG 00 01 (04/13), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO — with minimum limits of Two Million Dollars (\$2,000,000) per occurrence/Four Million Dollars (\$4,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

**18.3.3** Commercial Business Automobile Liability Insurance — under ISO Coverage Form No. CA 00 01 10 13, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO — for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

**18.3.4** Umbrella/Excess Liability Insurance over and above the Employers' Liability, Commercial General Liability, and Commercial Business Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty-Five Million Dollars (\$25,000,000) per occurrence/Twenty-Five Million Dollars (\$25,000,000) aggregate.

**18.3.5** Builder's Risk Insurance in a reasonably prudent amount consistent with Good Utility Practice.

**18.3.6** The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies of Transmission Developer and Connecting Transmission Owner shall each name the other Party and its respective directors, officers, agents, servants and employees (“Other Party Group”) as additional insureds. For Commercial General Liability Insurance, Transmission Developer and Connecting Transmission Owner each shall name the Other Party Group as additional



insureds under the following ISO form numbers, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO: (i) ISO Coverage Form No. CG 20 37 04 13 (“Additional Insured — Owners, Lessees or Contractors — Completed Operations”) and (ii) (A) ISO Coverage Form No. CG 20 10 04 13 (“Additional Insured — Owner, Lessees or Contractors — Scheduled Person or Organization”), or (B) ISO Coverage Form No. CG 20 26 04 13 (“Additional Insured — Designated Person or Organization”). For Commercial Business Automobile Liability Insurance, Transmission Developer and Connecting Transmission Owner shall each name the Other Party Group as additional insureds under ISO Coverage Form No. CA 20 48 10 13 (“Designated Insured for Covered Autos Liability Coverage”), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO.

**18.3.7** All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to non-renewal, cancellation or any material change in coverage or condition.

**18.3.8** The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each of Transmission Developer and Connecting Transmission Owner shall be responsible for its respective deductibles or retentions.

**18.3.9** The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies, if written on a Claims First Made Basis in a form acceptable to the NYISO, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of an extended reporting period (ERP) or a separate policy, if agreed by Transmission Developer and Connecting Transmission Owner.

**18.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by the Transmission Developer and Connecting Transmission Owner are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

**18.3.11** Each of Transmission Developer and Connecting Transmission Owner shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer: (A) within ten (10) days following: (i) execution of this Agreement, or (ii) the NYISO's date of filing this Agreement if it is filed unexecuted with FERC, and (B) as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within thirty (30) days thereafter.

**18.3.12** Notwithstanding the foregoing, Transmission Developer and Connecting Transmission Owner may each self-insure to meet the minimum insurance requirements of

Articles 18.3.1 through 18.3.9 to the extent it maintains a self-insurance program; provided that, such Party's senior debt is rated at investment grade, or better, by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.1 through 18.3.9. For any period of time that such Party's senior debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, the Party shall comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.12, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Articles 18.3.1 through 18.3.9 and provide evidence of such coverages.

**18.3.13** Transmission Developer and Connecting Transmission Owner agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

**18.3.14** Notwithstanding the minimum insurance coverage types and amounts described in this Article 18.3, each of Transmission Developer and Connecting Transmission Owner: (i) shall also maintain any additional insurance coverage types and amounts required under Applicable Laws and Regulations, including New York State law, and under Good Utility Practice for the work performed by such Party and its subcontractors under this Agreement, and (ii) shall satisfy the requirements set forth in Articles 18.3.6 through 18.3.13 with regard to the additional insurance coverages, including naming the Other Party Group as additional insureds under these policies.

## **ARTICLE 19. ASSIGNMENT**

This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Transmission Developer shall have the right to assign this Agreement, without the consent of the NYISO or Connecting Transmission Owner, for collateral security purposes to aid in providing financing for the Transmission Project, provided that the Transmission Developer will promptly notify the NYISO and Connecting Transmission Owner of any such assignment. Any financing arrangement entered into by the Transmission Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Connecting Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Connecting Transmission Owner with proof that it meets the requirements of Articles 11.4 and 18.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged,

in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 20. SEVERABILITY**

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

## **ARTICLE 21. COMPARABILITY**

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

## **ARTICLE 22. CONFIDENTIALITY**

### **22.1 Confidentiality.**

Certain information exchanged by the Parties during the term of this Agreement shall constitute confidential information (“Confidential Information”) and shall be subject to this Article 22.

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

### **22.2 Term.**

During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

### **22.3 Confidential Information.**

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

### **22.4 Scope.**

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the

receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 22.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

#### **22.5 Release of Confidential Information.**

No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be considering providing financing to or equity participation with Transmission Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

#### **22.6 Rights.**

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

#### **22.7 No Warranties.**

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.

#### **22.8 Standard of Care.**

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this Agreement or its regulatory requirements, including the

ISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information it receives in accordance with the requirements of Attachment F to the ISO OATT.

## **22.9 Order of Disclosure.**

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

## **22.10 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 to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties pursuant to this Agreement.

## **22.11 Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

## **22.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,

request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

### **22.13 Required Notices Upon Requests or Demands for Confidential Information**

Except as otherwise expressly provided herein, no Party shall disclose Confidential Information to any person not employed or retained by the Party possessing the Confidential Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

## **ARTICLE 23. TRANSMISSION DEVELOPER AND CONNECTING TRANSMISSION OWNER NOTICES OF ENVIRONMENTAL RELEASES**

Transmission Developer and Connecting Transmission Owner shall each notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Transmission Project or Network Upgrade Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

## **ARTICLE 24. INFORMATION REQUIREMENT**

### **24.1 Information Acquisition.**

Connecting Transmission Owner and Transmission Developer shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as described below and in accordance with Applicable Reliability Standards.

### **24.2 Information Submission Concerning the Network Upgrade Facilities.**

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

### **24.3 Updated Information Submission Concerning the Transmission Project.**

The updated information submission by the Transmission Developer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation of the Transmission Project. Transmission Developer shall submit a completed copy of the Transmission Project data requirements contained in Appendix 1 to the Transmission Interconnection Procedures. It shall also include any additional information provided to Connecting Transmission Owner for the Facilities Study. Information in this submission shall be the most current Transmission Project design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Transmission Developer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Transmission Developer's data is different from what was originally provided to Connecting Transmission Owner and NYISO pursuant to a Transmission Interconnection Study agreement among Connecting Transmission Owner, NYISO and Transmission Developer and this difference may be reasonably expected to affect the other Parties' facilities or the New York State Transmission System, but does not require the submission of a new Transmission Interconnection Application, then NYISO will conduct appropriate studies to determine the impact on the New York State Transmission System based on the actual data submitted pursuant to this Article 24.3. Such studies will provide an estimate of any additional modifications to the New York State Transmission System or Network Upgrade Facilities based on the actual data and a good faith estimate of the costs thereof. The Transmission Developer shall not begin Trial Operation for the Transmission Project until such studies are completed. The Transmission

Developer shall be responsible for the cost of any modifications required by the actual data, including the cost of any required studies.

#### **24.4 Information Supplementation.**

Prior to the In-Service Date, the Transmission Developer and Connecting Transmission Owner shall supplement their information submissions described above in this Article 24 with any and all “as-built” Transmission Project and Network Upgrade Facilities information or “as-tested” performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Transmission Developer shall conduct tests on the Transmission Project as required by Good Utility Practice.

Subsequent to the In-Service Date, the Transmission Developer shall provide Connecting Transmission Owner and NYISO any information changes concerning the Transmission Project and the Network Upgrade Facilities it owns as specified in Appendix C due to equipment replacement, repair, or adjustment. Connecting Transmission Owner shall provide the Transmission Developer and NYISO any information changes concerning the Network Upgrade Facilities that it owns as specified in Appendix C due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Connecting Transmission Owner substation that may affect the Transmission Project’s equipment ratings, protection or operating requirements. The Transmission Developer and Connecting Transmission Owner shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

### **ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS**

#### **25.1 Information Access.**

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting Party”) information that is in the possession of the Disclosing Party and is necessary in order for the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 of this Agreement and to enforce their rights under this Agreement.

#### **25.2 Reporting of Non-Force Majeure Events.**

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



### **25.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 22 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party's accounts and records pertaining to the other Party's performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, and each Party's actions in an Emergency or Emergency State. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to the Party's performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4 of this Agreement.

### **25.4 Audit Rights Periods.**

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

Accounts and records related to the design, engineering, procurement, and construction of the Network Upgrade Facilities shall be subject to audit for a period of twenty-four months following Connecting Transmission Owner's issuance of a final invoice in accordance with Article 12.2 of this Agreement.

#### **25.4.2 Audit Rights Period for All Other Accounts and Records.**

Accounts and records related to a Party's performance or satisfaction of its obligations under this Agreement other than those described in Article 25.4.1 of this Agreement shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

### **25.5 Audit Results.**

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

## **ARTICLE 26. SUBCONTRACTORS**

### **26.1 General.**

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

## **26.2 Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Connecting Transmission Owner be liable for the actions or inactions of the Transmission Developer or its subcontractors with respect to obligations of the Transmission Developer under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

## **26.3 No Limitation by Insurance.**

The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 27. DISPUTES**

### **27.1 Submission.**

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

### **27.2 External Arbitration Procedures.**

Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

### **27.3 Arbitration Decisions.**

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

### **27.4 Costs.**

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

### **27.5 Termination.**

Notwithstanding the provisions of this Article 27, any Party may terminate this Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

## **ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **28.1 General.**

Each Party makes the following representations, warranties and covenants:

#### **28.1.1 Good Standing.**

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

#### **28.1.2 Authority.**

Such Party has the right, power and authority to enter into this Agreement, to become a Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and

binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

### **28.1.3 No Conflict.**

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

### **28.1.4 Consent and Approval.**

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

## **ARTICLE 29. MISCELLANEOUS**

### **29.1 Binding Effect.**

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

### **29.2 Conflicts.**

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

### **29.3 Rules of Interpretation.**

This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated

otherwise, reference to any Article, Section or Appendix means such Article of this Agreement or such Appendix to this Agreement, or such Section to the Transmission Interconnection Procedures or such Appendix to the Transmission Interconnection Procedures, as the case may be; (6) “hereunder”, “hereof”, “herein”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”.

#### **29.4 Compliance.**

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

#### **29.5 Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Transmission Developer and Connecting Transmission Owner are several, and are neither joint nor joint and several.

#### **29.6 Entire Agreement.**

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

#### **29.7 No Third Party Beneficiaries.**

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

#### **29.8 Waiver.**

The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this

Agreement. Termination or Default of this Agreement for any reason by the Transmission Developer shall not constitute a waiver of the Transmission Developer's legal rights to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and Connecting Transmission Owner in accordance with the provisions of the ISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

#### **29.9 Headings.**

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

#### **29.10 Multiple Counterparts.**

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

#### **29.11 Amendment.**

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

#### **29.12 Modification by the Parties.**

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

#### **29.13 Reservation of Rights.**

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

#### **29.14 No Partnership.**

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership among the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power or

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

**29.15 Other Transmission Rights.**

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**New York State Electric & Gas Corporation**

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

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

**NextEra Energy Transmission New York, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



## **APPENDICES**

### **Appendix A**

Network Upgrade Facilities

### **Appendix B**

Milestones

### **Appendix C**

Interconnection Details

### **Appendix D**

Security Arrangements Details

### **Appendix E-1**

Initial Synchronization Date

### **Appendix E-2**

In-Service Date

### **Appendix F**

Addresses for Delivery of Notices and Billings

## APPENDIX A

### NETWORK UPGRADE FACILITIES

#### 1. Network Upgrade Facilities (“NUFs”)

##### A. Network Upgrade Facilities for Connecting Transmission Owner’s Transmission System

The Transmission Project will interconnect to the New York State Transmission System at existing transmission facilities owned and operated by the Connecting Transmission Owner as depicted in Figure A-1. The Facilities Study identified NUFs required to reliably interconnect the Transmission Project to the Connecting Transmission Owner’s system. These NUFs are described below.

###### *i. Upgrading the Erie St. 115 kV Substation Terminal to Depew*

The Transmission Developer will upgrade the Erie St. line terminal for line #921, so that the line rating of 125/152/181 MVA (Normal/LTE/STE) is not limited. This work will include the following major electrical and physical equipment:

- Replace existing oil breaker 92142 with a new 145 kV, 3000 A, 63 kA, 650 kV basic insulation level (“BIL”) sulfur hexafluoride (“SF6”) breaker; equipped with 2 sets of 2000:5 multi ratio (“MR”), C800 current transformers (“CTs”) on each bushing, and 1 set of 1200/5A single ratio (“SR”), 0.15B1.8, RF 1.5 metering CTs;
- Replace existing breaker foundation with new 115 kV breaker foundation;
- Install one (1) new 121 kV coupling capacitor voltage transformer (“CCVT”), which replaces the existing bushing potential device (“BPD”) located on existing breaker;
- Install CCVT structure and foundation;
- Install CCVT junction box;
- Install grounding materials;
- Install conduit; control cabling; and
- Install bus work.

This work will include the following major protection and control equipment:

- Replace existing breaker failure electromechanical relay package with one (1) SEL-451 bay control relay;
- Replace existing system A electromechanical relay package with one (1) SEL-411L system A line protection relay;
- Replace existing system B electromechanical relay package with one (1) GE-L90 system B line protection and system B breaker failure relay;
- Install nine (9) ABB FT-19R test switches;
- Install three (3) 19” rack mount adapter plates;
- Install a GPS clock for time synchronization; and
- Install a new communication processor for new microprocessor relays.

- There will be no modifications to the existing communication system (leased telephone line) and the RFL GARD 8000 equipment for Line 921.

*ii. Upgrading the Stolle Road to Roll Road 115 kV Terminal Equipment*

The Transmission Developer will upgrade the Stolle Road line terminal for line #928, so that the line rating of 176/196/225 MVA (Normal/LTE/STE) is not limited. This work will include the following major protection and control equipment:

- Replace existing breaker failure electromechanical relay package with one (1) SEL-451 bay control relay;
- Replace existing system A electromechanical relay package with one (1) SEL411L system A line protection relay;
- Replace existing system B electromechanical relay package with one (1) GEL90 system B line protection and system B breaker failure relay;
- Install nine (9) ABB FT-19R test switches; and
- Install three (3) 19" rack mount adapter plates.

*iii. Upgrading Line Protection Systems at Somerset/Kintigh Substation*

The Transmission Developer will upgrade the NS1-38 line protection system of the NS1-38 terminal at the 345 kV Somerset/Kintigh Substation. This work will include the following major protection and control equipment at the NS1-38 terminal:

- Three (3) new relay panels to house the following:
  - One (1) SEL411L system A line protection relay;
  - One (1) RFL GARD 8000;
  - One (1) GE-L90 system B line protection relay;
  - Two (2) SEL-451 bay control relays for circuit breakers 38/B312 and B1/3812;
  - Ten (10) FT-19R test switch assemblies;
  - JMUX T1 multiplexer chassis; and
  - Removal of existing line relay equipment associated with Line 38 and the existing breaker failure relaying associated with circuit breakers 38/B312 and B1/3812.

The Transmission Developer will upgrade the SH1-39 line protection system of the SH1-39 terminal at the 345 kV Somerset/Kintigh Substation. This work will include the following major protection and control equipment at the SH1-39 terminal:

- Replace the existing SEL421 system A line protection relay with a SEL411L.

*iv. Upgrading Line Protection Systems at Stolle Road 345kV*

The Transmission Developer will upgrade the existing Stolle Road-NGRID Five Mile (Line 29) line protection systems at the 345 kV Stolle Road Substation. This work will include the following major protection and control equipment at the Stolle to East Stolle line terminal:

- Replace existing system A line relay (SEL-421) with one (1) SEL-411L system A line protection relay utilizing a line differential protection scheme;
- Replace existing system B line relay (Siemens SIPROTEC) with one (1) GE-L90 system 2 line protection relay utilizing a line differential protection scheme;
- Twelve (12) FT-1 test switches;
- Remove existing line trap and line tuner;
- Remove existing System A RFL 9785 and RFL 9780 powerline carrier system devices;
- Remove existing System B RFL GARD 8000 device and disconnect the existing System B relay communications (JMUX over leased line);
- Install two (2) distinct fiber optic cables for the new line differential protection between Stolle Rd and East Stolle Rd;
- Optical ground wire (“OPGW”) will be used for system A and all-dielectric self-supporting (“ADSS”) routed underground will be used for system B; and
- Install two (2) fiber patch panels to terminate the two distinct fiber cables required for the new System A and System B relaying.

*v. Connecting Two Connecting Transmission Owner 345kV Lines #38 and #39 into New Transmission Project 345 kV Dysinger Substation*

The Transmission Developer will re-route lines #38 and #39 just south of its existing structure #5 on new steel three pole angle dead-end structures toward the west to new steel single pole angle dead-end structure or three pole angle dead-end and then span south into the Transmission Developer’s new Dysinger Substation. The eastern line (#39) will cross over the Connecting Transmission Owner’s existing 230 kV line #65. The Connecting Transmission Owner’s existing structures and conductors from New York Power Authority (“NYPA”) tap to structure #4 will be removed.

This work will include the following major electrical and physical equipment:

- Install one (1) new single circuit, single steel pole dead-end structure (Str D-S1-1);
- Install one (1) new single circuit, three steel pole dead-end structure (D-S2-1);
- Install two (2) new single circuit, three steel pole dead-end structures (D-S2-2, D-S1-2) based on Connecting Transmission Owner’s standards;
- String approximately 3,500 circuit feet of (2 bundle/phase) 1192.5 kcmil 45/7 stranded aluminum-conductor steel-reinforced (“ACSR”) “Bunting” conductor;
- String approximately 5,000 total feet of two 7/16” extra high strength (“EHS”) overhead groundwire;
- Remove eight (8) existing structures (4 three pole structures and 4 wood h-frames) and associated material from Dysinger Junction to the proposed tap;
- Remove existing conductor and ground wires for a total circuit length of approximately 1.2 miles between Dysinger Junction and the proposed tap;
- Remove the jumpers to Connecting Transmission Owner’s lines #NS1-38 and #SH1-39 from the Connecting Transmission Owner’s line to the NS1-38 and SH1-39 lines at the existing Dysinger Junction, which structures at this location are three (3) monopoles and will remain in the existing right-of-way to minimize the use of full tension aerial splices

for the existing Connecting Transmission Owner's transmission lines (see Figure A-2 for more details);

- Develop new transmission jumpers (2 bundle/phase) 795kcmil 26/7 stranded ACSR "Drake" conductor; for the existing three (3) pole structures to complete the circuit between the proposed Dysinger Switchyard and Rochester Gas and Electric Corporation's Station 255;

*vi. Connecting the Connecting Transmission Owner-owned Stolle Rd. to Five Mile 345 kV Line #29 into East Stolle Rd. Substation*

Transmission Developer will remove the existing lattice tower #F-1. Transmission Developer will install six (6) new steel single pole dead-end structures (ES-S1, ES-S2, ES-H1, ES-H2, ES-S3, ES-H3) designed to Connecting Transmission Owner's standards. The Connecting Transmission Owner's existing 345 kV line #29 (to Five Mile) will be rerouted on to the new steel dead-end structures into the Transmission Developer's new East Stolle Switchyard. A new Connecting Transmission Owner 345 kV tie line between Transmission Developer's East Stolle Substation and Connecting Transmission Owner's existing Stolle Substation will come out of Connecting Transmission Owner's existing 345 kV bay on the new steel deadend structures.

This work will include the following major electrical and physical equipment:

- Install two (2) new single circuit structures, consisting of six (6) steel pole dead-end structures with caisson foundations;
- String approximately 2,500 circuit feet of (2 bundle/phase) 1033.5kcmil 45/7 stranded ACSR "Ortolan" conductor;
- String approximately 3,600 total feet of overhead ground wire;
- String approximately 1,500 total feet of Connecting Transmission Owner approved optical ground wire;
- Remove existing F-1 lattice structure and foundations; and
- Remove existing conductor and ground wire from a 261 foot span on line #29.

## **B. Network Upgrade Facilities for NYPA's Transmission System**

Portions of the Transmission Project will also interconnect to the New York State Transmission System at existing transmission facilities owned and operated by the New York Power Authority ("NYPA"), which is also a Connecting Transmission Owner for the Transmission Project. The Facilities Study identified certain Network Upgrade Facilities required to reliably interconnect the Transmission Project to NYPA's system. These include:

- Looping two existing NYPA-owned 345 kV lines in and out of the Transmission Developer's new Dysinger Substation (lines NS-1, NR2, NH-2 and SH1-39); and
- Upgrading line protection systems at NYPA's Niagara 345 kV Substation.

The Transmission Developer, NYPA, and the NYISO have entered into a separate Transmission Project Interconnection Agreement concerning the interconnection of the Transmission Project to NYPA's facilities and the related Network Upgrade Facilities.

### **C. Affected System Upgrade Facilities**

The Transmission Interconnection Studies for the Transmission Project identified Rochester Gas and Electric Corporation (“RG&E”) and Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) as Affected System Operators, which systems are impacted by the Transmission Project. The Facilities Studies conducted for the Transmission Project identified certain Network Upgrade Facilities required for these Affected Systems.

The Facilities Studies identified the following work on RG&E’s transmission facilities:

- Add a new 100 Mvar shunt reactor at its Rochester Station 80 345 kV Substation; and
- Upgrade line protection systems at its Station 255 Substation.

This work will be performed in accordance with the terms of an engineering, procurement, and construction agreement by and among the NYISO, Transmission Developer, and RG&E.

The Facilities Studies identified the following work on National Grid’s transmission facilities:

- Modifications to its Five Mile Station, including updates to its protection, controls & integration, and telecommunications equipment; and
- Integrate the Transmission Developer’s New Dysinger Station into National Grid’s SONET ring used for line protection.

This work will be performed in accordance with the terms of an engineering, procurement, and construction agreement by and among the NYISO, Transmission Developer, and National Grid.

## **2. Connecting Transmission Owner’s and Transmission Developer’s Responsibilities Concerning Network Upgrade Facilities**

Transmission Developer will be responsible for engineering, designing, procuring, constructing, installing, updating relay settings, commissioning, and testing of all Network Upgrade Facilities identified in Section A of this Appendix A. Connecting Transmission Owner will work with Transmission Developer to ensure that Connecting Transmission Owner’s requirements are applied to those Network Upgrade Facilities, unless otherwise agreed to by Transmission Developer and Connecting Transmission Owner.

The Transmission Developer will design, procure, engineer and construct the new and modified NUFs in accordance with Connecting Transmission Owner’s Bulletin No. 86-01, Requirements for the Interconnection of Generation, Transmission and End-User Facilities (Revised October 3, 2011) (“Bulletin 86-01”) and the Connecting Transmission Owner’s Bulk Power POI Guide, to the extent they are not inconsistent with the terms of this Agreement, the NYISO OATT, or the Operating Agreement. The Connection Transmission Owner will provide project management, owners engineer (“OE”) and full construction oversight (“FCM”).

Consistent with Section 5.2.1 of this Agreement, all project engineering and design work shall be per the Connecting Transmission Owner’s Engineering, Design & Construction Standards. Consistent with Section 5.2.3 of this Agreement, all of the Transmission Developer’s engineering and design documentation shall be approved by the Connecting Transmission Owner. The work for the NUFs shall be per the Connecting Transmission Owner’s standards and under the supervision of a Connecting Transmission Owner’s FCM, unless the NUFs are to be owned by the Transmission Developer, in which case, the Transmission Developer’s standards will apply. A list of engineering contractors and substation construction contractors currently approved by the Connecting Transmission Owner is available. However, the Transmission Developer may propose an alternate engineering contractor and/or substation construction contractor for review and acceptance by the Connecting Transmission Owner.

In addition, Transmission Developer shall:

- Provide control plan, maintenance plan, or emergency callout plan for their stations;
- Coordinate relay testing between the Connecting Transmission Owners that connect to the Transmission Developer’s stations; and
- Coordinate and plan who will report on all 115 kV and above line faults associated with the Transmission Project and how that will be coordinated between the Transmission Owners and Transmission Developer.

Protection Considerations:

- The protection used for the two lines from Kintigh to Dysinger should be identical. This will require identical SEL and GE relays to be used for the A and B systems at each end of each line as well as same for all associated communications equipment for high speed line protection and direct transfer trip.
- The protection used for the line from Stolle to East Stolle will require A and B line differentials with diverse fiber cables. This will require identical SEL and GE relays to be used for the A and B line diff systems at each end of the line as well as same for any additional associated communications equipment for direct transformer trip needed.
- The protection used for the line from Dysinger to East Stolle should meet similar standards to that for other comparable lines.

### 3. NUF Estimated Total Costs

Description	Estimated Cost
Transmission Interconnections at Dysinger	\$4,444,000
Transmission Interconnections at Stolle Rd.	\$1,774,000
Upgrade Line Protection Systems at Somerset/Kintigh	\$938,000
Upgrade Line Protection Systems at Stolle Road	\$641,000
Upgrade Erie St. 115 kV Terminal	\$1,067,000
Upgrade Stolle Rd. 115 kV Terminal	\$541,000
<b>Total</b>	<b>\$9,405,000</b>

### 4. Security

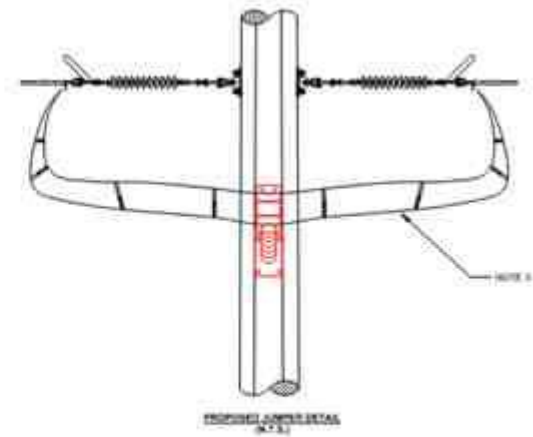
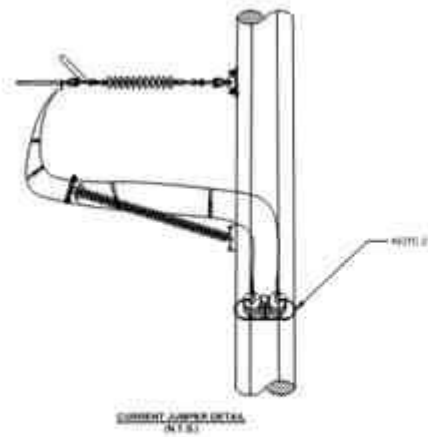
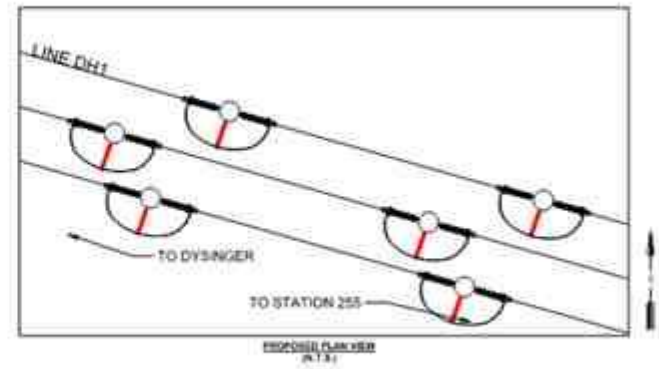
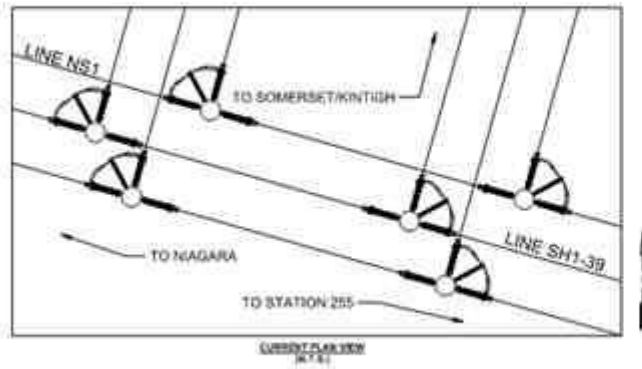
The total amount of Security is \$3,000,000. Within 30 calendar days of the execution of this Agreement, Transmission Developer shall provide security to the Connecting Transmission Owner in the form of a parental guarantee in the amount of \$2,700,000 pursuant to Article 11.4 of this Agreement for the Connecting Transmission Owner's Network Upgrade Facilities. The Transmission Developer has already paid \$300,000 towards the total Security amount under the Utility Service Agreement between the Connecting Transmission Owner and Transmission Developer. Thus, the remaining value of the security is in the amount of \$2,700,000 and shall be secured in the form of a parental guarantee. The Security shall be reduced on a dollar-for-dollar basis for payments made to Connecting Transmission Owner via the Utility Service Agreement.



**Figure A-1**

**[CONTAINS CEII – THIS FIGURE REMOVED FROM PUBLIC VERSION]**

**Figure A-2**



**NOTES:**

1. CURRENT SHOWS SCAMISSET TAP IN CURRENT CONFIGURATION
2. REMOVE ALL CONDUCTORS TO EXISTING NYSEG STRUCTURES, INSULATORS AND ASSOCIATED HARDWARE
3. INSTALL JUMPER CONDUCTORS, POST AND ASSOCIATED HARDWARE

**PRELIMINARY**  
NOT FOR CONSTRUCTION

**APPENDIX B**  
**MILESTONES**

<b>Task Name</b>	<b>Finish Date</b>	<b>Responsible Party</b>
Execute Interconnect Agreement		
<b>Upgrading the Erie St. 115 kV Substation Terminal to Depew</b>		
Preliminary Engineering (30% Design, Review, and Approval)	Complete	
Semi-detailed engineering (70% design, review, and approval)	Complete	Connecting Transmission Owner Review
Ratings and Modelling (RAM) draft submittal	Complete	Transmission Developer
Ratings/Modelling (RAM) Final Submittal	June 2021	Transmission Developer
Detailed engineering (90% design, review, and approval)	July 2021	Connecting Transmission Owner Review
Engineering (100% design, review, and approval)	July 2021	Connecting Transmission Owner Review
Transmission Developer procurement	July 2021	Transmission Developer
Relay and SCADA configuration and settings (System Protection and Control 3 – 7) review, and approval	July 2021	Developed by Connecting Transmission Owner
Transmission Developer construction RFP & contract execution	July 2021	Connecting Transmission Owner Review
Connecting Transmission Owner file Article VII amendments	July 2021	Connecting Transmission Owner
Begin construction	September 2021	Transmission Developer
Complete construction	December 2021	
Primary equipment testing and commissioning	December 2021	Transmission Developer
Protection and control testing & commissioning	December 2021	Connecting Transmission Owner
Connecting Transmission Owner As Built drawings review	January 2022	Connecting Transmission Owner
Initial Synchronization Date	February 2022	Transmission Developer
In-Service Date	February 2022	Connecting Transmission Owner
<b>Upgrading the Stolle Road to Roll Road 115 kV Terminal Equipment</b>		

<b>Task Name</b>	<b>Finish Date</b>	<b>Responsible Party</b>
Preliminary engineering (30% design, review, and approval)	Complete	Connecting Transmission Owner Review
Semi-detailed engineering (70% design, review, and approval)	Complete	Connecting Transmission Owner Review
Ratings and Modelling (RAM) draft submittal	Complete	Transmission Developer
Ratings and Modeling (RAM) Final submittal	June 2021	Transmission Developer
Detailed engineering (90% design, review, and approval)	June 2021	Connecting Transmission Owner Review
Engineering (100% design, review, and approval)	July 2021	Connecting Transmission Owner Review
Transmission Developer procurement	July 2021	Transmission Developer
Relay and SCADA configuration and settings (System Protection and Control 3 – 7) review, and approval	July 2021	Developed by Connecting Transmission Owner
Transmission Developer construction RFP & contract execution	July 2021	Connecting Transmission Owner Review
Connecting Transmission Owner file Article VII amendments with DPS	September 2021	Connecting Transmission Owner
Begin construction	September 2021	Transmission Developer
Complete construction	October 2021	Transmission Developer
Connecting Transmission Owner As Built drawings review	January 2022	Connecting Transmission Owner
Protection and control testing & commissioning	February 2022	Connecting Transmission Owner
Initial Synchronization Date	February 2022	Transmission Developer
In-Service Date	February 2022	Connecting Transmission Owner
<b>Upgrading Line Protection Systems at Somerset/Kintigh Substation</b>		
Preliminary engineering (30% design, review, and approval)	Complete	Connecting Transmission Owner Review
Semi-detailed engineering (70% design, review, and approval)	Complete	Connecting Transmission Owner Review
Ratings and Modelling (RAM) draft submittal	Complete	Transmission Developer
Ratings and Modelling (RAM) final submittal	August 2021	Transmission Developer

<b>Task Name</b>	<b>Finish Date</b>	<b>Responsible Party</b>
Detailed engineering (90% design, review, and approval)	August 2021	Connecting Transmission Owner Review
Engineering (100% design, review, and approval)	September 2021	Connecting Transmission Owner Review
Relay and SCADA configuration and settings (System Protection and Control 3 – 7) review, and approval	July 2021	Connecting Transmission Owner
Transmission Developer procurement	July 2021	Transmission Developer
Transmission Developer construction RFP & contract execution	September 2021	Connecting Transmission Owner Review
Connecting Transmission Owner file Article VII amendments with DPS	September 2021	Connecting Transmission Owner
Complete construction (3 new relay panels)	December 2021	Transmission Developer
Connecting Transmission Owner As Built drawings review	January 2022	Connecting Transmission Owner
Protection and control testing & commissioning	February 2022	Connecting Transmission Owner
Initial Synchronization Date	February 2022	Transmission Developer
In-Service Date	February 2022	Connecting Transmission Owner
<b>Upgrading Line Protection Systems at Stolle Road</b>		
Preliminary engineering (30% design, review, and approval)	Complete	Connecting Transmission Owner Review
Semi-detailed engineering (70% design, review, and approval)	Complete	Connecting Transmission Owner Review
Ratings and Modelling (RAM) draft submittal	Complete	Transmission Developer
Detailed engineering (90% design, review, and approval)	June 2021	Connecting Transmission Owner Review
Ratings and Modelling (RAM) final submittal	June 2021	Transmission Developer
Engineering (100% design, review, and approval)	August 2021	Connecting Transmission Owner Review
Transmission Developer procurement	July 2021	Transmission Developer
Relay and SCADA configuration and settings (System Protection and Control 3 – 7) review, and approval	July 2021	Connecting Transmission Owner
Transmission Developer construction RFP & contract execution	July 2021	Connecting Transmission Owner Review

<b>Task Name</b>	<b>Finish Date</b>	<b>Responsible Party</b>
Connecting Transmission Owner file A7 amendments with DPS	August 2021	Connecting Transmission Owner
Complete construction	April 2022	Transmission Developer
Protection and control testing & commissioning	April 2022	Connecting Transmission Owner
Connecting Transmission Owner As Built drawings review	April 2022	Connecting Transmission Owner
Initial Synchronization Date	April 2022	Transmission Developer
In-Service Date	April 2022	Connecting Transmission Owner
<b>Connecting Two Connecting Transmission Owner 345kV Lines #38 and #39 into New Transmission Project 345 kV Dysinger Substation</b>		
Preliminary engineering (30% design, review, and approval)	Complete	Connecting Transmission Owner Review
Semi-detailed engineering (70% design, review, and approval)	Complete	Connecting Transmission Owner Review
Ratings and Modelling (RAM) draft submittal	Complete	Transmission Developer
Transmission Developer Procurement	Complete	Transmission Developer
Transmission Developer construction RFP & contract execution	August 2021	Connecting Transmission Owner Review
Detailed engineering (90% design, review, and approval)	August 2021	Connecting Transmission Owner Review
Connecting Transmission Owner file Article VII amendments with DPS	July 2021	Connecting Transmission Owner
Ratings and Modelling (RAM) final submittal	August 2021	Transmission Developer
Engineering (100% design, review, and approval)	October 2021	Connecting Transmission Owner Review
Connecting Transmission Owner As Built drawings review	May 2022	Connecting Transmission Owner
Testing & commissioning	March 2022	Transmission Developer
Initial Synchronization Date	March 2022	Transmission Developer
In-Service Date	March 2022	Connecting Transmission Owner

<b>Task Name</b>	<b>Finish Date</b>	<b>Responsible Party</b>
<b>Connecting the Connecting Transmission Owner-owned Stolle Rd. to Five Mile 345 kV Line #29 into East Stolle Rd. Substation</b>		
Preliminary engineering (30% design, review, and approval)	Complete	Connecting Transmission Owner Review
Semi-detailed engineering (70% design, review, and approval)	Complete	Connecting Transmission Owner Review
Ratings and Modelling (RAM) draft submittal	Complete	Transmission Developer
Detailed engineering (90% design, review, and approval)	June 2021	Connecting Transmission Owner Review
Connecting Transmission Owner file Article VII amendments with DPS	July 2021	Connecting Transmission Owner
Ratings and Modelling (RAM) final submittal	July 2021	Transmission Developer
Engineering (100% design, review, and approval)	July 2021	Connecting Transmission Owner Review
Transmission Developer construction RFP & contract execution	August 2021	Connecting Transmission Owner Review
Complete Construction (3 new relay panels)	April 2022	Transmission Developer
Connecting Transmission Owner As Built drawings review	March 2022	Connecting Transmission Owner
Testing & commissioning	March 2022	Transmission Developer and Connecting Transmission Owner
Initial Synchronization Date	April 2022	Transmission Developer
In-Service Date	April 2022	Connecting Transmission Owner
<b>Turn Over Facilities (all)</b>	April 2022	Transmission Developer
Transmission Project: testing and commissioning	April 2022	Transmission Developer and Connecting Transmission Owner
Transmission Project: Initial Synchronization Date	April 2022	Transmission Developer
Transmission Project: In-Service Date	April 2022	Transmission Developer
<b>Required In Service Date</b>	June 2022	

## APPENDIX C

### INTERCONNECTION DETAILS

#### 1. Description of the Transmission Project

The Transmission Project was submitted by the Transmission Developer and evaluated in the NYISO's Public Policy Transmission Planning Process to address the Western New York Public Policy Transmission Need identified by the New York Public Service Commission. The NYISO Board of Directors selected the Transmission Project as the more efficient and cost-effective transmission solution to the Western New York Public Policy Transmission Need on October 17, 2017. The Transmission Developer will develop the Transmission Project in accordance with the terms of the Development Agreement.

The Transmission Project will be located in the West Region (Zone A) of New York State and includes the following new facilities that will be constructed, owned, and operated by the Transmission Developer:

- The proposed Q#545A's Dysinger 345 kV switchyard with a breaker-and-a-half configuration, located in Niagara County;
- The proposed Q#545A's East Stolle Rd. 345 kV switchyard with a ring-bus configuration, located in Erie County;
- A new overhead ("OH") 20.5 mile long 345 kV transmission line between Dysinger and East Stolle Rd. substations, which line: (i) will be a double bundle of 795MCM 26/7 ACSR conductor and rated 1357/1410/1410 MVA, and will be constructed utilizing the existing transmission right-of-way owned by Connecting Transmission Owner;
- In addition to proposed OH construction, the line will consist of approximately 2,000 lf underground construction at New York State Thruway Authority ("NYSTA") crossing. This conductor shall be rated at 3000 Amps (maximum) and consists of 5000 kcmil XLPE cable.
- A new OH 345 kV transmission line of approximately 1,000 feet between new East Stolle Rd. and Stolle Rd. substations;
- A 700 MVA phase angle regulator ("PAR") and bypass switch at the new Dysinger 345 kV switchyard to control the flow of the new proposed line; and
- A 30 MVAR shunt reactor on the proposed 345 kV line at the East Stolle Rd. 345 kV substation.

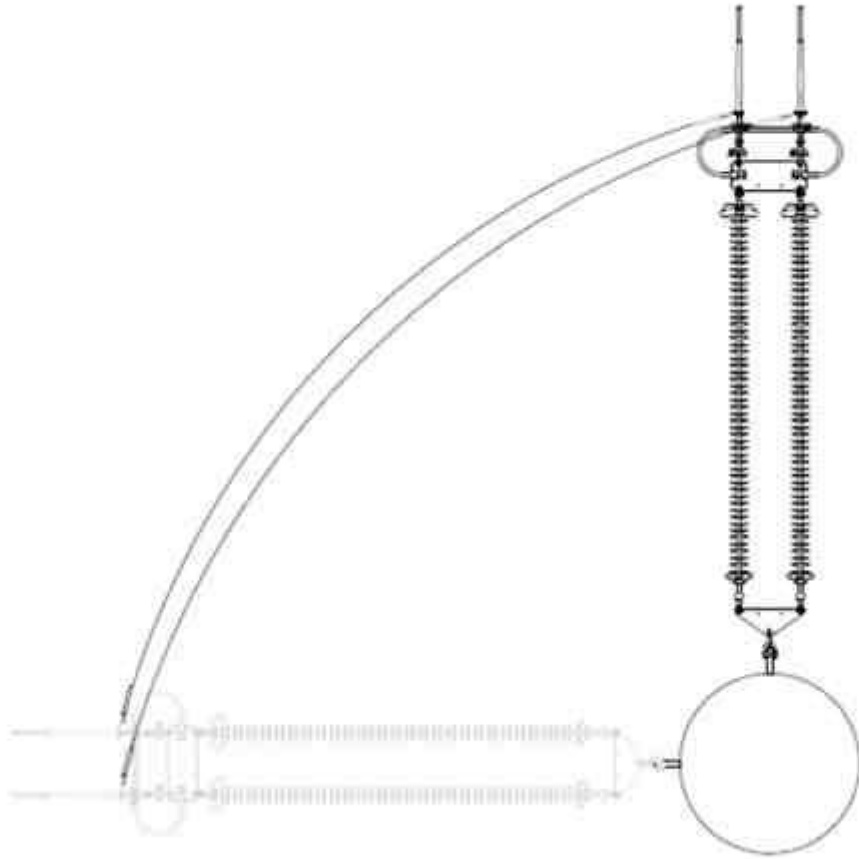
#### 2. Description of the Points of Interconnection and Points of Change of Ownership

The Point of Interconnection ("POI") and Point of Change in Ownership ("POC") are identified in the table below. The physical POI/POC shall be where the transmission line insulators attach to the structure and where the jumper pad attaches to the Transmission Owners hardware. The POI/POC are also shown in Figure C-1 below. The POI and POC are the same location since the Transmission Project will not require any Connecting Transmission Owner Attachment Facilities. The POI/POC locations are:



<b>Transmission Line</b>	<b>Line # Designation</b>	<b>Structure Number where POI/POC Is Located</b>	<b>Structure Description where POI/POC Is Located</b>	<b>Description of Change in Ownership</b>
Dysinger to Kintigh	38	D-S2-2	First structure in Connecting Transmission Owner's ROW	Connecting Transmission Owner ownership begins from the insulator of the structure and continues to Kintigh
Dysinger to Kintigh	39	D-S1-2	First structure in Connecting Transmission Owner's ROW	Connecting Transmission Owner ownership begins from the insulator of the structure and continues to Kintigh
E. Stolle to Five Mile	29	ES-H-1	First structure outside of East Stolle switchyard	Transmission Developer ownership will begin at the insulators, and go into the East Stolle Switchyard.
E. Stolle to Stolle	28	ES-S-1	First structure outside of East Stolle switchyard	Transmission Developer ownership will begin at the insulators, and go into the East Stolle Switchyard.

**FIGURE C-1**



**Transmission Developer: BLACK**  
**Connecting Transmission Owner: GREY**

**3. Ownership/Control/Maintenance Responsibilities of Network Upgrade Facilities**

<b>Network Upgrade Facility</b>	<b>Appendix A item</b>	<b>Ownership</b>	<b>Control</b>	<b>Operation &amp; Maintenance</b>
<i>Upgrading the Erie St. 115 kV Substation Terminal to Depew</i>	1.A.i	Connecting Transmission Owner	Connecting Transmission Owner	Connecting Transmission Owner
<i>Upgrading the Stolle Road to Roll Road 115 kV Terminal Equipment</i>	1.A.ii	Connecting Transmission Owner	Connecting Transmission Owner	Connecting Transmission Owner
<i>Upgrading Line Protection Systems at Somerset/Kintigh Substation</i>	1.A.iii	Connecting Transmission Owner	Connecting Transmission Owner	Connecting Transmission Owner
<i>Upgrading Line Protection Systems at Stolle Road</i>	1.A.iv	Connecting Transmission Owner	Connecting Transmission Owner	Connecting Transmission Owner

<b>Network Upgrade Facility</b>	<b>Appendix A item</b>	<b>Ownership</b>	<b>Control</b>	<b>Operation &amp; Maintenance</b>
<i>Connecting Two Connecting Transmission Owner 345kV Lines #38 and #39 into New Transmission Project 345 kV Dysinger Substation</i>	1.A.v	Transmission Developer	Transmission Developer/Connecting Transmission Owner	Transmission Developer
<i>Connecting the Connecting Transmission Owner-owned Stolle Rd. to Five Mile 345 kV Line #29 into East Stolle Rd. Substation</i>	1.A.vi	Connecting Transmission Owner	Transmission Developer/Connecting Transmission Owner	Connecting Transmission Owner

#### **4. Transmission Developer Operating Requirements**

(a) Transmission Developer must comply with all applicable NYISO tariffs and procedures, as amended from time to time.

(b) Transmission Developer and Connecting Transmission Owner must comply with each other's operating instructions and requirements, as amended from time to time, to the extent not inconsistent with the terms of this Agreement or the NYISO OATT.

## **APPENDIX D**

### **SECURITY ARRANGEMENTS DETAILS**

Infrastructure security of New York State Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day New York State Transmission System reliability and operational security. The Commission will expect the NYISO, all Transmission Owners, all Transmission Developers and all other Market Participants to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

**APPENDIX E-1**

**INITIAL SYNCHRONIZATION DATE**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

New York State Electric & Gas Corporation  
Attn: Manager-Programs/Projects  
Electric Transmission Services  
PO Box 5224  
Binghamton, NY 13902-5224

Re: \_\_ [Transmission Project/Network Upgrade Facilities]

Dear \_\_:

On [Date] [Transmission Developer] initially synchronized the [describe Transmission Project/Network Upgrade Facilities]. This letter confirms [Transmission Developer]'s Initial Synchronization Date was [specify].

Thank you.

[Signature]

[Transmission Developer Representative]

**APPENDIX E-2**  
**IN-SERVICE DATE**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

New York State Electric & Gas Corporation  
Attn: Manager-Programs/Projects  
Electric Transmission Services  
PO Box 5224  
Binghamton, NY 13902-5224

Re: \_\_\_\_\_ [Transmission Project/Network Upgrade Facilities]

Dear \_\_\_\_\_:

On [Date] [Transmission Developer] has completed Trial Operation of [describe Transmission Project/Network Upgrade Facilities]. This letter confirms that [describe Transmission Project/Network Upgrade Facilities] [has/have] commenced service, effective as of [Date plus one day].

Thank you.

[Signature]

[Transmission Developer Representative]

## APPENDIX F

### ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

#### Notices:

##### NYISO:

Before In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

After In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

##### Connecting Transmission Owner:

New York State Electric & Gas Corporation  
Attn: Manager-Programs/Projects  
Electric Transmission Services  
PO Box 5224  
Binghamton, NY 13902-5224  
Phone: (585) 484-6306  
J\_mahoney@nyseg.com  
NYISOInterconnectionAdmin@Avangrid.com

##### Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408

**Billings and Payments:**

Connecting Transmission Owner:

New York State Electric & Gas Corporation  
Attn: Mgr. Billing & Risk Management  
PO Box 5224  
Binghamton, NY 13902-5224  
Phone: (585) 484-6883  
Fax: (607) 762-8885

Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408

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

NYISO:

Before In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: [interconnectionsupport@nyiso.com](mailto:interconnectionsupport@nyiso.com)

After In-Service Date of Transmission Project:

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: [interconnectionsupport@nyiso.com](mailto:interconnectionsupport@nyiso.com)

Connecting Transmission Owner:

New York State Electric & Gas Corporation



Attn: Manager-Programs/Projects  
Electric Transmission Services  
PO Box 5224  
Binghamton, NY 13902-5224  
Phone: (585) 484-6306  
J\_mahoney@nyseg.com  
NYISOInterconnectionAdmin@Avangrid.com

Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408  
Phone: (561) 694-4831  
Johnbinh.vu@nexteraenergy.com  
info@empirestateline.com

**SERVICE AGREEMENT NO. 2635**

**SERVICE AGREEMENT NO. 2635**  
**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**  
**AMONG THE**  
**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**  
**AND**  
**ROCHESTER GAS AND ELECTRIC CORP.**  
**AND**  
**NEXTERA ENERGY TRANSMISSION NEW YORK, INC.**

**Dated as of July 15, 2021**

**SERVICE AGREEMENT NO. 2635**

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## **SERVICE AGREEMENT NO. 2635**

### **ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

#### **THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

("Agreement") is made and entered into this 15th day of July, 2021, by and among NextEra Energy Transmission New York, Inc., a corporation organized and existing under the laws of the State of New York ("Transmission Developer"), the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York ("NYISO"), and Rochester Gas and Electric Corporation, a corporation organized and existing under the laws of the State of New York ("Affected System Operator"). Transmission Developer, the NYISO, or Affected System Operator each may be referred to as a "Party" or collectively referred to as the "Parties."

#### **RECITALS**

**WHEREAS**, Transmission Developer is developing the Empire State Line Alternative Transmission Project as the more efficient or cost effective transmission solution to the Western New York Public Policy Transmission Need ("Transmission Project);

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

**WHEREAS**, Transmission Developer has entered into Transmission Project Interconnection Agreements concerning the Transmission Project with the NYISO and the Connecting Transmission Owners with which the project will interconnect - New York Power Authority and New York State Electric and Gas Corporation;

**WHEREAS**, the Transmission Interconnection Studies for the Transmission Project identified certain adverse impacts resulting from the Transmission Project on the Affected System owned and operated by the Affected System Operator and determined that certain Network Upgrade Facilities were required to mitigate these impacts ("Affected System Upgrade Facilities");

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

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

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



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### ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT, Section 22.1 of Attachment P of the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, the body of the TIP, or the body of this Agreement.

**Affected System** shall mean the electric system of the Affected System Operator that is affected by the interconnection of the Transmission Project.

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

**Affected System Upgrade Facilities** shall have the meaning set forth in the recitals and shall consist of the Network Upgrade Facilities identified in the Facilities Study and described in Appendix A 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 or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

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

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

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

**ASUF Estimated Total Costs** shall be the costs for the engineering, procurement, and construction of the Affected System Upgrade Facilities, which costs were identified in the Facilities Study and are specified in Appendix A.

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

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

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

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

**Confidential Information** shall mean any information that is defined as confidential by Article 16 of this Agreement.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, and (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point(s) of Interconnection with the Transmission Project.

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

**Development Agreement** shall mean the agreement executed between the NYISO and the Transmission Developer concerning the development of the Transmission Project, dated June 29, 2019, as it may be amended from time to time.

**Effective Date** shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

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

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

**Facilities Study** shall mean the study conducted pursuant to Section 22.9 of Attachment P of the NYISO OATT to determine a list of facilities required to reliably interconnect the Transmission Project (including the Network Upgrade Facilities) as identified in the System Impact Study, the cost of those facilities, and the time required to interconnect the Transmission Project with the New York 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 or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the

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

**Governmental Authority** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Developer, NYISO, Affected System Operator, or any Affiliate thereof.

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

**In-Service Date** shall mean the date upon which the Affected System Upgrade Facilities are energized consistent with the provisions of this Agreement and available to provide Transmission Service under the NYISO’s Tariffs. The Transmission Developer must provide notice of the In-Service Date to the other Parties in the form of Appendix C to this Agreement.

**Interconnection Agreements** shall mean the two interconnection agreements concerning the Transmission Project among the Transmission Developer, the NYISO, and the Connecting Transmission Owners - *i.e.*, New York Power Authority and New York State Electric and Gas Corporation.

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

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

**Network Upgrade Facilities** shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to the New York State Transmission System that are required for the proposed Transmission Project to connect reliably 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 electric

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



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

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

**NYISO Transmission Interconnection Standard** shall mean the reliability standard that must be met by any Transmission Project proposing to connect to the New York State Transmission System. The standard is designed to ensure reliable access by the proposed project to the New York State Transmission System.

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

**Party or Parties** shall mean NYISO, Affected System Operator, or Transmission Developer or any combination of the above.

**Point(s) of Interconnection** shall mean the point(s) where the Transmission Developer's Transmission Project connect to the New York State Transmission System.

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

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

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

**System Impact Study** shall mean the study conducted pursuant to Section 22.8 of Attachment P of the NYISO OATT that evaluates the impact of the proposed Transmission Project on the safety and reliability of the New York State Transmission System and, if applicable, Affected System, to determine what Network Upgrade Facilities are needed for the proposed Transmission Project to connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Transmission Project and (2) protect the Transmission Project from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.



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

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

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

**Transmission Interconnection Procedures (“TIP”)** shall mean the interconnection procedures applicable to a Transmission Interconnection Application pertaining to a Transmission Project that are included in Attachment P of the NYISO OATT.

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

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

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

### **2.1 Effective Date.**

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

### **2.2 Term of Agreement.**

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

### **2.3 Termination.**

#### **2.3.1 Completion of Term of Agreement**

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



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### **2.3.2 Written Notice.**

#### **2.3.2.1 Written Notice of Termination**

This Agreement may be terminated: (i) by any Party after giving the other Parties ninety (90) Calendar Days advance written notice following the termination of the Development Agreement prior to the completion of its term, subject to the suspension requirements in Section 2.3.2.2 below; or (ii) by the mutual agreement in writing of all Parties.

#### **2.3.2.2 Suspension Period for Project Transfer**

2.3.2.2.1 If the Development Agreement is terminated prior to the completion of its term and the NYISO exercises its right under the Development Agreement and the Tariff to request that a developer other than the Transmission Developer complete the Transmission Project, this Agreement shall be suspended. The suspension period will last until either: (i) the NYISO issues a written determination that the Transmission Project cannot be transferred to another developer and will not proceed, or (ii) the Transmission Developer completes the assignment of this Agreement to a new developer selected by the NYISO as set forth in Section 2.3.2.2.3. During the suspension period, the running of any advanced notice of termination time period pursuant to Section 2.3.2.1 will be paused. The Agreement shall not be terminated during the suspension period without the written agreement of all Parties.

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

2.3.2.2.3 If, pursuant to its Tariff, the NYISO selects a new developer to complete the Transmission Project, Transmission Developer shall coordinate with the new developer concerning the assignment of this Agreement to the new developer pursuant to the assignment requirements in Article 13 of this Agreement. All liabilities under this Agreement existing prior to such transfer shall remain with the Transmission Developer, unless otherwise agreed upon by

the Transmission Developer and the new developer as part of their good faith negotiations regarding the transfer.

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### **2.3.3 Default.**

Any Party may terminate this Agreement in accordance with Article 11.

### **2.3.4 Compliance.**

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

## **2.4 Termination Costs.**

If a Party elects to terminate this Agreement pursuant to Article 2.3.2 above, the Transmission Developer shall be responsible for all costs that are the responsibility of the Transmission Developer under this Agreement that are incurred by the Transmission Developer or the other Parties through the date, as applicable, of the other Parties' receipt of a Party's notice of termination or of the Parties' mutual agreement to terminate the agreement. Such costs include any cancellation costs relating to orders or contracts. In the event of termination by the Transmission Developer, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

**2.4.1** With respect to any portion of the Affected System Upgrade Facilities that have not yet been constructed or installed, but that is being relied upon by other projects in the manner described in Article 6.3 of this Agreement, Transmission Developer shall forfeit any remaining Security in accordance with the requirements in Article 6.3.

**2.4.2** With respect to any portion of the Affected System Upgrade Facilities that has not yet been constructed or installed and is not being relied upon by other projects in the manner described in Article 6.3 of this Agreement, the Affected System Operator shall to the extent possible and with Transmission Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Transmission Developer elects not to authorize such cancellation, Transmission Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Affected System Operator shall deliver such material and equipment, and, if necessary, assign such contracts, to Transmission Developer as soon as practicable, at Transmission Developer's expense. To the extent that Transmission Developer has already paid Affected System Operator for any or all such costs of materials or equipment not taken by Transmission Developer, Affected System Operator shall promptly refund such amounts to Transmission Developer, less any costs, including penalties incurred by the Affected System Operator to cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.3** Affected System Operator may, at its option, retain any portion of such materials or equipment that Transmission Developer chooses not to accept delivery of, in which case



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Affected System Operator shall be responsible for all costs associated with procuring such materials or equipment.

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

### **2.5 Survival.**

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement and Transmission Developer's satisfaction of the Security requirements in Article 6.3 to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Transmission Developer and Affected System Operator each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

## **ARTICLE 3. EPC SERVICES**

### **3.1 Performance of EPC Services.**

The Transmission Developer shall perform the EPC Services, as set forth in Appendix A hereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forth in Appendix A hereto. The Affected System Operator shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Developer reasonably expects that it will not be able to complete the EPC Services by the specified dates, the Transmission Developer shall promptly provide written notice to the Affected System Operator and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. The NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC Services under this Agreement.

### **3.2 General Conditions Applicable to Affected System Upgrade Facilities Constructed by Transmission Developer**

As Transmission Developer is responsible for the design, procurement and construction of the Affected System Upgrade Facilities as set forth in Appendix A, the following conditions apply:

**3.2.1** Transmission Developer shall engineer, procure equipment, and construct the Affected System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in due course by the Affected System Operator;



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**3.2.2** Transmission Developer's engineering, procurement and construction of the Affected System Upgrade Facilities shall comply with all requirements of law to which Affected System Operator would otherwise have been subject in the engineering, procurement or construction of the Affected System Upgrade Facilities;

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

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

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

**3.2.6** At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Affected System Upgrade Facilities not meet the standards and specifications provided by Affected System Operator, the Transmission Developer shall be obligated to remedy deficiencies in that portion of the Affected System Upgrade Facilities to Affected System Operator's satisfaction;

**3.2.7** Transmission Developer shall indemnify Affected System Operator and NYISO for claims arising from the Transmission Developer's construction of Affected System Upgrade Facilities under procedures applicable to Article 12.1 Indemnity;

**3.2.8** Transmission Developer shall transfer control of Affected System Upgrade Facilities to Affected System Operator;

**3.2.9** Transmission Developer shall transfer ownership of the Affected System Upgrade Facilities to Affected System Operator;

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

**3.2.11** Transmission Developer shall deliver to NYISO and Affected System Operator "as built" drawings, information, and any other documents that are reasonably required by NYISO or Affected System Operator to assure that the Affected System Upgrade Facilities are built to the standards and specifications required by Affected System Operator; and

**3.2.12** The Transmission Developer shall be responsible for the costs that Connecting Transmission Owner incurs in executing the responsibilities enumerated to Connecting



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Transmission Owner under Article 3.2. The Connecting Transmission Owner shall invoice Transmission Developer for such costs pursuant to Article 7.

### **3.3 Equipment Procurement.**

The Transmission Developer shall commence design of the Affected System Upgrade Facilities and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Transmission Developer and Affected System Operator otherwise agree in writing:

**3.3.1** NYISO and Affected System Operator have completed the Facilities Study pursuant to the Facilities Study Agreement; and

**3.3.2** The NYISO has completed the required cost allocation analyses, and Transmission Developer has provided Security to the Affected System Operator in accordance with Article 6.2 by the date specified in Appendix B hereto.

### **3.4 Construction Commencement.**

Transmission Developer shall commence construction of the Affected System Upgrade Facilities as soon as practicable after the following additional conditions are satisfied:

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

**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 Affected System Upgrade Facilities; and

**3.4.3** The Transmission Developer has provided Security to the Affected System Operator in accordance with Article 6.2 by the dates specified in Appendix B hereto.

### **3.5 Work Progress.**

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

### **3.6 Information Exchange.**

As soon as reasonably practicable after the Effective Date, the Transmission Developer and Affected System Operator shall exchange information, and provide NYISO the same information, regarding the design of the Affected System Upgrade Facilities and compatibility of the Affected System Upgrade Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes required by Affected

System Operator or NYISO, in accordance with Good Utility Practice to ensure that the Affected System Upgrade Facilities are compatible with the technical specifications, operational control,

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and safety requirements of the Affected System Operator and NYISO. Any review by the NYISO of the design of the Affected System Upgrade Facilities shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Affected System Upgrade Facilities. The Transmission Developer shall inform the Affected System Operator of the termination of one or both of the Interconnection Agreements or the Development Agreement within ten (10) days of the termination of the agreement(s).

### **3.7 Ownership of Affected System Upgrade Facilities**

Affected System Operator shall own the Affected System Upgrade Facilities.

### **3.8 Access Rights.**

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

### **3.9 Lands of Other Property Owners.**

If any part of the Affected System Upgrade Facilities is to be installed on property owned by persons other than Transmission Developer or Affected System Operator, the Affected System Operator shall at Transmission Developer’s expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to perform the EPC Services upon such property, including to construct, repair, test (or witness testing), inspect, replace or remove the Affected System Upgrade Facilities.

### **3.10 Permits.**

NYISO, Affected System Operator and the Transmission Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the EPC Services in compliance with Applicable Laws and Regulations. With respect to this paragraph, Affected System Operator shall provide permitting assistance to the

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



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### **3.11 Suspension.**

Transmission Developer reserves the right, upon written notice to Affected System Operator and NYISO, to suspend at any time all work by Affected System Operator associated with the EPC Services under this Agreement for Affected System Upgrade Facilities required for only Transmission Developer's Transmission Project with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Affected System Operator and NYISO. If the suspension will impact the Transmission Developer's ability to meet any Advisory Milestones or Critical Path Milestones in the Development Agreement, Transmission Developer shall notify the NYISO in accordance with the requirements in Article 3.3 of the Development Agreement. NYISO reserves the right, upon written notice to Transmission Developer and Affected System Operator, to require the suspension of all work by Transmission Developer and Affected System Operator associated with the EPC Services under this Agreement if the NYISO terminates the Development Agreement pursuant to Article 8 of the Development Agreement.

In the event of suspension pursuant to this Article 3.11, Transmission Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with the Facilities Study report including those which Affected System Operator (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Affected System Operator cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Affected System Operator shall obtain Transmission Developer's authorization to do so.

Affected System Operator shall invoice Transmission Developer for such costs pursuant to Article 7 and shall use due diligence to minimize its costs. In the event Transmission Developer suspends work by Affected System Operator required under this Agreement pursuant to this Article 3.11, and has not requested Affected System Operator to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date required under this Article 3.11 or the date specified in the written notice of suspension.

### **3.12 Taxes.**

#### **3.12.1 Transmission Developer Payments Taxable.**

The Transmission Developer and Affected System Operator intend that all payments or property transfers made by Transmission Developer to Affected System Operator for the installation of the Affected System Upgrade Facilities shall be taxable as contributions in aid of construction.



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### **3.12.2 Tax Gross-Up Amount.**

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

For this purpose, (i) Current Taxes shall be computed based on Affected System Operator's composite federal and state tax rates at the time the payments or property transfers are received and Affected System Operator will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Affected System Operator's anticipated tax depreciation deductions as a result of such payments or property transfers by Affected System Operator's current weighted average cost of capital. Thus, the formula for calculating Transmission Developer's liability to Affected System Operator pursuant to this Article 3.12.2 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$ . Transmission Developer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Affected System Upgrade Facilities.

### **3.12.3 Refund.**

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



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

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

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

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

### **3.12.4 Taxes Other Than Income Taxes.**

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

## **3.13 Tax Status**

Each Party shall cooperate with the other Parties to maintain the other Parties' tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including

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the status of NYISO, or the status of the Affected System Operator with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

### **3.14 Modification.**

#### **3.14.1 General.**

If, prior to the In-Service Date, either the Transmission Developer or Affected System Operator proposes to modify the Affected System Upgrade Facilities, they must inform the other Parties of the proposed modification and must satisfy the requirements in (i) Section 22.5.4 of Attachment P to the NYISO OATT, and (ii) the Development Agreement. The Transmission Developer shall be responsible for the costs of any such additional modifications, including the cost of studying the materiality and impact of the modification.

#### **3.14.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

#### **3.14.3 Modification Costs.**

Transmission Developer or Affected System Operator, as applicable, shall not be assigned the cost of any additions, modifications, or replacements that the other Party makes to the New York State Transmission System to facilitate the interconnection of a third party to the New York State Transmission System, or to provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT.

## **ARTICLE 4. TESTING AND INSPECTION**

### **4.1 Pre-In-Service Date Testing and Modifications.**

Prior to the In-Service Date, the Affected System Operator shall test the Affected System Upgrade Facilities and Transmission Developer shall coordinate with the Affected System Operator concerning the testing of the Affected System Upgrade Facilities and the Transmission Project under the Interconnection Agreements to ensure the safe and reliable operation of the Affected System Upgrade Facilities. Similar testing may be required after initial operation. Transmission Developer and Affected System Operator shall each make any modifications to their facilities that are found to be necessary as a result of such testing. Transmission Developer shall bear the cost of all such testing and modifications. Transmission Developer shall coordinate with the Affected System Operator to generate test energy at the Affected System Upgrade Facilities only if it has arranged for the injection of such test energy in accordance with NYISO procedures.





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### **4.2 Right to Observe Testing.**

Affected System Operator shall notify Transmission Developer and the NYISO, in advance of its performance of tests of the Affected System Upgrade Facilities. Transmission Developer and the NYISO shall each have the right, at its own expense, to observe such testing.

### **4.3 Right to Inspect.**

Transmission Developer and Affected System Operator shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Affected System Upgrade Facilities, the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Transmission Developer and Affected System Operator. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Affected System Upgrade Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 4.3 shall be treated in accordance with Article 16 of this Agreement and Attachment F to the ISO OATT.

## **ARTICLE 5. COMMUNICATIONS**

### **5.1 Affected System Operator Obligations.**

In accordance with applicable NYISO requirements, Affected System Operator shall maintain satisfactory operating communications with NYISO. Affected System Operator shall provide standard voice line, dedicated voice line and facsimile communications at its control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Affected System Operator shall also provide the dedicated data circuit(s) necessary to provide its data to NYISO as set forth in Appendix A hereto. The data circuit(s) shall extend from the Affected System Upgrade Facilities to the location(s) specified by NYISO.

### **5.2 Remote Terminal Unit.**

Prior to the In-Service Date, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Transmission Developer, or by Affected System Operator at Transmission Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Affected System Operator and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 5.1. The communication protocol for the data circuit(s) shall be specified by Affected System Operator and NYISO. Instantaneous bi-directional analog real power and reactive power flow

information must be capable of being telemetered directly to the location(s) specified by Affected System Operator and NYISO.

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### **5.3 No Annexation.**

Any and all equipment placed on the premises of a Party during the term of this Agreement shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

## **ARTICLE 6. PERFORMANCE OBLIGATION**

### **6.1 EPC Services**

Transmission Developer shall perform the EPC Services described in Appendix A hereto and as otherwise set forth by the terms of this Agreement at Transmission Developer's expense.

### **6.2 Provision of Security.**

Within thirty (30) Calendar Days of the effective date of this Agreement, Transmission Developer shall provide Affected System Operator with Security for the Affected System Upgrade Facilities in the amount set forth in Appendix A of this Agreement. If the Transmission Developer: (i) does not pay an invoice issued by the Affected System Operator pursuant to Article 7.1 within the timeframe set forth in Article 7.3 or (ii) does not pay any disputed amount into an independent escrow account pursuant to Article 7.4, the Affected System Operator may draw upon Transmission Developer's Security to recover such payment. The Security shall be reduced on a dollar-for-dollar basis for payments made to Affected System Operator for the purpose of constructing, procuring, and installing the Affected System Upgrade Facilities.

### **6.3 Forfeiture of Security**

The Security the Transmission Developer provides Affected System Operator in accordance with Article 6.2 of this Agreement shall be irrevocable and shall be subject to forfeiture in the event that the Transmission Developer subsequently terminates or abandons development of the Transmission Project or the Affected System Upgrade Facilities. Any Security provided by the Transmission Developer shall be subject to forfeiture to the extent necessary to defray the cost of: (1) Affected System Upgrade Facilities required for other Transmission Developers whose Transmission Project interconnection studies included the Transmission Developer's Transmission Project and Affected System Upgrade Facilities in their base cases; and (2) System Upgrade Facilities and System Deliverability Upgrade Facilities required for projects for which the Transmission Project and Affected System Upgrade Facilities were included in their Annual Transmission Reliability Assessment and/or Class Year Deliverability Study, as applicable. If Transmission Developer's Security is subject to forfeiture to defray the costs of an affected upgrade pursuant to this Article 6.3 and the Security is not in a form that can be readily drawn on by the Connecting Transmission Owner to defray the costs of the affected upgrade, Transmission Developer shall negotiate in good faith with the Connecting Transmission Owner to replace the Security with cash or an alternative form of Security that can be readily drawn on by Connecting Transmission Owner up to the amount required to satisfy Transmission Developer's Security obligations under this Agreement, including defraying the

costs of the affected upgrade. Connecting Transmission Owner shall only be responsible for using Transmission Developer's Security to defray the costs of an affected upgrade to the extent

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Transmission Developer has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on to defray such costs.

### **6.4 Affected System Upgrade Facility Costs**

**6.4.1** If the actual cost of Affected System Upgrade Facilities is less than the ASUF Estimated Total Costs amount, Transmission Developer is responsible only for the actual cost figure.

**6.4.2** If the actual cost of Affected System Upgrade Facilities is greater than the ASUF Estimated Total Costs amount because other projects have been expanded, accelerated, otherwise modified or terminated, Transmission Developer is responsible only for the agreed-to and secured amount for the Affected System Upgrade Facilities. The additional cost is covered by the developers of the modified projects, or by the drawing on the cash that has been paid and the Security that has been posted for terminated projects, depending on the factors that caused the additional cost. Such forfeitable Security from other developers will be drawn on only as needed for this purpose, and only to the extent that the terminated project associated with that Security has caused additional cost and that the developer of the terminated project has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on.

**6.4.3** If the actual cost of the Affected System Upgrade Facilities is greater than the ASUF Estimated Total Costs amount for reasons other than those set forth in Section 6.4.2, Transmission Developer will pay the additional costs to Affected System Operator to the extent such costs are prudently incurred. Disputes between Transmission Developer and Affected System Operator concerning costs in excess of the agreed-to and secured amount will be resolved by the parties in accordance with the terms and conditions of Article 21.

### **6.5 Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, Affected System Operator may propose to recover line outage costs associated with the installation of the Affected System Upgrade Facilities on a case-by-case basis.

## **ARTICLE 7. INVOICE**

### **7.1 General.**

To the extent that any amounts are due to the Transmission Developer or Affected System Operator under this Agreement, the Transmission Developer or Affected System Operator, as applicable, shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Transmission Developer and Affected System Operator may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts one Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only

the net amount remaining due shall be paid by the owing Party. Within six months after completion of the EPC Services, Transmission Developer or Affected System Operator, as

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applicable, shall provide a final invoice to the other Party of any remaining amounts due associated with the EPC Services.

### **7.2 Refund of Remaining Security.**

Following the later of Affected System Operator's completion of the EPC Services and Transmission Developer's payment of any final invoice issued under Article 7.1, the Affected System Operator shall refund to the Transmission Developer any remaining portions of its security. Affected System Operator shall provide Transmission Developer with the refunded amount within thirty (30) Calendar Days of the Parties' satisfaction of the requirements in this Article 7.2.

### **7.3 Payment.**

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

### **7.4 Disputes.**

In the event of a billing dispute between Parties, the Party owed money shall continue to perform under this Agreement as long as the other Party: (i) continues to make all payments not in dispute; and (ii) pays to the Party owed money or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes money fails to meet these two requirements for continuation of service, then the Party owed money may provide notice to the other Party of a Default pursuant to Article 11. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 8. REGULATORY REQUIREMENTS AND GOVERNING LAW**

### **8.1 Regulatory Requirements.**

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Transmission Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

**8.2 Governing Law.**



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

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

**8.2.3** 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 9. NOTICES**

### **9.1 General.**

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

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

### **9.2 Billings and Payments.**

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

### **9.3 Alternative Forms of Notice.**

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

## **ARTICLE 10. FORCE MAJEURE**

**16.1** Economic hardship is not considered a Force Majeure event.

**16.2** A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and

date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable

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dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

### **ARTICLE 11. DEFAULT**

#### **11.1 General.**

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

#### **11.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 11, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

### **ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

#### **12.1 Indemnity.**

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

##### **12.1.1 Indemnified Party.**

If a Party is entitled to indemnification under this Article 12 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed

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under Article 12.1.3, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

### **12.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 12, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

### **12.1.3 Indemnity Procedures.**

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

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

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

## **12.2 No Consequential Damages.**

Other than the indemnity obligations set forth in Article 12.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to

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loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

### **12.3 Insurance.**

Transmission Developer shall, at its own expense, procure and maintain in force throughout the period of this Agreement and until released by the other Parties, the following minimum insurance coverages, with insurers authorized to do business in the state of New York and rated “A- (minus) VII” or better by A.M. Best & Co. (or if not rated by A.M. Best & Co., a rating entity acceptable to the NYISO):

**12.3.1** Workers' Compensation and Employers' Liability Insurance providing statutory benefits in accordance with the laws and regulations of New York State under NCCI Coverage Form No. WC 00 00 00, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO; *provided, however*, if the Transmission Project will be located in part outside of New York State, Transmission Developer shall maintain such Employers' Liability Insurance coverage with a minimum limit of One Million Dollars (\$1,000,000).

**12.3.2** Commercial General Liability Insurance — under ISO Coverage Form No. CG 00 01 (04/13), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO — with minimum limits of Two Million Dollars (\$2,000,000) per occurrence/Four Million Dollars (\$4,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

**12.3.3** Commercial Business Automobile Liability Insurance — under ISO Coverage Form No. CA 00 01 10 13, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO — for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

**12.3.4** Umbrella/Excess Liability Insurance over and above the Employers' Liability, Commercial General Liability, and Commercial Business Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty-Five Million Dollars (\$25,000,000) per occurrence/Twenty-Five Million Dollars (\$25,000,000) aggregate.

**12.3.5** Builder's Risk Insurance in a reasonably prudent amount consistent with Good Utility Practice.

**12.3.6** The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies of

Transmission Developer shall name the Affected System Operator and its respective directors, officers, agents, servants and employees (“Other Party Group”) as additional insureds. For Commercial General Liability Insurance, Transmission Developer shall name the Other Party



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Group as additional insureds under the following ISO form numbers, as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO: (i) ISO Coverage Form No. CG 20 37 04 13 (“Additional Insured — Owners, Lessees or Contractors — Completed Operations”) and (ii) (A) ISO Coverage Form No. CG 20 10 04 13 (“Additional Insured — Owner, Lessees or Contractors — Scheduled Person or Organization”), or (B) ISO Coverage Form No. CG 20 26 04 13 (“Additional Insured — Designated Person or Organization”). For Commercial Business Automobile Liability Insurance, Transmission Developer shall name the Other Party Group as additional insureds under ISO Coverage Form No. CA 20 48 10 13 (“Designated Insured for Covered Autos Liability Coverage”), as amended or supplemented from time to time, or an equivalent form acceptable to the NYISO.

**12.3.7** All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to non-renewal, cancellation or any material change in coverage or condition.

**12.3.8** The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Transmission Developer shall be responsible for its respective deductibles or retentions.

**12.3.9** The Commercial General Liability Insurance, Commercial Business Automobile Liability Insurance and Umbrella/Excess Liability Insurance policies, if written on a Claims First Made Basis in a form acceptable to the NYISO, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of an extended reporting period (ERP) or a separate policy, if agreed by Transmission Developer and Affected System Operator.

**12.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by the Transmission Developer are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Transmission Developer under this Agreement.

**12.3.11** The Transmission Developer shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer: (A) within ten (10) days following: (i) execution of this Agreement, or (ii) the NYISO's date of filing this Agreement if it is filed unexecuted with FERC, and (B) as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within thirty (30) days thereafter.

**12.3.12** Notwithstanding the foregoing, Transmission Developer may self-insure to meet the minimum insurance requirements of Articles 12.3.1 through 12.3.9 to the extent it maintains

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

**12.3.13** Transmission Developer and Affected System Operator agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

**12.3.14** Notwithstanding the minimum insurance coverage types and amounts described in this Article 12.3, Transmission Developer: (i) shall also maintain any additional insurance coverage types and amounts required under Applicable Laws and Regulations, including New York State law, and under Good Utility Practice for the work performed by Transmission Developer and its subcontractors under this Agreement, and (ii) shall satisfy the requirements set forth in Articles 12.3.6 through 12.3.13 with regard to the additional insurance coverages, including naming the Other Party Group as additional insureds under these policies.

## **ARTICLE 13. ASSIGNMENT**

This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Transmission Developer shall have the right to assign this Agreement, without the consent of the NYISO or Affected System Operator, for collateral security purposes to aid in providing financing for the Affected System Upgrade Facilities, provided that the Transmission Developer will promptly notify the NYISO and Affected System Operator of any such assignment. Any financing arrangement entered into by the Transmission Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Affected System Operator of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Affected System Operator with proof that it meets the requirements of Articles 6.2 and 12.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part,

by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

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### **ARTICLE 14. SEVERABILITY**

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

### **ARTICLE 15. COMPARABILITY**

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

### **ARTICLE 16. CONFIDENTIALITY**

#### **16.1 Confidentiality.**

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

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

#### **16.2 Term.**

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

#### **16.3 Confidential Information.**

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

#### **16.4 Scope.**

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party

without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential;

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(4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 16.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

### **16.5 Release of Confidential Information.**

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

### **16.6 Rights.**

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

### **16.7 No Warranties.**

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.

### **16.8 Standard of Care.**

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





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### **16.9 Order of Disclosure.**

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

### **16.10 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 to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties pursuant to this Agreement.

### **16.11 Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 16. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 16, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 16, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 16.

### **16.12 Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in this Article 16 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,

request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying

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the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

### **16.13 Required Notices Upon Requests or Demands for Confidential Information**

Except as otherwise expressly provided herein, no Party shall disclose Confidential Information to any person not employed or retained by the Party possessing the Confidential Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

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

Transmission Developer and Affected System Operator shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Affected System Upgrade Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

## **ARTICLE 18. INFORMATION REQUIREMENT**

### **18.1 Information Acquisition.**

Affected System Operator and Transmission Developer shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as described below and in accordance with Applicable Reliability Standards.



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### **18.2 Information Submission Concerning the Affected System Upgrade Facilities.**

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

### **18.3 Updated Information Submission Concerning the Transmission Project.**

The updated information submission by the Transmission Developer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation of the Transmission Project. Transmission Developer shall submit a completed copy of the Transmission Project data requirements contained in Appendix 1 to the Transmission Interconnection Procedures. It shall also include any additional information provided to Affected System Operator for the Facilities Study. Information in this submission shall be the most current Transmission Project design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Transmission Developer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

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

### **18.4 Information Supplementation.**

Prior to the In-Service Date of the Affected System Upgrade Facilities, the Transmission Developer and Affected System Operator shall supplement their information submissions described above in this Article 18 with any and all "as-built" Transmission Project and Affected

System Upgrade Facilities information or “as-tested” performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The

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Transmission Developer shall conduct tests on the Transmission Project as required by Good Utility Practice.

Subsequent to the In-Service Date, the Transmission Developer shall provide Affected System Operator and NYISO any information changes concerning the Transmission Project due to equipment replacement, repair, or adjustment. Affected System Operator shall provide the Transmission Developer and NYISO any information changes concerning the Affected System Upgrade Facilities due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Affected System Operator substation that may affect the Transmission Project's equipment ratings, protection or operating requirements. The Transmission Developer and Affected System Operator shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

### **ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS**

#### **19.1 Information Access.**

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

#### **19.2 Reporting of Non-Force Majeure Events.**

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

#### **19.3 Audit Rights.**

Subject to the requirements of confidentiality under Article 16 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party's accounts and records pertaining to the other Party's performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, and calculation of invoiced amounts. Any audit authorized by this Article shall be performed at the offices where such accounts and

records are maintained and shall be limited to those portions of such accounts and records that relate to the Party's performance and satisfaction of obligations under this Agreement. Each



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Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 19.4 of this Agreement.

### **19.4 Audit Rights Periods.**

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

Accounts and records related to the design, engineering, procurement, and construction of the Affected System Upgrade Facilities shall be subject to audit for a period of twenty-four months following the issuance by Affected System Operator or Transmission Developer, as applicable, of a final invoice in accordance with Article 7.2 of this Agreement.

#### **19.4.2 Audit Rights Period for All Other Accounts and Records.**

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

### **19.5 Audit Results.**

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

## **ARTICLE 20. SUBCONTRACTORS**

### **20.1 General.**

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

### **20.2 Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Affected System Operator be liable for the actions or inactions of the Transmission Developer or its subcontractors with respect to obligations of the Transmission Developer under Article 5 of this Agreement. Any

applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

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### **20.3 No Limitation by Insurance.**

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

## **ARTICLE 21. DISPUTES**

### **21.1 Submission.**

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

### **21.2 External Arbitration Procedures.**

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

### **21.3 Arbitration Decisions.**

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the

arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be

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filed with FERC if it affects jurisdictional rates, terms and conditions of service or Affected System Upgrade Facilities.

### **21.4 Costs.**

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

### **21.5 Termination.**

Notwithstanding the provisions of this Article 21, any Party may terminate this Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

## **ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **22.1 General.**

Each Party makes the following representations, warranties and covenants:

#### **22.1.1 Good Standing.**

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

#### **22.1.2 Authority.**

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

#### **22.1.3 No Conflict.**

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such

Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

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### **22.1.4 Consent and Approval.**

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

## **ARTICLE 23. MISCELLANEOUS**

### **23.1 Binding Effect.**

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

### **23.2 Conflicts.**

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

### **23.3 Rules of Interpretation.**

This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this Agreement or such Appendix to this Agreement, or such Section to the Transmission Interconnection Procedures or such Appendix to the Transmission Interconnection Procedures, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".





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### **23.4 Compliance.**

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

### **23.5 Joint and Several Obligations.**

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

### **23.6 Entire Agreement.**

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

### **23.7 No Third Party Beneficiaries.**

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

### **23.8 Waiver.**

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

### **23.9 Headings.**

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



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### **23.10 Multiple Counterparts.**

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

### **23.11 Amendment.**

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

### **23.12 Modification by the Parties.**

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

### **23.13 Reservation of Rights.**

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

### **23.14 No Partnership.**

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

### **23.15 Other Transmission Rights.**

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, or transmission congestion rights that the Transmission Developer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise

associated with, the transmission capacity, if any, created by the Affected System Upgrade Facilities.

**SERVICE AGREEMENT NO. 2635**

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

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

By:

Name: \_\_\_\_\_

Title:

Date:

**Rochester Gas and Electric Corp.**

By:

Name: \_\_\_\_\_

Title:

Date:

**NextEra Energy Transmission New York, Inc.**

By:

Name: \_\_\_\_\_

Title:

Date:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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**SERVICE AGREEMENT NO. 2635**

**APPENDICES**

**Appendix A**

EPC Services

**Appendix B**

Addresses for Delivery of Notices and Billings

**Appendix C**

In-Service Date

## SERVICE AGREEMENT NO. 2635

### APPENDIX A

#### EPC SERVICES

##### 1. Affected System Upgrade Facilities

The Transmission Developer is developing the Transmission Project, which was selected by the NYISO as the more efficient or cost effective transmission solution to address the Western New York Public Policy Transmission Need. The Transmission Interconnection Studies for the Transmission Project identified certain adverse impacts resulting from the Transmission Project on the Affected System owned and operated by the Affected System Operator and determined that certain Affected System Upgrade Facilities are required to mitigate these impacts. Specifically, the Affected System Upgrade Facilities include:

*A. Adding a New 100 Mvar Shunt Reactor at Affected System Operator's Station 80 Substation*

Transmission Developer will install a 345 kV, 100 Mvar shunt reactor with a shunt reactor bay on the northern end of the 345 kV Bus #1 at Affected System Operator's Station 80 Substation. In addition, Transmission Developer will install three new relay panels for the SEL451 bay controller, the SEL-487E (System A) relay, and the GE-T60 (System B) relay. This work is described below and depicted in Figure A-1 and includes the installation of the following new major electrical and physical equipment:

- One (1) 345 kV 100 Mvar shunt reactor;
- One (1) shunt reactor foundation with oil containment;
- Three (3) single phase, surge arrester/bus support structures;
- One (1) 362 kV, 40kA, 3000A dead type circuit breaker with bushing current transformers ("CTs") and with synchronous switching control unit;
- One (1) 345 kV circuit breaker foundation;
- One (1) 345 kV dead-end structure and foundation (with integrated switch truss);
- One (1) 362 kV 3000A, 63kA, 1300 kV BIL upright mounted double side-break switch with motor operator;
- Three (3) single-phase coupling capacitor voltage transformer ("CCVT") structures and foundations;
- CCVT junction box;
- Grounding materials;
- Conduit materials;
- Control cabling;
- Miscellaneous bus work;
- Three new relay panels (#11, #9 and #28) to house the following:
  - One (1) SEL-451 bay control and System A breaker failure protection;
  - One (1) SEL-487E System A protection relay;



- One (1) GE-T60 System B protection relay and System B breaker failure protection;  
and
- Twelve (12) FT-1 test switches.

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## SERVICE AGREEMENT NO. 2635

This work would include the relocation of three existing 345 kV Bus 1 CCVT's. This work would also include the following electrical and physical equipment removals:

- One (1) 345 kV lattice type dead-end structure and four (4) foundations;
- Five (5) 345 kV bus support pedestal structures and foundations;
- Three (3) CCVT lattice type structures and foundations;
- One (1) 345 kV switch rack and six (6) foundations; and
- Minimal conduit removal.

### Figure A-1

**[CONTAINS CEII - THIS FIGURE REMOVED FROM PUBLIC VERSION]**

#### *B. Upgrade Line Protection Systems at Affected System Operator's Station 255 Substation*

Affected System Operator's Station 255 is a greenfield substation that went into service in late 2020 as part of the Rochester Area Reliability Project (RARP). The Transmission Developer will upgrade the existing SH1-39 line protection system of the SH1-39 terminal at the 345 kV Station 255 Substation. This terminal will be identified as the DH1 line terminal once the line is connected to the Dysinger Substation. This work will include the following major protection and control equipment at the SH1-39 terminal:

- Replace SEL 421 System A line protection relay with a GE-L90 relay utilizing a line differential protection scheme;
- Remove RFL GARD 8000 used for the existing System A communication;
- Utilize fiber path from optical ground wire ("OPGW") on NH2 (future DH2) line for System A communication;
- Remove wave trap and line tuning unit;
- Add bus in place of wave trap;
- Replace GE-L90 System B line protection relay with a SEL-411 relay utilizing a permissive overreaching transfer trip ("POTT") protection scheme;
- Repurpose the System B GE JMUX communication device by removing the existing leased line used for System B communication and connecting it to the existing SONET network;
- Install GE JMUX to extend SONET communication network to the Dysinger Substation; note that this device will be utilized for both the DH1 and DH2 System B communication networks; and
- The fiber paths for the primary and secondary communication channels shall not have a single point of failure and will be diversely routed

Note: The use of the New York Power Authority (“NYPA”) optical ground wire (“OPGW”) and the Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) portion of the SONET ring are covered under a separate agreement.

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## **SERVICE AGREEMENT NO. 2635**

The Transmission Developer will upgrade the existing NH-2 line protection system of the NH-2 terminal at the 345 kV Station 255 Substation. This terminal will be identified as the DH2 line terminal once the line is connected to the Dysinger Substation. This work will include the following major protection and control equipment at the NH-2 terminal:

- Existing System A GE-L90 relay will be retained to implement a line differential protection scheme;
- Remove RFL GARD 8000 used for the existing System A communication;
- Utilize fiber path from OPGW on NH2 (future DH2) line for System A communication;
- Remove wave trap and line tuning unit;
- Add bus in place of wave trap;
- Existing System B SEL 411 relay will be retained to implement a POTT protection scheme;
- System B SONET communication will be retained as the System B communication channel; and
- Install GE JMUX to extend SONET communication network to the Dysinger Substation. Note that this device will be utilized for both the DH1 and DH2 System B communication networks.

The fiber paths for the primary and secondary communication channels shall not have a single point of failure and will be diversely routed.

Note: The use of the NYPA OPGW and the National Grid portion of the SONET ring are covered under a separate agreement.

### **2. Transmission Developer's Work Responsibilities**

Transmission Developer will design, procure, engineer and construct the new and modified Affected System Upgrade Facilities in accordance with Affected System Operator's Bulletin No. 86-01, Requirements for the Interconnection of Generation, Transmission and EndUser Facilities (Revised October 3, 2011) ("Bulletin 86-01") and Affected System Operator's Bulk Power POI Guide, to the extent they are not inconsistent with the terms of this Agreement or the NYISO OATT. The Affected System Operator will provide project management, owners engineer ("OE") and full construction oversight ("FCM").

All project engineering and design work shall be per the IUSA/Avangrid/NYSEG/RG&E Engineering, Design & Construction Standards. All of the Transmission Developer's engineering and design documentation shall be approved by the Affected System Operator. The work for the Affected System Upgrade Facilities shall be per the Affected System Operator's standards and under the supervision of an Affected System Operator's FCM. A list of engineering contractors and substation construction contractors currently approved by the Affected System Operator is available. However, the Transmission Developer may propose an

alternate engineering contractor and/or substation construction contractor for review and acceptance by the Affected System Operator.

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**SERVICE AGREEMENT NO. 2635**

**3. ASUF Estimated Total Costs**

Description	Estimated Cost
Station 80 Shunt Reactor	\$8,392,000
Station 255 Work	\$175,000
<b>Total</b>	<b>\$8,567,000</b>

**4. Security**

In accordance with Article 6.2 of this Agreement, Transmission Developer will provide Affected System Operator Security in the amount of \$1,000,000 in the form of a parental guarantee.

**5. Milestones**

Task Name	Finish Date	Responsible Party
<b>Adding a new 100 Mvar shunt reactor at the Rochester Sta. 80 Substation</b>		
Preliminary engineering (30% design, review, and approval)		Pratt & Commissioning
Semi-detailed engineering (70% design, review, and approval)		Initial Synchronization Date
Ratings/Modelling (RAM) draft submittal		
Detailed engineering (90% design, review, and approval)		
Ratings/Modelling (RAM) final submittal		
Affected System Operator file Article VII Amendments with DPS		
Transmission Developer Construction RFP & contract execution		
Engineering (100% design, review, and approval)		
Transmission Developer System Protection and Control 3-7 design development, review, and approval		
Transmission Developer procurement		
Construction Completion		
Affected System Operator As Built drawings review		
Primary equipment testing and commissioning		

Complete		A	rator Review
		f	Transmission Developer
Complete		f	Affected System Operator
		e	Review
Complete		c	Transmission Developer
July 2021		t	Affected System Operator
		e	
August 2021	July 2021	d	Affected System Operator
		S	Review
August 2021		y	Affected System Operator
		s	Review
October 2021		t	Developed by Affected System
		e	Operator
		m	
September 2021		O	Transmission Developer
		p	Transmission Developer
Complete		e	Affected System Operator
March	2022	r	Transmission Developer
May	2022	a	Affected System Operator
		t	Transmission Developer
March	2022	o	Affected System Operator
		r	Transmission Developer
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April 2022		e	
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<b>Task Name</b>	<b>Finish Date</b>	<b>Responsible Party</b>
Planned In Service Date	April 2022	Affected System Operator
<b>Upgrade line protection systems at Rochester Station 255 Substation.</b>		
Preliminary engineering (30% design, review, and approval)	Complete	Affected System Operator Review
Ratings/Modelling (RAM) draft submittal	Complete	Transmission Developer
Semi-detailed engineering (70% design, review, and approval)	Complete	Affected System Operator Review
Ratings/Modelling (RAM) final submittal	July 2021	Transmission Developer
Detailed engineering (90% design, review, and approval)	July 2021	Affected System Operator Review
Transmission Developer Construction RFP & contract execution	August 2021	Affected System Operator Review
Engineering (100% design, review, and approval)	August 2021	Affected System Operator Review
Transmission Developer Procurement	July 2021	Transmission Developer
Construction Completion	December 2021	Transmission Developer
Protection and Control testing & commissioning	February 2022	Affected System Operator
Initial Synchronization Date	February 2022	Transmission Developer
Planned In Service Date	April 2022	Transmission Developer
<b>Turn Over Facilities (all)</b>	May 2022	Transmission Developer



**SERVICE AGREEMENT NO. 2635**

**APPENDIX B**

**ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

**Notices:**

NYISO:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

Affected System Operator:

Rochester Gas and Electric Corporation  
18 Link Drive  
P.O. Box 5224  
Binghamton, NY 13902-5224  
(585) 484-6306

Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408

**Billings and Payments:**

Affected System Operator:

Rochester Gas and Electric Corporation  
18 Link Drive  
P.O. Box 5224  
Binghamton, NY 13902-5224  
(585) 484-6306

Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666

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**SERVICE AGREEMENT NO. 2635**

Juno Beach, FL 34408

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

NYISO:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: [interconnectionsupport@nyiso.com](mailto:interconnectionsupport@nyiso.com)

Affected System Operator:

Rochester Gas and Electric Corporation  
18 Link Drive  
P.O. Box 5224  
Binghamton, NY 13902-5224  
(585) 484-6306  
[J\\_mahoney@nyseg.com](mailto:J_mahoney@nyseg.com)

Transmission Developer:

NextEra Energy Transmission New York, Inc.  
Attn: Director of NY Development  
700 Universe Boulevard  
UST-C5666  
Juno Beach, FL 34408  
Phone: (561) 694-4831  
[Johnbinh.vu@nexteraenergy.com](mailto:Johnbinh.vu@nexteraenergy.com)  
[info@empirestateline.com](mailto:info@empirestateline.com)

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**SERVICE AGREEMENT NO. 2635**

**APPENDIX C**

**IN-SERVICE DATE**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

Rochester Gas and Electric Corporation  
18 Link Drive  
P.O. Box 5224  
Binghamton, NY 13902-5224  
(585) 484-6306  
J\_mahoney@nyseg.com

Re: \_\_\_\_\_ [Affected System Upgrade Facilities]

Dear \_\_\_\_\_:

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

Thank you.

[Signature]

[Transmission Developer Representative]

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**SERVICE AGREEMENT NO. 2688**

**SERVICE AGREEMENT NO. 2688**

**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**AMONG THE**

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

**AND**

**NIAGARA MOHAWK POWER CORPORATION**

**D/B/A NATIONAL GRID,**

**AND**

**NEXTERA ENERGY TRANSMISSION NEW YORK, INC.**

**Dated as of February 18, 2022**

**SERVICE AGREEMENT NO. 2688**

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**SERVICE AGREEMENT NO. 2688**

**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

(“Agreement”) is made and entered into this 18th day of February 2022, by and among NextEra Energy Transmission New York, Inc., a corporation organized and existing under the laws of the State of New York (“Transmission Developer”), the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“NYISO”), and Niagara Mohawk Power Corporation d/b/a National Grid, a corporation organized and existing under the laws of the State of New York (“Affected System Operator”). Transmission Developer, the NYISO, or Affected System Operator each may be referred to as a “Party” or collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS**, Transmission Developer is developing the Empire State Line Alternative Transmission Project as the more efficient or cost effective transmission solution to the Western New York Public Policy Transmission Need (“Transmission Project”);

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

**WHEREAS**, Transmission Developer has entered into Transmission Project Interconnection Agreements concerning the Transmission Project with the NYISO and the Connecting Transmission Owners with which the project will interconnect - New York Power Authority and New York State Electric and Gas Corporation;

**WHEREAS**, the Transmission Interconnection Studies for the Transmission Project identified certain adverse impacts resulting from the Transmission Project on the Affected System owned and operated by the Affected System Operator and determined that certain Network Upgrade Facilities were required to mitigate these impacts (“Affected System Upgrade Facilities”);

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

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

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





## SERVICE AGREEMENT NO. 2688

### ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT, Section 22.1 of Attachment P of the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, the body of the TIP, or the body of this Agreement.

**Affected System** shall mean the electric system of the Affected System Operator that is affected by the interconnection of the Transmission Project.

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

**Affected System Upgrade Facilities** shall have the meaning set forth in the recitals and shall consist of the Network Upgrade Facilities identified in the Facilities Study and described in Appendix A 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 or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

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

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

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

**ASO Estimated Total Costs** shall be the costs for the engineering, procurement, and construction of the Affected System Upgrade Facilities, which costs were identified in the Facilities Study and are specified in Appendix A.

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

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

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra  
**Business Day** shall mean Monday through Friday, excluding federal holidays.

## **SERVICE AGREEMENT NO. 2688**

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

**Confidential Information** shall mean any information that is defined as confidential by Article 16 of this Agreement.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, and (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point(s) of Interconnection with the Transmission Project.

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

**Development Agreement** shall mean the agreement executed between the NYISO and the Transmission Developer concerning the development of the Transmission Project, dated June 29, 2019, as it may be amended from time to time.

**Effective Date** shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

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

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

**Facilities Study** shall mean the study conducted pursuant to Section 22.9 of Attachment P of the NYISO OATT to determine a list of facilities required to reliably interconnect the Transmission Project (including the Network Upgrade Facilities) as identified in the System Impact Study, the cost of those facilities, and the time required to interconnect the Transmission Project with the New York 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 or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra  
**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved  
by a significant portion of the electric industry during the relevant time period, or any of the

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

**Governmental Authority** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Developer, NYISO, Affected System Operator, or any Affiliate thereof.

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

**In-Service Date** shall mean the date upon which the Affected System Upgrade Facilities are energized consistent with the provisions of this Agreement and available to provide Transmission Service under the NYISO’s Tariffs. The Affected System Operator must provide notice of the In-Service Date to the other Parties in the form of Appendix C to this Agreement.

**Interconnection Agreements** shall mean the two interconnection agreements concerning the Transmission Project among the Transmission Developer, the NYISO, and the Connecting Transmission Owners - *i.e.*, New York Power Authority and New York State Electric and Gas Corporation.

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

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

**Network Upgrade Facilities** shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to the New York State Transmission System that are required for the proposed Transmission Project to connect reliably 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 electric

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra transmission system, which includes (i) the Transmission Facilities Under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

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

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

**NYISO Transmission Interconnection Standard** shall mean the reliability standard that must be met by any Transmission Project proposing to connect to the New York State Transmission System. The standard is designed to ensure reliable access by the proposed project to the New York State Transmission System.

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

**Party or Parties** shall mean NYISO, Affected System Operator, or Transmission Developer or any combination of the above.

**Point(s) of Interconnection** shall mean the point(s) where the Transmission Developer's Transmission Project connect to the New York State Transmission System.

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

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

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

**System Impact Study** shall mean the study conducted pursuant to Section 22.8 of Attachment P of the OATT that evaluates the impact of the proposed Transmission Project on the safety and reliability of the New York State Transmission System and, if applicable, Affected System, to determine what Network Upgrade Facilities are needed for the proposed Transmission Project to connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Transmission Project and (2) protect the Transmission Project from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.





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

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

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

**Transmission Interconnection Procedures (“TIP”)** shall mean the interconnection procedures applicable to a Transmission Interconnection Application pertaining to a Transmission Project that are included in Attachment P of the NYISO OATT.

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

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

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

### **2.1 Effective Date.**

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

### **2.2 Term of Agreement.**

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

### **2.3 Termination.**

#### **2.3.1 Completion of Term of Agreement**

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



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### **2.3.2 Written Notice.**

#### **2.3.2.1 Written Notice of Termination**

This Agreement may be terminated: (i) by any Party after giving the other Parties ninety (90) Calendar Days advance written notice following the termination of the Development Agreement prior to the completion of its term, subject to the suspension requirements in Section 2.3.2.2 below; or (ii) by the mutual agreement in writing of all Parties.

#### **2.3.2.2 Suspension Period for Project Transfer**

2.3.1.2.1 If the Development Agreement is terminated prior to the completion of its term and the NYISO exercises its right under the Development Agreement and the Tariff to request that a developer other than the Transmission Developer complete the Transmission Project, this Agreement shall be suspended. The suspension period will last until either: (i) the NYISO issues a written determination that the Transmission Project cannot be transferred to another developer and will not proceed, or (ii) the Transmission Developer completes the assignment of this Agreement to a new developer selected by the NYISO as set forth in Section 2.3.2.2.3. During the suspension period, the running of any advanced notice of termination time period pursuant to Section 2.3.2.1 will be paused. The Agreement shall not be terminated during the suspension period without the written agreement of all Parties.

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

2.3.1.2.3 If, pursuant to its Tariff, the NYISO selects a new developer to complete the Transmission Project, Transmission Developer shall coordinate with the new developer concerning the assignment of this Agreement to the new developer pursuant to the assignment requirements in Article 13 of this Agreement. All liabilities under this Agreement existing prior to such transfer shall remain with the Transmission Developer, unless otherwise agreed upon by

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra the Transmission Developer and the new developer as part of their good faith negotiations regarding the transfer.

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### **2.3.3 Default.**

Any Party may terminate this Agreement in accordance with Article 11.

### **2.3.4 Compliance.**

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

## **2.4 Termination Costs.**

If a Party elects to terminate this Agreement pursuant to Article 2.3.2 above, the Transmission Developer shall be responsible for all costs that are the responsibility of the Transmission Developer under this Agreement that are incurred by the Transmission Developer or the other Parties through the date, as applicable, of the other Parties' receipt of a Party's notice of termination or of the Parties' mutual agreement to terminate the agreement. Such costs include any cancellation costs relating to orders or contracts. In the event of termination by the Transmission Developer, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

**2.4.1** With respect to any portion of the Affected System Upgrade Facilities that have not yet been constructed or installed, but that is being relied upon by other projects in the manner described in Article 6.3 of this Agreement, Transmission Developer shall forfeit any remaining Security in accordance with the requirements in Article 6.3.

**2.4.2** With respect to any portion of the Affected System Upgrade Facilities that has not yet been constructed or installed and is not being relied upon by other projects in the manner described in Article 6.3 of this Agreement, the Affected System Operator shall to the extent possible and with Transmission Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Transmission Developer elects not to authorize such cancellation, Transmission Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Affected System Operator shall deliver such material and equipment, and, if necessary, assign such contracts, to Transmission Developer as soon as practicable, at Transmission Developer's expense. To the extent that Transmission Developer has already paid Affected System Operator for any or all such costs of materials or equipment not taken by Transmission Developer, Affected System Operator shall promptly refund such amounts to Transmission Developer, less any costs, including penalties incurred by the Affected System Operator to cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.3** Affected System Operator may, at its option, retain any portion of such materials or equipment that Transmission Developer chooses not to accept delivery of, in which case



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Affected System Operator shall be responsible for all costs associated with procuring such materials or equipment.

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

### **2.5 Survival.**

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement and Transmission Developer's satisfaction of the Security requirements in Article 6.3; and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

## **ARTICLE 3. EPC SERVICES**

### **3.1 Performance of EPC Services.**

The Affected System Operator shall perform the EPC Services, as set forth in Appendix A hereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forth in Appendix A hereto. The Affected System Operator shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Affected System Operator reasonably expects that it will not be able to complete the EPC Services by the specified dates, the Affected System Operator shall promptly provide written notice to the Transmission Developer and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. The NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC Services under this Agreement.

### **3.2 Equipment Procurement.**

Affected System Operator shall commence design of the Affected System Upgrade Facilities and procure necessary equipment as soon as practicable after the following additional conditions are satisfied:

**3.2.1** Affected System Operator receives written authorization to proceed with design and procurement from the Transmission Developer by the date specified in Appendix A hereto, unless the Transmission Developer and Affected System Operator otherwise agree in writing and





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**3.2.2** The Transmission Developer has provided Security to the Affected System Operator in accordance with Article 6.2 by the dates specified in Appendix A hereto.

### **3.3 Construction Commencement.**

The Affected System Operator shall commence construction of the Affected System Upgrade Facilities as soon as practicable after the following additional conditions are satisfied:

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

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

**3.3.3** The Affected System Operator has received written authorization to proceed with construction from the Transmission Developer by the date specified in Appendix B hereto; and

**3.3.4** The Transmission Developer has provided Security to the Affected System Operator in accordance with Article 6.2 by the dates specified in Appendix A hereto.

### **3.4 Work Progress.**

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

### **3.5 Information Exchange.**

As soon as reasonably practicable after the Effective Date, the Transmission Developer and Affected System Operator shall exchange information, and provide NYISO the same information, regarding the design of the Affected System Upgrade Facilities and compatibility of the Affected System Upgrade Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes required by Affected System Operator or NYISO, in accordance with Good Utility Practice to ensure that the Affected System Upgrade Facilities are compatible with the technical specifications, operational control, and safety requirements of the Affected System Operator and NYISO. Any review by the NYISO of the design of the Affected System Upgrade Facilities shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Affected System Upgrade Facilities. The Transmission Developer shall inform the Affected System Operator of the termination of one or both of the Interconnection Agreements or the Development Agreement within ten (10) days of the termination of the agreement(s).



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### **3.6 Ownership of Affected System Upgrade Facilities**

Affected System Operator shall own the Affected System Upgrade Facilities.

### **3.7 Access Rights.**

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

### **3.8 Lands of Other Property Owners.**

If any part of the Affected System Upgrade Facilities is to be installed on property owned by persons other than Transmission Developer or Affected System Operator, the Affected System Operator shall at Transmission Developer’s expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to perform the EPC Services upon such property, including to construct, repair, test (or witness testing), inspect, replace or remove the Affected System Upgrade Facilities.

### **3.9 Permits.**

NYISO, Affected System Operator and the Transmission Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the EPC Services in compliance with Applicable Laws and Regulations. With respect to this paragraph, Affected System Operator shall provide permitting assistance to the Transmission Developer comparable to that provided to the Affected System Operator’s own, or an Affiliate’s generation, if any.

### **3.10 Suspension.**

Transmission Developer reserves the right, upon written notice to Affected System

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Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Affected System Operator and NYISO. If the suspension will impact the Transmission Developer's ability to meet any Advisory Milestones or Critical Path Milestones in the Development Agreement, Transmission Developer shall notify the NYISO in accordance with the requirements in Article 3.3 of the Development Agreement. NYISO reserves the right, upon written notice to Transmission Developer and Affected System Operator, to require the suspension of all work by Transmission Developer and Affected System Operator associated with the EPC Services under this Agreement if the NYISO terminates the Development Agreement pursuant to Article 8 of the Development Agreement.

In the event of suspension pursuant to this Article 3.10, Transmission Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with the Facilities Study report including those which Affected System Operator (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Affected System Operator cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Affected System Operator shall obtain Transmission Developer's authorization to do so.

Affected System Operator shall invoice Transmission Developer for such costs pursuant to Article 7 and shall use due diligence to minimize its costs. In the event Transmission Developer suspends work by Affected System Operator required under this Agreement pursuant to this Article 3.10, and has not requested Affected System Operator to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date required under this Article 3.10 or the date specified in the written notice of suspension.

### **3.11 Taxes.**

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

Transmission Developer shall protect, indemnify and hold harmless Affected System Operator from the cost consequences of any current tax liability imposed against Affected System Operator as the result of payments or property transfers made by Transmission Developer to Affected System Operator under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Affected System Operator. Transmission Developer shall reimburse Affected System Operator for such costs on a fully grossed-up basis, in accordance with Article 2, within thirty (30) Calendar Days of receiving written notification from Affected System Operator of the amount due, including detail about how the amount was calculated. This indemnification obligation shall terminate at the

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earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation,  
as it may be extended by the Affected System Operator upon request of the IRS, to keep these

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years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 3.11.

### **3.11.2 Tax Gross-Up Amount.**

Transmission Developer's liability for the cost consequences of any current tax liability under this Article 3.11 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Transmission Developer will pay Affected System Operator, in addition to the amount paid for the Affected System Upgrade Facilities, an amount equal to (1) the current taxes imposed on Affected System Operator ("Current Taxes") on the excess of (a) the gross income realized by Affected System Operator as a result of payments or property transfers made by Transmission Developer to Affected System Operator under this Agreement (without regard to any payments under this Article 3.11) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Affected System Operator to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Affected System Operator's composite federal and state tax rates at the time the payments or property transfers are received and Affected System Operator will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Affected System Operator's anticipated tax depreciation deductions as a result of such payments or property transfers by Affected System Operator's current weighted average cost of capital. Thus, the formula for calculating Transmission Developer's liability to Affected System Operator pursuant to this Article 3.11.2 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$ . Transmission Developer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Affected System Upgrade Facilities.

### **3.11.3 Private Letter Ruling or Change or Clarification of Law.**

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



Affected System Operator shall keep Transmission Developer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Transmission Developer to

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participate in all discussions with the IRS regarding such request for a private letter ruling. Affected System Operator shall allow Transmission Developer to attend all meetings with IRS officials about the request and shall permit Transmission Developer to prepare the initial drafts of any follow-up letters in connection with the request.

### **3.11.4 Refund.**

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

(i) Any payment made by Transmission Developer under this Article 3.11 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

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

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

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



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### **3.11.5 Taxes Other Than Income Taxes.**

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

### **3.12 Tax Status**

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

### **3.13 Modification.**

#### **3.13.1 General.**

If, prior to the In-Service Date, either the Transmission Developer or Affected System Operator proposes to modify the Affected System Upgrade Facilities, they must inform the other Parties of the proposed modification and must satisfy the requirements in (i) Section 22.5.4 of Attachment P to the NYISO OATT, and (ii) the Development Agreement. The Transmission Developer shall be responsible for the costs of any such additional modifications, including the cost of studying the materiality and impact of the modification.

#### **3.13.2 Standards.**

Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

#### **3.13.3 Modification Costs.**

Transmission Developer or Affected System Operator, as applicable, shall not be

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

### **ARTICLE 4. TESTING AND INSPECTION**

#### **4.1 Pre-In-Service Date Testing and Modifications.**

Prior to the In-Service Date, the Affected System Operator shall test the Affected System Upgrade Facilities and Transmission Developer shall coordinate with the Affected System Operator concerning the testing of the Affected System Upgrade Facilities and the Transmission Project under the Interconnection Agreements to ensure the safe and reliable operation of the Affected System Upgrade Facilities. Similar testing may be required after initial operation. Transmission Developer and Affected System Operator shall each make any modifications to their facilities that are found to be necessary as a result of such testing. Transmission Developer shall bear the cost of all such testing and modifications. Transmission Developer shall coordinate with the Affected System Operator to generate test energy at the Affected System Upgrade Facilities only if it has arranged for the injection of such test energy in accordance with NYISO procedures.

#### **4.2 Right to Observe Testing.**

Affected System Operator shall notify Transmission Developer and the NYISO, in advance of its performance of tests of the Affected System Upgrade Facilities. Transmission Developer and the NYISO shall each have the right, at its own expense, to observe such testing.

#### **4.3 Right to Inspect.**

Transmission Developer and Affected System Operator shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Affected System Upgrade Facilities, the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Transmission Developer and Affected System Operator. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Affected System Upgrade Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 4.3 shall be treated in accordance with Article 16 of this Agreement and Attachment F to the ISO OATT.



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### **ARTICLE 5. COMMUNICATIONS**

#### **5.1 Affected System Operator Obligations.**

In accordance with applicable NYISO requirements, Affected System Operator shall maintain satisfactory operating communications with NYISO. Affected System Operator shall provide standard voice line, dedicated voice line and facsimile communications at its control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Affected System Operator shall also provide the dedicated data circuit(s) necessary to provide its data to NYISO as set forth in Appendix A hereto. The data circuit(s) shall extend from the Affected System Upgrade Facilities to the location(s) specified by NYISO.

#### **5.2 Remote Terminal Unit.**

Prior to the In-Service Date, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Transmission Developer, or by Affected System Operator at Transmission Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Affected System Operator and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 5.1. The communication protocol for the data circuit(s) shall be specified by Affected System Operator and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be capable of being telemetered directly to the location(s) specified by Affected System Operator and NYISO.

#### **5.3 No Annexation.**

Any and all equipment placed on the premises of a Party during the term of this Agreement shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

### **ARTICLE 6. PERFORMANCE OBLIGATION**

#### **6.1 EPC Services**

Affected System Operator shall perform the EPC Services described in Appendix A hereto and as otherwise set forth by the terms of this Agreement at Transmission Developer's expense.

#### **6.2 Provision of Security.**

Within thirty (30) Calendar Days of the effective date of this Agreement, Transmission Developer shall provide Affected System Operator with Security in the amount set forth in Appendix A of this Agreement. This amount is set forth in Appendix A of this Agreement. If the Transmission Developer: (i) does not pay an invoice issued by the Affected System Operator



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System Operator may draw upon Transmission Developer's Security to recover such payment. The Security shall be reduced on a dollar-for-dollar basis for payments made to Affected System Operator for the purpose of constructing, procuring, and installing the Affected System Upgrade Facilities.

### **6.3 Forfeiture of Security**

The Security the Transmission Developer provides Affected System Operator in accordance with Article 6.2 of this Agreement shall be irrevocable and shall be subject to forfeiture in the event that the Transmission Developer subsequently terminates or abandons development of the Transmission Project or the Affected System Upgrade Facilities. Any Security provided by the Transmission Developer shall be subject to forfeiture to the extent necessary to defray the cost of: (1) Affected System Upgrade Facilities required for other Transmission Developers whose Transmission Project interconnection studies included the Transmission Developer's Transmission Project and Affected System Upgrade Facilities in their base cases; and (2) System Upgrade Facilities and System Deliverability Upgrade Facilities required for projects for which the Transmission Project and Affected System Upgrade Facilities were included in their Annual Transmission Reliability Assessment and/or Class Year Deliverability Study, as applicable. If Transmission Developer's Security is subject to forfeiture to defray the costs of an affected upgrade pursuant to this Article 6.3 and the Security is not in a form that can be readily drawn on by the Connecting Transmission Owner to defray the costs of the affected upgrade, Transmission Developer shall negotiate in good faith with the Connecting Transmission Owner to replace the Security with cash or an alternative form of Security that can be readily drawn on by Connecting Transmission Owner up to the amount required to satisfy Transmission Developer's Security obligations under this Agreement, including defraying the costs of the affected upgrade. Connecting Transmission Owner shall only be responsible for using Transmission Developer's Security to defray the costs of an affected upgrade to the extent Transmission Developer has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on to defray such costs.

### **6.4 Affected System Upgrade Facility Costs**

**6.4.1** If the actual cost of Affected System Upgrade Facilities is less than the ASO Estimated Total Costs, Transmission Developer is responsible only for the actual cost figure.

**6.4.2** If the actual cost of Affected System Upgrade Facilities is greater than the ASO Estimated Total Costs because other projects have been expanded, accelerated, otherwise modified or terminated, Transmission Developer is responsible only for the agreed-to and secured amount for the Affected System Upgrade Facilities. The additional cost is covered by the developers of the modified projects, or by the drawing on the cash that has been paid and the Security that has been posted for terminated projects, depending on the factors that caused the additional cost. Such forfeitable Security from other developers will be drawn on only as needed for this purpose, and only to the extent that the terminated project associated with that Security has caused additional cost and that the developer of the terminated project has provided cash or Security in a form that the Connecting Transmission Owner can readily draw on.



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**6.4.3** If the actual cost of the Affected System Upgrade Facilities is greater than the ASO Estimated Total Costs for reasons other than those set forth in Section 6.4.2, Transmission Developer will pay the additional costs to Affected System Operator to the extent such costs are prudently incurred. Disputes between Transmission Developer and Affected System Operator concerning costs in excess of the agreed-to and secured amount will be resolved by the parties in accordance with the terms and conditions of Article 21.

### **6.5 Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, Affected System Operator may propose to recover line outage costs associated with the installation of the Affected System Upgrade Facilities on a case-by-case basis.

## **ARTICLE 7. INVOICE**

### **7.1 General.**

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

### **7.2 Refund of Remaining Security.**

Following the later of Affected System Operator's completion of the EPC Services and Transmission Developer's payment of any final invoice issued under Article 7.1, the Affected System Operator shall refund to the Transmission Developer any remaining portions of its security. Affected System Operator shall provide Transmission Developer with the refunded amount within thirty (30) Calendar Days of the Parties' satisfaction of the requirements in this Article 7.2.

### **7.3 Payment.**

Invoices shall be rendered to the paying Party at the address specified in Appendix F hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of

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invoices will not constitute a waiver of any rights or claims the paying Party may have under this  
Agreement.

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### **7.4 Disputes.**

In the event of a billing dispute between Parties, the Party owed money shall continue to perform under this Agreement as long as the other Party: (i) continues to make all payments not in dispute; and (ii) pays to the Party owed money or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes money fails to meet these two requirements for continuation of service, then the Party owed money may provide notice to the other Party of a Default pursuant to Article 11. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

## **ARTICLE 8. REGULATORY REQUIREMENTS AND GOVERNING LAW**

### **8.1 Regulatory Requirements.**

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Transmission Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

### **8.2 Governing Law.**

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

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

**8.2.3** 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 9. NOTICES**

### **9.1 General.**

Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to the other Parties and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Parties shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by



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certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix B hereto.

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

### **9.2 Billings and Payments.**

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

### **9.3 Alternative Forms of Notice.**

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

## **ARTICLE 10. FORCE MAJEURE**

**16.1** Economic hardship is not considered a Force Majeure event.

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

## **ARTICLE 11. DEFAULT**

### **11.1 General.**

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





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### **11.2 Right to Terminate.**

If a Breach is not cured as provided in this Article 11, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

## **ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

### **12.1 Indemnity.**

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

#### **12.1.1 Indemnified Party.**

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

#### **12.1.2 Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 12, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

#### **12.1.3 Indemnity Procedures.**

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

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

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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 defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

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

### **12.2 No Consequential Damages.**

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

### **12.3 Insurance.**

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



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

**12.3.2** Commercial General Liability ("CGL") Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available using Insurance Services Office, Inc. Commercial General Liability Coverage ("ISO CG") Form CG 00 01 04 13 or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

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

**12.3.4** If applicable, the Commercial General Liability and Comprehensive Automobile Liability Insurance policies should include contractual liability for work in connection with construction or demolition work on or within 50 feet of a railroad, or a separate Railroad Protective Liability Policy should be provided.

**12.3.5** 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 occurrence and Twenty Million Dollars (\$20,000,000) aggregate. The Excess policies should contain the same extensions listed under the Primary policies.

**12.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of Affected System Operator shall name the Transmission Developer, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG 20 37 04 13 or equivalent to or better forms. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

**12.3.7** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and non-contributory. Affected System Operator shall be responsible for its respective deductibles or retentions.



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

**12.3.9** 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 coverage for claims resulting from pollution or other environmental impairment arising out of or in connection with work performed on the premises by the other party, its contractors and and/or subcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, third party bodily injury and property damage and remediation and will be written on an occurrence basis. The policy shall name the Other Party Group as additional insureds, be primary and contain a waiver of subrogation.

**12.3.10** The requirements contained herein as to the types and limits of all insurance to be maintained by the Affected System Operator are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by it under this Agreement.

**12.3.11** Within 30 days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Affected System Operator shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

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

**12.3.13** Transmission Developer and Affected System Operator agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

**12.3.14** Subcontractors of Affected System Operator must maintain the same



New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra insurance requirements stated under Articles 12.3.1 through 12.3.9 and comply with the Additional Insured requirements herein. In addition, their policies must state that they are primary and non-contributory and contain a waiver of subrogation.

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### **ARTICLE 13. ASSIGNMENT**

This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Transmission Developer shall have the right to assign this Agreement, without the consent of the NYISO or Affected System Operator, for collateral security purposes to aid in providing financing for the Affected System Upgrade Facilities, provided that the Transmission Developer will promptly notify the NYISO and Affected System Operator of any such assignment. Any financing arrangement entered into by the Transmission Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Affected System Operator of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Affected System Operator with proof that it meets the requirements of Articles 6.2 and 12.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

### **ARTICLE 14. SEVERABILITY**

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

### **ARTICLE 15. COMPARABILITY**

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

### **ARTICLE 16. CONFIDENTIALITY**

#### **16.1 Confidentiality.**

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

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

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

### **16.2 Term.**

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

### **16.3 Confidential Information.**

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

### **16.4 Scope.**

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 16.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

### **16.5 Release of Confidential Information.**

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

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Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 16.

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### **16.6 Rights.**

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

### **16.7 No Warranties.**

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.

### **16.8 Standard of Care.**

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

### **16.9 Order of Disclosure.**

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

### **16.10 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 to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties pursuant to this Agreement.



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### **16.11 Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 16. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 16, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 16, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 16.

### **16.12 Disclosure to FERC, its Staff, or a State.**

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

### **16.13 Required Notices Upon Requests or Demands for Confidential Information**

Except as otherwise expressly provided herein, no Party shall disclose Confidential Information to any person not employed or retained by the Party possessing the Confidential Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or



New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra  
Governmental Authority makes any request or demand for any of the information described in  
this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and

## **SERVICE AGREEMENT NO. 2688**

agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

### **ARTICLE 17. AFFECTED SYSTEM OPERATOR NOTICES OF ENVIRONMENTAL RELEASES**

Affected System Operator shall notify Transmission Developer, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Affected System Upgrade Facilities, each of which may reasonably be expected to affect the Transmission Developer. The Affected System Operator shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

### **ARTICLE 18. INFORMATION REQUIREMENT**

On a quarterly basis, Affected System Operator shall provide the other Parties a status report on the construction and installation of the Affected System Upgrade Facilities, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

### **ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS**

#### **19.1 Information Access.**

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

#### **19.2 Reporting of Non-Force Majeure Events.**

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



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### **19.3 Audit Rights.**

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

### **19.4 Audit Rights Periods.**

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

Accounts and records related to the design, engineering, procurement, and construction of the Affected System Upgrade Facilities shall be subject to audit for a period of twenty-four months following the issuance by Affected System Operator or Transmission Developer, as applicable, of a final invoice in accordance with Article 7.2 of this Agreement.

#### **19.4.2 Audit Rights Period for All Other Accounts and Records.**

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

### **19.5 Audit Results.**

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

## **ARTICLE 20. SUBCONTRACTORS**

### **20.1 General.**

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



## **SERVICE AGREEMENT NO. 2688**

### **20.2 Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Affected System Operator be liable for the actions or inactions of the Transmission Developer or its subcontractors with respect to obligations of the Transmission Developer under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

### **20.3 No Limitation by Insurance.**

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

## **ARTICLE 21. DISPUTES**

### **21.1 Submission.**

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

### **21.2 External Arbitration Procedures.**

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



## **SERVICE AGREEMENT NO. 2688**

### **21.3 Arbitration Decisions.**

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

### **21.4 Costs.**

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

### **21.5 Termination.**

Notwithstanding the provisions of this Article 21, any Party may terminate this Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

## **ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **22.1 General.**

Each Party makes the following representations, warranties and covenants:

#### **22.1.1 Good Standing.**

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

#### **22.1.2 Authority.**



Such Party has the right, power and authority to enter into this Agreement, to become a Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms,

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except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

### **22.1.3 No Conflict.**

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

### **22.1.4 Consent and Approval.**

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

## **ARTICLE 23. MISCELLANEOUS**

### **23.1 Binding Effect.**

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

### **23.2 Conflicts.**

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

### **23.3 Rules of Interpretation.**

This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this Agreement

## **SERVICE AGREEMENT NO. 2688**

or such Appendix to this Agreement, or such Section to the Transmission Interconnection Procedures or such Appendix to the Transmission Interconnection Procedures, as the case may be; (6) “hereunder”, “hereof”, “herein”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”.

### **23.4 Compliance.**

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

### **23.5 Joint and Several Obligations.**

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

### **23.6 Entire Agreement.**

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

### **23.7 No Third Party Beneficiaries.**

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

### **23.8 Waiver.**

The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a

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waiver with respect to any other failure to comply with any other obligation, right, duty of this  
Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

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### **23.9 Headings.**

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

### **23.10 Multiple Counterparts.**

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

### **23.11 Amendment.**

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

### **23.12 Modification by the Parties.**

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

### **23.13 Reservation of Rights.**

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

### **23.14 No Partnership.**

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



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### **23.15 Other Transmission Rights.**

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





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

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

By:

Name: \_\_\_\_\_

Title:

Date:

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

By:

Name: \_\_\_\_\_

Title:

Date:

**NextEra Energy Transmission New York, Inc.**

By:

Name: \_\_\_\_\_

Title:

Date:

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**SERVICE AGREEMENT NO. 2688**

**APPENDICES**

**Appendix A**

EPC Services

**Appendix B**

Addresses for Delivery of Notices and Billings

**Appendix C**

In-Service Date

## SERVICE AGREEMENT NO. 2688

### APPENDIX A

#### EPC SERVICES

##### 1. Affected System Upgrade Facilities

The Transmission Developer is developing the Transmission Project, which was selected by the NYISO as the more efficient or cost effective transmission solution to address the Western New York Public Policy Transmission Need. The Transmission Interconnection Studies for the Transmission Project identified certain adverse impacts resulting from the Transmission Project on the Affected System owned and operated by the Affected System Operator and determined that certain Affected System Upgrade Facilities are required to mitigate these impacts. Specifically, the Affected System Upgrade Facilities include:

###### *A. Modifications at Five Mile Station*

Affected System Operator will perform the following modifications at its Five Mile Station to accommodate the Transmission Developer's new East Stolle Road Station.

###### *i. Protection*

Affected System Operator shall reuse the existing A package line relays and shall update the B package relays to work with the Transmission Developer's new East Stolle Road Station. Specifically,

- The existing A package is a directional comparison unblocking ("DCUB") scheme consisting of an SEL-421 using RFL 9785 frequency shift key powerline carrier. The settings for SEL-421 will be reset to reflect the change in the remote ends. The powerline carrier frequency currently used between Five Mile and Stolle Station will be retired. A new frequency will be requested for the communication between Five Mile and East Stolle Station.
- The existing B package is a permissive overreaching transfer trip ("POTT") scheme consisting of a Siemens 7SA522 and a GARD 8000 using a leased 4 wire telephone circuit. The Siemens relay will be replaced with a GE D60, and the GARD8000 will be replaced with a new GARD8000 that will be used to interface with the microwave telecommunication circuit.
- Affected System Operator shall bring the existing direct transfer trip ("DTT") schemes for Line 29 into compliance with current standards. For the DTT transmit the cross keying via SEL-2506 relays will be removed, and for DTT receive the 94TTA and 94TTB relays will have current and voltage inputs added, and the relays will be reset to supervise the DTT receive signals with fault detectors.

###### *ii. Controls & Integration*

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## SERVICE AGREEMENT NO. 2688

The existing remote telemetry units (“RTUs”) at Five Mile Station include a Telvent SAGE 2400 used for critical control and status points and a Novatech Orion LX and DDIO based RTU distributed throughout the relay and control panels for everything else. Affected System Operator shall use spare I/O points to accommodate the additions required. Most points will be replaced in kind from the old relays to the new relays or spared out.

### *iii. Telecommunications Equipment*

Affected System Operator shall utilize, for the B protection package, a microwave telecommunication circuit between the Five Mile Station and the new East Stolle Road Station to support the B package protection scheme.

#### *B. Gardenville Station*

Affected System Operator will be responsible for the following work concerning Gardenville Station, including coordinating with Transwave for its performance of the work described below. The Transwave design includes a four foot (4’) antenna installed at the 190’ level of the existing tower. Transwave will run EW63 waveguide from the antenna system to the systems outdoor unit. The outdoor unit will be installed at the base of the tower, and Transwave will run baseband cabling to the Intelligent Node Unit Ethernet (“INUe”) that will be installed in the existing control building adjacent to the tower. The INUe will demarcate up to sixteen (16) T1’s and the Affected System Operator’s point of demarcation will be at a jackfield as provided by Transwave. The INUe will also provide a standard RJ-45 interface for any future IP payload. The installed microwave equipment will operate from a -48 VDC power plant that will be provided by Affected System Operator.

Additional details for this site as requested are as follows:

- Rack Space Layout as follows: 2 racks to be provided for microwave electronics.; and
- Cable specifications and quantities: See Transwave *Path Study for NextEra Energy: Gardenville to East Stolle Rd.* (June 8, 2021) for waveguide type and quantity.

#### *C. Integrating the Transmission Developer’s New Dysinger Station into Affected System Operator’s SONET Ring Use for Line Protection*

The Transmission Project requires the integration of Transmission Developer’s new Dysinger Station into the Affected System Operator-owned fiber synchronous optical network (“SONET”) ring that is currently used for the Niagara-Rochester Station 255 345 kV line protection. The integration will be governed by a separate agreement, the “Network Facilities Agreement”, which defines each party’s scope and responsibilities.

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**2. ASO Estimated Total Costs\***

Engineering, design, construction, commissioning and testing of:

<i>Five Mile Station</i>	<b>\$125,100</b>
<i>Sonet Ring Integration</i>	<b>\$147,800</b>
<i>Gardenville Station (Microwave)</i>	<b>\$83,000</b>
<b>Subtotal</b>	<b>\$355,900</b>
Contingency	\$105,440
<b>TOTAL</b>	<b>\$461,340</b>

\* As indicated in Section 1.C of this Appendix A, the Sonet ring integration will be addressed in a separate agreement.

**3. Security**

In accordance with Section 6.2 of this Agreement, Transmission Developer will provide Affected System Operator Security in the amount of \$269,200 in the form of a parental guarantee.

**4. Milestones**

<b>Task</b>	<b>Milestone</b>	<b>Date</b>	<b>Responsible Party</b>
1.	Start engineering for Transmission Project	Complete	Transmission Developer
2.	Execute Support Services Agreement to initiate engineering	Complete	Transmission Developer/Affected System Operator
3.	Advanced payment provided pursuant to Support Services Agreement	Complete	Transmission Developer
4.	Start engineering for Network Upgrade Facilities	Complete	Affected System Operator
5.	Issue written authorization to proceed with engineering	Complete	Transmission Developer
6.	Start procurement for Network Upgrade Facilities	Complete	Affected System Operator

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**SERVICE AGREEMENT NO. 2688**

<b>Task</b>	<b>Milestone</b>	<b>Date</b>	<b>Responsible Party</b>
7.	Start procurement for Transmission Project	Complete	Transmission Developer
8.	Complete procurement for Transmission Project	Complete	Transmission Developer
9.	Start construction of Transmission Project	Complete	Transmission Developer
10.	Execute Engineering, Procurement and Construction Agreement	02/2022	NYISO/ Transmission Developer/ Affected System Operator
11.	Provide Security pursuant to this Agreement	03/2022	Transmission Developer
12.	Complete engineering for Network Upgrade Facilities	03/2022	Transmission Developer/ Affected System Operator
13.	Completion of Transmission Project engineering	03/2022	Transmission Developer
14.	Complete procurement for Network Upgrade Facilities	03/2022	Affected System Operator
15.	Start construction of Network Upgrade Facilities	03/2022	Affected System Operator
16.	Complete construction of Network Upgrade Facilities	05/2022	Affected System Operator
17.	Complete construction of Transmission Project	05/2022	Transmission Developer
18.	Testing and commissioning of Network Upgrade Facilities (assumes Task 17 is completed)	05/2022	Affected System Operator/Transmission Developer
19.	Line 28 and 29 modifications constructed and in service	06/2022	Affected System Operator
20.	Transmission Project In-Service Date	06/2022	Affected System Operator/ Transmission Developer
21.	Submit Transmission Project As-Builts	07/2022	Transmission Developer
22.	Complete review Transmission Project As-Builts	08/2022	Affected System Operator
23.	Complete Network Upgrade Facilities As-Builts	09/2022	Affected System Operator
24.	Complete project closeout.	12/2022	Affected System Operator



## **SERVICE AGREEMENT NO. 2688**

timely completion of its obligations in this Agreement. Due to the COVID-19 pandemic, the Connecting Transmission Owner's ability to deliver this project in accordance with these milestones may be at risk. Nothing herein is intended to affect the rights of the Parties under this Agreement, but rather provides notice to the Parties that COVID-19 pandemic may affect the completion of one or more milestones.

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**APPENDIX B**

**ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

**Notices:**

NYISO:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118

Affected System Operator:

Niagara Mohawk Power Corporation d/b/a National Grid  
Attn: Director, Transmission Commercial Services  
40 Sylvan Road  
Waltham, MA 02541-1120  
Phone: (781) 907-2406  
Fax: (315) 428-5114

Transmission Developer:

NextEra Energy Transmission New York, Inc  
Attn: President  
13 Executive Park Drive  
Clifton Park, NY 12065

**Billings and Payments:**

Affected System Operator:

Niagara Mohawk Power Corporation d/b/a National Grid  
Attn: Director, Transmission Commercial Services  
40 Sylvan Road  
Waltham, MA 02541-1120  
Phone: (781) 907-2406  
Fax: (315) 428-5114

Transmission Developer:

New York Independent System Operator, Inc. - NYISO Agreements - Service Agreements - EPC Agreement among NYISO, NMPC, NextEra  
NextEra Energy Transmission New York, Inc  
Attn: President  
13 Executive Park Drive

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Clifton Park, NY 12065

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

NYISO:

New York Independent System Operator, Inc.  
Attn: Vice President, System and Resource Planning  
10 Krey Boulevard  
Rensselaer, NY 12144  
Phone: (518) 356-6000  
Fax: (518) 356-6118  
E-mail: interconnectionsupport@nyiso.com

Affected System Operator:

Niagara Mohawk Power Corporation d/b/a National Grid  
Attn: Director, Transmission Commercial Services  
40 Sylvan Road  
Waltham, MA 02541-1120  
Phone: (781) 907-2406  
Fax: (315) 428-5114  
Email: Kevin.Reardon@nationalgrid.com

Transmission Developer:

NextEra Energy Transmission New York, Inc  
Attn: President  
13 Executive Park Drive  
Clifton Park, NY 12065  
Phone: (518) 930-7880  
Richard.allen2@nexteraenergy.com  
info@empirestateline.com

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**APPENDIX C**

**IN-SERVICE DATE**

**[Date]**

New York Independent System Operator, Inc.  
Attn: Vice President, Operations  
10 Krey Boulevard  
Rensselaer, NY 12144

NextEra Energy Transmission New York, Inc  
Attn: President  
13 Executive Park Drive  
Clifton Park, NY 12065

Re: \_\_\_\_\_ [Affected System Upgrade Facilities]

Dear \_\_\_\_\_:

On [Date] [Affected System Operator] has completed Trial Operation of [describe Affected System Upgrade Facilities]. This letter confirms that [describe Affected System Upgrade Facilities] have commenced service, effective as of [Date plus one day].

Thank you.

[Signature]

[Affected System Operator Representative]

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