

FERC rendition of the electronically filed tariff records in Docket No. [include if docket no. exists]

Filing Data:

CID: C000038

Filing Title: SA 2217 O&R Con Ed-Sugarloaf
Interconnection Agreement Company Filing Identifier: 971

Type of Filing Code: 10

Associated Filing

Identifier: [if applicable]

Tariff Title: NYISO

Agreements

Tariff ID: 58

Payment

Confirmati

on: N

Suspensio

n Motion:

Tariff Record Data:

Record Content Description: Service Agreement No. 2217

Tariff Record Title: O&R-Con Ed-Sugarloaf Interconnection
Agreement (SA 2217) Record Version Number: 0.0.0

Option Code: A

Tariff Record ID: 177

Tariff Record Collation

Value: 8076600

Tariff Record Parent

Identifier: 2

Proposed Date: 2015-
06-04

Priority Order: 500

Record

Change

Type: New

Record

Content

Type: 2

Associated Filing Identifier: [Source - if applicable]

SERVICE AGREEMENT NO. 2217

PUBLIC

SERVICE AGREEMENT NO. 2217

**TRANSMISSION FACILITY
INTERCONNECTION AGREEMENT**

BY AND BETWEEN

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

AND

ORANGE AND ROCKLAND UTILITIES, INC.

Dated As May 27, 2015

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TRANSMISSION FACILITY INTERCONNECTION AGREEMENT

THIS FACILITY INTERCONNECTION AGREEMENT (“Agreement”) is made and entered into this 27th day of May 2015, by and between Orange and Rockland Utilities, Inc. a corporation organized and existing under the laws of the State of New York (“Connecting Transmission Owner”) and Consolidated Edison Company of New York, Inc., a corporation organized and existing under the laws of the State of New York (“Developer”). Developer or Connecting Transmission Owner each may be referred to as a “Party” or collectively referred to as the “Parties”.

RECITALS

WHEREAS, the New York Independent System Operator (“NYISO”) operates the Transmission System in New York State and the Connecting Transmission Owner owns transmission facilities electrically located in New York State; and

WHEREAS, Connecting Transmission Owner is the owner of a transmission line running from the Ramapo Substation to the Sugarloaf Substation;

WHEREAS the transmission line continuing on from the Sugarloaf Substation to the flex connection that is located between tower and the rigid bus within the 345kV Sugarloaf Substation, which is referred to as the “Facility”;

WHEREAS, in response to the potential retirement of the Indian Point Nuclear facility, the Developer proposed, and the New York State Public Service Commission accepted as a partial solution to the calculated reliability need, a project that includes the Reliability Project;

WHEREAS, the Reliability Project includes in part the construction of a 345 kV transmission line originating at the Facility and terminating at the Rock Tavern Substation (the “Transmission Project”);

WHEREAS, Developer and the Connecting Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Transmission Project to the Facility;

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 30.1.0 or Attachment S of the NYISO OATT.

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

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

Affected Transmission Owner shall mean a 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 OATT, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Upgrade Facilities are installed pursuant to Attachment X and Attachment S of the 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 establish a rebuttable presumption of control.

Agreement shall have the meaning set forth in the preamble.

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 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.

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Attachment Facilities shall mean the Connecting Transmission Owner's Attachment Facilities and the Developer's Attachment Facilities. Collectively, Attachment Facilities include all facilities and equipment between the Transmission Project and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Transmission Project to the New York State Transmission System. Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities or System Upgrade Facilities.

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.

Byway shall mean all transmission facilities comprising the New York State Transmission System that are neither Highways nor Other Interfaces. All transmission facilities in Zone J and Zone K are Byways.

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

Central Hudson shall mean Central Hudson Gas & Electric Corporation.

Commercial Operation shall mean the status of a Transmission Project that has commenced transmitting electricity, excluding electricity transmitted during Trial Operation.

Commercial Operation Date shall mean the date on which the Transmission Project commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to this Agreement.

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

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

Connecting Transmission Owner's Attachment Facilities shall mean all facilities and equipment owned, controlled or operated by the Connecting Transmission Owner from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to this Agreement, including any modifications, additions or upgrades to such facilities and

equipment. Connecting Transmission Owner's Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities or System Upgrade Facilities.

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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.

Developer shall have the meaning set forth in the preamble.

Developer's Attachment Facilities shall mean all facilities and equipment, as identified in Appendix A of this Agreement, that are located between the Transmission Project and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Transmission Project to the New York State Transmission System. Developer's Attachment Facilities are sole use facilities.

Dispute Resolution shall mean the procedure described in Article 27 of this Agreement for resolution of a dispute between the Parties.

Effective Date shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by FERC.

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.

Engineering & Procurement ("E&P") Agreement shall mean an agreement that authorizes Connecting Transmission Owner to begin engineering and procurement of long leadtime items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

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

Facility shall mean all facilities and equipment owned by the Connecting Transmission Owner that is located between tower and the rigid bus within the 345kV Sugarloaf Substation, as identified in Appendix A of this Agreement.

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

FERC shall mean the Federal Energy Regulatory 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 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 shall mean the date upon which the Transmission Project is initially synchronized with the New York State Transmission System and upon which Trial Operation begins.

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In-Service Date shall mean the date upon which the Developer reasonably expects it will be ready to begin use of the Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities to obtain back feed power.

IRS shall mean the Internal Revenue Service.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Indemnified Party's performance or non-performance of its obligations under this Agreement on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

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

Minimum Interconnection Standard shall mean the reliability standard that must be met by any Transmission Facility 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. The Standard does not impose any deliverability test or deliverability requirement on the proposed interconnection.

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

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.

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

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

Other Interfaces shall mean interfaces into New York capacity regions, Zone J and Zone K, and external ties into the New York Control Area.

Party or Parties shall have the meaning set forth in the preamble.

Point of Change of Ownership (PCO) shall mean the point, as set forth in Appendix A to this Agreement, where the Developer's Transmission Project connects to the Connecting Transmission Owner's System Upgrade Facilities.

Point of Interconnection (POI) shall mean the point, as set forth in Appendix A to this Agreement, where the Transmission Project connects 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.

Reliability Project shall mean generally, once modifications are completed, the Transmission Line which shall enable the interconnection of the 345kV Ramapo Substation to the Rock Tavern Substation, which is owned and operated by Central Hudson, as described in this Agreement and the Appendices hereto.

Rock Tavern Substation shall mean the 345kV electric substation owned by Central Hudson.

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

Stand Alone System Upgrade Facilities shall mean System Upgrade Facilities that a Developer may construct without affecting day-to-day operations of the New York State Transmission System during their construction. The Connecting Transmission Owner and the Developer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify them in Appendix A to this Agreement.

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

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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.

System Upgrade Facilities shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications to the existing transmission system that are required to maintain system reliability due to: (i) changes in the system, including such changes as load growth and changes in load pattern, to be addressed in the form of generic generation or transmission projects; and (ii) proposed interconnections.

Transmission District: The geographic area served by the Investor-Owned Transmission Owners.

Transmission Project shall mean all facilities and equipment as identified in Appendix A of this Agreement.

Trial Operation shall mean the period during which Developer is engaged in on-site test operations and commissioning of the Transmission Project prior to Commercial Operation.

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, the Connecting Transmission Owner and the Developer shall promptly file this Agreement with FERC upon execution in accordance with Article 3.1.
- 2.2 Term of Agreement.** Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of 25 years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter, unless terminated in accordance with Article 2.3.
- 2.3 Termination.**
- 2.3.1 Written Notice.** This Agreement may be terminated by the Developer after giving the Connecting Transmission Owner 90 Calendar Days advance written notice at any time during the term of this Agreement, or by the Connecting Transmission Owner notifying FERC after the Transmission Project permanently ceases Commercial Operations.

2.3.2 Default. Either Party may terminate this Agreement in accordance with Article 17.

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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 terminating Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the terminating Party under this Agreement. In the event of termination by a Party, 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 Connecting Transmission Owner's Attachment Facilities that have not yet been constructed or installed, the Connecting Transmission Owner shall to the extent possible and with 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 Developer elects not to authorize such cancellation, 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 Developer as soon as practicable, at Developer's sole expense. To the extent that Developer has already paid Connecting Transmission Owner for any or all such costs of materials or equipment not taken by Developer, Connecting Transmission Owner shall promptly refund such amounts to 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.

If Developer terminates this Agreement, it shall be responsible for all costs incurred in association with Developer's interconnection, including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment, and other expenses including any System Upgrade Facilities for which the Connecting Transmission Owner has incurred expenses and has not been reimbursed by the Developer.

2.4.2 Connecting Transmission Owner may, at its option, retain any portion of such

materials, equipment, or facilities that 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.

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- 2.4.3** With respect to any portion of the Attachment Facilities, and any other facilities already installed or constructed pursuant to the terms of this Agreement, Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such 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; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Developer 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.
- 2.6** **Reserved.**

ARTICLE 3. REGULATORY FILINGS

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

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE

- 4.1** **Reserved.**
- 4.2** **No Transmission Delivery Service.** The execution of this Agreement does not constitute a request for, nor an agreement to provide, any Transmission Service under the OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery. If Developer wishes to obtain Transmission Service on the New York

State Transmission System, then Developer must request such Transmission Service in accordance with the provisions of the OATT.

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- 4.3 No Other Services.** The execution of this Agreement does not constitute a request for, nor an agreement to provide Energy, any Ancillary Services or Installed Capacity under the Services Tariff. If Developer wishes to supply Energy, Installed Capacity or Ancillary Services, then Developer will make application to do so in accordance with the Services Tariff and the NYISO Installed Capacity Manual. This Agreement does not in any way alter the Transmission Project's eligibility for Unforced Capacity Deliverability Rights to the extent such Unforced Capacity Deliverability Rights are requested by the Developer after execution of this Agreement.

ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION

- 5.1 Options.** Unless otherwise mutually agreed to by Developer and Connecting Transmission Owner, Developer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities as set forth in Appendix A hereto. Such dates and selected option shall be set forth in Appendix B hereto.

5.1.1 Standard Option. The Connecting Transmission Owner shall design, procure, and construct the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities, using Reasonable Efforts to complete the Connecting Transmission Owner's Attachment Facilities and System 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 Connecting Transmission Owner reasonably expects that it will not be able to complete the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities, by the specified dates, the Connecting Transmission Owner shall promptly provide written notice to the Developer, with the revised completion dates, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option. If the dates designated by Developer are acceptable to Connecting Transmission Owner, the Connecting Transmission Owner shall so notify Developer within 30 Calendar Days, and shall assume responsibility for the design, procurement and construction of the System Upgrade Facilities by the designated dates.

5.1.3 Option to Build. If the dates designated by Developer are not acceptable to Connecting Transmission Owner, the Connecting Transmission Owner shall so notify the Developer within 30 Calendar Days, and unless the Developer and

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Connecting Transmission Owner agree otherwise, Developer shall have the option to assume responsibility for the design, procurement and construction of System Upgrade Facilities on the dates specified in Article 5.1.2.

5.1.4 Negotiated Option. If the Developer elects not to exercise its option under Article 5.1.3, Option to Build, Developer shall so notify Connecting Transmission Owner within thirty (30) Calendar Days, and the Developer and Connecting Transmission Owner shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of the Connecting Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities by Developer) pursuant to which Connecting Transmission Owner is responsible for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities. If the two Parties are unable to reach agreement on such terms and conditions, Connecting Transmission Owner shall assume responsibility for the design, procurement and construction of the Connecting Transmission Owner's Attachment Facilities and System Upgrades Facilities pursuant to 5.1.1, Standard Option.

5.2 General Conditions Applicable to Option to Build. If Developer assumes responsibility for the design, procurement and construction of System Upgrade Facilities,

- (1) Developer shall engineer, procure equipment, and construct System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Connecting Transmission Owner;
- (2) Developer's engineering, procurement and construction of the System 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 System Upgrade Facilities;
- (3) Connecting Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the System Upgrade Facilities;
- (4) Prior to commencement of construction, Developer shall provide to Connecting Transmission Owner a schedule for construction of the System Upgrade Facilities, and shall promptly respond to requests for information from Connecting Transmission Owner;

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

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

(7) Developer shall indemnify Connecting Transmission Owner for claims arising from the Developer's construction of System Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;

(8) Developer shall transfer control of System Upgrade Facilities to the Connecting Transmission Owner;

(9) Unless the Developer and Connecting Transmission Owner otherwise agree, Developer shall transfer ownership of System Upgrade Facilities to Connecting Transmission Owner;

(10) The Connecting Transmission Owner shall be responsible for operation and maintenance the System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 5.2, and Connecting Transmission Owner may transfer that responsibility to a third party by contract.

(11) Developer shall deliver to Connecting Transmission Owner "as built" drawings, information, and any other documents that are reasonably required by Connecting Transmission Owner to assure that the System Upgrade Facilities are built to the standards and specifications required by Connecting Transmission Owner.

5.3 Reserved.

5.4 Reserved.

5.5 Reserved.

5.6 Construction Commencement.

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

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- 5.6.1** Approvals of all appropriate Governmental Authorities have been obtained for any facilities requiring regulatory approvals;
- 5.6.2** All necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Project; and
- 5.6.3** The Connecting Transmission Owner has received written authorization to proceed with construction from the Developer by the date specified in Appendix B hereto.
- 5.7 Work Progress.** The Developer and Connecting Transmission Owner will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, the Developer determines that the completion of the Connecting Transmission Owner's Attachment Facilities will not be required until after the specified In-Service Date, the Developer will provide written notice to the Connecting Transmission Owner of such later date upon which the completion of the Connecting Transmission Owner's Attachment Facilities will be required.
- 5.8 Information Exchange.** As soon as reasonably practicable after the Effective Date, the Developer and Connecting Transmission Owner shall exchange information, regarding the design and compatibility of the Attachment Facilities and compatibility of the Attachment Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.
- 5.9 Reserved.**
- 5.10 Reserved.**
- 5.11 Reserved.**
- 5.12 Access Rights.** Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals from a Governmental Authority, either the Connecting Transmission Owner or Developer ("Granting Party") shall furnish to the other Party ("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 of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Transmission Project with the New York State Transmission System; (ii) operate and maintain the

Transmission Project, the Attachment 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

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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, under procedures applicable to Article 18.1 Indemnity.

- 5.13 Lands of Other Property Owners.** If any part of the Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities is to be installed on property owned by persons other than Developer or Connecting Transmission Owner, the Connecting Transmission Owner shall at 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 construct, operate, maintain, test, inspect, replace or remove the Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities upon such property.
- 5.14 Permits.** Connecting Transmission Owner and the 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 Developer comparable to that provided to the Connecting Transmission Owner's own, or an Affiliate's generation or transmission facilities, if any.
- 5.15 Reserved.**
- 5.16 Suspension.** Developer reserves the right, upon written notice to Connecting Transmission Owner, to suspend at any time all work by Connecting Transmission Owner associated with the construction and installation of Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities required for only that 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, Developer shall be responsible for all reasonable and necessary costs and/or obligations 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 Developer's authorization to do so.

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Connecting Transmission Owner shall invoice Developer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Developer suspends work by Connecting Transmission Owner required under this Agreement pursuant to this Article 5.16, and has not requested Connecting Transmission Owner to recommence the work required under this Agreement on or before the expiration of three years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Connecting Transmission Owner if no effective date is specified.

5.17 Taxes.

5.17.1 Developer Payments Not Taxable. The Developer and Connecting Transmission Owner intend that all payments or property transfers made by Developer to Connecting Transmission Owner for the installation of the Connecting Transmission Owner's Attachment Facilities and the System Upgrade Facilities shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 Representations and Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, as applicable to this Transmission Project, Developer represents and covenants that (i) ownership of the electricity transmitted on the Transmission Project will pass to another party prior to the transmission of the electricity on the New York State Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Connecting Transmission Owner for the Connecting Transmission Owner's Attachment Facilities will be capitalized by Developer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Connecting Transmission Owner's Attachment Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Transmission Project. For this purpose, "de minimis amount" means no more than five percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Connecting Transmission Owner's request, Developer shall provide

Connecting Transmission Owner with a report from an independent engineer confirming its representation in clause (iii), above. Connecting Transmission Owner represents and covenants that the cost of the Connecting Transmission

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Owner's Attachment Facilities paid for by Developer will have no net effect on the base upon which rates are determined.

5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Connecting Transmission Owner. Notwithstanding Article 5.17.1, 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 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 Developer under this Agreement unless (i) Connecting Transmission Owner has determined, in good faith, that the payments or property transfers made by 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; provided, however, that Connecting Transmission Owner may require Developer to provide security, in a form reasonably acceptable to Connecting Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Developer shall reimburse Connecting Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Connecting Transmission Owner of the amount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Connecting Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 Tax Gross-Up Amount. Developer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Developer will pay Connecting Transmission Owner, in addition to the amount paid for the Attachment Facilities and System 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 Developer to Connecting Transmission Owner under this Agreement (without

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regard to any payments under this Article 5.17) (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 Developer’s liability to Connecting Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$.

Developer’s estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Attachment Facilities and System Upgrade Facilities.

5.17.5 Private Letter Ruling or Change or Clarification of Law. At 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 Developer to Connecting Transmission Owner under this Agreement are subject to federal income taxation. Developer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Developer’s knowledge. Connecting Transmission Owner and Developer shall cooperate in good faith with respect to the submission of such request.

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

5.17.6 Subsequent Taxable Events. If, within ten years from the date on which the relevant Connecting Transmission Owner's Attachment Facilities are placed in

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service, (i) Developer Breaches the covenants contained in Article 5.17.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Connecting Transmission Owner retains ownership of the Attachment Facilities and System Upgrade Facilities, the Developer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Connecting Transmission Owner, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

5.17.7 Contests. In the event any Governmental Authority determines that Connecting Transmission Owner’s receipt of payments or property constitutes income that is subject to taxation, Connecting Transmission Owner shall notify Developer, in writing, within 30 Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Developer and at Developer’s sole expense, Connecting Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Developer’s written request and sole expense, Connecting Transmission Owner may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Connecting Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Connecting Transmission Owner shall keep Developer informed, shall consider in good faith suggestions from Developer about the conduct of the contest, and shall reasonably permit Developer or an Developer representative to attend contest proceedings.

Developer shall pay to 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. At any time during the contest, Connecting Transmission Owner may agree to a settlement either with Developer’s consent or after obtaining written advice from nationally-recognized tax counsel, selected by Connecting Transmission Owner, but reasonably acceptable to Developer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Developer’s obligation shall be based on the amount of the settlement agreed to by Developer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Developer’s consent or such written advice will relieve Developer from any obligation to indemnify Connecting Transmission Owner for the tax at issue in the contest.

5.17.8 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

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property transferred by 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 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 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 Developer to Connecting Transmission Owner pursuant to this Agreement, Connecting Transmission Owner shall promptly refund to Developer the following:

- (i) Any payment made by Developer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,
- (ii) Interest on any amounts paid by Developer to 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 Developer to the date Connecting Transmission Owner refunds such payment to 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 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 Connecting Transmission Owner's Attachment Facilities.

The intent of this provision is to leave both the Developer and

Connecting Transmission Owner, to the extent practicable, in the event that no taxes are due with respect to any payment for Attachment

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Facilities and System Upgrade Facilities hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 Taxes Other Than Income Taxes. Upon the timely request by Developer, and at 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 Developer may be required to reimburse Connecting Transmission Owner under the terms of this Agreement. 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. 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 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, Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Connecting Transmission Owner.

5.18 Tax Status; Non-Jurisdictional Entities.

5.18.1 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, 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 the Connecting Transmission Owner and the Developer 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 their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Connecting Transmission Owner and the Developer the interest on which is not included in gross income under the Internal Revenue Code.

5.19 Modification.

5.19.1 General. Either the Developer or Connecting Transmission Owner may undertake modifications to its facilities covered by this Agreement. If either the 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, sufficient information regarding such modification so that the other Party may evaluate the potential impact of such

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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 flow of electricity from the Transmission Project. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least 90 Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

5.19.2 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.

5.19.3 Modification Costs. Developer shall not be assigned the costs of any additions, modifications, or replacements that Connecting Transmission Owner makes to the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the OATT, except in accordance with the cost allocation procedures in Attachment S of the OATT. Developer shall be responsible for the costs of any additions, modifications, or replacements to the Developer's Attachment Facilities that may be necessary to maintain or upgrade such Developer's Attachment Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

ARTICLE 6. TESTING AND INSPECTION

6.1 Pre-Commercial Operation Date Testing and Modifications. Prior to the Commercial Operation Date, the Connecting Transmission Owner shall test the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and Developer shall test the Transmission Project and the Developer's Attachment Facilities to verify their safe and reliable operation. Similar testing may be required after initial operation. 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. Developer shall bear the cost of all such testing and modifications.

6.2 Post-Commercial Operation Date Testing and Modifications. 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 for the continued interconnection of the Transmission Project with the New York State Transmission

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System in a safe and reliable manner. 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. Developer and Connecting Transmission Owner shall notify each other in advance of its performance of tests of its Attachment Facilities and Transmission Project. Developer and Connecting Transmission Owner shall each have the right, at its own expense, to observe such testing.

6.4 Right to Inspect. 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 Attachment Facilities, the System Protection Facilities and other protective equipment. 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 Attachment 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 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the OATT.

ARTICLE 7. METERING

7.1 This Agreement does not require any additional metering equipment to be installed.¹

ARTICLE 8. COMMUNICATIONS

8.1 Reserved.

8.2 Reserved.

¹ The metering equipment relevant to this transmission line is contained in the Con Edison/ Orange and Rockland Ramapo Interconnection Agreement.

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- 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 Party all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards.
- 9.2 Connecting Transmission Owner Obligations.** Connecting Transmission Owner shall cause the New York State Transmission System and the Connecting Transmission Owner's Attachment Facilities to be operated, maintained and controlled in a safe and reliable manner in accordance with this Agreement and the NYISO Tariffs.
- 9.3 Developer Obligations** 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. Developer shall operate the Transmission Project in accordance with NYISO and Connecting Transmission Owner requirements.
- 9.4 Start-Up and Synchronization.** Consistent with the mutually acceptable procedures of the Developer and Connecting Transmission Owner, the Developer is responsible for the proper synchronization of the Transmission Project to the New York State Transmission System in accordance with the NYISO's, and Connecting Transmission Owner's procedures and requirements.
- 9.5 Reserved.**
- 9.6 Outages and Interruptions.**
- 9.6.1 Outages.**
- 9.6.1.1 Outage Authority and Coordination.** 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 Attachment Facilities or System 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 State, the Party

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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 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.

9.6.1.2 Outage Schedules. Developer shall post scheduled outages of its transmission facilities on the NYISO OASIS.

9.6.1.3 Outage Restoration. If an outage on the Attachment Facilities or System Upgrade Facilities of the Connecting Transmission Owner or Developer 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 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.

9.6.2 Interruption of Service. If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO or Connecting Transmission Owner may require Developer to interrupt or reduce transmission of electricity over the Transmission Project if such transmission could adversely affect the ability of the NYISO and Connecting Transmission Owner 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 or reduction permitted under this Article 9.6.2:

9.6.2.1 The interruption or reduction shall continue only for so long as reasonably necessary to: (a) protect its facilities from physical damage or to prevent injury or damage to persons or property under Good Utility Practice; or (b) comply with Applicable Reliability Standards;

9.6.2.2 Any such interruption or reduction shall be: (a) undertaken in accordance with applicable NYISO procedures and directives; and (b) undertaken on an equitable, non-discriminatory basis with respect to all transmission facilities directly connected to that part of the New

York State Transmission System owned by Connecting Transmission Owner;

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

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

9.6.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Transmission Project, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice, and in accordance with the directives of the NYISO.

9.6.3 Under-Frequency and Over-Frequency Conditions. The New York State Transmission System is designed to automatically activate a load-shed program as required by the NPCC in the event of an under-frequency system disturbance. Developer shall implement under-frequency and over-frequency relay set points for the Transmission Project as required by the NPCC to ensure the “ride through” capability of the New York State Transmission System. Transmission Project response to frequency deviations of predetermined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the NYISO and Connecting Transmission Owner in accordance with Good Utility Practice. The term “ride through” as used herein shall mean the ability of a transmission facility to stay connected to and synchronized with the New York State Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice and with NPCC Criteria 3.

9.6.4 System Protection and Other Control Requirements.

9.6.4.1 Reserved.

9.6.4.2 Reserved.

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9.6.4.3 Developer and Connecting Transmission Owner shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.²

9.6.4.4 The protective relay designs of 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 Project or the Connecting Transmission Owner's facilities.

9.6.4.5 **Reserved.**

9.6.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, 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, Developer and Connecting Transmission Owner shall each perform calibration and functional trip tests of the System Protection Facilities in a manner and at intervals consistent with Connecting Transmission Owner's standard practice for performing such tests. 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.

9.6.5 Requirements for Protection. In compliance with NPCC requirements, applicable requirements of other Applicable Reliability Councils, and Good Utility Practice, 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. Developer shall be solely responsible to disconnect the Transmission Project and Developer's other equipment if conditions on the New

² The protection equipment relevant to this transmission line is contained in the Con Edison/ Orange and Rockland Ramapo Interconnection Agreement.

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York State Transmission System could adversely affect the Transmission Project.

9.6.6 Power Quality. Neither the facilities of 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.

9.7 Switching and Tagging Rules. Developer and Connecting Transmission Owner shall each provide the other Party with 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 non-discriminatory 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.

9.8 Reserved.

9.9 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 in a safe and reliable manner and in accordance with this Agreement.

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

10.3 Coordination. Developer and Connecting Transmission Owner shall confer regularly

to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Transmission Project. Developer and Connecting Transmission Owner shall keep the NYISO fully informed of the preventive and corrective

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maintenance that is planned, and shall schedule all such maintenance in accordance with NYISO procedures.

10.4 Secondary Systems. 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 Developer or Connecting Transmission Owner's facilities and equipment which may reasonably be expected to impact the other Party. Developer and Connecting Transmission Owner shall each provide advance notice to the other Party, and to the 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 third parties, 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, Developer shall be responsible for all operating and maintenance expenses associated with the SUFs that are listed in Appendix A.

ARTICLE 11. PERFORMANCE OBLIGATION

11.1 Reserved.

11.2 Reserved.

11.3 System Upgrade Facilities. Developer shall design, procure, construct, install, and where applicable, remove the System Upgrade Facilities described in Appendix A hereto. Developer shall be responsible for costs related to System Upgrade Facilities, except as provided for in Article 5.2 (11). The Connecting Transmission Owner shall own the System Upgrade Facilities, described in Appendix A.

11.4 Reserved.

11.5 Provision of Security. No security is required to be posted because Developer will be responsible for performing all the construction activities related to the Project and has assumed all such cost responsibility.

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- 11.6 Developer Compensation for Emergency Services.** If, during an Emergency State, Developer provides services at the request or direction of the NYISO or Connecting Transmission Owner, Developer will be compensated for such services in accordance with the Services Tariff.
- 11.7 Line Outage Costs.** Notwithstanding any provision in the OATT to the contrary, the Connecting Transmission Owner may propose to recover line outage costs associated with the installation of System Upgrade Facilities on a case-by-case basis.

ARTICLE 12. INVOICE

- 12.1 General.** 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. 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.** Within six months after completion of the construction of the System Upgrade Facilities, Connecting Transmission Owner shall provide an invoice of the final cost of the construction of the System Upgrade Facilities and shall set forth such costs in sufficient detail to enable 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 Developer any amount by which the actual payment by Developer for estimated costs exceeds the actual costs of construction within 30 Calendar Days of the issuance of such final construction invoice.
- 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 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 Developer, Connecting Transmission Owner shall continue to perform under this Agreement as long as 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 Developer fails to meet these two requirements for continuation of service, then Connecting

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Transmission Owner may provide notice to Developer of a Default pursuant to Article 17. Within 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 the NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee.
- 13.2 Notice.** The NYISO or, as applicable, Connecting Transmission Owner shall notify Developer promptly when it becomes aware of an Emergency State that affects the or the New York State Transmission System that may reasonably be expected to affect Developer's operation of the Transmission Project. Developer shall notify the NYISO and Connecting Transmission Owner promptly when it becomes aware of an Emergency State that affects the Transmission Project that may reasonably be expected to affect the New York State Transmission System. To the extent information is known, the notification shall describe the Emergency State, the extent of the damage or deficiency, the expected effect on the operation of 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 Developer's reasonable judgment, immediate action is required, 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 or the Developer's Attachment Facilities in response to an Emergency State either declared by the NYISO, Connecting Transmission Owner or otherwise regarding New York State Transmission System.
- 13.4 NYISO and Connecting Transmission Owner Authority.**
- 13.4.1 General.** The NYISO or Connecting Transmission Owner may take whatever actions with regard to the New York State Transmission System it deems necessary during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission, (iii) limit or prevent damage, and (iv) expedite restoration of service.

The NYISO and Connecting Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System. The NYISO or Connecting Transmission Owner may, on the basis of technical

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considerations, require the Transmission Project to mitigate an Emergency State by taking actions necessary and limited in scope to remedy the Emergency State, including, but not limited to, directing Developer to shut-down, start-up, increase or decrease the real or reactive power output of the Transmission Project; implementing a reduction or disconnection pursuant to Article 13.4.2; directing Developer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Transmission Project and Developer's Attachment Facilities. Developer shall comply with all of the NYISO's and Connecting Transmission Owner's operating instructions concerning Transmission Project real power and reactive power output within the manufacturer's design limitations of the Transmission Project's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.4.2 Reduction and Disconnection. The NYISO or Connecting Transmission Owner may disconnect the Transmission Project when such reduction or disconnection is necessary under Good Utility Practice due to an Emergency State. These rights are separate and distinct from any right of Curtailment of the NYISO pursuant to the OATT. When the NYISO or Connecting Transmission Owner can schedule the reduction or disconnection in advance, the NYISO or Connecting Transmission Owner shall notify Developer of the reasons, timing and expected duration of the reduction or disconnection. The NYISO or Connecting Transmission Owner shall coordinate with Developer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to Developer and the New York State Transmission System. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Transmission Project and the New York State Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.5 Developer Authority. Consistent with Good Utility Practice and this Agreement, Developer may take whatever actions with regard to the Transmission Project during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission Project (iii) limit or prevent damage, and (iv) expedite restoration of service. Developer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the New York State Transmission System. The NYISO and Connecting Transmission Owner shall use Reasonable Efforts to assist Developer in such actions.

13.6 Limited Liability. Except as otherwise provided in Article 11.6 of this Agreement, no Party shall be liable to another Party for any action it takes in responding to an

Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

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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 approvals. Nothing in this Agreement shall require 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 Party and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Party 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 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.** Developer and Connecting Transmission Owner shall each notify the other Party 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 Force Majeure.

16.1.1 Economic hardship shall not constitute and is not considered a Force Majeure event.

16.1.2 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 Party 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.

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ARTICLE 17. DEFAULT

17.1 Default.

17.1.1 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 Party. Upon a Breach, the non-Breaching Party shall give written notice of such to the Breaching Party. The Breaching Party shall have 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 30 Calendar Days, the Breaching Party shall commence such cure within 30 Calendar Days after notice and continuously and diligently complete such cure within 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.

17.1.2 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 Party 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 the non-breaching Party terminates 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 Party (the “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, 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.

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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 the Indemnified Party 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 be required to pay the fees and expenses of an attorney to represent the Indemnified Party.

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.

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18.2 No Consequential Damages. Other than the Liquidated Damages heretofore described and 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 the other Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 Insurance. The following insurance requirements will apply in the event that Developer and the Connecting Transmission Owner are no longer owned by the same parent company.

Developer and Connecting Transmission Owner shall each, at its own expense, maintain in force throughout the period of this Agreement, and until released by the other Party, the following insurance coverages:

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

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, property damage, 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 damages to the extent normally available and include cross liability, with minimum limits of \$1,000,000 per occurrence/\$1,000,000 aggregate combined single limit for personal injury, bodily injury, including death and property damage.

18.3.3 Commercial 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 \$1,000,000 per accident for bodily injury, including death, and property damage.

18.3.4 Excess Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of \$20,000,000 per occurrence/\$20,000,000 aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of Developer and Connecting Transmission Owner shall name the other Party, its parent, associated and

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Affiliate companies and their respective directors, officers, agents, servants and employees (“Other Party Group”) as additional insured. 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. Each party will provide 30 calendar days advance written notice to the Other Party Group prior to the cancellation or any material change in coverage.

- 18.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies providing additional insured status shall contain provisions that the policies are primary and shall apply to such extent without consideration for other policies separately carried. These policies 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. Developer and Connecting Transmission Owner shall each be responsible for its respective deductibles or retentions.
- 18.3.7** 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 two years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage.
- 18.3.8** The requirements contained herein as to the types and limits of all insurance to be maintained by the 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.
- 18.3.9** Within ten 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 90 days thereafter, Developer and Connecting Transmission Owner shall provide certification of all insurance required in this Agreement, executed by an authorized representative of insurers.
- 18.3.10** Notwithstanding the foregoing, Developer and Connecting Transmission Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.1, 18.3.2, 18.3.3 and 18.3.5 auto liability and workers compensation is in statutory compliance with New York State laws In the event that a Party is selfinsured pursuant to this Article 18.3.10, it shall notify the other Party that it meets the statutory requirements to self-insure and that its self-insurance program meets the New York State statutory self-insurance requirements in a manner consistent with that specified in Article 18.3.9.

18.3.11 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

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any person, including death, and any property damage arising out of this Agreement.

Contractors' Insurance. Each party will require their Contractors of every level to: procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage and shall be placed with insurance companies acceptable to the Developer.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$5,000,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$5,000,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. Every contractor will be responsible for their policies' deductibles. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Connecting Transmission Owner and Developer as an additional insured. And their insurance will be primary and non-contributory to any other insurance available to the Additional Insured. There shall be no exclusion for claims by Contractor employees against Connecting Transmission Owner or Developer based on injury to Contractor's employees.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the contractor or any subcontractors, with limits of \$1,000,000 each accident for bodily injury or death and property damage.

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D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of not less than \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name both Connecting Transmission Owner and Developer as an additional insured for the full policy limits insured.

Contractor will provide Developer with at least ten days' written notice prior to the effective date of any cancellation of the insurance or of any changes in policy limits or scope of coverage.

At least three days prior to commencing work at the site, Contractor shall furnish Developer with Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Developer is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Developer shall have the right to require Contractor to furnish Developer, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Developer for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the work performed pursuant to this Agreement.

ARTICLE 19. ASSIGNMENT

- 19.1 Assignment.** This Agreement may be assigned by a Party only with the written consent of the other Party; provided that a Party may assign this Agreement without the consent of the other Party to a company, where both Developer and Connecting Transmission Owner are indirect equity owners of the company; 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, including the Attachment Facilities it owns, 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 Developer shall have the right to assign this Agreement, without the consent of Connecting Transmission Owner, for collateral security purposes to aid in providing financing for the Transmission Project, provided

that Developer will promptly notify Connecting Transmission Owner of any such assignment. Any financing arrangement entered into by Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's trustee's or

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mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Connecting Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide Connecting Transmission Owner with proof that it meets the requirements of Article 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

- 20.1 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; provided that if Developer (or any third party, but only if such third party is not acting at the direction of Connecting Transmission Owner) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the rights and obligations of Developer and Connecting Transmission Owner shall be governed solely by the Standard Option (Article 5.1.1).

ARTICLE 21. COMPARABILITY

- 21.1 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

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the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

22.1.1 Term. During the term of this Agreement, and for a period of three 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.

22.1.2 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 OATT.

22.1.3 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 22.1.8 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.

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

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- 22.1.5 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by one Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 22.1.6 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 Party nor to enter into any further agreements or proceed with any other relationship or joint venture.
- 22.1.7 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 Party under this Agreement or its regulatory requirements, including the OATT and Services Tariff.
- 22.1.8 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 Party 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.
- 22.1.9 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, within ten Calendar Days of receipt of a written request from the other Party, 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 Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party pursuant to this Agreement.
- 22.1.10 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 Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches

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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.

22.1.11 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 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. A Party is prohibited from notifying the other Party to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party 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 other Party 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.

22.1.12 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 OATT or the 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

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protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 23. ENVIRONMENTAL RELEASES

- 23.1 Developer and Connecting Transmission Owner Notice.** 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 the Attachment 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 Developer shall each submit specific information regarding the electrical characteristics of their respective facilities to the other, as described below and in accordance with Applicable Reliability Standards.
- 24.2 Information Submission by Connecting Transmission Owner.** The initial information submission by Connecting Transmission Owner shall occur no later than 180 Calendar Days prior to Trial Operation and shall include New York State Transmission System information necessary to allow the Developer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Developer and Connecting Transmission Owner. On a monthly basis Connecting Transmission Owner shall provide Developer and if requested, to the NYISO, a status report on the construction and installation of 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.
- 24.3 Updated Information Submission by Developer.** The updated information submission by Developer, including manufacturer information, shall occur no later than 180

Calendar Days prior to the Trial Operation 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

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there is no compatible model, Developer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If Developer's data is different from what was originally provided to Connecting Transmission Owner and this difference may be reasonably expected to affect the other Connecting Transmission Owner's facilities or the New York State Transmission System, then Connecting Transmission Owner and the Developer 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 System Upgrade Facilities based on the actual data and a good faith estimate of the costs thereof. Developer shall not begin Trial Operation until such studies are completed. 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 Commercial Operation Date, Developer and Connecting Transmission Owner shall supplement their information submissions described above in this Article 24 with any and all "as-built" Transmission Project information or "as-tested" performance information that differs from the initial submissions or alternatively, written confirmation that no such differences exist. Developer shall conduct tests on the Transmission Project as required by Good Utility Practice.

Developer shall provide the Connecting Transmission Owner validated test recordings showing the responses of the Transmission Project.

Subsequent to the Commercial Operation Date, Developer shall provide Connecting Transmission Owner with any information changes due to equipment replacement, repair, or adjustment. Connecting Transmission Owner shall provide Developer with any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Connecting Transmission Owner substation that may affect the Transmission equipment ratings, protection or operating requirements. Developer and Connecting Transmission Owner shall provide such information no later than 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;

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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 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 System 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 24 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 24 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

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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 establishment 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 Connecting Transmission Owner be liable for the actions or inactions of Developer or its subcontractors with respect to obligations of the 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 ("Dispute"), such Party shall provide the other Party 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 Party. In the event the designated representatives are unable to resolve the Dispute through unassisted or assisted negotiations within 30 Calendar Days of the other Party's 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 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 with 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 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, Attachment Facilities, or System 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-half 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.

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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, Attachment Facilities and System 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.

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- 29.2 Conflicts.** The Parties expressly agree that the terms and conditions of the Appendices shall take precedence over the provisions of this cover agreement in case of a discrepancy or conflict between or among the terms and conditions of same.
- 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 Large Facility Interconnection Procedures or such Appendix to the Large Facility Interconnection Procedures, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".
- 29.4 Compliance.** Each Party shall perform its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, the 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 Party promptly so that the Party 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 Developer and Connecting Transmission Owner are several, and are neither joint nor joint and several.
- 29.6 Entire Agreement.** This Agreement, including all Appendices 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

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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. 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.** This Agreement shall not be amended, modified or supplemented unless such amendment shall be in writing and duly executed by 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 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.** 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 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 the other 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

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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 establish an association, joint venture, agency relationship, or partnership between 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 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, resulting from the 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.

ORANGE AND ROCKLAND UTILITIES, INC.

By _____

Francis W. Peverly

Vice President, Operations

Date _____

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By _____

Brian Horton

Vice President, System and Transmission Operations

Date _____

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APPENDICES

Appendix A

Attachment Facilities and System Upgrade Facilities

Appendix B

Milestones

Appendix C

Interconnection Details

Appendix D

Security Arrangements

Appendix E

Commercial Operation Date

Appendix F

Addresses for Delivery of Notices and Billings

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APPENDIX A

ATTACHMENT FACILITIES AND SYSTEM UPGRADE FACILITIES

1. Reliability Project Overview

The Reliability Project consists of the a 345kV transmission line from the 345kV Ramapo Substation and terminating at the Rock Tavern substation, owned by Central Hudson. The Reliability Project requires certain modifications at the 138kV Ramapo Substation, the 345kV Ramapo Substation, and the 345kV Rock Tavern Substation. In addition, System Upgrade Facilities at the Sugarloaf Substation will need to be constructed in order to permit the voltages to be transformed from 345kV to 138kV.³ Finally, the 345kV transmission line will be interconnected to the Rock Tavern Substation⁴.

2. Transmission Project Overview

The Transmission Project consists of a new 345kV transmission line segment between the Sugarloaf 345 kV Facility and the Rock Tavern 345kV Substation. The Point of Interconnection occurs at a flex removable link connection point that is physically located between the tower (continuing on to the Rock Tavern 345kV Substation) and the rigid bus, which is referred to as the “Facility,” both of which are within the 345kV Sugarloaf Substation.

3. Attachment Facilities:

(a) Developer’s Attachment Facilities (“DAF”):

The Developer’s Attachment Facilities include the following equipment:

There are no Developer’s Attachment Facilities.

(b) Connecting Transmission Owner’s Attachment Facilities (“CTOAF”):

The Connecting Transmission Owner’s Attachment Facilities include the following equipment:

³ A separate Interconnection Agreement between the Parties covers the interconnection into the 345kV Ramapo Substation and the modifications of the Sugarloaf substation.

⁴ A separate Interconnection Agreement between Con Edison and Central Hudson covers the Rock Tavern Substation interconnection.

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There are no Connecting Transmission Owner Attachment Facilities.

4. System Upgrade Facilities: The System Upgrade Facilities required for the Transmission Project are listed below:

- ☐ the flex links consist of 1590 kcmil Aluminum Conductor Steel Reinforced (ACSR) conductor

5. System Deliverability Upgrades:

There are no System Deliverability Upgrades that are covered by this Agreement.

Figure A-1 One Line diagram has been deleted from the public version.

The Developer will own the transmission line from the Point of Interconnection (“POI”) and Point of Ownership Change (“PCO”) going to the Rock Tavern Substation. The Connecting Transmission Owner shall own all the facilities on the other side of the POI and PCO.

6. Tax Liability

As of the Effective Date, Developer and Connecting Transmission Owner are not aware of Developer having any tax liability under Article 5.17 of this Agreement.

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APPENDIX B

MILESTONES

1. Selected Option Pursuant to Article 5.1

Under Article 5.1 of this Agreement, Developer and Connecting Transmission Owner have agreed that, pursuant to Article 5.1.3 (Option to Build), Developer shall be responsible for designing, procuring and constructing of System Upgrade Facilities identified in Section 4 of Appendix A of this Agreement. Developer shall transfer to Connecting Transmission Owner, and Connecting Transmission Owner shall own System Upgrades Facilities as identified in Section 4 of Appendix A to this Agreement. Developer shall cooperate with Connecting Transmission Owner to insure that these transfers are done in a timely manner.

The flex link connection will be installed after the 345kV Sugarloaf Substation has been completed, pursuant to the Con Edison-Orange and Rockland Ramapo Interconnection Agreement. The actual dates for completion of the milestones are highly dependent upon lead times for the procurement of equipment and material, the availability of labor, outage scheduling, receipt of regulatory approvals, and the results of equipment testing. The completion and results of environmental remediation of the site, and other unforeseen events could also affect the achievement of the milestones. Connecting Transmission Owner and Developer are mutually undertaking the required engineering, procurement, or construction work to implement this emergency reliability solution pursuant to this Agreement and as defined in Section 2 of this Agreement. Developer accepts cost responsibility for all engineering, procurement and construction costs associated with the transmission expansion and SUF's.

Prior to the In-Service Date, Developer and the Connecting Transmission Owner shall comply with NYISO procedures and request energization of the Transmission Project. If the Transmission Project is determined to be ready for energization by Connecting Transmission Owner, the Connecting Transmission Owner shall grant such approval within ten days of receiving the request by Developer.

The following notes apply to all work performed on Connecting Transmission Owner's System Upgrade Facilities.

- A. The parties do not believe that any permits are required. If permits are required, however, the Developer will obtain the permits and submit to Connecting Transmission Owner copies of all required construction permits including all supporting documentation such as calculations, applications and drawings in a timely fashion.

- B. Transmission system emergencies take precedence over all other work and could significantly impact the schedule depending upon the duration of the emergency.

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- C. 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. Missing a schedule task or milestone date may result in some delay before Connecting Transmission Owner can reschedule its manpower to work on the assigned task.
- D. Developer shall be responsible for all fines imposed on Connecting Transmission Owner by a Governmental Authority or Applicable Reliability Councils due to any Developer action or inaction relating to the Transmission Facility as described in Appendix C.

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APPENDIX C

INTERCONNECTION DETAILS

1. Description of Facilities

(a) Overview of the Transmission Project

The Developer is planning the installation of a 345 kV transmission line that is scheduled to be placed into commercial operation by June, 2016. This new transmission line will electrically connect Central Hudson's 345 kV Rock Tavern Substation with the Developer's Ramapo 345 kV Substation.

The Point of Interconnection for the Transmission Project will be located between the Transmission line tower connecting the feeder 76 line segment to the Rock Tavern Substation and the rigid bus within the 345kV Sugarloaf Substation, as described in Figure A-1

2 Developer Operating Requirements

(a) Developer shall comply with all provisions of NYISO tariffs and procedures, as amended from time to time, which apply to any aspect of the Transmission Project's operations. Tariff revisions and/or operating protocols with NYISO, the Connecting Transmission Owner, and Developer may need to be developed to coordinate the operational control of the facility.

(b) Developer shall comply with Connecting Transmission Owner operating instructions and requirements, which requirements shall include the dedicated data circuits to be maintained by Developer in accordance with Article 8.1 of this Agreement. Operating instructions will be communicated by telephone, or such other means of communication as the Parties may agree upon.

3. System Protection and Other Control Requirements

This Interconnection Agreement does not require the installation of any additional system protection or other control equipment.

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APPENDIX D

SECURITY ARRANGEMENTS

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 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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APPENDIX E

COMMERCIAL OPERATION DATE

Orange and Rockland Utilities, Inc.

390 West Route 59

Spring Valley, New York 10977

Attn. Vice President-Operations

Re: Sugarloaf Interconnection

Dear _____:

On **[Date]** Consolidated Edison Company of New York, Inc. has completed Trial Operation. This letter confirms that Con Edison commenced Commercial Operation of the Transmission Facility, effective as of **[Date plus one day]**.

Thank you.

[Signature]

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APPENDIX F

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

1. Notices:

(a) Connecting Transmission Owner:

Orange and Rockland Utilities, Inc.

390 West Route 59
Spring Valley, New York 10977
Attn: Vice President, Operations
Phone: (845) 577-3697
Fax: (718) 923-7011

(b) Developer:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attn: Vice President, System and Transmission Operations
Phone: (212) 460-1210
Fax: (212) 353-8831

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attn: General Counsel
Phone: (212) 460-2432
Fax: (212) 674-7329

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SERVICE AGREEMENT NO. 2217

2. Billings and Payments:

(a) Connecting Transmission Owner:

Orange and Rockland Utilities, Inc.

390 West Route 59
Spring Valley, New York 10977
Attn. Vice President, Operations
Phone: (845) 577-3697
Fax: (718) 923-7011

(b) Developer:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Attn: Vice President, System and Transmission Operations
Phone: (212) 460-1210
Fax: (212) 353-8831

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SERVICE AGREEMENT NO. 2217

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.

ORANGE AND ROCKLAND UTILITIES, INC.

By 

Francis W. Peverly

Vice President, Operations

Date 5-28-15

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By 

Brian Horton

Vice President, System and Transmission Operations

Date 5/27/15