PUBLIC VERSION

TRANSMISSION FACILITY INTERCONNECTION AGREEMENT

BY AND AMONG

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

AND

NEW YORK POWER AUTHORITY

Dated As Of April 25, 2012

TABLE OF CONTENTS

Page No.

TRANSMISSION FACILITY INTERCONNECTION AGREEMENT

THIS FACILITY INTERCONNECTION AGREEMENT ("Agreement") is made and entered into this 25th day of April , 2012, by and among New York Power Authority, a corporate municipal instrumentality and political subdivision of the State of New York ("Connecting Transmission Owner "), 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 and the Connecting Transmission Owner owns transmission facilities located in New York City; and

WHEREAS, Connecting Transmission Owner is the owner of a non-exclusive easement and facilities located within a fence line on a portion of real property owned by Developer in the City of New York, County of Queens, known as Tax Lot 1, in Block 850, on the Tax Map of the City of New York, which facilities include the Astoria Annex Substation, Q 35L and Q 35M transmission feeders, shunt reactors, breakers, grounding equipment, fencing and other equipment which are referred to collectively herein as the "Facility";

WHEREAS, certain owners of in-city generation has made formal notification to the NYS Public Service Commission that they intend to Mothball certain generation assets located in New York City;

WHEREAS, The Mothballing of these generation assets will cause a Reliability Issue and Developer must solve this reliability problem;

WHEREAS, Developer has proposed, a two-phase project as the reliability solution (the "Project");

WHEREAS, it is anticipated that Phase I of the Project will require certain modifications to the Facility, which modifications are more specifically described on Exhibit "A" attached hereto and made a part hereof;

WHEREAS, it is anticipated that Phase II of the Project will require the removal of the Phase 1 modifications and require certain permanent modifications to the Facility, which modifications are more specifically described on Exhibit "B" attached hereto and made a part hereof;

WHEREAS, Developer and the Connecting Transmission Owner are mutually cooperating in the exchange of design concepts, drawings, and other details to support the Project;

WHEREAS, Developer and the Connecting Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Transmission Facility with the New York State Transmission System;

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

ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1, shall have the meanings specified in Section 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 that may be affected by the proposed interconnection.

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

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

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

Ancillary Services shall mean those services that are necessary to support the transmission of Capacity and Energy from resources to Loads while maintaining reliable operation of the New York State Transmission System in accordance with Good Utility Practice.

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 and to the extent applicable for portions of the Transmission Facility and Developer Attachment Facilities located beyond the New York Control Area

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Developer's Transmission Facility 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.

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 Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Transmission Facility 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 or System Deliverability Upgrades.

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 including Saturday, Sunday or a federal holiday.

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

Commercial Operation Date of a unit shall mean the date on which the Transmission Facility 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 mean the New York public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point of Interconnection, and (iii) is a Party to the Standard Large Interconnection Agreement.

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.

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 mean an Eligible Customer developing a Transmission Facility, proposing to connect to the New York State Transmission System.

Developer's Attachment Facilities shall mean all facilities and equipment, as identified in Appendix A of this Agreement, that are located between the Transmission Facility 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 Facility 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 the Commission, or if filed unexecuted, upon the date specified by the Commission.

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.

Energy Resource Interconnection Service ("ERIS") shall mean the service provided by NYISO to interconnect the Developer's Transmission Facility to the New York State Transmission System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive Energy and Ancillary Services from the Transmission Facility..

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes Connecting Transmission Owner to begin engineering and procurement of long lead-time 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.

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

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

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

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

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

authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include 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.

Highway shall mean 115 kV and higher transmission facilities that comprise the following NYCA interfaces: Dysinger East, West Central, Volney East, Moses South, Central East/Total East, UPNY-SENY and UPNY-ConEd, and their immediately connected, in series, Bulk Power System facilities in New York State. Each interface shall be evaluated to determine additional "in series" facilities, defined as any transmission facility higher than 115 kV that (a) is located in an upstream or downstream zone adjacent to the interface and (b) has a power transfer distribution factor (DFAX) equal to or greater than five percent when the aggregate of generation in zones or systems adjacent to the upstream zone or zones which define the interface is shifted to the aggregate of generation in zones or systems adjacent to the downstream zone or zones which define the interface. In determining "in series" facilities for Dysinger East and West Central interfaces, the 115 kV and 230 kV tie lines between NYCA and PJM located in LBMP Zones A and B shall not participate in the transfer. Highway transmission facilities are listed in ISO Procedures.

Initial Synchronization Date shall mean the date upon which the Transmission Facility is initially synchronized with the New York State Transmission System and upon which Trial Operation begins.

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.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

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.

Mothballing shall mean the taking of a generation facility out of service for an indefinite period of time.

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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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 mean , Connecting Transmission Owner, or Developer or any combination of the above.

Phase 1 shall mean the configuration of the Developer transmission expansion project and the Point of Interconnection with the Connecting Transmission Owners System Upgrade Facilities, until the completion of Phase 2 .

Phase 2 shall mean the permanent configuration of the Developer transmission expansion project and the Point of Interconnection with the Connecting Transmission Owners System Upgrade Facilities.

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

Point of Interconnection shall mean the point, as set forth in Appendix A to this Agreement, where the Transmission Expansion connects to the New York State Transmission System.

Reliability Issue shall mean the impending reliability problem in the Astoria East area of Queens, New York caused by the mothballing of the two generating facilities by Astoria Generating Company, LP.

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.

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

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Transmission Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Developer and the entity having the right to sell, lease or grant Developer the right to possess or occupy a site for such purpose.

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 Deliverability Upgrades** shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to Byways and Highways and Other Interfaces on the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard at the requested level of Capacity Resource Interconnection Service.

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 Facility and (2) protect the Transmission Facility from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

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.

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

Transmission Expansion shall mean generally a facility for the transmission of electricity, and specifically the Developer's facility for the transmission of electricity as described in this Agreement and the Appendices hereto.

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

Transmission Facility Interconnection Agreement shall mean this Agreement.

Trial Operation shall mean the period during which Developer is engaged in on-site test operations and commissioning of the Transmission Facility 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, or if filed unexecuted, upon the date specified 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 twenty (25) years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination.

2.3.1 Written Notice. This Agreement may be terminated by the Developer after giving the Connecting Transmission Owner ninety (90) Calendar Days advance written notice, or by the Connecting Transmission Owner notifying FERC after the Transmission Facility permanently ceases Commercial Operations.

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

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

2.4 Termination Costs. If a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the 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 Parties, as of the date of the other Parties' 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 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 and System Deliverability Upgrades 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.

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 **Disconnection**. Upon termination of this Agreement, Developer and Connecting Transmission Owner will take all appropriate steps to disconnect the Developer's Transmission Facility from the New York State Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

2.6 **Survival**. This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; 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.

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 NYISO 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 NYISO 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 NYISO OATT.

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 NYISO Market Administration and Control Area Services Tariff ("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 NYISO Services Tariff and the NYISO Installed Capacity Manual. This Agreement does not in any way alter the Transmission Facility's eligibility for Unforced Capacity Deliverability Rights to the extent such Unforced Capacity Deliverability Rights are requested by the Transmission Facility 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 and System Deliverability Upgrades as set forth in Appendix A hereto, and 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 and System Deliverability Upgrades, using Reasonable Efforts to complete the Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades 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 and System Deliverability Upgrades, by the specified dates, the Connecting Transmission Owner shall promptly provide written notice to the Developer and NYISO, 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 thirty (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 thirty (30) Calendar Days, and unless the Developer and 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 and System Deliverability Upgrades. 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 and System Deliverability Upgrades 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) Developer agrees to comply with all applicable provisions of Section 220 of the New York State Labor Law ("Section 220"), as it may be amended from time to time. Pursuant to the requirements of Section 220, Developer agrees that, for work performed on existing Connecting Transmission Owner Facilities (i.e., "public work")

(a) Each laborer, workman or mechanic shall be paid no less than the prevailing wage as defined in Section 220,

(b) The filing of payrolls should be made in a manner consistent with subdivision three-a (3(a)) of Section 220; this is a condition precedent to the payment of any sums due and owing to any person for work done upon the project, and

(c) No laborer, worker or mechanic shall be permitted or required to work more than eight hours on one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property.[1]

(4) Connecting Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the System Upgrade Facilities;

(5) 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;

(6) 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;

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

(7) 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;

(8) 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;

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

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

(11) 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. Developer and Connecting Transmission Owner have entered into an operations and maintenance agreement of the Astoria Annex Substation, which governs the operations and maintenance of the Astoria Annex Substation, which O&M Agreement may be amended, terminated and/or expire pursuant to its own terms.

(12) 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 Reserved.

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. Any Party may, at any time, request a progress report from the Developer or Connecting Transmission Owner. 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, either the Connecting Transmission Owner or Developer ("Granting Party") shall furnish to the other of those two Parties ("Access Party") at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the Point of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Transmission Facility with the New York State Transmission System; (ii) operate and maintain the Transmission Facility, 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 Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

5.13 Lands of Other Property Owners. If any part of the Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades 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 and/or System Deliverability Upgrades upon such property. Notwithstanding the previous sentence, the Connecting Transmission Owner's exercise of powers and rights to acquire real property or any rights in real property, pursuant to this Section 5.13, is subject to the provisions of the Power Authority Act (or any amendments thereto).

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 and/or System Deliverability Upgrades 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.

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 (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to 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 and the System Deliverability Upgrades 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 Facility, Developer represents and covenants that (i) ownership of the electricity transmitted on the Transmission Facility 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 deminimis amount of electricity in the direction of the Transmission Facility. For this purpose, "deminimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At 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 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 and System Deliverability Upgrades, 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 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: (Current Tax Rate x (Gross Income Amount - Present Value of Tax Depreciation))/(1 - 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 and System Deliverability Upgrades.

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 10 years from the date on which the relevant Connecting Transmission Owner Attachment Facilities are placed in 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 and System Deliverability Upgrades, 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 thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Developer and at Developer's sole expense, 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 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 Facilities and System Upgrade Facilities and System Deliverability Upgrades 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 including the status of NYISO, or the status of any Connecting Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New York, Inc. 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 Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

5.18.2 Non-Jurisdictional Entities. LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

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 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 Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (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 NYISO OATT, except in accordance with the cost allocation procedures in Attachment S of the NYISO OATT. Developer shall be responsible for the costs of any additions, modifications, or replacements to the Developer Attachment Facilities that may be necessary to maintain or upgrade such Developer 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 System Deliverability Upgrades and Developer shall test the Transmission Facility and the Developer Attachment Facilities to ensure 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 to ensure the continued interconnection of the Transmission Facility with the New York State Transmission 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 each notify the other Party in advance of its performance of tests of its Attachment Facilities

and Transmission Facility. The other Party 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 NYISO OATT.

ARTICLE 7. METERING

7.1 The feeder connects Astoria Annex to Astoria East station. The Revenue Metering is already installed for the G13 feeder, which connects the Astoria Energy to Astoria Annex station. As the G13 Revenue meter, sums up the total power flow of all the feeders connected from Astoria Annex bus, including the new feeder interconnecting Astoria Annex to Astoria East, a separate Revenue meter will not be installed for this interconnection.

For telemetry, a multifunction meter will be provided at both Astoria Annex and Astoria East terminals of the feeder to record the MW, MVAR, current and voltage and provide this information to the control center through Remote Terminal units.

This telemetry data on the new Astoria Annex to Astoria East connection will be made available to all three (3) Remote Terminal Units (RTUs) in the Astoria Annex – the two (2) RTUs used by Con Edison for Data Acquisition and Control and the one (1) RTU used by NYPA for Data Acquisition only.

ARTICLE 8. COMMUNICATIONS

8.1 **Developer Obligations**. In accordance with applicable NYISO requirements, Developer shall maintain satisfactory operating communications with Connecting Transmission Owner and NYISO. Developer shall provide standard voice line, dedicated voice line and facsimile communications at its Transmission Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Developer

shall also provide the dedicated data circuit(s) necessary to provide Developer data to Connecting Transmission Owner and NYISO as set forth in Appendix C hereto. The data circuit(s) shall extend from the Transmission Facility to the location(s) specified by Connecting Transmission Owner and NYISO. Any required maintenance of such communications equipment shall be performed by Developer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

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

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

8.3 **No Annexation**. Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

ARTICLE 9. OPERATIONS

9.1 **General**. Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

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. Connecting Transmission Owner may provide operating instructions to Developer consistent with this Agreement, NYISO procedures and Connecting Transmission Owner's operating protocols and procedures as they may change from time to time. Connecting

Transmission Owner will consider changes to their respective operating protocols and procedures proposed by Developer.

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

9.4 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 Facility to the New York State Transmission System in accordance with NYISO, and Connecting Transmission Owner procedures and requirements, as applicable.

9.5 Real and Reactive Power Control.

9.5.1 Power Factor Design Criteria. Developer shall design the Transmission Facility to maintain an effective power delivery at maximum net capability at the Point of Interconnection to within a power factor range of 0.85 lagging to 0.90 leading for an AC voltage range of 0.95 pu to 1.05 pu at the Point of Interconnection

9.5.2 Voltage Schedules. Once the Developer has synchronized the Transmission Facility with the New York State Transmission System, NYISO shall require Developer to operate the Transmission Facility so that the voltage at the Point of Interconnection is within the range of 346 kV to 362 kV in accordance with Connecting Transmission Owner's voltage schedule, as amended from time to time. When voltages are outside the range specified by the Connecting Transmission Owner's voltage schedule due to conditions beyond the control of Connecting Transmission Owner and NYISO, the Developer shall also provide assistance consistent with Good Utility Practice within the full capability of the Transmission Facility in restoring the voltage at the Point of Interconnection to the normal range as may be directed by the Connecting Transmission Owner or the NYISO. If the Transmission Facility is unable to provide the requested assistance, or maintain the specified power factor, it shall promptly notify both the Connecting Transmission Owner and the NYISO.

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 and System Deliverability Upgrades 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 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. Developer shall submit its planned maintenance schedules for the Transmission Facility to Connecting Transmission Owner and NYISO for a minimum of a rolling thirty-six month period. Developer shall update its planned maintenance schedules as necessary. NYISO may direct, or the Connecting Transmission Owner may request, Developer to reschedule its maintenance as necessary to maintain the reliability of the New York State Transmission System. Compensation to Developer for any additional direct costs that the Developer incurs as a result of rescheduling maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Developer would have incurred absent the request to reschedule maintenance, shall be in accordance with the NYISO OATT. Developer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Developer had modified its schedule of maintenance activities other than at the direction of the NYISO or request of the Connecting Transmission Owner.

9.6.1.3 Outage Restoration. If an outage on the Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades 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 Facility if such transmission could adversely affect the ability of 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 under Good Utility Practice;

9.6.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all transmission facilities directly connected to the New York State Transmission System;

9.6.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, NYISO or Connecting Transmission Owner shall notify Developer by telephone 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, NYISO or Connecting Transmission Owner shall notify Developer in advance regarding the timing of such scheduling and further notify Developer of the expected duration. NYISO or Connecting Transmission Owner shall coordinate with each other and 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 Facility,

Attachment Facilities, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

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 Facility as required by the NPCC to ensure "ride through" capability of the New York State Transmission System. Transmission Facility 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 Regional Reliability Reference Directory # 12.

9.6.4 System Protection and Other Control Requirements.

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

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

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

9.6.4.4 The protective relay design of the 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 Developer's Transmission Facility or the Connecting Transmission Owner's facilities.

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

9.6.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, the Developer and Connecting Transmission Owner shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, the 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 Facility 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 Facility and Developer's other equipment if conditions on the New York State Transmission System could adversely affect the Transmission Facility.

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. The Developer and Connecting Transmission Owner shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be

developed on a nondiscriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.8 Use of Attachment Facilities by Third Parties.

9.8.1 Purpose of Attachment Facilities. Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of interconnecting the Transmission Facility to the New York State Transmission System and shall be used for no other purpose.

9.8.2 Third Party Users. If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Connecting Transmission Owner's Attachment Facilities, or any part thereof, Developer will be entitled to compensation for the capital expenses it incurred in connection with the Attachment Facilities based upon the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Attachment Facilities, will be allocated between Developer and any third party users based upon the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

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 Facility 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 and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.

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

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

10.4 Secondary Systems. The 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. The Developer and Connecting Transmission Owner shall each provide advance notice to the other Party, and to NYISO, before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Developer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Developer Attachment Facilities; and (2) operation, maintenance, repair and replacement of Connecting Transmission Owner's Attachment Facilities.

ARTICLE 11. PERFORMANCE OBLIGATION

11.1 Developer Attachment Facilities. Developer shall design, procure, construct, install, own and/or control the Developer Attachment Facilities described in Appendix A, hereto, at its sole expense.

11.2 Connecting Transmission Owner's Attachment Facilities. Connecting Transmission Owner shall design, procure, construct, install, own and/or control the Connecting Transmission Owner's Attachment Facilities described in Appendix A hereto, at the sole expense of the Developer.

11.3 System Upgrade Facilities. The Developer shall design, procure, construct, install, and where applicable, remove the System Upgrade Facilities described in Appendix A hereto. The Developer shall be responsible for costs related to System Upgrade Facilities, except as provided for in section 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 the Developer will be responsible for performing all the construction activities related to the Project and has assumed all such cost responsibility.

11.6 Developer Compensation for Emergency Services. If, during an Emergency State, the Developer provides services at the request or direction of the NYISO or Connecting Transmission Owner, the Developer will be compensated for such services in accordance with the NYISO Services Tariff.

11.7 Line Outage Costs. Notwithstanding anything in the NYISO OATT to the contrary, the Connecting Transmission Owner may propose to recover line outage costs associated with the installation of Connecting Transmission Owner's Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades on a case-by-case basis.

ARTICLE 12. INVOICE

12.1 General. The Developer and Connecting Transmission Owner shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The 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 Connecting Transmission Owner's Attachment Facilities and the System Upgrade Facilities , Connecting Transmission Owner shall provide an invoice of the final cost of the construction of the Connecting Transmission Owner's Attachment Facilities and 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 thirty (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 thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices will not constitute a waiver of any rights or claims the paying Party may have under this Agreement.

12.4 Disputes. In the event of a billing dispute between Connecting Transmission Owner and 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 Transmission Owner may provide notice to Developer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 13. EMERGENCIES

13.1 Obligations. Each Party shall comply with the Emergency State procedures of NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee.

13.2 Notice. NYISO or, as applicable, Connecting Transmission Owner shall notify Developer promptly when it becomes aware of an Emergency State that affects the Connecting Transmission Owner's Attachment Facilities or the New York State Transmission System that may reasonably be expected to affect Developer's operation of the Transmission Facility or the Developer's Attachment Facilities. Developer shall notify NYISO and Connecting Transmission Owner promptly when it becomes aware of an Emergency State that affects the Transmission Facility or the Developer Attachment Facilities that may reasonably be expected to affect the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities. 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 Facility or the Developer Attachment Facilities in response to an Emergency State either declared by NYISO, Connecting Transmission Owner or otherwise regarding New York State Transmission System.

13.4 NYISO and Connecting Transmission Owner Authority.

13.4.1 General. NYISO or Connecting Transmission Owner may take whatever actions with regard to the New York State Transmission System or the Connecting Transmission Owner's Attachment Facilities 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 System or the Connecting Transmission Owner's Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

NYISO and Connecting Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission Facility or the Developer Attachment Facilities. NYISO or Connecting Transmission Owner may, on the basis of technical considerations, require the Transmission Facility 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 Facility; implementing a reduction or disconnection pursuant to Article 13.4.2; directing the Developer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Transmission Facility and the Developer Attachment Facilities. Developer shall comply with all of the NYISO and Connecting Transmission Owner's operating instructions concerning Transmission Facility real power and reactive power output within the manufacturer's design limitations of the Transmission Facility'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. NYISO or Connecting Transmission Owner may disconnect the Transmission Facility or the Developer Attachment Facilities, 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 NYISO pursuant to the NYISO OATT. When NYISO or Connecting Transmission Owner can schedule the reduction or disconnection in advance, NYISO or Connecting Transmission Owner shall notify Developer of the reasons, timing and expected duration of the reduction or disconnection. NYISO or Connecting Transmission Owner shall coordinate with the Developer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the 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 Facility, the Attachment Facilities,

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, the Developer may take whatever actions or inactions with regard to the Transmission Facility or the Developer Attachment Facilities during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission Facility or the Developer Attachment Facilities, (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 and the Connecting Transmission Owner's Attachment Facilities. 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.

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW

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

14.2 Governing Law.

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

14.2.2 This Agreement is subject to all Applicable Laws and Regulations.

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

ARTICLE 15. NOTICES

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

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

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

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

15.4 Operations and Maintenance Notice. 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 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, (including obligations under Article 4 of this Agreement) , other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due

diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 17. DEFAULT

17.1 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 Parties. Upon a Breach, the non-Breaching Parties shall give written notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

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

ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

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

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

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

18.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in

any action, suit or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

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

18.3 Insurance. 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 Parties, the following minimum 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, broad form 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 , with minimum limits of One Million Dollars ($1,000,000) per occurrence/One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

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

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 Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($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

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.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. 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 (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Developer and Connecting Transmission Owner.

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

18.3.10 Notwithstanding the foregoing, Developer and Connecting Transmission Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior debt is rated at investment grade, or better, by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. For any period of time that a Party's senior debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.10, it shall notify the other Party that it meets the requirements to self-insure and

that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in 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 any person, including death, and any property damage arising out of this Agreement.

ARTICLE 19. ASSIGNMENT

19.1 **Assignment**. This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, 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 the Developer shall have the right to assign this Agreement, without the consent of the Connecting Transmission Owner, for collateral security purposes to aid in providing financing for the Transmission Facility, provided that the Developer will promptly notify the Connecting Transmission Owner of any such assignment. Any financing arrangement entered into by the Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Connecting Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide the 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 the Developer (or any third party, but only if such third party is not acting at the direction of the 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 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 (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 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 NYISO 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.

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 each Party to the other Parties of Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.6 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 Parties 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 NYISO OATT and NYISO 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 Parties may seek an

appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

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

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

22.1.11 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 NYISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body

conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

22.1.12 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 NYISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 23. 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 Facility 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 one hundred eighty (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 Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of 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 the Developer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Developer shall submit a completed copy of the Transmission Facility data requirements contained in Appendix 1 to the Large Facility Interconnection Procedures. It shall also include any additional information provided to Connecting Transmission Owner for the Interconnection Feasibility Study and Interconnection Facilities Study. Information in this submission shall be the most current Transmission Facility design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Developer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Developer's data is different from what was originally provided to Connecting Transmission Owner and this difference may be reasonably expected to affect the other Parties' 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, Connecting Transmission Owner's Attachment Facilities, or System Upgrade Facilities or System Deliverability Upgrades based on the actual data and a good faith estimate of the costs thereof. The Developer shall not begin Trial Operation until such studies are completed. The Developer shall be responsible for the cost of any modifications required by the actual data, including the cost of any required studies.

24.4 Information Supplementation. Prior to the Commercial Operation Date, the Developer and Connecting Transmission Owner shall supplement their information submissions described above in this Article 24 with any and all "as-built" Transmission Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Developer shall conduct tests on the Transmission Facility as required by Good Utility Practice.

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

Subsequent to the Commercial Operation Date, the Developer shall provide Connecting Transmission Owner any information changes due to equipment replacement, repair, or adjustment. Connecting Transmission Owner shall provide the Developer 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 Facility or Developer Attachment Facilities equipment ratings, protection or operating requirements. The Developer and Connecting Transmission Owner shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS

25.1 Information Access. Each Party ("Disclosing Party") shall make available to another Party ("Requesting Party") information that is in the possession of the Disclosing Party and is necessary in order for the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 of this Agreement and to enforce their rights under this Agreement.

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

25.3 Audit Rights. Subject to the requirements of confidentiality under Article 22 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party's accounts and records pertaining to the other Party's performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, and each Party's actions in an Emergency 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 Connecting Transmission Owner's Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades shall be subject to audit for a period of twenty-four months following Connecting Transmission Owner's issuance of a final invoice in accordance with Article 12.2 of this Agreement.

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

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

ARTICLE 26. SUBCONTRACTORS

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

26.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Connecting Transmission Owner be liable for the actions or inactions of the 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 (a "Dispute"), such Party shall provide the other Parties with written notice of the Dispute ("Notice of Dispute"). Such Dispute shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated representatives are unable to resolve the Dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Parties' receipt of the Notice of Dispute, such Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

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

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

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

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

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS

28.1 General. Each Party makes the following representations, warranties and covenants:

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

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

28.1.3 No Conflict. The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to

any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 29. MISCELLANEOUS

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

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

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

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

29.7 No Third Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and permitted their assigns.

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

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

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

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

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

29.13 Reservation of Rights. 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 another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

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

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

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

NEW YORK POWER AUTHORITY.

By: _____

Title: V.P., Transmission

Date: 4/25/12

CONSOLIDATED EDISON COMPANY OF NEW YORK,.

By: _____

Title: V.P., System and Transmission Operations

Date: 4/25/12

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

APPENDIX A

ATTACHMENT FACILITIES AND SYSTEM UPGRADE FACILITIES

1. Project Overview

The Developer of this Project is Consolidated Edison Company of New York, Inc., the local electric utility serving the five (5) boroughs of New York City. The Project responds to a Reliability Issue that arose during December of 2011, and February 2012, when Astoria Generating Company, L.P. gave formal notice to the NYS PSC and NYISO of its intent to mothball both Astoria Unit 2 and Astoria Unit #4, respectively.

In order to mitigate the Reliability Issue beginning the summer of 2012, the Developer has embarked on an aggressive project schedule to implement the Project. All of the work required will not be completed by summer of 2012, so a two (2) phase approach is being utilized.

The Project consists of a transmission connection between the Con Edison 138kV Astoria East Substation and the New York Power Authority's (NYPA) 345kV Astoria Annex GIS Substation (the "Astoria Annex").

NYPA is the Connecting Transmission Owner, as it is the owner of the Astoria Annex Substation, the Q 35L and Q 35M transmission feeders, and associated shunt reactors, breakers, grounding equipment, fencing and other equipment.

The Point of Interconnection for Phase 1 (POI-Phase 1") of the Project will be at the Connecting Transmission Owner's Astoria Annex 345 kilovolt ("kV") Gas Insulated Switchgear ("GIS") substation ("the Astoria Annex") between existing circuit breaker R2 and Reactor 2. As part of Phase 1, new relay protection panels and associated equipment, as indicated in figure A-1 are being installed in the Astoria Annex relay rooms, designated as the Line 1 and Line 2 relay panels in their respective relay rooms.

The Point of Interconnection for Phase 2 ("POI-Phase 2") of the Project will be on a permanent basis at the air to GIS bushing on the Connecting Transmission Owner's Astoria Annex 345 kilovolt ("kV") GIS, which is between existing circuit breaker 3 and circuit breaker 5, as indicated in figure A-2. Phase 2 includes additional relay protection panels and associated equipment. Upon completion of Phase 2, the relay protection system will be moved to bus section 3-5, and the relay panels installed during Phase 1 will be retired, removed, and replaced by Developer at no cost to the Connecting Transmission Owner. Upon completion of Phase 2, three wood poles, with their cross arms and guide wires will also be removed at no cost to the Connecting Transmission Owner.

The Astoria Annex 345kV Substation is an existing indoor GIS design and is configured as a ring bus as shown on Figures A-1 and A-2.

2. Attachment Facilities:

(a) Developer's Attachment Facilities ("DAF"):

There are no Developer Attachment Facilities for the Project. The Project is a reliability driven transmission expansion designed to remedy the Reliability Issue commencing by summer 2012. The transmission expansion will connect Connecting Transmission Owner's Astoria Annex GIS Substation to the Astoria East Substation, owned by the Developer. There are no DAF because the Project will include all facilities located between Developer's Astoria East Substation and the Point of Interconnection.

(b) Connecting Transmission Owner's Attachment Facilities ("CTOAF"):

There are no CTOAFs that are covered by this Agreement.

3. System Upgrade Facilities:

(a) System Upgrade Facilities: The System Upgrade Facilities ("SUF") shall include the following equipment, as illustrated in Figures A-1 and A-2.

The SUF's for Phase 1 of the Project consist of Relay Panels and associated equipment.

The SUFs for Phase 2 of the Project include (i) the addition of GIS equipment (ii) approximately one hundred fifty (150) total feet of 345KV, 3000 amps GIS bus which will connect to existing GIS bus containing disconnect and ground switches; (iii) approximately 12 elbows, 3 misalignment joints, 3 gas/air bushings and required structures for bus and bushing supports; and (iv) the necessary removal, addition or modifications to the existing structural steel termination and accessories stand at the Astoria Annex Substation allowing the Developer transmission expansion to interconnect to the point.

The GIS bus section between breakers 3 and 5 will continue to conform to the following existing technical specifications:

- Rated Voltage - 362kV;
- Rated Interrupting Rating - 63kA;
- Rated Current - 3000A;

- Rated 60 Hz. Withstand - 555kV;
- Rated BIL in the pressurized SF_6 housing - 1050kV;
- Rated BIL across any open contacts – 1300kV;
- Rated Test Voltage Withstand for Pothead Compartments – 540kVDC for 15 minutes.

- All electrical components associated with installation of new 345kV feeder, will be SF6 GIS design. The installation will require a penetration to the Astoria Annex wall and the Developer will restore the Astoria Annex wall in a manner satisfactory to the Connecting Transmission Owner.
- Surge Arrestors, if installed, must be done with the review and approval of the Connecting Transmission Owner (capability rating to be determined at the conclusion of an on-going technical switching surge analysis).
- As required, and with NYPA's approval, the GIS equipment supplier will provide platforms to the GIS equipment view ports, gas pressure gauges, and related equipment to ensure easy future safe personnel access and maintenance. The platforms design shall adhere to the OSHA requirements.

The following are details regarding the protection and control equipment required at the Astoria Annex Substation:

- Existing metering and protection current transformers will be utilized. Two relay protection panels will be installed consisting of new control, supervisory and protection equipment along with all wiring, terminations and raceways. The existing relay room layout will be modified to provide space for the installation of two relay panels associated with Developer's new 345kV to 138kV feeder. The existing zones of relay protection will be modified and new zones of relay protection will be established in compliance with Connecting Transmission Owner's Engineering Specifications and NPCC Bulk Power System Protection requirements.

- AC and DC control power feeds to interface control cabinet will be installed.

- Developer to wire RTU alarm inputs from the autotransformer, phase angle regulator and protective relays.

(b) Other System Upgrade Facilities:

There are no Other System Upgrade Facilities that are covered by this Agreement.

43. System Deliverability Upgrades:

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

PAGE CONTAINS CEII MATERIAL.

Figure A-1 – Single Line Diagram for Phase 1 System Interconnection

Material has been redacted.

PAGE CONTAINS CEII MATERIAL

Figure A-2 – Single Line Diagram for Phase 2 System Interconnection

Material has been redacted.

5. Deliverability System Upgrades

There are no Deliverability System Upgrades for the Transmission Facility that are covered by this Agreement.

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.

APPENDIX B

MILESTONES

1. Selected Option Pursuant to Article 5.1

Under section 5.1 of this Agreement, Developer and Connecting Transmission Owner have agreed that, pursuant to Subsection 5.13 (Option to Build), Developer shall be responsible for designing, procuring and constructing System Upgrade Facilities identified in Section 3a of Appendix A of this Agreement. Developer shall, at its expense, and with the Connecting Transmission Owner's approval, be responsible for dismantling and removal of any of the equipment that was installed in Phase 1, that is determined to be temporary and not used in Phase 2, as described in 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 3a 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 following milestones shall apply to the engineering, procurement, construction, and testing for the interconnection of the transmission expansion and SUFs.

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.

2. Milestones PHASE 1 SOLUTION

Item	Milestone	Responsible Party	Due Date
(a)	Developer Phase I Cable installed, tested and ready for Energization	Developer	5/9/2012
(b)	Completion of Phase 1 System Upgrade Facilities	Developer	5/9/2012

Item	Milestone	Responsible Party	Due Date
(c)	Commercial Operation Date ("COD")	Developer	5/15/2012

Milestones PHASE 2 SOLUTION

Item	Milestone	Responsible Party	Due Date
(a)	Connecting Transmission Owner initiates authorization to issue GIS Purchase Order	Connecting Transmission Owner	9/1/2012
(b)	Developer Phase II Cable installed, tested and ready for Energization	Developer	5/13/2013
(c)	Completion of Permanent System Upgrade Facilities	Developer	5/13/2013
(d)	Commercial Operation Date ("COD")	Developer	5/15/2013

* Prior to the In-Service Date, Developer shall comply with NYISO procedures and request and obtain written approval for synchronization from Connecting Transmission Owner. If the facility is determined ready for synchronization by Connecting Transmission Owner, Connecting Transmission Owner shall grant such approval within ten (10) days of receiving the request by Developer.

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

A. No permits are required for the Phase 1 work. If permits are required for the Phase 2 work, 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.

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 Developer's Transmission Facility as described in Appendix C.

APPENDIX C

INTERCONNECTION DETAILS

1. Description of Facilities including Point of Interconnection

(a) Overview of the Transmission Expansion

The transmission expansion facility is a 234 MVA Phase Angle Regulator 345kV to 138kV transmission project that will connect the existing Developer's 138kV Astoria East Substation located in Astoria , New York, with the Connecting Transmission Owner's Astoria Annex 345kV GIS Substation in Astoria, New York.

The transmission expansion includes approx. 2000 feet of 138 and 345kV alternating current ("AC"), cable system connection from the Astoria East 138kV Substation to the Astoria Annex 345kV GIS Substation A simplified schematic illustrating the major components of the transmission expansion are included in Appendix A, as Figures A-1 and A-2. The transmission expansion will have an operating capability of 234 MVA.

The POI-Phase 1 is identified in Figure A-1 (the Phase I solution) at the Astoria Annex 345kV GIS Substation between existing circuit breakers R2 and the R2 Shunt reactor and as shown in Figure A-1. Phase 1 is scheduled to be in service by the summer of 2012.

The POI-Phase 2 is identified in Figure A-2 (the Phase 2 solution) at the Astoria Annex 345kV GIS Substation between existing circuit breakers 3 and 5 as shown in Figure A-2. Phase 2 is scheduled to be in service by the summer of 2013.

(b) Detailed Description of the Transmission Facility

The major components for the transmission expansion are as follows:

Phase 1 Reliability Solution :

- One (1) Autotransformer, rated 125.4/234 MVA, 335/136/13.8KV, Impedance: 14.0% at 234MVA, 335KV, LTC position N.
- One (1) Phase Angle Regulator, rated 125.8/234/300 MVA, 138KV, Impedance: 4.17% at 125.8MVA, 138KV LTC position N.
- Three (3) 345KV Lightning Arresters.
- Three (3) 138KV Lightning Arresters.

- Approx. 350 feet run of 2500kcmil solid dielectric cable, 138KV, above grade to the new pothead stand between existing breakers, located at the Astoria East 138KV Substation.
- Approx. 1500 feet run of 795 MCM ACRS (Aluminum Conductor Steel Reinforced) cable.
- Twelve (12) wood poles (six H frames) with associated hardware.
- Two (2) Relay Panels for first & second line protection of the new feeder.
- Miscellaneous fiber optic, control, power & grounding cables with associated raceways and terminations.
- New grounding grid in auto transformer and PAR area.
- Security and lighting systems.

Phase 2 Reliability Solution :

- Approx. one hundred fifty (150) total feet of 345KV, 3000 amps GIS bus which will connect to existing GIS bus containing disconnect and ground switch, approx. 12 elbows, 3 misalignment joints, 3 gas/air bushings and required structures for bus and bushing supports.
- Same Autotransformer and Phase Angle Regulator, as listed in PHASE I above (items 1 and 2).
- Same Lightning Arresters, as listed in Phase I above (items 3 and 4).
- Same solid dielectric cable, as listed in Phase I above (item 5).
- Approx. 2000 feet run of 795 MCM ACRS cable.
- Two (2) new Relay Panels for first & second line protection of the new feeder.
- Miscellaneous fiber optic, control, power and grounding cables with associated raceways and terminations.
- Two (2) lighting masts.
- Approx. six (6) additional wood poles.

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 Facility'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

Developer shall provide, install and test relay protection systems associated with the control and protection of the transmission expansion to interface with those systems installed by Connecting Transmission Owner at the Astoria Annex345kV GIS Substation.

4. Transmission Expansion Design and Construction

In accordance with Article 5.2 and Article 24.4, Developer shall provide to Connecting Transmission Owner all detailed design drawings, requirements, specifications, calculations, equipment drawings, "as-built" drawings, information and documents for the Transmission Facility and transmission expansion, including the following:

a) Final design and performance verification studies as described in Section 5 below;

b) A one-line diagram;

c) Site plan and elevation drawings;

d) Relay functional diagram(s), AC and DC schematic wiring diagrams and device settings for all facilities associated with the; and

e) Autotransformer and Phase Angle Regulator impedances (determined by factory tests) for the 345kV to 138kV transformer and 138 kV PAR, respectively.

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.

APPENDIX E1

COMMERCIAL OPERATION DATE – PHASE 1

[Date]

New York Power Authority
123 Main Street
White Plains, NY 10601
Attn: Vice President,
Transmission
Phone: Fax:

Re: Astoria Reliability Project (Cable 34091) Transmission Facility Phase 1

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]

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York NY, 10003

APPENDIX E2

COMMERCIAL OPERATION DATE - PHASE 2

New York Power Authority
123 Main Street
White Plains, NY 10601
Attn: Vice President, Transmission
Phone: Fax:

Re: Astoria Reliability Project (Cable 34091) Transmission Facility Phase 2

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]

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York NY, 10003

APPENDIX F

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

CONFIRM WHO AT CON EDISON SHOULD RECEIVE THE NOTICES AND BILLS.

1. Notices:

(b) Connecting Transmission Owner:

New York Power Authority
123 Main Street
White Plains, NY 10601
Attn: Vice President, Transmission
Phone: (914) 681-6574

(c) 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

2. Billings and Payments:

(a) Connecting Transmission Owner:

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

(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

AMENDED

COST REIMBURSEMENT AGREEMENT

Between

NIAGARA MOHAWK POWER CORPORATION
d/b/a/ National Grid

and

NEW YORK POWER AUTHORITY

(NYISO OATT Service Agreement No. 2177)

COST REIMBURSEMENT AGREEMENT

THIS COST REIMBURSEMENT AGREEMENT (the "*Agreement*"), made and entered into as of this November [___], 2014 (the "*Effective Date*"), by and between the **NEW YORK POWER AUTHORITY**, having an office and place of business at 123 Main Street, White Plains, New York 10601 (the "*Customer")*, and **NIAGARA MOHAWK POWER CORPORATION**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer is planning to install new Series Compensation Equipment (the "*Project*") on the existing Edic –Frazier 345 kV transmission line; and

WHEREAS, Customer has undertaken a study of adjoining transmission facilities and has identified equipment on Company's transmission system that will require the Company to engineer, design, procure, construct, test and commission replacements or up-grades as part of the Project; and

WHEREAS, Customer shall be responsible for all costs arising from such engineering, design, procurement, construction, testing and commissioning; and

WHEREAS, all such construction, testing and commissioning shall be performed solely on Company facilities and property and Company shall own and operate such replacements and up-grades on Company's transmission system as described in this Agreement; and

WHEREAS, the Company is willing to perform these requested replacements and upgrades to its equipment, subject to the terms and conditions of this Agreement;

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

1.0 Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Agreement*" means this Cost Reimbursement Agreement including all annexes, appendices, attachments, schedules and exhibits and any subsequent amendments, supplements, or

modifications thereto, as mutually agreed to and executed by the Parties in accordance with the terms of this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its affiliates in connection with performance of the Work (as defined below) or otherwise incurred by Company and/or its affiliates in connection with the Project (as defined below) or this Agreement. Without limiting the foregoing, these Company Reimbursable Costs shall include the actual expenses for labor (including internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Work or otherwise in connection with the Project, all applicable overhead, all federal, state and local taxes incurred (including all applicable taxes arising from amounts paid to Company that are determined to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required consents, releases, approvals, or authorizations, including the Required Regulatory Approvals.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Dollars*" and "$" mean United States of America dollars.

"*Estimated Cost of Work*" shall have the meaning set forth in Section 6.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located. Good Utility Practice shall include, but not be limited to, NERC (defined below) criteria, rules, guidelines, and standards, NPCC (defined below) criteria, rules, guidelines, and standards, NYSRC (defined below) criteria, rules, guidelines, and standards, and NYISO (defined below) criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities. When applied to Customer, the term Good Utility Practice shall include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

"*NPCC"* shall mean the Northeast Power Coordinating Council (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"NYISO" shall mean the New York Independent System Operator, Inc.

"*NYSRC*" shall mean the New York State Reliability Council.

"*Project Manager*" means the respective representative of Customer and the Company appointed pursuant to Section 26.1 of this Agreement.

"Project" means the Work to be performed under this Agreement by the Company.

"Subcontractor" means any organization, firm or individual, regardless of tier, which Company retains in connection with the Agreement.

"*Supplemental Conditions*" means those terms and conditions, if included in the Agreement by mutual written agreement of the Parties, which add to or modify the Agreement and are incorporated by reference as if fully set forth in the Agreement. In the case of a conflict between the Supplemental Conditions and the Agreement, the Supplemental Conditions shall prevail.

"*Work*" shall have the meaning specified in Section 3.1 of this Agreement.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until all amounts due and owing hereunder from Customer to Company have been paid in full as contemplated by this Agreement, or until terminated in accordance with the terms of this Agreement, whichever occurs first. From and after the date of receipt of final payment and written acknowledgement by Company that full payment for the Work has been paid by Customer, this Agreement shall terminate and be of no further force or effect and the Parties shall have no obligation to each other hereunder, provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

3.0 Scope of Work

3.1 The scope of work is set forth in Schedule A of this Agreement, attached hereto and incorporated herein by reference (the "*Work*").

3.2 Company shall use reasonable efforts to perform the Work in accordance with Good Utility Practice. Prior to completion of the Work, Customer shall have the right to notify the Company in writing of the need for correction of defective Work that does not meet the standards of this Section 3.2 and the Company shall promptly complete, correct, repair or replace such defective Work, as appropriate, at no added cost to the Customer if the previously incurred total Company Reimbursable Costs are equal to or in excess of the Estimated Cost of Work. However, as long as the total Company Reimbursable Costs do not exceed the Estimated Cost of Work, then items of defective Work identified by the Customer prior to completion of the Work that Company reasonably determines need to be re-performed in order to comply with the standards in this Section 3.2 shall be completed or re-performed subject to reimbursement of all costs associated therewith as part of Company Reimbursable Costs. The remedy set forth in this Section shall be the sole and exclusive remedy available to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

4.0 Changes in the Work

4.1 If Customer requests a change in the Work, such request shall be submitted to the Company in writing. If the Parties agree to a change in the Work, such agreed change will be set forth in writing, and the Work schedule shall be adjusted and/or extended as mutually agreed by the Parties. Any additional costs arising from such change shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.3 of this Agreement.

4.2 Notwithstanding the above, and subject to compliance with the last sentence of this Section, Company, without Customer's consent, may make any reasonable changes in the Work in order to ensure the completion of the Project, prevent delays in the schedule, meet the requirements of governmental authorities, laws, regulations, ordinances, Good Utility Practice and/or codes or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable industry codes and standards ("*Company Changes*"). The Work schedule shall be adjusted accordingly and any additional costs shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.3 of this Agreement. If Company becomes aware of the need to make a Company Change that is reasonably expected to have a significant impact on cost or schedule, Company shall provide Customer with written notice of such contemplated Company Change, each such notice to be provided in advance, if possible, but, in any event, as soon as may be reasonably practicable under the circumstances.

5.0 **Performance and Schedule**

5.1 The Company shall use commercially-reasonable efforts to attempt to have Work performed by its direct employees performed during normal working hours. The foregoing notwithstanding, if Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs.

5.2 If Customer requests, and the Company agrees, to work outside normal working hours due to delays in the Project schedule or for other reasons, Company shall be entitled to recover all actual costs resulting therefrom as part of Company Reimbursable Costs.

5.3 The Projected Milestone Schedule is set forth in Schedule B, attached hereto and incorporated herein by reference. The Projected Milestone Schedule is a projection only and subject to change. Neither Party shall be liable for failure to meet the Projected Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement, the Work or the Project.

6.0 **Estimate Only; Customer Obligation to Pay Company Reimbursable Costs.**

6.1 The current good faith estimate of the total Company Reimbursable Costs, exclusive of applicable taxes, to complete the Work is Four Million One Hundred and Thirteen Thousand Dollars ($4,113,000) ("*Estimated Cost of Work*"). The Estimated Cost of Work, including any revisions thereto, is an estimate only. The Estimated Cost of Work (and any revisions thereto) and any other estimates provided under or in connection with this Agreement or the Work shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its affiliates.

7.0 **Payment**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs incurred in connection with performance of the Work described in PART 1 of Schedule A hereto ("*Preliminary Engineering & Design Work*"). Within thirty (30) Days following the Effective Date, the Company shall invoice Customer for an initial prepayment of Five Hundred Ninety Thousand Dollars ($590,000) ("*Initial Prepayment*") and Customer shall pay the Initial Prepayment to Company within thirty (30) Days of invoice receipt. Company shall not be obligated to commence Work under this Agreement prior to receiving the Initial Prepayment.

7.2 Once Company has completed the Preliminary Engineering & Design Work and Customer has delivered a written consent to proceed ("*Consent to Proceed*"), the

Company shall commence the Work described in PART 2 of Schedule A hereto (the "*Implementation Work*"). Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred in connection with performance of the Implementation Work. Monies remaining from the Initial Prepayment after payment of all Company Reimbursable Costs for the Preliminary Engineering & Design Work, if any, shall be credited to the Customer for use toward defraying Company Reimbursable Costs for the Implementation Work.

7.3 Company may periodically invoice Customer for Company Reimbursable Costs incurred. Company is not required to issue periodic invoices to Customer and may elect, in its sole discretion, to continue performance hereunder after the depletion of the Initial Prepayment or any subsequent prepayment made by Customer, and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable within thirty (30) Days following receipt of the invoice. The payment of interest by Customer on overdue amounts in connection with this Agreement shall be governed by subparagraphs 5 through 8 of paragraph D as set forth in the Customer's prompt payment policy attached hereto as Schedule E ("*Prompt Payment Policy Interest Provisions*"). . For the avoidance of doubt: in the event of any difference or conflict between the terms of this Agreement and the terms of the Prompt Payment Policy Interest Provisions, the Prompt Payment Policy Interest Provisions shall govern. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement is not received within thirty (30) Days following the applicable due date, Company may suspend any or all Work pending receipt of all overdue amounts from Customer.

If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to Company, relieving Company from any obligation to collect sales taxes from Customer ("*Sales Tax Exemption Certificate*"). During the term of this Agreement, Customer shall promptly provide Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.4 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate upon written notice to the Company:

New York Power Authority
ATTN: Manna Yu, Accounts Payable
P. O. Box 437
White Plains, N.Y. 10602-0437

7.5 Payments to the Company shall be made by Automated Clearing House transfer in accordance with the following bank instructions (please include a copy of the invoice):

Wire Payment: JP Morgan Chase
ABA#.021000021
Credit: National Grid USA
Account #777149642

8.0 **Final Payment, Books & Recordkeeping**

8.1 Following completion of the Work, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("***Total Payments Made***"). If the total of all Company Reimbursable Costs is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "***Balance Amount***"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer ("***Reimbursement Amount***"). The Reimbursement Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation.

8.2 The Company shall keep accurate books and records of accounts to reasonably document the Company Reimbursable Costs incurred in connection with performance of the Project and Work or otherwise incurred in connection with this Agreement (such books and records kept in accordance with generally accepted accounting principles). All such books and records to the extent relating to amounts charged to Customer in connection with this Agreement shall be available for review (at Customer's sole cost) by authorized representatives of Customer upon reasonable advanced written request (of not less than ten (10) days), any such review to be conducted at Company's facilities during customary business hours. If any such review determines that there has been an amount under or overpaid in accordance with the terms of this Agreement, then the Party owing such amount shall promptly pay the amount due to the other Party. The obligations under this Article shall expire one (1) year after the termination or cancellation of this Agreement.

9.0 **Customer's Responsibilities-**

9.1 The Customer shall perform the obligations set forth in Schedule C of this Agreement, attached hereto and incorporated herein by reference.

9.2 Customer shall reasonably cooperate with Company as required to facilitate Company's performance of the Work.

9.3 Company shall have no responsibility or liability under this Agreement for any delay in performance, defective performance or nonperformance to the extent such delay in performance, defective performance or nonperformance is caused by the inability or failure of (a) Customer to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by the Customer under this Agreement or (b) Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement.

10.0 **Meetings**

10.1 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimers**

11.1 THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE OF THE WORK HEREUNDER. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS SET FORTH IN SECTION 3.2 OF THIS AGREEMENT. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THE AGREEMENT, ANY PROJECTOR ANY WORK PERFORMED IN CONNECTION THEREWITH, WHETHER WRITTEN, ORAL OR STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, SERVICES OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE WORK, INCLUDING ITEMS INCORPORATED IN THE WORK ("THIRD PARTY WARRANTIES"), ARE NOT TO BE CONSIDERED WARRANTIES OF THE COMPANY AND THE COMPANY MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation or expiration of this Agreement.

12.0 **Liability and Indemnification**

12.1 To the fullest extent allowed by law, Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees (each, individually, an "*Indemnified Party*" and, collectively, the "*Indemnified Parties*"), from and against any and all direct liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, and claims brought by third parties for personal injury and/or property damage (collectively, "*Damages*"), incurred by any Indemnified Party to the extent caused by the negligence, unlawful act or omission, or intentional misconduct of Customer, its parents or affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, and employees, arising out of or in connection with this Agreement, the Project, or Work, except to the extent such Damages are caused by the negligence, intentional misconduct or unlawful act of the Company, the Company's contractors or any person or entity for whom Company is legally responsible.

Customer shall also indemnify and hold harmless the Company and its affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its affiliates as the result of payments made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company affiliate.

12.2 The Company's total cumulative liability to Customer for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not exceed the aggregate amount of all payments made to Company by Customer as Company Reimbursable Costs under this Agreement.

Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party.

12.3 Neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorney's fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.4 Neither Party shall be liable to the other Party for claims of, or damages for, lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.5 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such other Party or any person or entity for whom such other Party is legally responsible) or any third party.

12.6 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation or expiration of this Agreement.

13.0 **Employee Claims; Insurance**

13.1 The Company and Customer elect to self-insure and to maintain the insurance coverage amounts set forth in Schedule D of this Agreement.

13.2 Each Party shall be separately responsible for insuring its own property and operations.

14.0 **Assignment and Subcontracting**

14.1 Each Party may assign this Agreement or any part thereof to any affiliated entity controlling, controlled by, or under common control with, the assigning Party provided such assignee shall be bound by the terms and conditions of this Agreement. For purposes of this Section, "control" of an entity shall mean the ownership of, with right to vote, fifty percent (50%) or more of the outstanding voting securities or equity of such entity. Any assignment of this Agreement in violation of the foregoing shall be voidable at the option of the non-assigning Party.

15.0 **Independent Contractor; No Utility Services**

15.1 Company and Customer shall be independent contractors, and neither Party shall be deemed to be an agent of the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **Examination, Inspection and Witnessing**

16.1 Subject to Customer's and its representatives' compliance with Company's security and other access requirements, the Customer and/or its representatives shall have the right to inspect and examine the Work, from time to time, at Customer's sole cost and expense, with reasonable prior notice to Company. Unless otherwise agreed between the Parties, such inspections, examinations and tests shall be scheduled during normal business hours.

16.2 Company shall inspect all Work and make or cause to be made all tests required by Good Utility Practice at Customer's sole cost and expense as part of Company Reimbursable Costs.

16.3 At times and places mutually agreed to by the Parties, Customer and Company, or their respective designated representatives, shall be entitled to witness any test contemplated by this Agreement.

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with the Work or on the Site(s). In connection with the Project, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 (OSHA), as amended from time to time. While on the property (including, without limitation, easements or rights of way) of, or accessing the facilities of, the other Party, each Party's employees and/or contractors and representatives shall at all times abide by such other Party's safety standards and policies, switching and tagging rules, and escort and other applicable access requirements. The Party owning or controlling the property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors.

18.0 **Approvals, Permits and Easements**

18.1 The actual cost of seeking and/or obtaining all permits, licenses, permissions, consents and Required Regulatory Approvals sought and/or obtained by or on behalf of Company for the Project and the Work shall be paid for by Customer as part of Company Reimbursable Costs. If Company anticipates that the cost of obtaining any such permit, license, permission, consent or Required Regulatory Approval will represent a substantial portion of Project costs, Company shall provide written notice thereof to Customer, such notice to be provided promptly following Company's determination that such costs will be incurred.

19.0 **Suspension of Work**

19.1 Subject to Section 19.2, below, Customer may interrupt, suspend, or delay the Project upon written notice to the Company specifying the nature and expected duration of the interruption, suspension, or delay. Company will use commercially reasonable efforts to suspend performance of the Work when so requested by Customer. Customer shall be responsible to pay Company (as part of Company Reimbursable Costs) for all costs incurred by Company that arise as a result of such interruption, suspension or delay.

19.2 As a precondition to the Company resuming the Work following a suspension under Section 19.1, the Projected Milestone Schedule and the Estimated Cost of Work shall be revised as mutually agreed by the Parties to reflect the interruption, suspension, or delay. Adjustments to the Company Reimbursable Costs shall include any costs or expenses the Company incurs as a result of the interruption, suspension, or delay.

20.0 **Right to Terminate Agreement**

20.1 Notwithstanding any other provision of this Agreement, if either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement, or (b) fails to comply with or perform, in any material respect, any other terms or conditions of this Agreement; then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the other Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, in whole or in part, and thereupon each Party shall promptly discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing Work- and/or Project- related commitments, orders and contracts upon terms that are reasonably expected to minimize all associated costs. However, nothing herein will restrict Company's ability to complete aspects of the Work that Company must reasonably complete in order return its facilities and the Sites to a configuration in compliance with Good Utility Practice

and all applicable laws, codes, regulations and standards. Subject to compliance with Section 26.3 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any limitations on liability contained herein).

20.2 If the event of termination or cancellation of the Work in connection in this Agreement, Customer shall pay Company for:

a. all Company Reimbursable Costs for Work performed on or before the effective date of termination or cancellation;

b. all other Company Reimbursable Costs reasonably incurred by Company in connection with the Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

c. all Company Reimbursable Costs reasonably incurred to unwind Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities and the Site(s) to a configuration in compliance with Good Utility Practice and all applicable laws, codes, regulations and standards, including, without limitation, applicable NERC and NPCC protection requirements; and

d. all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Work prior to the effective date of termination or cancellation; and

e. all Company Reimbursable Costs arising from other reasonable demobilization expenses incurred by Company which cannot be reasonably avoided or mitigated.

21.0 **Delays; Unforeseen Difficulties**

21.1 Any delays or failure of performance by Company shall not constitute a default and shall be excused hereunder, if and to the extent such delays or failures of performance are caused by unforeseen conditions or occurrences beyond the reasonable control of the Company (including, without limitation, conditions of or at the Site(s), delays in shipments of materials and equipment and the unavailability of materials.) If Company becomes aware of circumstances that make it reasonably likely that such a delay or failure will occur and will have a significant impact on cost or schedule, Company shall provide Customer with written notice thereof, each such notice to (i) include the estimated impact of such delay or failure and (ii) be provided in advance, if possible, but, in any event, as soon as may be reasonably practicable under the circumstances.

22.0 **Force Majeure**

22.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and permit requests necessary in connection with the Work or Project, or order by any federal or state regulatory agency, or other similar causes beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather condition. If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement, in whole or in part, with no further obligation or liability; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company Reimbursable Costs as contemplated by Section 20.2 of this Agreement. For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or

reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

22.2 Within thirty (30) Days after the termination of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impacts regarding price and time for performance as a result of the delay.

23.0 **[Reserved]**

24.0 **Proprietary and Confidential Information**

24.1 The rights and obligations of the Parties with respect to confidential and proprietary information (including, without limitation, critical energy infrastructure information and critical infrastructure protection information) shall be governed by the Confidentiality Agreement made as of July 31, 2014 by and among Consolidated Edison Company of New York, Inc., Orange & Rockland Utilities, Inc., the Company, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, the Customer, Long Island Power Authority, Long Island Lighting Company, and Central Hudson Gas & Electric Corporation (the "*Confidentiality Agreement*").

25.0 **Governing Law**

25.1 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York without reference to such State's conflict-of-laws doctrine.

25.2 The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in the State of New York, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

26.0 **Miscellaneous**

26.1 **Project Managers.** Promptly following the Effective Date, each Party shall designate a Project Manager and shall provide the other Party with a written notice containing the name and contact information of its Project Manager. Whenever either Party is entitled to approve a matter, the Project Manager for the Party responsible for the matter shall notify the Project Manager of the other Party of the nature of such matter. The Project Managers shall discuss such matter, and each Project Manager shall confer on such matter on behalf of his/her Party. The foregoing notwithstanding, in no event shall Project Managers be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by providing written notice thereof to the other Party.

26.2 **Company Intellectual Property.** Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

26.3 **Dispute Resolution.** Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Each Party shall designate one or more representatives with the authority to negotiate the matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than sixty (60) days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the agreement of both Parties to participate in such an alternative dispute resolution process.

26.4 **Compliance with Law, Standard Safety Practices, etc**. Each Party shall comply, at all times, with, and procure the compliance, at all times, by all of its subcontractors with, all applicable federal, state, and local laws, rules, codes, regulations, and ordinances in connection with this Agreement and performance of the Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any applicable laws or regulations.

26.5 **Form and Address.** All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third (3rd) business Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) business Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party. Each Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

26.6 **Exercise of Right.** No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

26.7 **Additional Actions and Documents**. Each Party hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file, or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms, and conditions of this Agreement, whether at or after the execution of this Agreement.

26.8 **Headings.** The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

26.9 **Incorporation of Schedules and Exhibits.** The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

26.10 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

26.11 **Prior Agreements; Modifications.** This Agreement and the schedules, attachments, and exhibits attached hereto, together with the Confidentiality Agreement, constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced.

26.12 **Severability.** Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail; provided, however, that in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

26.13 **Nouns and Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

26.14 **No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

26.15 **Validity; Required Regulatory Approvals.** Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

The obligations of each Party under this Agreement are expressly contingent upon (i) each Party receiving all approvals, authorizations, consents, franchises, Permits, and licenses from any local, state, or federal regulatory agency or other governmental agency that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Regulatory Approvals*"), (ii) each Required Regulatory Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Regulatory Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion. If any application or request is made in connection with seeking any Required Regulatory Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Section 20.2 hereof) for all Company Reimbursable Costs incurred. All of the Company's actual costs in connection with seeking Required Regulatory Approvals shall be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

26.16 **Notices** All formal notices, demands, or communications under this Agreement shall be submitted in writing either by hand, registered or certified mail, or recognized overnight mail carrier to:

To Customer:

Mr. Andrew Sumner
Acting VP – Project Management
New York Power Authority
123 Main Street
White Plains, NY 10601
(914) 681-6706

To Company:

Mr. William Malee
Director, Transmission Commercial Services
National Grid
40 Sylvan Road
Waltham, MA 02451
(781) 907-2422

[Signatures are on following page.]

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

NEW YORK POWER AUTHORITY

By: _____
Name:
Title:

NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid

By: _____
Name:
Title:

Schedule A: Scope of Work

Company shall, engineer, design, procure, construct, test and commission the changes to the Company's electric delivery facilities described below.

Please Note:

This Scope of Work ("*Scope*") covers National Grid system upgrade facilities ("*SUF*") identified to date directly affected by the Marcy South Series Compensation Project.

The identified SUFs consist of multiple protective relaying upgrades, installation of addition telecommunications, and the replacement of multiple breakers at existing National Grid facilities. National Grid facilities affected include Edic, New Scotland, Clay and Volney stations.

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PART 1 - Preliminary Engineering & Design Work

Company shall perform the preliminary engineering and design work necessary to procure, construct, test and commission the changes to the Company's electric delivery facilities contemplated by PART 2 of this Schedule A. Upon completion of this preliminary engineering and design work, Company shall provide the Customer with a revised Estimated Cost of Work (+/- 25%) , and, following delivery of such revised Estimated Cost of Work, shall suspend Work pending Customer's delivery of its Consent to Proceed.

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PART 2 - Implementation Work

Company shall perform final engineering and design for, and procure, construct, test and commission, the changes to the Company's electric delivery facilities as contemplated by (i) Sections IA, IIA, IIIA, and IVA of the Revised Preliminary Engineering Report for National Grid Work to Support MSSC Project dated August 12, 2015 attached as Annex 1 to this Schedule A (the "*Preliminary Engineering Report*"), and (ii) the portion of the Preliminary Engineering Report entitled "DISTRIBUTION LINE INTERFERENCE MODIFICATION".

Annex 1 to Schedule A

REVISED PRELIMINARY ENGINEERING REPORT FOR NATIONAL GRID WORK TO SUPPORT MSSC PROJECT

REVISED PRELIMINARY ENGINEERING REPORT
For
NATIONAL GRID WORK TO SUPPORT MSSC PROJECT

August 12, 2015

Based upon the preliminary engineering and design work that has been performed, National Grid is seeking approval to proceed with the scope of work as defined in the Cost Reimbursement Agreement, Schedule A, Part 2, per the original scope as modified per the specific changes and clarifications below. Also included is the updated estimated cost per Station. If no clarifications or changes are provided below, the work will be performed per the original scope.

Edic Station work – Original Scope

Edic-Fraser Line 24-40 will need relaying and telecommunications upgrades along with breaker replacements.

Edic Station Upgrades

Replace two (2) existing circuit breakers (R400 & R915) with ones capable of handling the anticipated Transient Recovery Voltage ("*TRV*");

Replace / add six (6) line and bus Capacitance Coupled Voltage Transformers ("*CCVTs*");

Replace wave trap;

New cable and raceway for separation between system 'A' and 'B' packages;

Protection

Replace existing system 'A' and 'B' line protection packages with microprocessor based series compensated line protection packages;

Control & Integration (C&I)

Reuse existing RTU / EMS points;

Upgrade controls to current standards;

Telecommunications

Replace existing system 'A' protection package power line carrier ("*PLC*") equipment with new RFL PLC DCUB and Direct Transfer Trip ("*DTT*") communications;

Replace existing system 'B' protection package audio tone equipment with new audio tone equipment with POTT and DTT communications;

Assumptions, Clarifications and Exceptions

New circuit breakers referred to above are assumed to be of similar physical size as the existing circuit breakers;

Existing Edic control house does not have the necessary space for additional panels, therefore, this Scope assumes that any new panels will be installed in

outdoor panels or in a new Edic control house that may be constructed by National Grid;

This Scope assumes that the existing above-referenced RTU / EMS points are adequate for reuse, if outdoor cabinets utilized.

Marcy-Edic Line UE1-7 will need relaying and telecommunications upgrades.

Edic Station Upgrades

New cable and raceway for separation between system 'A' and 'B' packages;

Protection

Replace existing system 'A' pilot distance protection package with a microprocessor based line differential relay protection package.

Replace existing system 'B' line differential protection package with a microprocessor based line differential relay protection package.

Replace existing system 'A' DTT relay with a microprocessor based one for breaker failure DTT over fiber;

Control & Integration (C&I)

Reuse existing RTU / EMS points;

Telecommunications

Replace existing system 'A' protection package pilot communication equipment with fiber optic equipment;

Assumptions, Clarifications and Exceptions

Existing Edic control house does not have the necessary space for additional panels, therefore, this Scope assumes any new panels will be installed in outdoor panels or in a new Edic control house may be constructed by National Grid;

This Scope assumes that the existing above-referenced RTU / EMS points are adequate for reuse, if outdoor cabinets utilized;

This Scope also assumes that redundant fiber optic cable will be run between Marcy and Edic by others; therefore, work and cost for this are not included in the Scope**.**

Edic-Clay Lines 15 and 16

Protection

Replace existing 'B' protection package with a microprocessor based series compensated line protection package at each terminal.

Edic-New Scotland (14) Line

Protection

Replace existing 'B' protection package with a microprocessor based series compensated line protection package (SEL 421-5) at Edic Terminal.

Fitzpatrick-Edic (FE-1) Line

Protection

Replacement of existing 'A' and 'B' protection packages with microprocessor based series compensated line protection packages (GE D60 and SEL 421-5) at Edic Terminal.

IA. Edic Station REVISED and Updated Scope (see Reference Drawing # Drawing # D-66895-C, sht 1)

1. Due to NPCC Bulk Power separation criteria and the overcrowded conditions existing in the Edic control building, the new protective relays and telecommunications equipment for MSSC/TOTS must be installed in a new control building that will be constructed by National Grid. Evaluation of site conditions has led to a determination that the upgrades cannot be performed using outdoor panels or cabinets while still meeting Bulk Power System (BES) separation criteria.

2. The Edic-Fraser Line 24-40 protective relays and telecommunications are being designed as follows:

   The A line protection package will be a directional comparison unblocking (DCUB) scheme using a GE D60 and RFL 9780 carrier equipment. Switch onto fault and stub bus protection shall be utilized.
   The B line protection package will be a permissive overreaching transfer trip (POTT) scheme using an SEL-421-5 and RFL GARD8000 tone equipment. Switch onto fault protection shall be utilized.

3. The Marcy-Edic Line UE1-7 protective relays and telecommunications are being designed as follows:

   The A line protection package will be a line differential SEL-411L. Redundant fiber pairs will be used for communication to Marcy. Switch onto fault and stub bus protection shall be utilized. Back up distance functions will be enabled for backup when both differential channels are lost.

The B line protection package will be a line differential SEL-311L. Redundant fiber pairs will be used for communication to Marcy. Switch onto fault and stub bus protection shall be utilized. Back up distance functions will be enabled for backup when both differential channels are lost.

A redundant direct transfer trip scheme for breaker failure at Marcy will be used. The A and B packages will use mirrored bits on fiber using SEL-351 relays. The schemes will trip the breakers and drive the reclosing relay to lockout.

The new, second fiber optic channel from Marcy (SkyWrap to be installed by Others for NYPA) will require the fiber pairs to be directed from the NYPA splice box at the Edic switchyard entry to the Edic control building, and terminated / patched by National Grid to the relay panels in order to complete the fiber path.

4. The Edic-New Scotland Line 14 protective relays and telecommunications are being designed as follows:

   The A line protection package will be a permissive overreaching transfer (POTT) scheme using a GE D60 and RFL IMUX 2000 multiplexer with DS-TT cards.

   The B line protection package will be a directional comparison unblocking (DCUB) scheme using an SEL-421-5 and RFL IMUX 2000 multiplexer with DS-TT cards.

5. The Edic-Clay Lines 2-15 and 1-16 protective relays have been designed and installed as follows:

   The A line protection relay on each line has been replaced with an SEL-421-5 with series compensation settings capabilities. The relays have been programmed and placed in service on 5/27/15.

   The existing B line protection relay on each line (ERL Phase LPro-2100) has been reprogrammed with new settings to accommodate the series compensation.

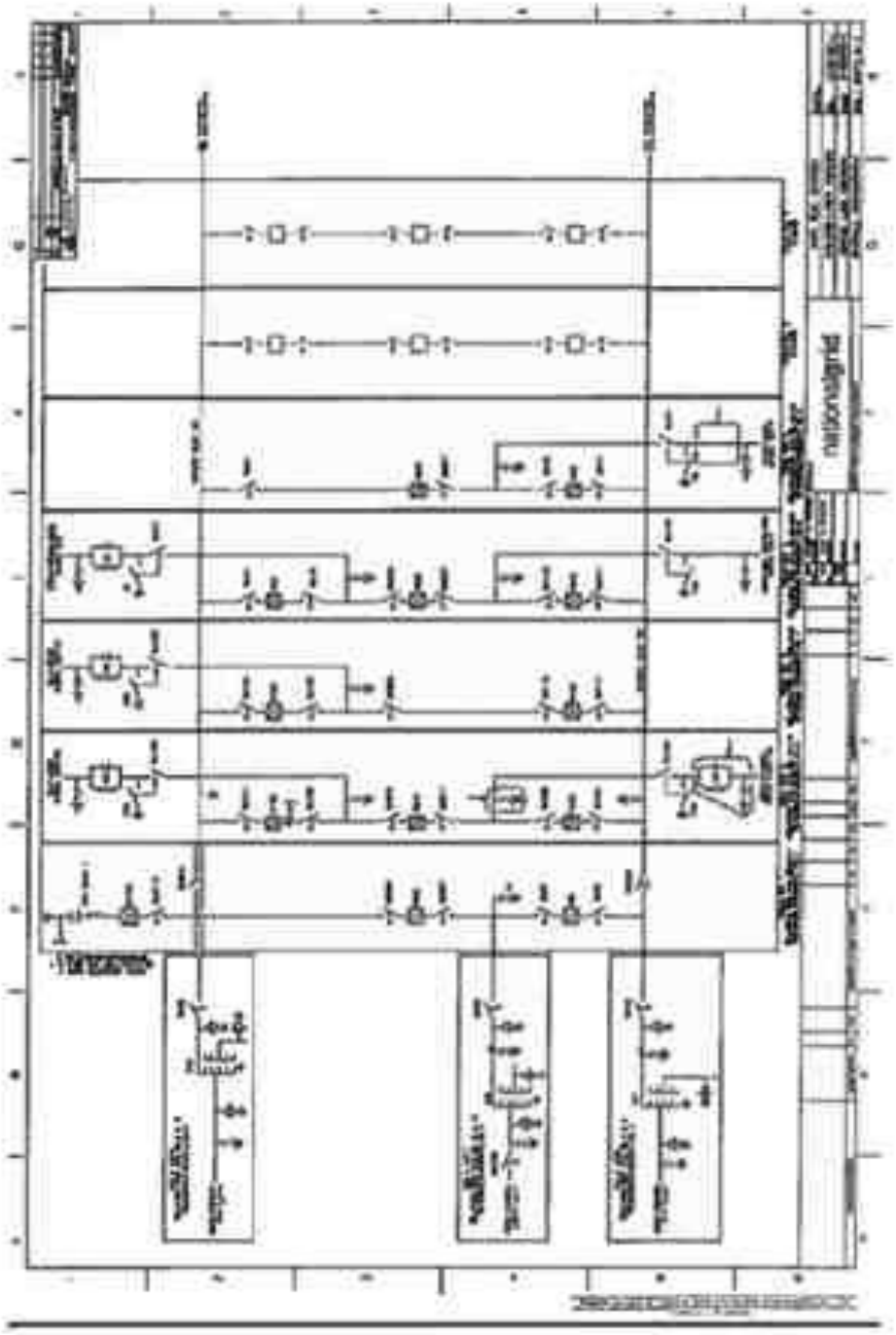
6. Certain cabling and control cabling costs were added not identified in the first version of the preliminary engineering report.

IB. Edic Station Revised and Updated Cost Estimate

Company Field Labor = $448,000
Company Project Management and Engineering = $186,000
Contract Labor = $337,000
Materials = $581,000
Transportation/Equipment = $84,000
Other = $16,000
Company Overheads and Costs = $430,000
Contingency (25%) = $520,000

TOTAL = $2,602,000

EDIC STATION DIAGRAM



II. New Scotland Station work – Original Scope and Assumptions

Gilboa-New Scotland Line 1 will need relaying upgrades.

Protection

Replace existing system 'A' line protection package with a microprocessor based series compensated line protection package;

Control & Integration (C&I)

Reuse existing RTU / EMS points;

Assumptions, Clarifications and Exceptions

This Scope assumes that adequate system 'A' and 'B' separation exists**.**

Edic-New Scotland (14) Line

Protection

Replace existing 'B' protection package with a microprocessor based series compensated line protection package (SEL 421-5) at New Scotland Terminal.

Marcy-New Scotland (18) Line

Protection

Replace existing 'B' protection package with a microprocessor based series compensated line protection package (SEL 421-5) at New Scotland Terminal.

IIA. New Scotland – Updated Scope (see Reference Drawings C-8059-E shts 4, 7, 8)

1. The Original Scope assumed that New Scotland Station had proper A and B separation to meet NPCC Bulk Power criteria. During preparation of National Grid's technical scope, it was determined that control buildings 1 and 2 do not have proper separation. Only control building 3 has proper separation. In order to ensure proper separation, it was determined to install all the new relays in control building 3.

2. The Gilboa-New Scotland Line 1 protective relays and telecommunications are being designed as follows:

   The A line relay protection package will be a microprocessor-based directional distance relay (GE-D60) in a permissive overreaching (POTT) scheme. An RFL GARD8000 will be used for communication to Gilboa station. The GARD8000 will be programmed to match the RFL9745 installed at Gilboa.

A leased line will be used for the communication medium. This relay and telecommunications package will be installed in control building 2.

The existing B line relay protection will be renamed and re-used, with updated relay settings to accommodate the series compensation. The 21TTB/46TTB/LN1 relay will be renamed to 94TTB/LN1 and all potential and current sources will be disconnected.

3. The Edic-New Scotland Line 14 protective relays and telecommunications are being designed as follows:

   To achieve proper A and B separation, the new relays for Line 14 will be installed in control building 3. This will necessitate replacement of both the A and B line protection packages.

   The A line relay protection package will be a microprocessor-based directional distance relay (GE D60) in a permissive overreaching (POTT) scheme. A DS-TT card in an RFL IMUX 2000 will be used for communication to Edic station.

   The B line relay protection package will be a microprocessor-based directional distance relay (SEL-421-5) configured in a permissive overreaching (POTT) scheme. A DS-TT card in an RFL IMUX 2000 will be used for communication to Edic station.

4. The Marcy-New Scotland Line 18 protective relays and telecommunications are being designed as follows:

   To achieve proper A and B separation, the new relays for Line 18 will be installed in control building 3. This will necessitate replacement of both the A and B line protection packages.

   The A line relay protection package will be a microprocessor-based directional distance relay (GE D60) in a directional comparison unblocking (DCUB) scheme. An RFL 9780 FSK power line carrier set will be used for communication to Marcy station.

   The B line relay protection package will be a microprocessor-based directional distance relay (SEL-421-5) configured in a permissive overreaching transfer trip (POTT) scheme. An RFL GARD8000 will be used for communication to Marcy station. The GARD8000 will be programmed to match the RFL9745 installed at Marcy. A leased phone line will be used for the communication medium.

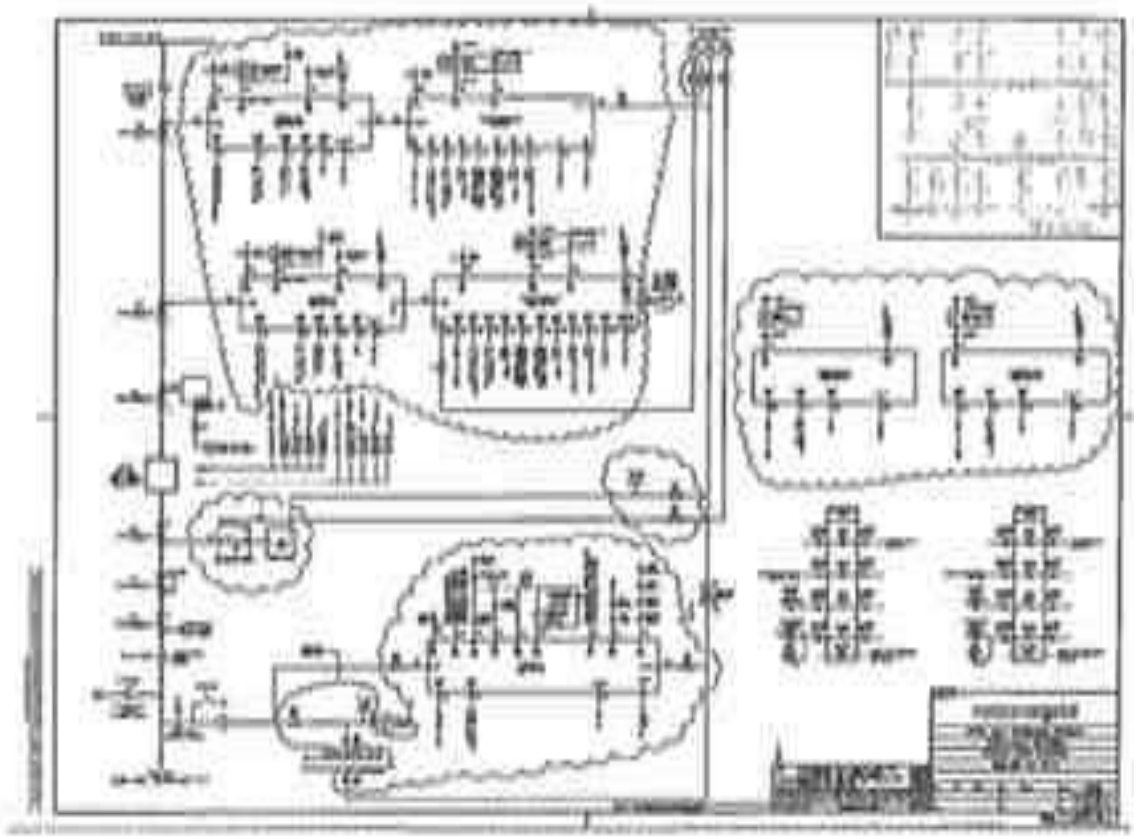
IIB. Total Estimated Cost for New Scotland Scope as revised;

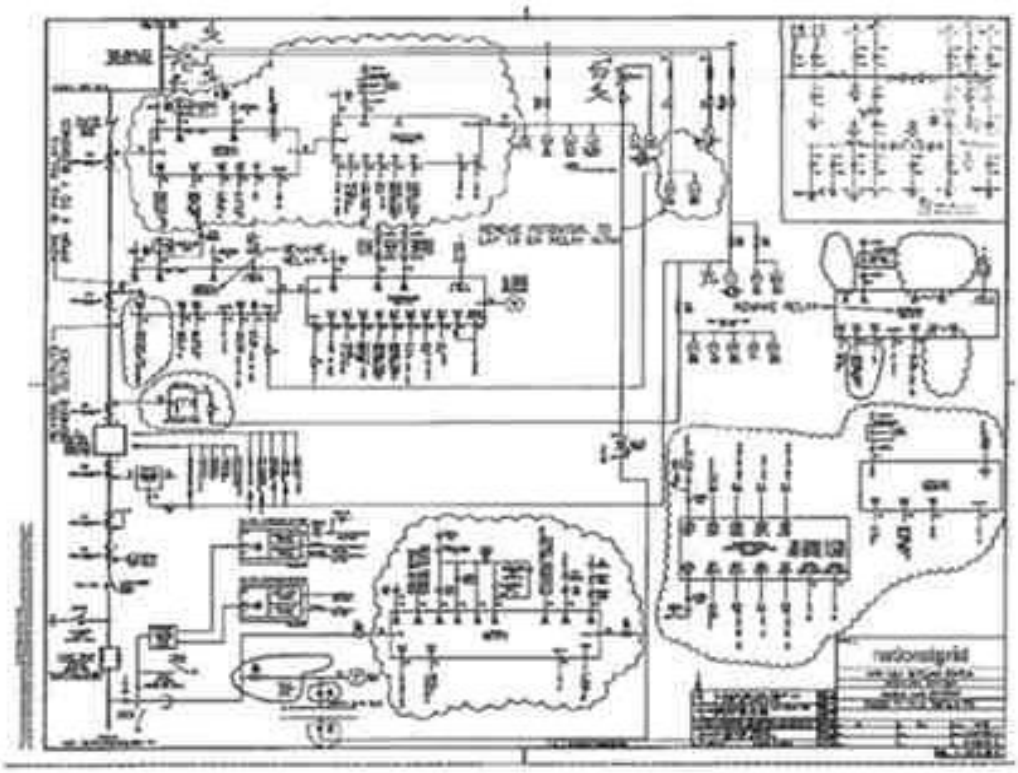
Company Field Labor = $256,000
Company Project Management and Engineering = $133,000
Contract Labor = $36,000
Materials = $261,000

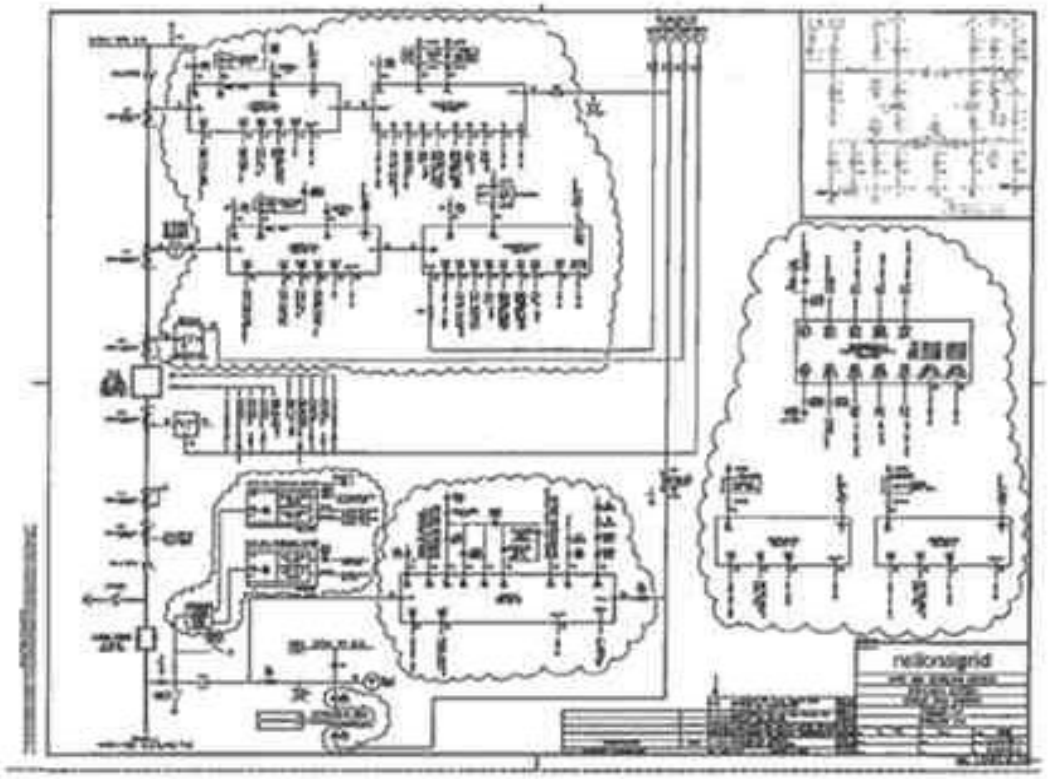
Transportation/Equipment = $33,000
Other = $8,000
Company Overheads and Costs = $274,000
Contingency (25%) = $249,000

TOTAL = $1,250,000

New Scotland Diagrams







III. Volney Station work – Original Scope

Volney-Marcy Line 19 will need additional relaying upgrades.

Protection

Replace existing 'B' protection package with a microprocessor based series compensated line protection package;

Control & Integration (C&I)

Reuse existing RTU / EMS points

Assumptions, Clarifications and Exceptions

This Scope assumes that the existing Volney control house panels have space for additional equipment and that the existing above-referenced RTU / EMS has spare points for use.

IIIA. Volney Station – Updated Scope

The Volney-Marcy Line 19 protective relays have been designed and installed as of 5/13/15 as follows.

The existing B line protection relay (SEL-321) has been replaced with an SEL-421-5 with series compensation settings capabilities. The relay has been programmed and placed in service.

The existing A line protection relay (ERL Phase LPro-2100) has been reprogrammed with new settings to accommodate the series compensation.

IIIB. Volney Station Cost Estimate

Company Field Labor = $27,000
Company Project Management and Engineering = $12,000
Contract Labor = $16,000
Materials = $8,000
Transportation/Equipment = $3,000
Other = $1,000
Company Overheads and Costs = $15,000
Contingency (5%) = $4,000

TOTAL = $86,000

IV. Clay Station work – Original Scope

Edic-Clay Lines 15 and 16

Protection

Replace existing 'B' protection package with a microprocessor based series compensated line protection package at each terminal.

IVA. Clay Station Updated Scope

1. The Edic-Clay Lines 2-15 and 1-16 protective relays have been designed and installed as of 5/27/15 as follows.

   The B line protection relay on each line has been replaced with an SEL-421-5 with series compensation settings capabilities. The relays have been programmed and placed in service.
   The existing A line protection relay on each line (ERL Phase LPro-2100) has been reprogrammed with new settings to accommodate the series compensation.

IVB. Clay Station Updated Estimate

Company Field Labor = $59,000
Company Project Management and Engineering = $10,000
Contract Labor = $20,000
Materials = $25,000
Transportation/Equipment = $7,000
Other = $1,000
Company Overheads and Costs = $34,000
Contingency (5%) = $8,000

TOTAL = $167,000

DISTRIBUTION LINE INTERFERENCE MODIFICATION

For modification to our distribution system to remove a potential high voltage line interference related to changes caused by the MSSC Project affecting NYPA's 345 kV UCCs-41 transmission line.;

1. Scope: National Grid will modify the distribution line by lowering the crossarm on our structure #4 a distance of three feet, and installing an intermediate pole

2. Estimated Cost for proposed scope:

Labor = $4800

Transportation = $500

Materials = $1100

Company Overheads = $1600

Total Estimated Cost = $8000

V. TOTAL REVISED and UPDATED NATIONAL GRID PROJECT ESTIMATE

Edic Station Estimate = $2,602,000

New Scotland Station Estimate = $1,250,000

Volney Station Estimate = $167,000

Distribution Line Interference Modification = $8,000

Total Revised and Updated Project Estimate = $4,113,000

;

;

Schedule B: Projected Milestone Schedule

PROJECTED MILESTONE SCHEDULE*

Task	Milestone	Date	Responsible Party
1.	Execute Agreement	November 21, 2014	Customer/Company
2.	Invoice and Payment of Initial Prepayment	November 26, 2014	Customer/Company
3.	Start Part 1 (Preliminary Engineering & Design Work)	December 12, 2014	Company
4.	Complete Part 1	March 1, 2015	Company
5.	Delivery of Consent to Proceed with Part 2 (Implementation Work)	March 15, 2015	Customer
6.	Complete Final Engineering, Design and Procurement	February 15, 2016	Company
7.	Start Construction	March 1, 2016	Company
8.	Complete testing; become operational	June 30, 2016	Company

* Company, under a separate project (and not as part of the Work and at no cost to the Customer), may elect to design and construct a new control house building at Edic Station, any such project will have a direct relationship to, and may result in delays in, the Work and the preliminary schedule contemplated by this Schedule B.

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension in accordance with the terms of this Agreement.

Schedule C: Customer's Responsibilities

Customer shall provide:

1. If and to the extent applicable or under the control of the Customer, complete and accurate information regarding requirements for Work, including, without limitation, constraints, space, requirements, underground or hidden facilities and structures, and all applicable drawings and specifications; and

2. At Sites where Customer has site control, provide access to the Site where services are to be performed for Company and its contractors and adequate parking for Company and contractor vehicles; and.

3. Other responsibilities and access deemed necessary by Company to facilitate performance of the Work

Schedule D*:* Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of **New York.** If required, coverage shall include the U.S. Longshoremen's, Harbor Workers Compensation Act & the Jones Act.

- Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with following minimum limits:

  (A) Bodily Injury - $1,000,000/$1,000,000
  Property Damage - $1,000,000/$1,000,000
  OR
  (B) Combined Single Limit - $1,000,000
  OR
  (C) Bodily Injury and Property Damage per Occurrence - $1,000,000
  General Aggregate & Product Aggregate - $2,000,000 each

- Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

   To: National Grid c/o NIAGARA MOHAWK POWER CORPORATION
   Attention: Risk Management, A-4
   300 Erie Boulevard West
   Syracuse, NY 13202

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: Procurement Department
123 Main Street
White Plains, NY 10601

2. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, both Parties shall furnish to each other with copies of any accidents report(s) sent to the a party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work for the Project under this Agreement.

5. Each Party shall comply with any governmental and/or site specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other that it will have full policy limits available and shall notify each other in writing when coverage's required herein have been reduced as a result of claim payments, expenses, or both.

Schedule E: Prompt Payment Policy

Service Agreement No. 2223

COST REIMBURSEMENT AGREEMENT
MORTIMER STATION, STATION 56

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as ofMarch 5, 2015 (the "*Effective Date*"), by and between **ROCHESTER GAS AND ELECTRIC CORPORATION**, a utility organized and existing under the laws of NEW York State, having an office and place of business at 89 East Avenue Rochester, NY 14604*(*"*Customer*" or "*RG&E*"*)* and **NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*" or "*National Grid*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer has requested that Company perform certain Work with respect to Mortimer Station, Station 56and related portions of transmission lines/circuits and equipment located inside the property lineof the impacted National Grid Stationsas described herein; and

WHEREAS, Company is willing to perform the Work, subject to reimbursement by Customer of all Company costs and expenses incurred in connection therewith;

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

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person; "control" of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all 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 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, NYISO, NPCC, and NYSRC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Work or otherwise in connection with the Project, all applicable overhead, all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations, including, without limitation, the Required Approvals.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Dollars*" and "$" mean United States of America dollars.

"*Effective Date*"shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located. Good Utility Practice shall include, but not be limited to, NERC, NPCC, NYSRC, and NYISO criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" and "*Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Indemnifying Party*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Initial Prepayment*" shall have the meaning set forth in Section 7.1 of this Agreement.

"*Monthly Report*" shall have the meaning set forth in Section 7.3 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization.

"*NYPSC*" shall mean the New York Public Service Commission.

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

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Projected Milestone Schedule*" shall have the meaning set forth in Section 5.3 of this Agreement.

"*Project*" means the Work to be performed under this Agreement by the Company.

"*Project Manager*" means the respective representative of the Customer and the Company appointed pursuant to Section 27.1 of this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Receiving Party*" shall mean the Party receiving Proprietary Information.

"*Reimbursement Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Requesting Party*" shall have the meaning set forth in the Real Property Standards.

"*Required Approvals*" shall have the meaning set forth in Section 27.12 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Site*" shall mean Station 56 located at188 W. Jefferson Road, PittsfordNY.

"*Subcontractor*" means any organization, firm or individual, regardless of tier, which Company retains in connection with the Agreement.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall have the meaning specified in Section 3.1 and Exhibit Aof this Agreement.

"*Work Cost Estimate*" shall have the meaning set forth in Section 6.1 of this Agreement.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Work*").

3.2 Company shall use commercially reasonable efforts to perform the Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Work, Customer shall have the right to notify the Company of the need for correction of defective Work that does not meet the standards of this Section 3.2. If the Work is defective within the meaning of the prior sentence, the Company shall promptly complete, correct, repair or replace such defective Work, as appropriate. The remedy set forth in this Section is the sole and exclusive remedy granted to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

4.0 Changes in the Work

4.1 Prior to commencement of the Work, each Party shall provide a written notice to the other Party containing the name and contact information of such Party's Project Manager.

4.2 If Customer wishes to request a change in the Work, such request shall be submitted to the Company in writing. If, as a result of any such request, the Parties agree to a change in the Work, the agreed change will be set forth in a written document signed by both Parties specifying such change. The Projected Milestone Schedule and the Work Cost Estimate shall be adjusted and/or extended as mutually agreed by the Partiesto reflect any such agreed change to the Work. Any additional costs arising from such change shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.2 of this Agreement.

4.3 Notwithstanding the above, Company may make any reasonable changes in the Work to ensure the completion of the Project or prevent delays in the schedule. Company shall provide Customer with written notice of any such changes to the Work within fifteen (15) business days after such changes are implemented. The Projected Milestone Schedule and the Work Cost Estimate shall be adjusted accordingly and any additional costs shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.2 of this Agreement.

The foregoing notwithstanding, the Company is not required to obtain the consent of the Customer for any change to the Work if such change is made in order to comply with any Applicable Requirement(s) or Good Utility Practice or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable industry codes and standards. The Projected Milestone Schedule and the Work Cost Estimate shall be adjusted accordingly and any additional costs shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.2 of this Agreement.

5.0 **Performance and Schedule; Conditions to Proceed**

5.1 The Company shall use commercially reasonable efforts to have any Work performed by its direct employees performed during normal working hours. The foregoing notwithstanding, if Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. The Company shall provide the Customer with prior notification when work outside of normal working hours is required.

5.2 If Customer requests, and the Company agrees, to work outside normal working hours due to delays in the Project schedule or for other reasons, Company shall be entitled to recover all resulting costs as part of Company Reimbursable Costs.

5.3 The Projected Milestone Schedule is set forth in Exhibit B, attached hereto and incorporated herein by reference. The Projected Milestone Schedule is a projection only and is subject to change.Both Parties shall make reasonable efforts to adhere to the Projected Milestone Schedule. Neither Party shall be liable for

failure to meet the Preliminary Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Project.

5.4 Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any Work until all of the following conditions have been satisfied:

(i) all Required Approvals for the Work have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of the Work is permitted under the terms and conditions of such Required Approvals, and

(ii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **Estimate Only; Customer Obligation to Pay Company Reimbursable Costs.**

6.1 The current good faith estimate of the Company Reimbursable Costs, exclusive of any applicable taxes, is Three Hundred FiftyThousandDollars($350,000) (the "*Work Cost Estimate*"). The Work Cost Estimate is an estimate only and shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company or its Affiliates.

7.0 **Payment**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs. The Company shall invoice Customer for an initial prepayment of One Hundred Seventy FiveThousandDollars ($175,000)("*Initial Prepayment*") and Customer shall pay the Initial Prepayment to Company within thirty (30) Days of the invoice due date. Company shall not be obligated to commence Work under this Agreement prior to receiving the Initial Prepayment.

7.2 Company may periodically invoice Customer for Company Reimbursable Costs incurred. Each invoice will contain reasonable detail sufficient to show the invoiced Company Reimbursable Costs incurred by line item. Company is not required to issue periodic invoices to Customer and may elect, in its sole discretion, to continue performance hereunder after the depletion of the Initial Prepayment or any subsequent prepayment, as applicable, and invoice Customer at a later date.Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any payment due under this Agreement is not received within thirty (30) Days after the applicable invoice due date, the Customer shall pay to the Company interest on the unpaid amount at an annual rate equal to two percent (2%) above the prime rate of interest from time to time published under "Money Rates" in The Wall Street Journal (or if at the time of determination thereof, such rate is not being published in The Wall Street Journal, such comparable rate from a federally

insured bank in New York, New York as the Company may reasonably determine), the rate to be calculated daily from and including the due date until payment is made in full. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement is not received within thirty (30) Days after the applicable invoice due date, Company may suspend any or all Work pending receipt of all amounts due from Customer;any such suspension shall be without recourse or liability to Company.

7.3 Each month during the term of this Agreement, the Company shall provide Customer witha report (each, a "*Monthly Report*") containing(i) unless invoiced, the Company's current estimate of the Company Reimbursable Costs incurred in the prior calendar month, and (ii) the Company's current forecast (20% to 40% variance) of the Company Reimbursable Costs expected to be incurred in the next calendar month, provided, however, that such Monthly Reports (and any forecastedor estimated amounts reflected therein) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company or its Affiliates.

7.4 If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to National Grid, relieving National Grid from any obligation to collect sales taxes from Customer ("Sales Tax Exemption Certificate"). During the term of this Agreement, Customer shall promptly provide National Grid with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, National Grid shall add the sales tax to the applicable invoice to be paid by Customer.

7.5 Company shall maintain reasonably detailed records to document the Company Reimbursable Costs. So long as a request for access is made within six (6) months of completion of the Work, Customer and its chosen auditor shall, during normal business hours and upon reasonable advanced written notice of not less than ten (10) days, be provided with access to such records for the sole purpose of verification by Customer that the Company Reimbursable Costs have been incurred by Company.

7.6 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company :

Name: Mr. Christopher Calice

Address: RG&E
1300 Scottsville Road

Rochester, NY14624

7.7 All payments made under this Agreement shall be made in immediately available funds. Payments to the Company shall be made by wire transfer to:

Wire Payment:	JP Morgan Chase
ABA#:	021000021
Credit:	National Grid USA
Account#:	77149642

8.0 **Final Payment**

8.1 Following completion of the Work, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer ("*Reimbursement Amount*"). The Reimbursement Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Reimbursement Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 7.2 of this Agreement.

9.0 **Customer's Responsibilities**

9.1 If and to the extent applicable or under the control of the Customer, Customer shall provide complete and accurate information regarding requirements for the Project and the Site(s), including, without limitation, constraints, space requirements, underground or hidden facilities and structures, and all applicable drawings and specifications.

9.2 Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

9.3 Customer shall reasonably cooperate with Company as required to facilitate Company's performance of the Work, including, without limitation, performance of any work or tasks to be performed by Customer as contemplated by Exhibit A of this Agreement.

10.0 **Meetings**

10.1 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties, which meetings shall be held at least monthly by teleconference or in person as agreed to by the Project Managers.

11.0 **Disclaimers**

11.1 THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE OF THE WORK HEREUNDER. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, ANY PROJECT, OR ANY WORK OR SERVICES PERFORMED IN CONNECTION THEREWITH, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, SERVICES OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE WORK, INCLUDING ITEMS INCORPORATED IN THE WORK ("THIRD PARTY WARRANTIES"), ARE NOT TO BE CONSIDERED WARRANTIES OF THE COMPANY AND THE COMPANY MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation or expiration of this Agreement.

12.0 **Liability and Indemnification**

12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees (each, individually, an "***Indemnified Party***" and, collectively, the "***Indemnified Parties***"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "***Damages***"), incurred by any Indemnified Party to the extent caused by (i) any breach of this Agreement by Customer, its Affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, or employees, or (ii) the negligence, unlawful act or omission, or intentional misconduct of Customer, its Affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, and employees, arising out of or in connection with this Agreement, the Project, or any Work, except to the extent such Damages are directly caused by the gross negligence, intentional misconduct or unlawful act of the Indemnified Party or its contractors, officers, directors, servants, agents, representatives, or employees.

12.2 Customer shall defend, indemnify and save harmless Company, its parents and Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Customer's subcontractors or suppliers in connection with the Work or the Project.

12.3 Customer shall also protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates as the result of payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

12.4 The Company's total cumulative liability to Customer for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not exceed the aggregate amount of all payments made to Company by Customer as Company Reimbursable Costs under this Agreement.

12.5 Neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.6 Neither Party shall be liable to the other Party for claims or damages for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: neither Party, as applicable, shall have any responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of the other Party or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by such other Party under this Agreement, (b) any unforeseen conditions or occurrences beyond the reasonable control of the Party (including, without limitation, conditions of or at the Site, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, or (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement.

12.8 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party.

12.9 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation or expiration of this Agreement.

13.0 **Employee Claims; Insurance**

13.1 The Company elects to self-insure to maintain the insurance coverage amounts set forth in Exhibit C of this Agreement.

13.2 Prior to commencing Work on the Project and during the term of the Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit C of this Agreement, or Customer may self-insure to the extent authorized or licensed to do so under the applicable laws of the State of New York. Customer hereby elects to self-insure to maintain the insurance coverage amounts set forth in Exhibit C of this Agreement.

13.3 Except to the extent Customer self-insures in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to commencement of Work.

13.4 Each Party shall be separately responsible for insuring its own property and operations.

14.0 **Assignment and Subcontracting**

14.1 Either Party may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Any assignment of this Agreement in violation of the foregoing shall be voidable at the option of the non-assigning Party. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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 be an agent or representative of, or to otherwise bind, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **Examination, Inspection and Witnessing**

16.1 Subject to Customer's and its representatives' compliance with Company's security, safety, escort and other access requirements, the Customer and/or its representatives shall have the right to inspect and examine the Work, or witness any test with respect to the Work, from time to time, when and as mutually agreed by the Parties, at Customer's sole cost and expense, and with reasonable prior notice to Company. Unless otherwise agreed between the Parties, such inspections, examinations and tests shall be scheduled during normal business hours.

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with the Work or any other activities contemplated by this Agreement. In connection with the activities contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("*OSHA*"), as amended from time to time. While on the property (including, without limitation, easements or rights of way) of, or accessing the facilities of, the other Party, each Party's employees and/or contractors and agents shall at all times abide by the other Party's safety standards and policies, switching and tagging rules, and escort and other applicable access requirements. The Party owning or controlling the property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors.

18.0 **Approvals, Permits and Easements**

18.1 The actual cost of obtaining all Required Approvals obtained by or on behalf of the Company shall be paid for by Customer as part of Company Reimbursable Costs.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on any Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or which the Company, its Affiliates or contractors, their respective officers, directors,

employees, agents, servants, or representatives may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the Company, and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law. Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, release, threat of release or generation of Hazardous Substances, or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., except to the extent such presence, discovery, release, threat of release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the expiration, cancellation or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in Customer- owned, occupied, used, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Work or this Agreement. Prior to Company's commencement of the Work, Customer shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to adequately investigate the presence and nature of any such Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, and to promptly, fully, and in writing, communicate the results thereof to the Company. Customer's provision to the Company of the information contemplated in this Section shall in no event give rise to any liability or obligation on the part of the Company, nor shall Customer's obligations under this Agreement, or under law, be decreased or diminished thereby.

20.0 **Suspension of Work**

20.1 Subject to Section 20.2, below, Customer may interrupt, suspend, or delay the Work by providing written notice to the Company specifying the nature and expected duration of the interruption, suspension, or delay. Company will use commercially reasonable efforts to suspend performance of the Company Work as requested by Customer. Customer shall be responsible to pay Company (as part of Company Reimbursable Costs) for all costs incurred by Company that arise as a result of such interruption, suspension or delay.

20.2 As a precondition to the Company resuming the Work following a suspension under Section 20.1, the Projected Milestone Schedule and the Work Cost Estimate shall be revised as mutually agreed by the Parties to reflect the interruption, suspension, or delay. Adjustments to the Company Reimbursable Costs shall include any costs or expenses the Company incurs as a result of the interruption, suspension, or delay.

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "***Breaching Party***") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "***Non-Breaching Party***") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, in whole or in part, and thereupon each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing Work- and/or Project- related commitments, orders and contracts upon terms that are reasonably expected to minimize all associated costs. However, nothing herein will restrict Company's ability to complete aspects of the Work that Company must reasonably complete in order to return its facilities and the Site(s) to a configuration in compliance with Good Utility Practice and all Applicable Requirements. The Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 In the event of any early termination or cancellation of the Work as contemplated in this Agreement, Customer shall pay Company for:

(i) all Company Reimbursable Costs for Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company in connection with the Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company which cannot be reasonably avoided or mitigated.

22.0 **[Reserved]**

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and permit requests necessary in connection with the Work or Project, or order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment

obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement, in whole or in part, with no further obligation or liability; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company's Company Reimbursable Costs in accordance with Section 21.2 of this Agreement.

23.2 Within thirty (30) Days after the termination of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **[Reserved]**

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 General Restrictions. Upon receiving Proprietary Information, the Receiving Party*)* and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Section to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

25.3 Exceptions. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Section; or

25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include "critical energy infrastructure information" under applicable FERC rules and policies ("*CEII*"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC regulations, rules, orders and policies) applicable to any such CEII disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII status and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII, Receiving Party's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, or (ii) the date on which such CEII is no longer required to be kept confidential under applicable law, whichever is later.With respect to CEII, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any termination, expiration or cancellation of this Agreement.

26.0 **Governing Law; Effect of Applicable Requirements**

26.1 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in the State of New York, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

26.2 If and to the extent a Party is required or prevented or limited in taking any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

27.0 **Miscellaneous**

27.1 **Project Managers.** Promptly following the Effective Date, each Party shall designate a Project Manager and shall provide the other Party with a written notice containing the name and contact information of such Project Manager. Whenever either Party is entitled to approve a matter, the Project Manager for the Party responsible for the matter shall notify the Project Manager of the other Party of the nature of such matter. The Project Managers shall discuss such matter, and each Project Manager shall confer on such matter on behalf of his/her Party. The foregoing notwithstanding, in no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

27.2 **Dispute Resolution.** Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Each Party shall designate one or more representatives with the authority to negotiate the matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the agreement of both Parties to participate in such an alternative dispute resolution process.

27.3 **Compliance with Law**. Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

27.4 **Form and Address.** All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third (3rd) business Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) business Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party. Each Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.5 **Exercise of Right.**No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.6 **Headings.**The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

27.7 **Incorporation of Schedules and Exhibits.**The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.8 **Prior Agreements; Modifications.**This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced.The Project Managers shall not be authorized representatives within the meaning of this Section.

27.9 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.10 **Nouns and Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.11 **No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.12 **Validity; Required Regulatory Approvals.**

(a) Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

(b) Subject to Section 23.3 of this Agreement, the obligations of each Party under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases from any local, state, or federal regulatory agency or other governmental agency or authority (which may include, without limitation and as applicable, the NYISO and the NYPSC) or any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

(c) Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Section 21.2 hereof) for all Company Reimbursable Costs. All of the Company's actual costs in connection with seeking Required Approvals shall be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

27.13 **Notices** All formal notices, demands, or communications under this Agreement shall be submitted in writing either by hand, registered or certified mail, or recognized overnight mail carrier to:

To Customer: Christopher Calice
Manager, Capital Delivery
RG&E
1300 Scottsville Rd
Rochester, NY 14624

To Company: Mr. William Malee
Director, Transmission Commercial
Niagara Mohawk Power Corporation
d/b/a National Grid
40 Sylvan Road
Waltham, MA02451
(781) 907-2422

27.14 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[*Signatures are on following page*.]

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

ROCHESTER GAS & ELECTRIC CORPORATION

By: _____
Name: CHRISTOPHER M. CALLICE
Title: RGE ELD MANAGER

NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid

By: _____
Name: William L Malee
Title: Director –Transmission Commercial

LIST OF EXHIBITS

Exhibit A: Scope of Work

COMPANY shall perform the following Work under this Agreement:

1. Design, engineer, procure, construct, test and place into service the new Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, as contemplated in the "STATION 56 NEW 12kV SOURCE PROJECT DESCRIPTION" attached as Annex 1 to this Exhibit.

2. Perform engineering review and field verifications as required on the facilities described in Annex 1 to this Exhibit.

3. Prepare, file for, and use commercially reasonable efforts to obtain any Required Approvals that must be obtained by Company to enable it to perform the work and any other of its obligations contemplated by this Exhibit and this Agreement.

4. Inspect, review, witness, examine and test, from time to time, Company's work contemplated herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

5. Review, from time to time, permitting, licensing, real property, and other materials relating to the work contemplated herein.

6. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.

7. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Work or the Project including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company's Work include securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company.

NOTE: COMPANY's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time. See:

https://www.nationalgridus.com/niagaramohawk/construction/3_elec_specs.asp

Annex 1 to Exhibit A

STATION 56 NEW 12kV SOURCE
PROJECT DESCRIPTION

PROJECT DESCRIPTION

RG&E will add one new 115/12kV, 22 MVA transformer (4T) at Station 56 to be connected as a tee tap to the National Grid, Trunk 23 transmission line adjacent to the station. The 115kV and 12.5kV buses will be reconfigured.

RG&E work will generally consist of adding the following:

- A 115/12kV, 22 MVA Transformer (4T)
- Two 115kV dead-end structures along with the 115kV breakers and bus work
- 12.5kV Gas Insulated Switchgear (GIS) equipment and ControlBuilding
- Control equipment and auxiliary systems
- The relocation/modifications of 12.5kV feeders and two new 12kV distribution circuits

Station 56 is located at 188 W Jefferson Road, PittsfordNY14534. Presently, three National Grid transmission lines are adjacent to Station 56 (Trunk 23, Trunk 24 and Trunk 25). The normal source for the existing transformer 3T is Trunk 24 with Trunk 25 as the backup. Transformer 3T utilizes one 115kV circuit switcher for protection.

RG&E will rebuild Station 56 and a new 115kV high side configuration will be established. The new configuration consists of two transformers (existing 3T and new 4T) with high side 115kV circuit breakers for their control and protection and a normally open tie breaker that will connect the 115kV sources in case of the loss of a transmission line.

RG&E will perform all work located outside of the property line of the National Grid right of way/property line. All work inside the National Grid right of way/property line will be performed by National Grid.

PROJECT TECHNICAL SCOPE:

RG&E will perform the following work:

Station 56:

115 kV:

- A sectionalized bus configuration with three 115kV SF6 breakers and motor gang operated disconnect switches. The tie breaker will be normally open.
- 2 – power transformers 115/13kV, 13.4/17.9/22.4 MVA (65 °C), with LTC. Impedance = 7.67% at 115/13kV and 22MVA.

12 kV:

- 12kV GIS, with 6 feeder positions, two incoming transformer positions and one normally open tie breaker.

P&C:

- Install new protection and control devices for the 115 kV and 12 kV buses, the Power Transformers, and all 12 kV distribution feeders.
- New coordination study and relay settings with the remote stations (if necessary). ***No DTT will be implemented.***

Communication:

- Relay communications for system protection will be via fiber using the existing SONET (JMUX) system in Station 56.

Station 82 and 121:

Protection and Control

- It is necessary to implement new relay settings in Station 82 and Station 121 to the relays that protect the Trunk 23 transmission line. RG&E will provide and implement the new settings and National Grid will approve the new settings.

RG&E

Station 122 and Mortimer Station:

Protection and Control

- It is necessary to implement new relay settings in Mortimer Station and Station 122 to the relays that protect the Trunk 25 transmission line. RG&E will provide the new settings for both stations. RG&E will implement the new settings at Station 122. National Grid will approve and implement the new settings at Mortimer Station.

National Gridwill perform the following work:

Trunk 23:

Transmission Line Work

- Trunk 23 runs from Station 82 to Station 121, the line runs adjacent to Station 56. A new structure and arrangement outside Station 56 will be necessary to connect the new 4T Transformer to the Line. It will be necessary to connect the Power Cables from the new structure outside Station 56 to the dead end structure inside Station 56.

Protection and Control

- National Grid will approve the new relay settings in Station 82 and Station 121 that protect Trunk 23 transmission line.

Trunk 25:

Transmission Line Work

- Trunk 25 runs from **Mortimer Station** to Station 122, the line runs adjacent to Station 56. There is an existing structure used to connect the existing 3T transformer. National Grid needs to evaluate the existing structure and replace it (if necessary). Trunk 25 will become the normal source of 3T transformer. It will be necessary to connect the power cables from the structure outside Station 56 to the dead end structure inside Station 56.
  Note: The existing connection of the 3T transformer to Trunk 24 will be removed by RG&E since the arrangement is located inside Station 56.

Protection and Control

- National Grid will approve and implement the new settings at Mortimer Station.

Exhibit B: Projected Milestone Schedule

PROJECTED MILESTONE SCHEDULE

Task	Milestone	Date	Responsible Party
1.	Engineering and Design Trunk 23 Trunk 25	10 Weeks 4 Weeks	Customer/Company Customer needs to supply Trunk25 Take off Structure design information
2.	Construction of Trunk 23 Structure	6 weeks	Company
3.	Testing and Commissioning for Trunk 23 Portion	1 Week	Company
4.	Construction of Trunk 25 Structure	2 Weeks	Company
5.	Testing and Commissioning of Trunk 25 Portion	1 Week	Company
6.	Close Out	3 – 4 months	Company

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. Neither Party shall be liable for failure to meet the above Preliminary Milestone Schedule, any milestone, any in-service date, or any other projected or preliminary schedule in connection with this Agreement, the Work or the Project. National Grid does not and cannot guarantee or covenant that any outage necessary in connection with the Work will occur when presently scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages.

Exhibit C: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of **New York.** If required, coverage shall include the U.S. Longshore and Harbor Workers' Compensation Act and the Jones Act.

- Public Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

  (A) Bodily Injury - $1,000,000/$1,000,000
  Property Damage - $1,000,000/$1,000,000
  OR
  (B) Combined Single Limit - $1,000,000
  OR
  (C) Bodily Injury and Property Damage per Occurrence - $1,000,000
  General Aggregate & Product Aggregate - $2,000,000 each

- Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

   To: National Grid c/o NIAGARA MOHAWK POWER CORPORATION
   Attention: Risk Management, A-4
   300 Erie Boulevard West
   Syracuse, NY13202

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: RG&E
Attention: Christopher Calice 1300 Scottsville Road
Rochester , NY 14624

2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the

cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, both Parties shall furnish to each other copies of any accidents report(s) sent to the Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work for the Project under this Agreement.

5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other that it will have full policy limits available and shall notify each other in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

7. Customer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Project and associated Work.

Exhibit D: Estimated Cost Breakdown

RG&E STATION 56 - LINES 23 & 25 TAPS
PRELIMINARY COST ESTIMATE [*]

1	**Contractor/Consultant Invoices**		$0.00	
2	Labor Cost (Straight Time)		$100,000.00	
Labor Overheads @ 94%		$94,000.00		
Total Cost of Labor		$194,000.00		
3	**Transportation Cost**	@ 23.84% of Labor Cost		$23,840.00
4	A. Material - Inventory		$26,000.00	
B. Material - Invoices		$15,000.00		
C. Inventory Handling	@ 16.83%		$4,375.80	
D. Sales Tax on Invoices	@ 8%		$1,200.00	
Material Cost		$46,575.80		
5	**Other costs not included above**		$0.00	
6	**Subtotal of Lines 1-5**		**$264,415.80**	
7	**Capital Overheads**	@ 5.58% on Capital Portion of 6		$14,146.63
8	**Subtotal of lines 6-7**		**$278,562.43**	
9	**Administrative and General**	@ 25.66% of 6		$67,849.09
10	**O&M Property Taxes & AFUDC**		$0.00	
11	**Total NG Cost**		**$346,411.52**	
12	**Plus Applicable Sales Tax**	0.00%		$0.00
13	**Grand Total**		***$346,411.52***	

[*] The contents of this Exhibit D are estimates only and shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company or its Affiliates.

FERC rendition of the electronically filed tariff records in Docket No.

Filing Data:
CID: C000038
Filing Title: Cost Reimbursement Agreement 2324-Niagara Mohawk and Erie Boulevard Hydropower
Company Filing Identifier: 1216
Type of Filing Code: 10
Associated Filing Identifier:
Tariff Title: NYISO Agreements
Tariff ID: 58
Payment Confirmation: N
Suspension Motion:

Tariff Record Data:
Record Content Description: Agreement No. 2324
Tariff Record Title: CRA No. 2324 - NMPC and Erie Boulevard Hydropower
Record Version Number: 0.0.0
Option Code: A
Tariff Record ID: 214
Tariff Record Collation Value: 8081500
Tariff Record Parent Identifier: 2
Proposed Date: 2016-11-18
Priority Order: 500
Record Change Type: New
Record Content Type: 2
Associated Filing Identifier:

Service Agreement No. 2324

COST REIMBURSEMENT AGREEMENT

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as of November 18, 2016 (the "*Effective Date*"), by and between **ERIE BOULEVARD HYDROPOWER, L.P.**, having an office and place of business at 800 Starbuck Avenue, Suite 802, Watertown, NY 13601 *("Customer")* and **NIAGARA MOHAWK POWER CORPORATION** d/b/a National Grid, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer has requested that Company perform certain work, as more specifically described below; and

WHEREAS, Company and Customer are parties to that certain Interconnection Agreement dated as of February 4, 1999 (the "*Interconnection Agreement*") and that certain Site Agreement entered into on February 4, 1999 (the "*Site Agreement*") pertaining to the Site (as such term is define below) and the collocation of certain Company facilities at the Site; and

WHEREAS, Customer is proposing to utilize portions, or otherwise potentially provide for the relocation of certain portions, of a certain electric sub-station property and 23 kV Right-of-Way identified as the "Heuvelton Substation Easement" (the "*Subject Easement Areas*") and reserved by Company, in that Bargain and Sale Deed with Lien Covenant, dated July 30, 1999, conveyed to Customer and recorded as Instrument ID #1999-00015616 in the St. Lawrence County Clerk's Office (the "*Bargain and Sale Deed*"), in order to facilitate its development of a new fish passage as directed by FERC License 2713, issued 11/26/2012 (the "*Fish Passage Project*"); and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) if applicable, Customer's acquisition and delivery of certain modified real property interests as contemplated in this Agreement, (iii) Customer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below); and (iv) receipt of any and all "*Required Approvals*", as set forth in Section 18.1, in a form acceptable to Company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

Erie Blvd. Cost Reimbursement Agreement

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person or entity; "control" of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all 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 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, NYISO, NYSRC and NPCC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Bargain and Sale Deed*" shall have the meaning set forth in the preamble to this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*CIP*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Company*" shall have the meaning set forth in the preamble to this Agreement.

"*Company Indemnified Party*" and "*Company Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation,

internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Project, all applicable overhead, overtime costs, all federal, state and local taxes incurred (including, without

limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

"*Company Work*" means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

"*Construction Commencement Notice*" shall mean a written notice executed by a duly authorized representative of Customer requesting or directing that the Company commence construction in connection with the Company Work, such notice to be without condition or qualification.

"*Customer*" shall have the meaning set forth in the preamble to this Agreement.

"*Customer Grant of Easement*" shall have the meaning set forth in Exhibit C to this Agreement.

"*Customer Indemnified Party*" and "*Customer Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Customer Required Actions*" means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Dollars*" and "$" mean United States of America dollars.

"*Effective Date*" shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Due Diligence Procedure*" is set forth in Schedule II to this Agreement.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of

the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*Existing Facilities*" means existing Company equipment and/or facilities located at or near Heuvelton Substation, requiring removal for the Fish Passage Project.

"*Existing Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Facilities Approvals*" shall mean the New Facilities Approvals and the Existing Facilities Approvals.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*FERC Approval Date*" shall mean the date as of which FERC grants approval of this Agreement without condition or modification.

"*Fish Passage Project*" shall have the meaning set forth in the preamble to this Agreement.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Fish Passage Project is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC and NYISO, NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities. When applied to Customer, the term Good Utility Practice shall include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" shall mean a Company Indemnified Party and/or a Customer Indemnified Party, as applicable.

"*Initial Prepayment*" shall have the meaning set forth in Section 7.2 of this Agreement.

"*Interconnection Agreement*" shall have the mean specified in the preamble to this Agreement.

"*Land Use Approvals*" shall have the meaning set forth in Exhibit C to this Agreement.

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*New Facilities*" means the personal property assets constituting new or modified facilities to be constructed and placed in service by Company as contemplated this by this Agreement.

"*New Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*New Facilities Property Rights*" shall have the meaning set forth in Exhibit C of this Agreement.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

"*NYPSC*" shall mean the New York Public Service Commission.

"*NYSRC*" shall mean the New York State Reliability Council or any successor organization thereto.

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Preliminary Milestone Schedule*" shall have the meaning set forth in Section 5.2 of this Agreement.

"*Project*" means the Company Work.

"*Project Manager*" means the respective representatives of each of the Customer and Company appointed pursuant to Section 10.1 of this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or

proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is

described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Receiving Party*" shall mean the Party receiving Proprietary Information.

"*Refund Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Required Approvals*" shall have the meaning set forth in Section 18.1 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Site*" shall mean the location of the hydroelectric facility commonly known as the Heuvelton Hydro Station.

"Site Agreement" shall have the meaning set forth in the preamble to this Agreement.

"*Subject Easement Areas*" shall having the meaning set forth in the preamble to this Agreement.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall mean the Customer Required Actions and/or the Company Work, as applicable.

"*Work Commencement Notice*" shall mean a written notice executed by a duly authorized representative of Customer requesting or directing that the Company begin performance of the Company Work, such notice to be without condition or qualification.

Erie Blvd. Cost Reimbursement Agreement

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Company Work*").

3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Company Work, Customer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2. If the Company Work is defective within the meaning of the prior sentence, the Company shall promptly correct, repair or replace such defective Company Work, as appropriate, provided, that, Company shall not have any obligation to correct, repair or replace such defective Company Work unless the defect in the Company Work has (or is reasonably likely to have) a material adverse impact on the Customer's implementation of the Fish Passage Project as contemplated by the Parties as of the Effective Date. The remedy set forth in this Section is the sole and exclusive remedy granted or available to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall use reasonable efforts to perform the actions described in Exhibit C attached to this Agreement (the "*Customer Required Actions*"). All of the Customer Required Actions shall be performed at Customer's sole cost and expense.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Work.

Erie Blvd. Cost Reimbursement Agreement

4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any requests for material additions, modifications, or changes to the Work shall be communicated in writing by the Party making the request, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Customer as part of Company Reimbursable Costs.

4.2 The foregoing notwithstanding, the Company is not required to obtain the consent or agreement of the Customer for, or (unless required by the last sentence of this Section) provide any notice to Customer of, any change to the Company Work if such change (a) will not materially interfere with Customer's ability to implement the Fish Passage Project as contemplated by the Parties as of the Effective Date, or (b) is made in order to comply with any Applicable Requirement(s), Good Utility Practice, the Company's applicable standards, specifications, requirements and practices, or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable codes and standards. Any additional costs arising from such change shall be paid by the Customer as part of Company Reimbursable Costs. The Company shall provide written notice to the Customer of any change made pursuant to this Section 4.2 that the Company estimates, in good faith at the time such change is initiated, will increase the total Company Reimbursable Costs payable under this Agreement by an amount exceeding twenty percent (20%) of the Initial Prepayment.

5.0 Performance and Preliminary Milestone Schedule; Conditions to Proceed

5.1 The Company shall use reasonable efforts to attempt to have any Company Work performed by its direct employees performed during normal working hours. The foregoing notwithstanding, if Company Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.

5.2 The preliminary project milestone schedule for the Fish Passage Project is set forth in Exhibit B, attached hereto and incorporated herein by reference ("*Preliminary Milestone Schedule*"). The Preliminary Milestone Schedule is a

projection only and is subject to change with or without a written adjustment to such Schedule. Neither Party shall be liable for failure to meet the Preliminary

Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Project.

5.3 Commencement of Company Work. Company will proceed with the Company Work following the later of (i) the FERC Approval Date, (ii) Company's receipt of the Initial Prepayment, and (iii) Company's receipt of the Work Commencement Notice from Customer.

5.4 Construction Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any construction in connection with the Company Work unless and until all of the following conditions have been satisfied:

(i) Customer has delivered, or arranged to deliver, and Company has received, all real property rights necessary for Company to complete the Company Work, including, without limitation, the New Facilities Property Rights,

(ii) all Required Approvals for the Work (including, without limitation, the New Facilities Approvals, the Existing Facilities Approvals and the Land Use Approvals) have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of such construction is permitted under the terms and conditions of such Required Approvals,

(iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company, and

(iv) Company has received the Construction Commencement Notice from Customer.

5.5 Decommissioning Commencement. Company shall not be obligated to proceed with de-energizing, decommissioning or removing the Existing Facilities unless and until all of the following conditions have been satisfied:

(i) the New Facilities have been completed, energized and placed in commercial operation by the Company,

(ii) all Required Approvals for the Work (including, without limitation, the New Facilities Approvals, the Existing Facilities Approvals and the Land Use Approvals) have been received, are in form and substance satisfactory to the Parties and have become final and non-appealable, and

(iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **[Reserved]**

Erie Blvd. Cost Reimbursement Agreement

7.0 **Customer Obligation to Pay Company Reimbursable Costs; Additional Prepayments; Invoicing; Taxes**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.

7.2 Once the FERC Approval Date has occurred, Customer shall provide Company with a prepayment of **$45,000** ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Company Work. The Company shall invoice Customer for the Initial Prepayment; Customer shall pay such amount to Company within thirty-five (35) Days of the invoice date. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.

7.3 Company may invoice Customer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty-five (35) Days from date of invoice. If any payment due to Company under this Agreement is not made when due, Customer shall pay Company interest on the unpaid amount in accordance with Section 9.1 of this Agreement. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement (including, without limitation, any Additional Prepayment) is not received within five (5) Days after the applicable invoice due date, Company may suspend any or all Work pending receipt of all amounts due from Customer; any such suspension shall be without recourse or liability to Company. The foregoing notwithstanding, if the unpaid invoiced amount is being disputed in good faith by Customer and Customer has provided written notice thereof to Company, Company shall not be entitled to suspend Work hereunder for non-payment of such disputed amount unless the aggregate amount of all unpaid invoiced amounts due from Customer under this Agreement at the time of such suspension (inclusive of such disputed amount) exceeds ten percent (10%) of the Initial Prepayment.

7.4 If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("*Sales Tax Exemption*

Certificate"). During the term of this Agreement, Customer shall promptly

provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.5 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company:

Brookfield Renewable Energy Group
c/o Erie Boulevard Hydropower, L.P.
800 Starbuck Avenue, Suite 802
Watertown, NY 13601

7.6 All payments made under this Agreement shall be made in immediately available funds.

Unless otherwise directed by the Company, payments to the Company shall be made by wire transfer to:

Wire Payment: JP Morgan Chase
ABA#: 021000021
Credit: National Grid USA
Account#.77149642

Unless otherwise directed by Customer, payments to Customer shall be made by wire transfer to:

Bank: HSBC Bank USA, N.A.
ABA#: 021001088
Credit: Erie Boulevard Hydropower, L.P.
Account #: 000256552

8.0 **Final Payment**

8.1 Within one hundred and eighty (180) Days following the earlier of (i) the Existing Facilities Removal Date, and (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs is greater than the Total Payments Made, the

Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"). If the Total Payments

Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer ("*Refund Amount*") The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 Interest on Overdue Amounts

9.1 If any payment due under this Agreement is not made when due, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount calculated in accordance with Section 35.19a of the FERC's regulations (18 C.F.R. 35.19a) from and including the due date until payment is made in full.

10.0 Project Managers; Meetings

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party's Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager ("*Project Manager*"). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

Erie Blvd. Cost Reimbursement Agreement

11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW FACILITIES, THE FISH PASSAGE PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

12.0 **Liability and Indemnification**

12.1 (a) To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, a "*Company Indemnified Party*" and, collectively, the "*Company Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, for economic damage, and for claims brought by third parties for personal injury, property damage or other damages ("*Damages*"), incurred by any Company Indemnified Party to the extent arising out of or in connection with this Agreement, the Fish Passage Project, or any Work, except to the extent such Damages are attributable to (x) the negligence, intentional misconduct, breach of this Agreement or unlawful act of a Company Indemnified Party as determined by a court of competent jurisdiction, or (y) the subject matter of Customer's indemnity set forth in Section 19.1 of this Agreement.

Erie Blvd. Cost Reimbursement Agreement

(b) To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Company shall indemnify and hold harmless, and at Customer's option, defend Customer, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, a "*Customer Indemnified Party*" and, collectively, the "*Customer Indemnified Parties*"), from and against any and all Damages incurred by any Customer Indemnified Party to the extent such Damages are attributable to the negligence, intentional misconduct, or unlawful act of a Company Indemnified Party in connection with this Agreement, the Fish Passage Project, the Project, or any Company Work as determined by a court of competent jurisdiction, except to the extent such Damages are attributable to the negligence, intentional misconduct, breach of this Agreement or unlawful act of a Customer Indemnified Party as determined by a court of competent jurisdiction.

12.2 Without limiting the foregoing, Customer shall defend, indemnify and save harmless the Company Indemnified Parties from any and all Damages resulting from (i) any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Customer's contractors, subcontractors or suppliers in connection with any Work or the Fish Passage Project, or (ii) any claim of trespass, or other third party cause of action arising from or are related to reliance upon or use of the New Facilities Property Rights by the Company or any other Indemnified Parties for the purposes contemplated herein.

12.3 Without limiting the foregoing, Customer shall protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

12.4 To the fullest extent permitted by applicable law, the Company's total cumulative liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not exceed the aggregate amount of all payments made to Company by Customer as Company Reimbursable Costs under this Agreement.

Erie Blvd. Cost Reimbursement Agreement

12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.6 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of Customer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Customer under this Agreement (including, without limitation, the Customer Required Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

Erie Blvd. Cost Reimbursement Agreement

12.8 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer's insurance.

12.9 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

13.0 **Insurance; Employee and Contractor Claims**

13.1 Prior to the commencement of any Company Work and during the term of the Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or the Company may elect to self-insure one or more of the insurance coverage amounts set forth in Exhibit D of this Agreement.

13.2 Prior to the commencement of any Work on the Fish Passage Project and during the term of the Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or Customer may elect to self-insure one or more of such coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York, provided, that, the Customer provides written notice of any such election to the Company prior to the commencement of any Work under this Agreement.

13.3 Unless the Customer elects to self-insure in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to the commencement of any Work under this Agreement.

13.4 Each Party shall be separately responsible for insuring its own property and operations.

13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this Section shall survive the termination, cancellation, completion or expiration of this Agreement.

Erie Blvd. Cost Reimbursement Agreement

14.0 **Assignment and Subcontracting**

14.1 The Company may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **[Reserved]**

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the performance contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("*OSHA*"), as amended from time to time. While performing the Company Work, Company shall at all times abide by Company's safety standards and policies and Company's switching and tagging rules. During the term of this Agreement, the Party owning or controlling the applicable property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities in connection with any performance under this Agreement if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors in connection with any such performance.

Erie Blvd. Cost Reimbursement Agreement

18.0 **Required Approvals**

18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases (including, without limitation and as applicable, the Existing Facilities Approvals, New Facilities Approvals and Land Use Approvals) from any local, state, or federal regulatory agency or other governmental agency or authority (which shall include the FERC and may also include, without limitation and if applicable, the NYPSC) or any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of the Company's actual costs in connection with seeking any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on the Site or any Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or

which the Company, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, release, or

generate at or on such properties or facilities unless and to the extent caused by the negligence, intentional misconduct, or unlawful act of the Company, its Affiliates or contractors, or their respective officers, directors, employees, agents, servants, or representatives, and except as provided above Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all Damages relating to, or arising out of (i) the presence, discovery, Release, Threat of Release or generation of Hazardous Substances in violation of Environmental Laws at or on the Site or any Customer- or third party-owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property), or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq*.) in connection with this Agreement or the Fish Passage Project, except to the extent such presence, discovery, Release, Threat of Release, generation or breach is attributable to the negligence, intentional misconduct, or unlawful act of any Company Indemnified Party (with respect to which the Company shall indemnify the Customer Indemnified Parties in accordance with Section 12.1(b) of this Agreement). The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the expiration, completion, cancellation or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in the Site or any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement and known to Customer at the time. Prior to Company's commencement of the Company Work, Customer shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to investigate in accordance with Good Utility Practice and Applicable Requirement(s) the presence and nature of any such Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, and to promptly, fully, and in writing, communicate the results thereof to the Company. Customer's provision to the Company of the information contemplated in this Section shall in no event give rise to any liability

or obligation on the part of the Company, nor shall Customer's obligations under this Agreement, or under law, be decreased or diminished thereby.

20.0 **Suspension of Work**

20.1 Customer may interrupt, suspend, or delay the Company Work following written notice to Company specifying the nature and expected duration of the interruption, suspension, or delay. Company will use reasonable efforts to suspend performance of the Company Work as requested by Customer. Customer shall be responsible to pay Company (as part of Company Reimbursable Costs) for all costs incurred by Company and/or its Affiliates that arise as a result of such interruption, suspension or delay. The foregoing notwithstanding, Company shall not be required to interrupt, suspend or delay any Company Work to the extent continued performance of such Company Work is reasonably required (i) due to emergency circumstances, (ii) for safety, security or reliability reasons (including, without limitation, to protect any facility(ies) from damage or to protect any person(s) from injury), (iii) to return any facility(ies) to service in accordance with applicable standards, or (iv) to comply with Good Utility Practice or any Applicable Requirement(s).

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due and one hundred and twenty (120) Days in the case of a non-monetary breach), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement. Subject to compliance with Section 22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding ninety (90) consecutive days as the result of any continuing dispute between the Parties and Company reasonably determines that Customer has not actively participated in Company's good faith efforts to resolve such dispute pursuant to Section 22.1

hereof for at least sixty (60) days immediately preceding such written notice, or (ii) under the circumstances contemplated by, and in accordance with, Section

18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.

21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Customer shall also pay Company for:

(i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

Erie Blvd. Cost Reimbursement Agreement

22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days (subject to extension by mutual agreement of the Parties acting in good faith) may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and/or permit requests necessary in connection with the Company Work or the Customer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company Reimbursable Costs in accordance with Sections

21.3 and 21.4 of this Agreement.

23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **Compliance with Law**

24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving Party*)* and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Fish Passage Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

Erie Blvd. Cost Reimbursement Agreement

25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Article; or

25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than two (2) years after first receipt of the disclosed Proprietary Information, or two (2) years after the termination or expiration of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

Erie Blvd. Cost Reimbursement Agreement

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include "critical energy infrastructure information" under applicable FERC rules and policies ("*CEII*") and critical infrastructure protection information as defined under applicable NERC standards and procedures ("*CIP*"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any termination, expiration, completion or cancellation of this Agreement.

Erie Blvd. Cost Reimbursement Agreement

26.0 **Effect of Applicable Requirements; Governing Law**

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgement is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3rd) Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

Erie Blvd. Cost Reimbursement Agreement

To Customer:

Erie Boulevard Hydropower, L.P.
800 Starbuck Ave.
Watertown, NY 13601
Attention: Director of Operations
Phone: 315-779-2401
Fax: 315-786-7121

With a copy to:

Erie Boulevard Hydropower, L.P.
c/o Brookfield Renewable Partners
41 Rue Victoria
Gatineau, QC J8X 2A1
Attention: Legal Department
Phone: 819-561-2722
Fax: 819-561-7188

To Company:

Ms. Kathryn Cox-Arslan
Director, Transmission Commercial Services
40 Sylvan Road
Waltham, MA 02451
(781) 907-2406

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

Erie Blvd. Cost Reimbursement Agreement

27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter.

Notwithstanding the foregoing, the Parties agree that neither this Section, nor any other provision of this Agreement, shall be deemed to amend or modify the Interconnection Agreement or the Site Agreement, each of which shall remain in full force and effect in accordance with their respective terms.

Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.

27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

Erie Blvd. Cost Reimbursement Agreement

27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[Signatures are on following page.]

Erie Blvd. Cost Reimbursement Agreement

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

ERIE BOULEVARD HYDROPOWER, LP

By: _____

Name: Thomas Uncher

Title: Vice-President

By: _____

Name: John D. Elmer

Title: Director, E.B.H. L.P. Operations

NIAGARA MOHAWK POWER CORPORATION

By: _____

Name: Kathryn Cox-Arslan

Title: Director, Transmission Commercial Services

Erie Blvd. Cost Reimbursement Agreement

LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A	Scope of Company Work
Exhibit B	Preliminary Milestone Schedule
Exhibit C	Customer Required Actions
Exhibit D	Insurance Requirements
Exhibit E	Map of Site
Schedule I	Real Property Standards
Schedule II	Environmental Due Diligence Procedure

Erie Blvd. Cost Reimbursement Agreement

Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Perform preliminary engineering work, studies and other tasks necessary to develop a detailed project plan to implement the work contemplated by this Exhibit as specified below.

2. With the exception of any Land Use Approvals, prepare, file for, and use reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the "*New Facilities Approvals*").

   With the exception of any Land Use Approvals, prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state or federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Facilities (the "*Existing Facilities Approvals*").

   The terms "New Facilities Approvals" and "Existing Facilities Approvals" shall not include any Land Use Approvals; Customer shall be solely responsible for obtaining all Land Use Approvals.

3. Subject to Section 5.4 of the Agreement, design, engineer, procure, construct, test and place into service the new (permanent or temporary) Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, including, without limitation, the New Facilities, necessary or advisable to support the Customer's accomplishment of the Fish Passage Project, including, but not limited to:

   a. retirement of /modifications to Heuvelton Station 4.8kv steel support structure; and
   b. distribution/transmission line and structure modifications.

4. Subject to Sections 5.5 of the Agreement, decommission, dismantle and remove the Existing Facilities.

5. Prepare, file for, and use reasonable efforts to obtain any other Required Approvals (other than Land Use Approvals) that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.

6. Inspect, review, witness, examine and test, from time to time, Company's work contemplated herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

Erie Blvd. Cost Reimbursement Agreement

7. Review, from time to time, permitting, licensing, real property, and other materials relating to the work contemplated herein, including, without limitations, all documents and materials related to the New Facilities Property Rights, if applicable, and any Required Approvals.

8. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.

9. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

The Company Work may be performed in any order as determined by the Company. For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Fish Passage Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

NOTE: Company's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time. See:

https://www9.nationalgridus.com/niagaramohawk/construction/3_elec_specs.asp

Erie Blvd. Cost Reimbursement Agreement

Exhibit B: Preliminary Milestone Schedule

PRELIMINARY MILESTONE SCHEDULE

Task	Milestone	Estimated Timeframe	Responsible Party
1.	Execute Agreement	October 2016	Customer/Company
2.	Make Initial Prepayment	FERC Approval Date	Customer
3.	Site Surveying/ Planning	November 2016	Customer/ Company
3.	Field Work Start	April 2017	Customer
4.	Field Work Completion	August 2017	Customer

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with the Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals or the acquisition of New Facilities Property Rights, if applicable, are not included in such preliminary schedule.

Exhibit C: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall grant and convey to Company perpetual easements and rights, as needed, for the construction, installation, testing, ownership, use, operation, and maintenance of the portions of the New Facilities to be located on, over, across, through Customer's property (the "*Customer Grant of Easement*"). The Customer Grant of Easement, if necessary, will take the form of an amendment to the Bargain and Sale Deed in form and substance satisfactory to Company in its sole but reasonable discretion and provided without charge or cost to Company. If applicable, Customer shall further use reasonable efforts to acquire all other easements, access rights, rights-of-way, fee interests, and other rights in property, if any, that are necessary to accommodate Company's construction, installation, testing, ownership, use, operation, and maintenance of the New Facilities, as determined to Company's satisfaction in its sole discretion (together with the Customer Grant of Easement, collectively the "*New Facilities Property Rights*"). Customer shall convey, or arrange to have conveyed, to the Company all New Facilities Property Rights, each such conveyance to be in form and substance satisfactory to Company in its sole discretion and without charge or cost to Company.

   Customer acknowledges and agrees that the Company is required to abide by all Applicable Requirements, including, without limitation, any and all land use, zoning, planning and other such Requirements. To the extent necessary, Customer shall prepare, file for, and use reasonable efforts to obtain, on the Company's behalf, all required subdivision, zoning and other special, conditional use or other such land use permits or other discretionary permits, approvals, licenses, consents, permissions, certificates, variances, zoning changes, entitlements or any other such authorizations from all local, state and federal governmental agencies and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities and for Company to decommission, dismantle and remove the Existing Facilities (the "*Land Use Approvals*").

2. In undertaking or performing any work required of it under the terms of this Agreement, including, without limitation, securing the New Facilities Property Rights and Land Use Approvals, Customer shall comply, at all times, with (i) the Real Property Standards, including, without limitation, performing all obligations of the Requesting Party as contemplated by the Real Property Standards (see Schedule 1), and (ii) the Environmental Due Diligence Procedure (see Schedule 2) , as each may be updated, amended or revised from time to time. Customer shall coordinate with the Company's Environmental Department; the Company's Project Manager will provide Customer with the name and contact information for an appropriate Company representative in the Company's Environmental Department.

3. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

4. If and to the extent applicable or under the control of the Customer, provide complete and accurate information regarding the Project and the site(s) where Work is to be performed, including, without limitation, constraints, space requirements, underground or hidden facilities and structures, and all applicable data, drawings and specifications.

5. Customer shall provide adequate and continuous access to the site(s) where Company Work is to be performed. Such access is to be provided to Company and its contractors and representatives for the purpose of enabling them to perform the Company Work as and when needed and shall include adequate and secure parking for Company and contractor vehicles, stores and equipment.

6. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

Erie Blvd. Cost Reimbursement Agreement

Exhibit D: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of New York. If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.

- Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

  (A) Bodily Injury - $1,000,000/$1,000,000
  Property Damage - $1,000,000/$1,000,000
  OR
  (B) Combined Single Limit - $1,000,000
  OR
  (C) Bodily Injury and Property Damage per Occurrence - $1,000,000
  General Aggregate & Product Aggregate - $2,000,000 each

- Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of: Combined Single Limit - $1,000,000 per occurrence.

- Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

- Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

   To: National Grid c/o Niagara Mohawk Power Corporation
   Attention: Earl A. Barber
   300 Erie Boulevard West
   Syracuse, NY 13108

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: Brookfield Renewable Energy Group
c/o Erie Boulevard Hydropower, L.P.
800 Starbuck Avenue, Suite 802
Watertown, NY 13601

2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Erie Blvd. Cost Reimbursement Agreement

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent to the furnishing Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work under this Agreement.

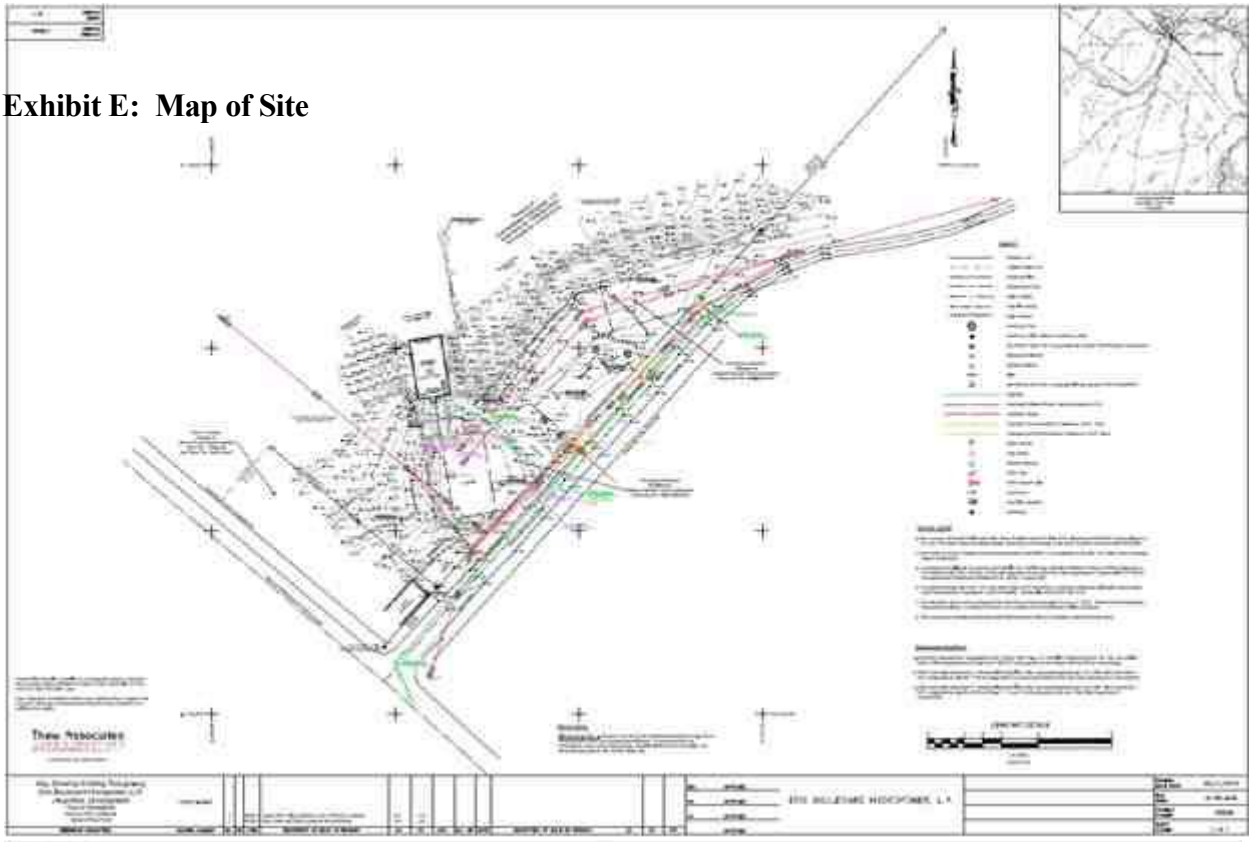
5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

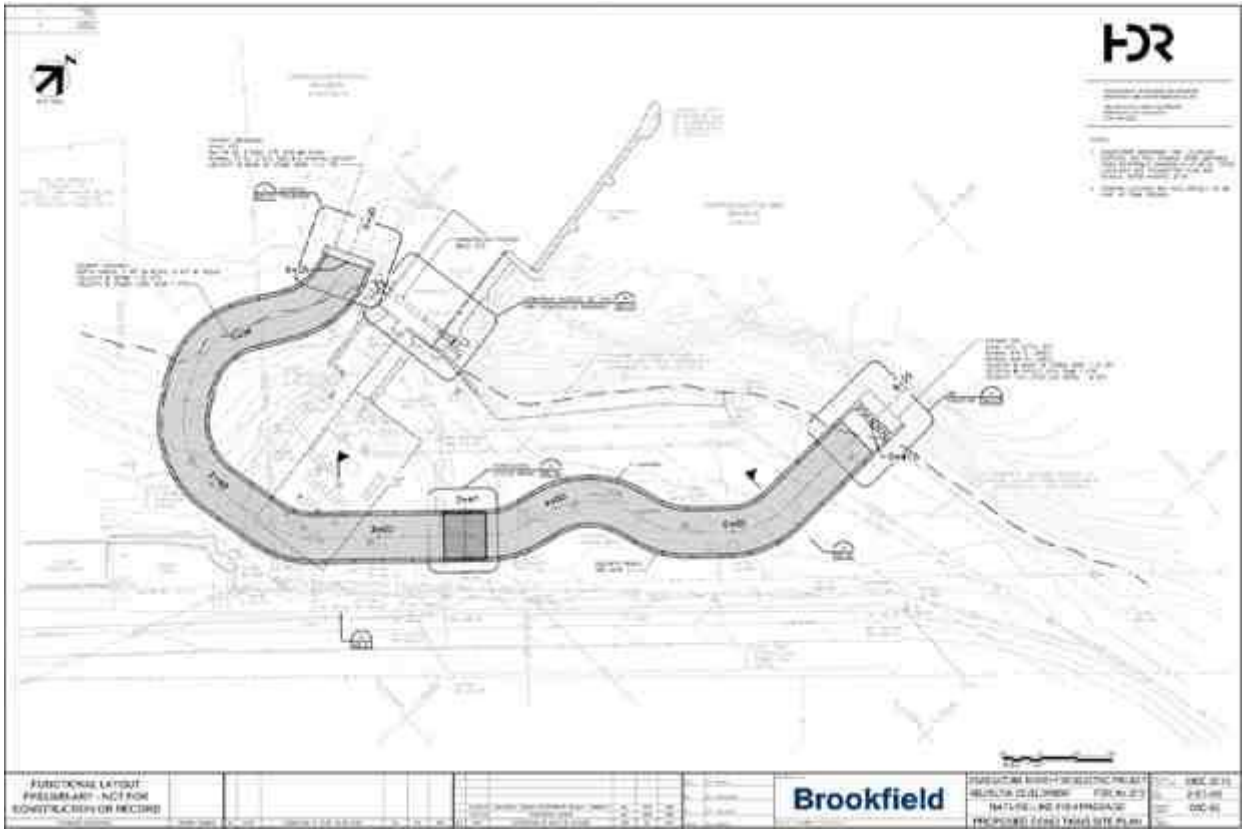
6. By the date that such coverage is required, each Party represents to the other Party that it will have full policy limits available and shall notify the other Party in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

7. Customer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Fish Passage Project and associated Work.

Erie Blvd. Cost Reimbursement Agreement

Exhibit E: Map of Site





Erie Blvd. Cost Reimbursement Agreement

Schedule I: Real Property Standards

5.0 STANDARDS AND REQUIREMENTS RELATING TO THIRD PARTY ACQUISITION AND TRANSFER OF REAL PROPERTY INTERESTS TO NIAGARA MOHAWK POWER CORPORATION FOR ELECTRIC FACILITIES

Note Regarding Application/Reservation of Rights

The standards set forth herein are intended to apply generally in cases where real property interests shall be acquired by third parties and transferred to Niagara Mohawk Power Corporation ("NMPC") in connection with the construction of new electric facilities (the "New Facilities"). NMPC advises, however, that it may impose additional or modified requirements in its sole discretion and/or on a case-by-case basis and, therefore, reserves the right to amend, modify or supplement these standards at any time prior to transfer/acceptance. Third parties shall not deviate from these standards unless expressly authorized in writing by NMPC, or the terms of the Agreement between NMPC and such third party to which these standards are attached expressly provide otherwise.

5.1 General Requirements

Unless otherwise expressly authorized in writing by NMPC, a third party requesting relocation of NMPC electric facilities and/or responsible for siting and constructing the New Facilities (the "Requesting Party") shall acquire all interests in real property that, in the opinion of NMPC, are necessary for the construction, reconstruction, relocation, operation, repair, maintenance, and removal of such Facilities. Further subject to the standards set forth herein, the Requesting Party shall obtain NMPC's approval of the proposed site or sites prior to the Requesting Party's acquisition or obtaining site control thereof. As a general rule, except for railroads, public lands and highways, the Requesting Party shall acquire a fee-owned right-of-way or a fully-assignable/transferable easement (each as further described below) for the New Facilities in all cases where NMPC will be assuming ownership thereof. The Requesting Party shall pay and be solely responsible for paying all costs and expenses incurred by the Requesting Party and/or NMPC that relate to the acquisition of all real property interests necessary and proper to construct, reconstruct, relocate, operate, repair, maintain and remove, as applicable, the New Facilities. The Requesting Party shall pay and be solely responsible for paying all costs associated with the transfer of real property interests to NMPC, including, but not limited to, closing costs, subdivision costs, transfer taxes and recording fees. The Requesting Party shall reimburse NMPC for all costs NMPC may incur in connection with transfers of real property interests. Title shall be transferred only after having been determined

satisfactory by NMPC. Further, NMPC reserves the right to condition its acceptance of title until such time as the New Facilities have been constructed, operational tests have

been completed, and the New Facilities placed in service (or determined by NMPC to be ready to be placed in service), and the Requesting Party is strongly advised to consult with NMPC's project manager as to the anticipated sequencing of events.

The Requesting Party will be responsible for payment of all real estate taxes (i.e., county, village, city/town and/or school) until such time as title has been transferred to NMPC (allocation of responsibility for payment of real estate taxes following the transfer to be determined on a case-by-case basis).

Prior to such transfer, the Requesting Party shall furnish to NMPC the original costs of any improvements by type/category of property; i.e., conductors, towers, poles, station equipment, etc. These original costs will show year of construction by location of such improvements. This information may be transmitted by NMPC to Federal, State or local governmental authorities, as required by law.

Erie Blvd. Cost Reimbursement Agreement

5.1.1 Title Documentation; Compliance with Appropriate Conveyancing Standards

The real property interests necessary for the construction, reconstruction, relocation, operation, repair, maintenance and removal of the New Facilities shall be conveyed to NMPC in fee simple (by warranty deed) or by fully-assignable/transferable easement approved by NMPC, with good and marketable title free and clear of all liens, encumbrances, and exceptions to title for a sum of $1.00. With respect to any approved conveyance of easements, the Requesting Party shall subordinate pertinent mortgages to the acquired easement rights or otherwise secure non-disturbance agreements or the like from any mortgagees. The Requesting Party shall indemnify, defend, and hold harmless NMPC, its agents and employees, officers, directors, parent(s) and affiliates, and successors in interest, from all liens and encumbrances against the property conveyed. The Requesting Party further agrees to provide to NMPC a complete field survey (with iron pin markers delineating the perimeter boundaries of the parcel or the centerline of the entire right-of-way in the case of an electric transmission line), an abstract of title (of at least 40 years or such longer period as may be required by NMPC on a case-by-case basis), and a 10-year tax search for real property interests to be transferred to NMPC. The Requesting Party shall be required to provide NMPC with a title insurance commitment with a complete title report issued by a reputable and independent title insurance company for any real property rights in fee or easement that are to be transferred to NMPC. At the time of the transfer of such interests to NMPC, the Requesting Party shall provide a title insurance policy naming NMPC as the insured covering the real property interests, in fee or easement, that are to be transferred to NMPC.

The Requesting Party shall provide such title documentation and title insurance as shall be required by the NMPC real estate attorney assigned to review and close the transfer of ownership from the Requesting Party to NMPC. The Requesting Party shall request direction from such attorney with respect to preparation of abstracts of title, title insurance commitments and policies, and preparation of boundary surveys that comply with ALTA/ACSM Land Title Survey Standards and which must conform to proposed legal descriptions. The Requesting Party will be provided legal forms which include acceptable language and format for title transfer. Title shall be determined satisfactory by the NMPC real estate attorney in his or her sole discretion.

Title requirements of NMPC shall be of a reasonable nature and consistent with legally sound title practice in the applicable jurisdiction. Without limiting the foregoing, title shall not be encumbered by any liens or encumbrances superior to or on par with any applicable lien of NMPC's indentures or otherwise deemed objectionable by the NMPC real estate attorney so assigned. All title insurance fees and premiums (including, without limitation, costs of title insurance policy endorsements) shall be paid by the Requesting Party at or prior to the date of transfer.

The Requesting Party shall provide to NMPC conformed copies of all necessary real property interests not prepared by, or directly for, or issued to NMPC.

Erie Blvd. Cost Reimbursement Agreement

5.1.2 Forms

The Requesting Party shall use NMPC-approved forms (including form subordination agreements) for obtaining, recording and transferring fee-owned right-of-way and easements. Proposed changes to such forms shall be discussed with and agreed upon with the assigned NMPC real estate attorney.

5.2 Areas Where Easements/Permits Are Acceptable

5.2.1 Railroads

Where the New Facilities shall cross railroads, the Requesting Party shall obtain railroad crossing permits or other standard railroad crossing rights prior to constructing the crossing.

5.2.2 Public Land

Where the New Facilities shall cross public land, the Requesting Party shall obtain an easement for the crossing and/or any permits necessary to construct, operate and thereafter maintain such Facilities.

5.2.3 Highways and other Public Roads

Where the New Facilities shall cross highways or other public roads, the Requesting Party shall obtain crossing permits, easements, or other standard highway crossing rights prior to constructing the crossing, from the agency or agencies authorized to issue such rights.

5.2.4 Off Right-of-Way Access

In all cases, the Requesting Party shall obtain access/egress rights to the New Facilities acceptable to NMPC. Where construction and maintenance access along the fee-owned or easement strip is not possible or feasible, the Requesting Party shall obtain easements for off right-of-way access and construct, where necessary, permanent access roads for construction and future operation and maintenance of the New Facilities. NMPC will review the line route for maintenance access and advise the Requesting Party of locations requiring permanent off right-of-way access. The Requesting Party shall obtain permanent easements and construct the permanent maintenance access roads. Typically, a width easement of 25 feet maximum shall be obtained for off right-of-way access, but the dimensions shall be per NMPC requirements on a case-by-case basis.

The Requesting Party shall obtain all necessary rights of access and licenses, including adequate and continuing rights of access to NMPC's property, as necessary for NMPC

to construct, operate, maintain, replace, or remove the New Facilities, to read meters, and to exercise any other of its obligations from time to time. The Requesting Party

hereby agrees to execute any such further grants, deeds, licenses, assignments, instruments or other documents as NMPC may require to enable it to record such rights-of-way, easements, and licenses.

5.2.5 Temporary Roads

The Requesting Party shall obtain temporary easements for access roads which are necessary for construction, but not for future operation and maintenance of, the New Facilities. NMPC shall concur with respect to any temporary roads being acquired versus permanent roads. If any disagreements occur with respect to the type of road being needed, NMPC's decision shall be final. In the event NMPC determines that permanent roads will not be required for operation and maintenance (including repair or replacement), easements for temporary roads shall not be assigned or otherwise transferred to NMPC by the Requesting Party.

5.2.6 Danger Trees

If it is determined that the fee-owned or principal easement strip is not wide enough to eliminate danger tree concerns, the Requesting Party shall obtain additional permanent easements for danger tree removal beyond the bounds of the principal strip. The additional danger tree easement rights may be general in their coverage area, however if a width must be specified, NMPC Forestry shall make that determination but in no case shall less than 25' feet be acquired beyond the bounds of the principal strip.

5.2.7 Guy and Anchor Rights

The Requesting Party shall obtain an additional permanent fee-owned strip or easement for guys and anchors when the fee-owned or principal easement strip is not wide enough to fully contain guys, anchors and, other such appurtenant facilities.

5.3 Dimensions

Dimensional requirements with respect to electric station/substation facilities will vary on a case-by-case basis. In all cases, however, the Requesting Party shall obtain sufficient area to allow safe construction, operation and maintenance of the New Facilities, in conformity with applicable land use and environmental laws, rules and regulations, including, without limitation, bulk, setback and other intensity requirements of applicable zoning ordinances, subdivision regulations, and wetlands setback requirements. Basic width for the fee-owned or easement strip for 115kV transmission lines shall be 100 feet, with the transmission facility constructed in the center of the strip. NMPC will advise the Requesting Party if there will be any additional right-of-way requirements. This requirement may be modified by the agreement of the parties as the scope of the project is further developed or if there are changes to the project. Where extreme side-hill exists, additional width beyond the 25

feet may be required on the uphill side of the strip to allow additional danger tree removal.

Where guyed angle structures are to be installed, additional fee strip widths or permanent easement shall be obtained by the Requesting Party on the outside of the angle to provide for installation of guys and anchors within the fee-owned strip or permanent easement. The width of the additional strip shall be a minimum of 25 feet. The length of the strip shall be sufficient to assure that all guys and anchors will fall within the fee-owned strip. A 125' strip will then be typically required.

5.4 Eminent Domain

If condemnation in NMPC's name is required, the Requesting Party shall contact NMPC's project manager for additional details on any assistance NMPC may provide. Typically, the Requesting Party shall prepare all acquisition maps, property descriptions and appraisals. Contact shall be made with NMPC's surveyor, right-of-way supervisor and legal department, and all requirements shall be closely followed. The Requesting Party shall also prepare an Environmental Assessment and Public Need report (Environmental Impact Statement or equivalent) and any other report or reports which may be required. A certified survey may also be required. NMPC must approve the Requesting Party's attorney for all condemnation hearings and proceedings. NMPC participation in such proceedings will be required at the Requesting Party's sole cost and expense. The Requesting Party shall contact NMPC attorneys prior to undertaking any condemnation proceedings for proper procedures to follow. To the extent legally permissible, NMPC reserves the right to refuse the use of condemnation by the Requesting Party (if the Requesting Party has the legal authority to commence and conduct an eminent domain proceeding), or by itself, in its sole discretion.

5.5 Use of Existing NMPC Right-of-Way

Existing NMPC right-of-way will not be available for use for the New Facilities unless NMPC Engineering, Planning and Operating departments agree to the contrary. The Requesting Party will pay a mutually acceptable cost to use such lands if NMPC gives internal approval.

5.6 Public Right-of-Way

If the Requesting Party must use public right-of-way for the New Facilities, the Requesting Party shall arrange for and reimburse NMPC and/or other utilities for any relocation which may be necessary.

5.7 General Environmental Standards

The Requesting Party agrees that, prior to the transfer by the Requesting Party of any real property interest to NMPC, the Requesting Party shall conduct, or cause to be conducted, and be responsible for all costs of sampling, soil testing, and any other

methods of investigation which would disclose the presence of any Hazardous Substance which has been released on the Property or which is present upon the

Property by migration from an external source, and which existed on the Property prior to the transfer, and shall notify NMPC in writing as soon as reasonably practicable after learning of the presence of Hazardous Substance upon said Property interest. The Requesting Party agrees to indemnify, defend, and save NMPC, its agents and employees, officers, directors, parents and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge (including reasonable attorneys' fees), expense, or cause of action, for the removal or management of any Hazardous Substance and relating to any damages to any person or property resulting from presence of such Hazardous Substance. The Requesting Party shall be required, at its sole cost and expense, to have a Phase I Environmental Site Assessment ("Phase I ESA") conducted on any such property which may be legally relied upon by NMPC and which shall be reviewed and approved by NMPC prior and as a condition to transfer. NMPC further reserves the right, in its sole discretion, to require that the Requesting Party have a Phase II Environmental Site Assessment conducted on any such property, also at the Requesting Party's sole cost and expense, if NMPC determines the same to be necessary or advisable, which (if required) shall be reviewed and approved by NMPC prior and as a condition to transfer.

Erie Blvd. Cost Reimbursement Agreement

Schedule II: Environmental Due Diligence Procedure

Erie Blvd. Cost Reimbursement Agreement

Serivce Agreement No. 2357

COST REIMBURSEMENT AGREEMENT

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as of May 3, 2017 (the "*Effective Date*"), by and between NIAGARA MOHAWK POWER CORPORATION *(*"*Company*" or "*National Grid*"*)* and NEW YORK STATE ELECTRIC & GAS CORPORATION (the "*Customer*" or "*NYSEG*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, the Customer is rebuilding its Silver Creek Substation located in Silver Creek, New York; and

WHEREAS, Customer has requested that Company perform certain Work as described herein; and

WHEREAS, Company is willing to perform the Work, subject to reimbursement by Customer of all Company costs and expenses incurred in connection therewith;

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

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Advance Notice*" shall have the meaning specified in Section 4.2 of this Agreement.

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person; "control" of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all 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 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, NYISO, NPCC, and NYSRC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Certificate*" shall have the meaning set forth in Section 4.2 of this Agreement.

"*Company Overtime Notice*" shall have the meaning set forth in Section 5.1 of this Agreement.

"*Company Overtime Work*" shall have the meaning set forth in Section 5.1 of this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Work or otherwise incurred by Company and/or its Affiliates in connection with this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Work or otherwise in connection with this Agreement, all applicable overhead, all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations, including, without limitation, the Required Approvals. The foregoing notwithstanding, these Company Reimbursable Costs shall not include any costs that are specified in Exhibit A to this Agreement as being excluded from Company Reimbursable Costs.

"*Customer Deferral Notice*" shall have the meaning set forth in Section 5.1 of this Agreement.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Dollars*" and "$" mean United States of America dollars.

"DPS Staff" shall have the meaning specified in Section 4.8 of this Agreement.

"*Effective Date*" shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located. Good Utility Practice shall include, but not be limited to, NERC, NPCC, NYSRC, and NYISO criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" and "*Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Indemnifying Party*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Liens*" shall have the meaning specified in Section 12.2 of this Agreement.

"*Material Change*" shall have the meaning specified in Section 4.2 of this Agreement.

"*Monthly Report*" shall have the meaning set forth in Section 7.3 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization.

"*NYPSC*" shall mean the New York Public Service Commission.

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

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Projected Milestone Schedule*" shall have the meaning set forth in Section 5.3 of this Agreement.

"*Project*" means the Work to be performed under this Agreement by the Company.

"*Project Manager*" means the respective representative of the Customer and the Company appointed pursuant to Section 27.1 of this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Recipient or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Proposing Party*" shall have the meaning specified in Section 4.2 of this Agreement.

"*Receiving Party*" shall have the meaning specified in Section 4.2 of this Agreement.

"*Recipient*" shall mean the Party receiving Proprietary Information.

"*Reimbursement Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Requesting Party*" shall have the meaning set forth in the Real Property Standards.

"*Required Approvals*" shall have the meaning set forth in Section 27.12 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Response Notice*" shall have the meaning specified in Section 4.4 of this Agreement.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Site*" shall mean the premises of the current National Grid Gardenville 115kV Substation on Indian Church Road in the Town of West Seneca, New York .

"*Subcontractor*" means any organization, firm or individual, regardless of tier, which Company retains in connection with the Agreement.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall have the meaning specified in Section 3.1 of this Agreement.

"*Work Cost Estimate*" shall have the meaning set forth in Section 6.1 of this Agreement.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Work*"). It is the intent of the Parties that, in carrying out their respective obligations under this Agreement, neither Party will perform work on the physical facilities of the other Party.

3.2 Company shall use commercially reasonable efforts to perform the Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Work, Customer shall have the right to notify the Company of the need for correction of defective Work that does not meet the standards of this Section 3.2. If the Work is defective within the meaning of the prior sentence, the Company shall promptly complete, correct, repair or replace such defective Work, as appropriate. The remedy set forth in this Section is the sole and exclusive remedy granted to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

4.0 Changes in the Work

4.1 Prior to commencement of the Work, each Party shall provide a written notice to the other Party containing the name and contact information of such Party's Project Manager.

4.2 A Party proposing a change to the Work ("*Proposing Party*") shall provide the other Party ("*Receiving Party*") with at least fifteen (15) days' advance notice ("*Advance Notice*") of any proposed change to the Work that is material (as defined below) ("*Material Change*") before implementing such change. If legal or regulatory compliance requirements, safety considerations, or other exigent circumstances, make providing Advance Notice impractical, notice of the Material Change shall be provided by the Proposing Party as soon as reasonably practicable under the circumstances. A Material Change is any change that may result in a delay in the Project Milestone Schedule (as such delay is estimated in good faith by the Proposing Party at the time of the Advance Notice) greater than one (1) month, any increase of the cost to be reimbursed by the Receiving Party (as estimated in good faith by the Proposing Party at the time of the Advance Notice) in excess of $200,000, any change constituting a major change under any Certificate of Public Convenience and Necessity ("*Certificate*") issued by the NYPSC under Article VII of the New York Public Service Law, or any other instance where a necessary permit or authorization (*e.g.*, Corps of Engineers approval) must be modified, except where such approval or authorization is ministerial in nature.

4.3 Advance Notice by the Proposing Party shall include a good faith estimate of the impact of the Material Change on the Project Milestone Schedule and an explanation of why such Material Change is being made.

4.4 If the Receiving Party notifies the Proposing Party within such 15 day period that the proposed Material Change is not accepted ("***Response Notice***"), the consent of the Receiving Party shall be required. If the Receiving Party does not respond to the Advance Notice within such 15 day period, the Receiving Party's consent shall be deemed to have been given.

4.5 However, if the Material Change: (1) is made in order to comply with Good Utility Practice, (2) is required to accommodate a change in the Receiving Party's Work, or (3) is necessary to comply with applicable law, regulation, or order (including a Certificate); is at the direction of any monitor required under a Certificate (*e.g.*, environmental monitor) or an Agency representative; is necessary to return facilities to service per applicable standards, or is necessary to address safety considerations, the Receiving Party's consent shall not be required.

4.6 A change to the Work that is not a Material Change is not subject to the Advance Notice or consent provisions above.

4.7 For the avoidance of doubt, the good faith estimates of cost and/or of delay in Project Milestone Schedule anticipated to result from a change of Work, as estimated by the Party contemplating such change, shall be dispositive and neither Party shall be deemed in breach of this Section if any such good faith estimate differs from the actual cost or Project Milestone Schedule delay arising from such change of Work.

4.8 The foregoing shall not excuse the Parties from providing any required notification to New York Department of Public Service ("***DPS Staff***") or otherwise obtaining approval from DPS Staff or the NYPSC for such changes to the Work as required by a Certificate.

4.9 Any continued dispute regarding any necessary consent or any other aspect of a notice given by either Party with regard to changes to the Work shall be resolved as described in the "Dispute Resolution" section of this Agreement (Section 27.2).

5.0 **Performance and Schedule; Conditions to Proceed**

5.1 The Company shall use commercially reasonable efforts to have any Work performed by its direct employees performed during normal working hours. The foregoing notwithstanding, if Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs, provided, that, with respect to Work to be performed by Company's direct employees outside of normal working hours ("***Company Overtime Work***"), Company provides at least five (5) days prior written notice to the Customer (each, a "***Company Overtime Notice***") when Company schedules such Company Overtime Work other than at the request of Customer. Upon Customer's written request delivered to Company prior to the

scheduled commencement of the Company Overtime Work referred to in the applicable Company Overtime Notice (each, a "*Customer Deferral Notice*"), Company shall defer the scheduled performance of such Company Overtime Work and instead perform this Work during normal working hours. The foregoing notwithstanding, Company shall not be required to provide a Company Overtime Notice, nor shall Company be required to comply with any Customer Deferral Notice, with respect to any Company Overtime Work that is reasonably required (i) due to emergency circumstances, (ii) for safety, security or reliability reasons (including, without limitation, to protect any facility(ies) from damage or to protect any person(s) from injury), (iii) to return any facility(ies)to service in accordance with applicable standards, or (iv) to comply with Good Utility Practice or any Applicable Requirement. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Work outside of normal working hours if the Company determines that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.

5.2 If Customer requests, and the Company agrees, to work outside normal working hours due to delays in the Project schedule or for other reasons, Company shall be entitled to recover all resulting costs as part of Company Reimbursable Costs.

5.3 The Projected Milestone Schedule is set forth in Exhibit B, attached hereto and incorporated herein by reference. The Projected Milestone Schedule is a projection only and is subject to change. Neither Party shall be liable for failure to meet the Preliminary Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Project.

5.4 Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any Work until all of the following conditions have been satisfied:

(i) all Required Approvals for the Work have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of the Work is permitted under the terms and conditions of such Required Approvals, and

(ii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **Estimate Only; Customer Obligation to Pay Company Reimbursable Costs.**

6.1 The current good faith estimate of the total Company Reimbursable Costs, exclusive of any applicable taxes, is Two Hundred Forty Two Thousand Eight Hundred Thirty Five Dollars ($242,835) (the "*Work Cost Estimate"*). The Work Cost Estimate is an estimate only and shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company or its Affiliates.

7.0 **Payment**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs. The Company shall invoice Customer for the amount of the Work Cost Estimate and Customer shall pay the amount of the Work Cost Estimate to Company within five (5) Days of the invoice due date. Company shall not be obligated to commence Work under this Agreement prior to receiving payment of the Work Cost Estimate.

7.2 Company may periodically invoice Customer for Company Reimbursable Costs incurred. Each invoice will contain reasonable detail sufficient to show the invoiced Company Reimbursable Costs incurred by line item. Company is not required to issue periodic invoices to Customer and may elect, in its sole discretion, to continue performance hereunder after the depletion of the Work Cost Estimate amount paid by Customer or any subsequent prepayment, as applicable, and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any payment due under this Agreement is not received within five (5) Days after the applicable invoice due date, the Customer shall pay to the Company interest on the unpaid amount at an annual rate equal to two percent (2%) above the prime rate of interest from time to time published under "Money Rates" in The Wall Street Journal (or if at the time of determination thereof, such rate is not being published in The Wall Street Journal, such comparable rate from a federally insured bank in New York, New York as the Company may reasonably determine), the rate to be calculated daily from and including the due date until payment is made in full. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement is not received within five (5) Days after the applicable invoice due date, Company may suspend any or all Work pending receipt of all amounts due from Customer; any such suspension shall be without recourse or liability to Company.

7.3 Each month during the term of this Agreement, the Company shall provide Customer with a report (each, a "***Monthly Report***") containing (i) unless invoiced, the Company's current estimate of the Company Reimbursable Costs incurred in the prior calendar month, and (ii) the Company's current forecast (20% to 40% variance) of the Company Reimbursable Costs expected to be incurred in the next calendar month, provided, however, that such Monthly Reports (and any forecasted or estimated amounts reflected therein) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company or its Affiliates.

7.4 If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to Company, relieving Company from any obligation to collect sales taxes from Customer ("Sales Tax Exemption Certificate"). During

the term of this Agreement, Customer shall promptly provide Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.5 Company shall maintain reasonably detailed records to document the Company Reimbursable Costs. So long as a request for access is made within one (1) year of completion of the Work, Customer and its chosen auditor shall, during normal business hours and upon reasonable advanced written notice of not less than ten (10) days, be provided with access to such records for the sole purpose of verification by Customer that the Company Reimbursable Costs have been incurred by Company.

7.6 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company :

Name: Kathryn Cox-Arslan
Director, Transmission Commercial Services
Niagara Mohawk Power Corporation
d/b/a National Grid

Address: 40 Sylvan Road
Waltham, MA 02451

7.7 All payments made under this Agreement shall be made in immediately available funds.

Company's contact for payment matters is:

Name: Kathryn Cox -Arslan

Address: 40 Sylvan Rd
Waltham, MA 02451

Payments to the Company shall be made by wire transfer to:

Wire Payment: JP Morgan Chase
ABA#: 021000021
Credit: National Grid USA
Account#: 77149642

8.0 **Final Payment**

8.1 Following completion of the Work, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer ("*Reimbursement Amount*"). The Reimbursement Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Reimbursement Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 7.2 of this Agreement.

9.0 **Customer's Responsibilities**

9.1 If and to the extent applicable or under the control of the Customer, Customer shall provide complete and accurate information regarding requirements for the Project and the Site(s), including, without limitation, constraints, space requirements, underground or hidden facilities and structures, and all applicable drawings and specifications.

9.2 Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

9.3 Customer shall reasonably cooperate with Company as required to facilitate Company's performance of the Work.

10.0 **Meetings**

10.1 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties, which meetings shall be held at least monthly by teleconference or in person as agreed to by the Project Managers.

11.0 **Disclaimers**

11.1 THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE OF THE WORK HEREUNDER. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, ANY PROJECT, OR ANY WORK OR SERVICES PERFORMED IN CONNECTION THEREWITH, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, SERVICES OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE WORK, INCLUDING ITEMS INCORPORATED IN THE WORK ("THIRD PARTY WARRANTIES"), ARE NOT TO BE CONSIDERED WARRANTIES OF THE COMPANY AND THE COMPANY MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation or expiration of this Agreement.

12.0 **Liability and Indemnification**

12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), each Party (the "*Indemnifying Party*") shall indemnify and hold harmless, and defend the other Party, its parents and Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees (each, individually, an "Indemnified Party" and, collectively, the "*Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "*Damages*"), incurred by any Indemnified Party to the extent caused by the negligence, unlawful act or omission, or intentional misconduct of the Indemnifying Party, its Affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, and employees, arising out of or in connection with this Agreement, the Project, or any Work, except to the extent such Damages are directly caused by the negligence, intentional misconduct or unlawful act of the Indemnified Party or its contractors, officers, directors, servants, agents, representatives, or employees.

12.2 Each Party shall defend, indemnify and save harmless the other Party, its parents and Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien (collectively, "*Liens*") asserted by any of the Indemnifying Party's subcontractors or suppliers in connection with the Work or the Project, except to the extent such Liens are directly caused by the negligence, intentional misconduct or unlawful act of the Indemnified Party or its contractors, officers, directors, servants, agents, representatives, or employees.

12.3 Customer shall defend, indemnify and hold harmless Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates as the result of payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

12.4 Prior to the start of construction activities hereunder by Company, Company's total cumulative liability to Customer and its Affiliates for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall be capped at an amount not to exceed the total of all Company Reimbursable Costs actually paid to Company by Customer under this Agreement. Following commencement of construction activities by Company hereunder, Company's total cumulative liability to Customer and its Affiliates for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall be capped at an amount not to exceed the greater of: (a) fifty percent (50%) of the total estimated costs of the Work to be performed by Company under this Agreement; or (b) the total of all Company Reimbursable Costs actually paid to Company by Customer under this Agreement. For the avoidance of doubt, any initial pre-payment amount paid by Customer to Company under this Agreement shall be included in the estimated and actual costs in determining the cumulative liability cap above.

12.5 Neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.6 Neither Party shall be liable to the other Party for claims or damages for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the negligence of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

12.8 For the avoidance of doubt: neither Party, as applicable, shall have any responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or results from (a) the inability or failure of the other Party or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by such other Party under this Agreement, (b) any unforeseen conditions or occurrences beyond the reasonable control of the Party (including, without limitation, conditions of or at the site of the Work, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, or (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement.

12.9 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation or expiration of this Agreement.

13.0 **Employee Claims; Insurance**

13.1 The Company elects to self-insure to maintain the insurance coverage amounts set forth in Exhibit C of this Agreement.

13.2 Prior to commencing Work on the Project and during the term of this Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit C of this Agreement, or Customer may self-insure to the extent authorized or licensed to do so under the applicable laws of the State of New York. Customer hereby elects to self-insure to maintain the insurance coverage amounts set forth in Exhibit C of this Agreement.

13.3 Except to the extent Customer self-insures in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to commencement of Work.

13.4 Each Party shall be separately responsible for insuring its own property and operations.

14.0 **Assignment and Subcontracting**

14.1 Either Party may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Any assignment of this Agreement in violation of the foregoing shall be voidable at the option of the non-assigning Party. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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 be an agent or representative of, or to otherwise bind, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **Examination, Inspection and Witnessing**

16.1 Subject to Customer's and its representatives' compliance with Company's security, safety, escort and other access requirements, the Customer and/or its representatives shall have the right to inspect and examine the Work, or witness any test with respect to the Work, from time to time, when and as mutually agreed by the Parties, at Customer's sole cost and expense, and with reasonable prior notice to Company. Unless otherwise agreed between the Parties, such inspections, examinations and tests shall be scheduled during normal business hours.

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with the Work or any other activities contemplated by this Agreement. In connection with the activities contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("*OSHA*"), as amended from time to time. While on the property (including, without limitation, easements or rights of way) of, or accessing the facilities of, the other Party, each Party's employees and/or contractors and agents shall at all times abide by the other Party's safety standards and policies, switching and tagging rules, and escort and other applicable access requirements. The Party owning or controlling the property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors.

18.0 **Approvals, Permits and Easements**

18.1 The actual cost of obtaining all Required Approvals obtained by or on behalf of the Company shall be paid for by Customer as part of Company Reimbursable Costs.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 Except as provided below, Company shall not be liable to Customer, its affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on any portion of Company's owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property).

19.2 Company shall cooperate with Customer in the course of Customer's real property related due diligence. Such cooperation shall include, but not be limited to, access to the ROW by Customer personnel or consultants for the purpose of conducting environmental site assessments or "all-appropriate inquires."

19.3 Customer shall notify Company during the construction of any of the Project facilities of any known Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in Customer's owned, occupied, used, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in

connection with the Work or this Agreement.

19.4 In connection with the activities contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local environmental protection and compliance requirements, rules, regulations laws and ordinances.

19.5 Company will not be liable to Customer with respect to any Hazardous Substances which may be on any Customer or third party property (including, without limitation, easements, rights-of-way, or other third-party property) that Company may discover, release, or generate through no negligent or unlawful act of Company, and Company disclaims any liability to the fullest extent allowed by applicable law. Customer agrees to hold harmless, defend, and indemnify Company from and against any claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, release, threat of release or generation of Hazardous Substances on Customer owned or lease property, or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment, except to the extent directly and solely caused by the negligent or unlawful act of Company.

19.6 Except with regard to improvements required at the Site, Customer will be responsible for obtaining any environmental permits or other authorizations necessary for the construction of the Project facilities, including, without limitation any permits required by the U.S. Army Corp of Engineers, and shall also be responsible for satisfying any mitigation requirements associated with such permits and authorizations. For avoidance of doubt, any costs incurred by Company and/or its affiliates in connection with obtaining environmental permits or other authorizations necessary for the construction of the Project facilities, if any, will be part of the costs and expenditures to be paid by Customer.

20.0 **Suspension of Work**

20.1 Subject to Section 20.2, below, Customer may interrupt, suspend, or delay the Work by providing written notice to the Company specifying the nature and expected duration of the interruption, suspension, or delay. Company will use commercially reasonable efforts to suspend performance of the Company Work as requested by Customer. Customer shall be responsible to pay Company (as part of Company Reimbursable Costs) for all costs incurred by Company that arise as a result of such interruption, suspension or delay.

20.2 As a precondition to the Company resuming the Work following a suspension under Section 20.1, the Projected Milestone Schedule and the Work Cost Estimate shall be revised as mutually agreed by the Parties to reflect the interruption, suspension, or delay. Adjustments to the Company Reimbursable Costs shall include any costs or expenses the Company incurs as a result of the interruption, suspension, or delay.

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, in whole or in part, and thereupon each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing Work- and/or Project- related commitments, orders and contracts upon terms that are reasonably expected to minimize all associated costs. However, nothing herein will restrict Company's ability to complete aspects of the Work that Company must reasonably complete in order to return its facilities and the Sites to a configuration in compliance with Good Utility Practice and all Applicable Requirements. The Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 In the event of any early termination or cancellation of the Work as contemplated in this Agreement, Customer shall pay Company for the Company Reimbursable Costs set forth below, except if the early termination or cancellation is a result of a breach by Company, the costs indicated in subparagraphs (iii) and (iv) below shall not be considered Company Reimbursable Costs and Customer shall not be required to pay such costs:

(i) all Company Reimbursable Costs for Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company in connection with the Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company which cannot be reasonably avoided or mitigated.

22.0 **[Reserved]**

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and permit requests necessary in connection with the Work or Project, or order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement, in whole or in part, with no further obligation or liability; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company's Company Reimbursable Costs in accordance with Section 21.2 of this Agreement.

23.2 Within thirty (30) Days after the termination of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **[Reserved]**

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 General Restrictions. Upon receiving Proprietary Information, the Recipient*)* and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Recipient, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Recipient and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Recipient shall be solely liable for any breach of this Section to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

25.3 Exceptions. Subject to Section 25.4 hereof, the Recipient shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Section; or

25.3.2 is known to the Recipient or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Recipient or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Recipient or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Recipient or its Representatives, for public safety reasons, provided, that, Recipient has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Recipient or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Recipient or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Recipient shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Recipient will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include "critical energy infrastructure information" under applicable FERC rules and policies ("*CEII*"). Recipient shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC regulations, rules, orders and policies) applicable to any such CEII disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Recipient nor its Representatives shall divulge any such CEII to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Recipient has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Recipient or any of its Representatives seeks or is ordered to submit any such CEII to FERC, a state regulatory agency, court or other governmental body, the Recipient shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII status and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII, Recipient's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, or (ii) the date on which such CEII is no longer required to be kept confidential under applicable law, whichever is later. With respect to CEII, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any termination, expiration or cancellation of this Agreement.

26.0 **Governing Law; Effect of Applicable Requirements**

26.1 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in the State of New York, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

26.2 If and to the extent a Party is required or prevented or limited in taking any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

27.0 **Miscellaneous**

27.1 **Project Managers.** Promptly following the Effective Date, each Party shall designate a Project Manager and shall provide the other Party with a written notice containing the name and contact information of such Project Manager. Whenever either Party is entitled to approve a matter, the Project Manager for the Party responsible for the matter shall notify the Project Manager of the other Party of the nature of such matter. The Project Managers shall discuss such matter, and each Project Manager shall confer on such matter on behalf of his/her Party. The foregoing notwithstanding, in no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

27.2 **Dispute Resolution.** Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Each Party shall designate one or more representatives with the authority to negotiate the matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the agreement of both Parties to participate in such an alternative dispute resolution process.

27.3 **Compliance with Law**. Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

27.4 **Form and Address.** All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third (3rd) business Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) business Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party. Each Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.5 **Exercise of Right.** No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.6 **Headings.** The descriptive headings of the several Articles, Sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

27.7 **Incorporation of Schedules and Exhibits.** The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.8 **Prior Agreements; Modifications.** This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.

27.9 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.10 **Nouns and Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.11 **No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.12 **Validity; Required Regulatory Approvals.**

(a) Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

(b) Subject to Section 23.3 of this Agreement, the obligations of each Party under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases from any local, state, or federal regulatory agency or other governmental agency or authority (which may include, without limitation and as applicable, the NYISO and the NYPSC) or any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

(c) Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Section 21.2 hereof) for all Company Reimbursable Costs. All of the Company's actual costs in connection with seeking Required Approvals shall be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

27.13 **Notices** All formal notices, demands, or communications under this Agreement shall be submitted in writing either by hand, registered or certified mail, or recognized overnight mail carrier to:

To Company: NYSEG
Ellen Miller
Vice President of Electric Capital Delivery

83 Edison Drive,
Augusta, ME.04336
207-522-8984
ellen.miller@cmpco.com

To Customer: Ms. Kathryn Cox-Arslan
Director, Transmission Commercial Services
Niagara Mohawk Power Corporation
d/b/a National Grid
40 Sylvan Road
Waltham, MA 02451
(781) 907-2406

27.14 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[*Signatures are on following page*.]

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

NEW YORK STATE ELECTRIC & GAS CORPORATION

By: _____
Name: Ellen Miller
Title: Vice President of Electric Capital Delivery

By: _____
Name: Joseph Syta
Title: Vice President of NY Controller & Treasurer

NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid

By: _____
Name: Kathryn Cox-Arslan
Title: Director, Transmission Commercial Services

LIST OF EXHIBITS

Exhibit A: Scope of Work

NYSEG is rebuilding their existing Silver Creek substation in Silver Creek, NY. This station is energized from National Grid's Gardenville – Dunkirk #141 and #142 (Major Location #Z10062) 115kV transmission lines. The objective is to supply NYSEG's new switch/receiving structure from both lines #141 and #142.

NYSEG is to build its new switch/receiving structure.

National Grid's scope of work under this Agreement is as follows, provided, that, National Grid shall not be obligated to begin performance of such scope of work until after NYSEG has completed its new switch/receiving structure and has notified National Grid of such completion:

- Install guy wires on existing National Grid switch/receiving structure to support the line #141 tap
- Remove tap line #142 from structure 400 to the existing National Grid switch/receiving structure
- Modify the attachment point of the middle phase on structure 400 to match the top and bottom phase
- Install new conductor from structure 400 to the new NYSEG switch/receiving structure
- Remove tap line #141 from structure 399 to the existing National Grid switch/receiving structure
- Modify the attachment point of the middle phase and bottom phase on the structure 399 to match the top phase
- Remove previously installed guy wires from the existing National Grid switch/receiving structure
- Install new conductor from structure 399 to the new NYSEG switch/receiving structure
- Remove the existing National Grid switch/receiving structure

  The phasing for each circuit on the mainline is not the same. The attachments at each structure will be modified to maintain clearance while rolling into the new switch/receiving receiving structure.

For the avoidance of doubt: National Grid's scope of work includes all study, documentation, design, engineering, project management, permitting, procurement, construction, testing, review, and inspection work, as well as other necessary or advisable activities, to perform and complete the tasks contemplated above.

Exhibit B: Projected Milestone Schedule

PROJECTED MILESTONE SCHEDULE

Task	Milestone	Completion Date	Responsible Party
1.	Preliminary Engineering	12/1/2016	Customer/Company
2.	Final Design	12/31/2017	Customer/Company
3.	Material & Equipment Procurement	03/31/2018	Company
4.	Construction	TBD	Company
5	Close Out	10/31/2018	Customer / Company

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension.

Neither Party shall be liable for failure to meet the above Preliminary Milestone Schedule, any milestone, any in-service date, or any other projected or preliminary schedule in connection with this Agreement, the Work or the Project. The Company does not and cannot guarantee or covenant that any outage necessary in connection with the Work will occur when presently scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages.

Exhibit C: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of **New York.** If required, coverage shall include the U.S. Longshore and Harbor Workers' Compensation Act and the Jones Act.

- Public Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

  (A) Bodily Injury - $1,000,000/$1,000,000
  Property Damage - $1,000,000/$1,000,000
  OR
  (B) Combined Single Limit - $1,000,000
  OR
  (C) Bodily Injury and Property Damage per Occurrence - $1,000,000
  General Aggregate & Product Aggregate - $2,000,000 each

- Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

   To: Ms. Kathryn Cox-Arslan
   Director, Transmission Commercial Services
   Niagara Mohawk Power Corporation d/b/a National Grid
   40 Sylvan Road
   Waltham, MA 02451
   (781) 907-2406

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: NYSEG
Ellen Miller
Vice President of Electric Capital Delivery
83 Edison Drive,
Augusta, ME.04336
207-522-8984
ellen.miller@cmpco.com

2. Should any of the above-described policies be cancelled before the expiration date thereof,

notice will be delivered in accordance with the policy provisions.

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, both Parties shall furnish to each other copies of any accidents report(s) sent to the Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work for the Project under this Agreement.

5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other that it will have full policy limits available and shall notify each other in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

7. Customer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Project and associated Work.

NYISO OATT SERVICE AGREEMENT No. 2386

AGREEMENT

BETWEEN

NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID

AND

MID-ATLANTIC INTERSTATE TRANSMISSION, LLC

nationalgrid

October 11, 2017

Valerie L. Davin
FERC & Wholesale Connection Support
Mid- Atlantic Interstate Transmission, LLC
c/o FirstEnergy Service Company
800 Cabin Hill Drive, GCH-C201
Greensburg, PA 15601

Re: South Ripley Relay Changes Project

Dear Ms. Davin:

This letter sets forth the agreement ("*Agreement*") between Niagara Mohawk Power Corporation d/b/a National Grid ("*NMPC*") and Mid-Atlantic Interstate Transmission, LLC ("*MAIT*") under which NMPC will perform certain system protection modifications to its South Ripley Substation at the 230kv Line 69, as described below, that are required as a result of MAIT's upgrades to its Erie East 230 kV Substation as defined in PJM Interconnection LLC's Regional Transmission Expansion Plan (RTEP) b2371, subject to the terms and conditions hereof, including, without limitation, MAIT's reimbursement of NMCP's incurred costs, as set forth herein. NMPC and MAIT may be referred to hereunder, individually, as a "*Party*" and, collectively, as the "*Parties*."

In accordance with the terms and conditions of this Agreement, NMPC will perform the Scope of Work described below (the "*NMPC Scope of Work*"):

NMPCs Scope of Work

A. Prepare and provide temporary relay settings for NMPC/MAIT 230kV Line 69 protection at National Grid's South Ripley Substation. Revised settings will be created for both "A" and "B" protection schemes for this Line. The "B" package communication based protection scheme will be disabled while the Line is being protected by the temporary settings.

B. Existing tone-based Direct Transfer Trip (DTT) schemes to MAIT at the South Ripley Substation will also be disabled while the temporary line settings are in service.

C. Update related as-built drawings, as needed.

D. Apply & test above-referenced new 230kV "A" and "B" package relay settings at South Ripley Substation.

E. Provide related energization support calls/field support as needed.

Total estimated cost: Forty Thousand US Dollars ($40,000) plus or minus 25%

MAIT's Scope of Work (the "*MAIT Scope of Work*")

A. Coordinate with NMPC in developing and reviewing relay settings for the South Ripley line protection schemes referred to above.

MAIT agrees to reimburse NMPC for all NMPC's actual and verifiable costs incurred to perform the NMPC Scope of Work defined above ("*NMPC Costs*").

MAIT shall provide NMPC with an initial prepayment in the amount of $40,000 ("*Initial Prepayment*"). NMPC shall not be obligated to commence performance of any work in connection with this Agreement until it has received the Initial Prepayment.

MAITs responsibility to reimburse NMPC for NMPC Costs shall include, but not be limited to, actual quantities of labor and material expended by NMPC and/or its contractor(s) for performance of the NMPC Scope of Work. NMPC will invoice MAIT for all NMPC Costs at the completion of the NMPC Scope of Work, which invoice shall reflect the application of a credit in the amount of the Initial Prepayment paid by MAIT under this Agreement and be accompanied by reasonable documentation of the costs incurred; MAIT shall pay such invoiced amount no later than 45 days following MAITs receipt of the invoice. If NMPC will be unable to complete the NMPC Scope of Work, MAIT may terminate this Agreement upon written notice to NMPC and NMPC shall return the Initial Prepayment to MAIT less any NMPC Costs incurred through the effective date of termination (inclusive of NMPC's reasonable costs and expenses incurred as a result of such termination which cannot reasonably be avoided or mitigated by NMPC including, without limitation, wind-up costs, equipment rental fees, and subcontractor fees).

Payment instructions: All payments made under this Agreement shall be made in immediately available funds. Unless otherwise directed by NMPC, payments to NMPC shall be made by wire transfer to:

Wire Payment: JPMorgan Chase
Bank Routing Number (ABA): 021000021
Credit: National Grid USA
Bank Acct. Number: 777149642.

A copy of related invoice(s) should be included with payment.

Neither Party shall be liable hereunder for failure to meet any estimated completion date, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the work contemplated herein. The Parties shall perform their respective Scope of Work using qualified and competent personnel and in a manner consistent with applicable law and Good Utility Practice. For purposes of this Agreement, the term "*Good Utility Practice*" shall mean the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any practices, methods and acts which, in the exercise of good judgment in light of the facts known at the time the decision was made**,** would have been reasonably expected to accomplish the desired result consistent with good business practices, safety, and law. Good Utility Practice is not intended to require or contemplate the optimum practice, method or act, to the exclusion of all others, but rather to be reasonably acceptable practices, methods, or acts generally accepted in the region in which the applicable work is to be performed.

Each Party shall keep the other Party informed as to the progress of its Scope of Work. NMPC shall keep accurate and complete accounting records, including but not limited to invoices, receipts, procurement files, correspondence, electronic data and hard copy files, as reasonably necessary to substantiate and document NMPC's work and expenses under this Agreement. These records and files shall be kept in accordance with generally accepted accounting principles and practices. MAIT or its designee shall have the right to audit (at its sole cost) such records and files to the extent pertaining to the NMPC Scope of Work at any reasonable time with reasonable advance notice, during normal working hours.

Miscellaneous provisions:

1. This Agreement will become effective as of the date first above referenced upon its execution by both Parties. Any material change, modification, increase or reduction to the NMPC Scope of Work shall be subject to the prior mutual written agreement of the Parties, provided, however, that NMPC may make any changes to the NMPC Scope of Work as it deems necessary or prudent in order to meet the requirements of governmental authorities, laws, regulations, ordinances, Good Utility Practice (as such term is defined in this Agreement) and/or applicable codes or standards, without MAIT's consent or agreement.

2. The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree that the Parties shall not be liable to each other for any breach or failure to perform under this Agreement (other than a failure to pay any amount when due hereunder) caused by Force Majeure. The term "*Force Majeure*" as used herein means those causes beyond the reasonable control of the Party affected, and which wholly or in part prevents such Party from performing its obligations under this Agreement, including, without limitation, the following: any act of God; labor disturbance; act of the public enemy; war; insurrection; riot; fire; storm; flood; sun spots; lightning strikes; earthquake; explosion; breakage or accident to machinery or equipment; electric system disturbance; law, order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities; action of any court, action or inaction of a governmental authority, unavailability of personnel, equipment, supplies, or other resources for utility-related duties, compliance with such Party's public service obligations; or any other cause

of a similar nature beyond a Party's reasonable control. Mere economic hardship of a Party does not constitute Force Majeure.

3. No Consequential Damages; Limitation of Liability; No Warranties. Any one Party's liability under this Agreement shall be limited to the dollar amount of any direct damages that are proven to result from a breach of such Party's obligations under this Agreement, provided, however, that NMPC' s total cumulative liability to MAIT and its affiliates for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, shall not exceed the aggregate amount of all payments made to NMPC by MAIT for NMPC Costs under this Agreement. In no event shall either Party be liable to the other in connection with this Agreement for incidental, indirect, special, punitive or consequential damages (including, without limitation, damages for lost profits), whether or not (i) such damages were reasonably foreseeable or (ii) such Party was advised or aware that such damages might be incurred.

   NATIONAL GRID MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT OR THE NMPC SCOPE OF WORK PERFORMED IN CONNECTION HEREWITH, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WHICH REPRESENTATIONS, WARRANTIES AND GUARANTEES NMPC HEREBY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY LAW. ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS', LICENSORS', OR PROVIDERS' OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THIS AGREEMENT OR PERFORMANCE OF THE NMPC SCOPE OF WORK, INCLUDING ITEMS INCORPORATED IN ANY DELIVERABLES, ("THIRD PARTY WARRANTIES") ARE NOT TO BE CONSIDERED WARRANTIES OF NMPC AND NMPC MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES. THE TERMS OF THIS SECTION SHALL GOVERN OVER ANY CONTRARY VERBAL STATEMENTS OR LANGUAGE APPEARING IN ANY NMPC OR OTHER DOCUMENTS.

   This paragraph shall survive any termination, expiration, cancellation, or completion of the Agreement.

4. Indemnification. Each Party (the "*Indemnifying Party*") shall indemnify, hold harmless, and upon request, defend the other Party, its affiliates, and its officers, directors, employees, agents, contractors, subcontractors, invitees, and successors (each, an "*Indemnified Party*") from and against any and all demands, claims, liabilities, costs, losses, judgments, damages, and expenses (including, without limitation, reasonable attorney and expert fees, and disbursements incurred by any of them in any action or proceeding between Indemnified Party and a third party, Indemnifying Party, or any other party) for damage to property, injury to or death of any third party, including Indemnified Party's employees and their affiliates' employees, to the extent caused by the negligence or

willful misconduct of Indemnifying Party and/or its officers, directors, employees, agents, contractors and subcontractors arising out of or in connection with this Agreement ("*Claims*"), except to the extent such Claims arise from any breach of this Agreement by the Indemnified Party or from the negligence of wilful misconduct of an Indemnified Party, its affiliates, or its or its affiliates' officers, directors, employees, agents, contractors, or subcontractors. In furtherance of the foregoing indemnification, and not by way of limitation thereof, Indemnifying Party hereby waives any defense it might otherwise have under applicable workers' compensation laws. This paragraph shall survive any termination, expiration, cancellation, or completion of the Agreement.

5. Each Party shall comply, at all times, with all applicable federal, state and local laws, codes, standards and regulations in connection with this Agreement and performance of any work hereunder. Any work product resulting from the NMPC Scope of Work ("*Work Product*"), including, without limitation, as-built drawings, shall be and remain the sole property of NMPC at no cost to NMPC. Excluding third-party owned or licensed documents, materials and software, MAIT is granted an irrevocable, non-transferable, and non-assignable license to use the Work Product solely in connection with the South Ripley Substation project, but only if and to the extent such Work Product is incorporated, in whole or in part, into drawings, specifications, or other documents provided as deliverables to MAIT by NMPC.

6. [Reserved.]

7. This Agreement may not be assigned, in whole or in part, without the prior written consent of both Parties, which consent shall not be unreasonably withheld, conditioned or delayed.

8. The Parties are each independent contractors and shall not be considered or deemed to be an agent, employee, joint venturer or partner of the other. Any subcontracting of work, in whole or in part, shall not relieve NMPC of the responsibility for full compliance with the requirements of this Agreement. This Agreement is for the use and benefit of the Parties only, and not for the use and benefit of the public generally or any other person, party, or entity. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and not those laws determined by application of New York's conflicts of law principles. Venue in any action with respect to this Agreement shall be in the State of New York; each Party agrees to submit to the personal jurisdiction of courts in the State of New York with respect to any such actions. This Agreement sets forth the entire understanding of the Parties with respect to the matters it purports to cover and supersedes all prior communications, agreements, and understandings between the Parties, whether written or oral, concerning the subject matter hereof. No amendment to this Agreement will be valid or binding unless and until reduced to writing and executed by each Party's authorized representative. This Agreement may be executed by the Parties in multiple original counterparts, and each such counterpart will constitute an original hereof. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

Please have an authorized representative of MAIT sign below to indicate MAIT agreement with the terms of this Agreement and return a signed copy by pdf to William J. Donovan at William.donovan@nationalgrid.com

Acknowledged and agreed:

NIAGARA MOHAWK POWER CORPORATION
DBA NATIONAL GRID

By: _____
Name: Brian Gemmell, VP Strategy & Performance FERC
Title: Authorized Representative

MID-ATLANTIC-INTERSTATE TRANSMISSION, LLC

By: _____
Name: Richard A. Zoller
Title: Director - ISO & RTO Technical Support

FERC rendition of the electronically filed tariff records in Docket No. ER19- -000

Filing Data:
CID: C000038
Filing Title: 205: NMPC NYPA CRA SA No. 2448
Company Filing Identifier: 1463
Type of Filing Code: 10
Associated Filing Identifier:
Tariff Title: NYISO Agreements
Tariff ID: 58
Payment Confirmation: N
Suspension Motion:

Tariff Record Data:
Record Content Description: Agreement No. 2448
Tariff Record Title: CRA between NMPC and NYPA
Record Version Number: 0.0.0
Option Code: A
Tariff Record ID: 238
Tariff Record Collation Value: 8083500
Tariff Record Parent Identifier: 2
Proposed Date: 2019-03-01
Priority Order: 500
Record Change Type: New
Record Content Type: 2
Associated Filing Identifier: [Source - if applicable]

Service Agreement No. 2448

COST REIMBURSEMENT AGREEMENT

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as of March 1, 2019 (the "*Effective Date*"), by and between **NEW YORK POWER AUTHORITY** ("*Authority*"), a corporate municipal instrumentality of the State of New York *(*"*Customer*"*)* and **NIAGARA MOHAWK POWER CORPORATION** d/b/a National Grid, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer is proposing to replace one of the shield wires on the 345 kV Gilboa-New Scotland Line #1 ("*GNS-1*"), which connects the NYPA Gilboa Station with the Company's New Scotland Station, with Optical Ground Wire (the "*Customer Project*"); and

WHEREAS, the Company has undertaken a study of its adjoining transmission facilities and has identified equipment on the Company's transmission system that will require modifications in order for the Customer Project to be implemented; and

WHEREAS, Customer has requested that Company perform such modifications and other Company Work, as more specifically described below; and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) Customer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below); and (iii) receipt of any and all "*Required Approvals*", as set forth in Section 18.1, in a form acceptable to Company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person or entity; "control" of a person or entity shall mean the ownership of,

with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all 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 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, NYISO, NYSRC and NPCC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*CIP*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Company*" shall have the meaning set forth in the preamble to this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Project, all applicable overhead, overtime costs, all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

"*Company Work*" means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

"*Convenience Termination Notice*" shall have the meaning set forth in Section 7.1 of this Agreement.

"*Customer*" shall have the meaning set forth in the preamble to this Agreement.

"*Customer Prompt Payment Policy*" shall mean the Customer's Prompt Payment Policy contained in Schedule A attached to this Agreement.

"*Customer Required Actions*" means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

"*Customer Project*" shall have the meaning set forth in the preamble to this Agreement.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Defect Notice*" and "*Defect Notice Period*" shall have the meanings specified in Section 3.2 of this Agreement.

"*Detailed Project Plan*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Dollars*" and "$" mean United States of America dollars.

"*Effective Date*" shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*Existing Facilities*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Existing Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Facilities Approvals*" shall mean the New Facilities Approvals and the Existing Facilities Approvals.

"*Facilities Study Report*" shall mean that certain Facilities Study Report for the NYPA GilboaNew Scotland Line #1 OPGW Installation, Version 1.1, dated 2/26/18 (NYPA GNS-1 OPGW Project, Queue #440), a copy of which is attached to this Agreement as Exhibit A-1.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*FERC Approval Date*" shall mean the date as of which FERC grants approval of this Agreement without condition or modification.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC, NYISO, and NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" and "*Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Initial Prepayment*" shall have the meaning set forth in Section 7.2 of this Agreement.

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

"*Negotiation Period*" shall have the meaning set forth in Section 22.1 of this Agreement.

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*New Facilities*" means the personal property assets constituting the facilities to be constructed and/or modified and placed in service by Company as contemplated in the Facilities Study Report.

"*New Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*Notice to Proceed*" shall have the meaning set forth in Section 7.1 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

"*NYPSC*" shall mean the New York Public Service Commission.

"*NYSRC*" shall mean the New York State Reliability Council or any successor organization thereto.

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Preliminary Milestone Schedule*" shall have the meaning set forth in Section 5.2 of this Agreement.

"*Project*" means the Company Work to be performed under this Agreement.

"*Project Manager*" means the respective representatives of each of the Customer and Company appointed pursuant to Section 10.1 of this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Receiving Party*" shall mean the Party receiving Proprietary Information.

"*Refund Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Required Approvals*" shall have the meaning set forth in Section 18.1 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Threshold Notice*" shall have the meaning set forth in Section 7.1 of this Agreement.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall mean the Customer Required Actions and/or the Company Work, as applicable.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Company Work*"). This Agreement does not provide for, and the Company Work shall not include, provision of generation interconnection service or transmission service.

3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Company Work ("*Defect Notice Period*"), Customer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2 (each, a "*Defect Notice*"). If the Company Work is defective within the meaning of the prior sentence, then, following its receipt, prior to expiration of the Defect Notice Period, of a Defect Notice with respect thereto, the Company shall promptly correct, repair or replace such defective Company Work, as appropriate, provided, that, Company shall not have any obligation to correct, repair or replace such defective Company Work unless the defect in the Company Work has (or is reasonably likely to have) a material adverse impact on the Customer's implementation of the Customer Project. The remedy set forth in this Section is the sole and exclusive remedy granted or available to Customer for any failure of Company to meet the performance standards set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall use reasonable efforts to perform the actions described in Exhibit C attached to this Agreement (the "*Customer Required Actions*"). All of the Customer Required Actions shall be performed at Customer's sole cost and expense.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Company Wor

4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any requests for material additions, modifications, or changes to the Work shall be communicated in writing by the Party making the request, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Customer as part of Company Reimbursable Costs.

4.2 The foregoing notwithstanding, and subject to compliance with the last sentence of this Section, the Company, without the consent of the Customer, may make any reasonable change to the Company Work if such change is made in order to comply with any Applicable Requirement(s), Good Utility Practice, the Company's applicable standards, specifications, requirements and practices, or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable codes and standards (each, a "*Company Change*") . The Preliminary Milestone Schedule shall be adjusted accordingly and any additional costs arising from such Company Change shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.4 of this Agreement. If Company becomes aware of the need to make a Company Change that is reasonably expected to have a significant impact on cost or schedule of the Company Work, Company shall provide Customer with written notice of such contemplated Company Change, each such notice to be provided in advance, if possible, but, in any event, as soon as may be reasonably practicable under the circumstances.

5.0 Performance and Preliminary Milestone Schedule; Conditions to Proceed

5.1 Company shall use commercially reasonable efforts to attempt to have Company Work performed by its direct employees performed during normal working hours. If Company Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.

5.2 The preliminary project milestone schedule for the Company Work and the Customer Required Actions is set forth in Exhibit B, attached hereto and incorporated herein by reference ("*Preliminary Milestone Schedule*"). The

Preliminary Milestone Schedule is a projection only and is subject to change with or without a written adjustment to such Schedule. Neither Party shall be liable for

failure to meet the Preliminary Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Project.

5.3 Commencement of Company Work. Company will proceed with the Company Work promptly following the later of (i) the FERC Approval Date, or (ii) Company's receipt of the Initial Prepayment.

5.4 **[Reserved]**

5.5 **[Reserved]**

5.6 Construction Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any construction in connection with the Company Work unless and until all of the following conditions have been satisfied:

(i) all Required Approvals for the Company Work have been received, are in form and substance satisfactory to the Company, have become final and non-appealable and commencement of such construction is permitted under the terms and conditions of such Required Approvals, and

(ii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **[Reserved]**

7.0 **Customer Obligation to Pay Company Reimbursable Costs; Invoicing; Taxes**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Company will provide Customer with copies of such back-up documentation in Company's possession supporting Company Reimbursable Costs as may be reasonably requested by Customer, from time to time.

Company shall provide written notice to Customer ("*Threshold Notice*") when the total Company Reimbursable Costs are estimated to have reached $275,000. Upon issuance of the Threshold Notice, Company shall suspend performance of the Company Work pending Company's receipt of a Notice to Proceed (as defined below). Following Customer's receipt of the Threshold Notice, Company and Customer shall consult and Customer shall determine whether it wishes to (a) deliver an unconditional written direction to Company to complete the Company Work ("*Notice to Proceed*") or (b) terminate this Agreement for convenience by delivering a written notice thereof to Company ("*Convenience Termination Notice*"). Following Company's receipt of a Notice to Proceed signed by an authorized representative of Customer, Company will recommence performance of the Company Work in accordance with and subject to the terms and conditions of this Agreement. In the event that Customer does not deliver either a Notice to Proceed or a Convenience Termination Notice on or before one hundred twenty (120) days following the date of the Threshold Notice, this Agreement, at Company's election, shall be deemed terminated for convenience by Customer.

7.2 Once the FERC Approval Date has occurred, Customer shall provide Company with a prepayment of Three Hundred Sixty-Two Thousand and Eight Hundred Dollars ($362,800) ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Company Work. The Company shall invoice Customer for the Initial Prepayment. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.

7.3 **[Reserved]**

7.4 Company may invoice Customer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Customer at a later date. All invoices shall be due and payable by Customer thirty (30) calendar days (excluding legal holidays) from the date of Customer's receipt of invoice, as provided in subparagraph 4 of paragraph D set forth in the Customer Prompt Payment Policy. If any payment due to Company under this Agreement is not made when due, Customer shall pay Company interest on the unpaid amount in accordance with subparagraphs 5 through 8 of paragraph D set forth in the Customer Prompt Payment Policy. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement is not received within five (5) business days after the applicable invoice due date, Company may suspend any or all Company Work pending receipt of all amounts due from Customer; any such suspension shall be without recourse or liability to Company.

7.5 If Customer claims exemption from sales tax, Customer agrees to provide Company

with an appropriate, current and valid tax exemption certificate, in form and

substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("*Sales Tax Exemption Certificate*"). During the term of this Agreement, Customer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.6 **[Reserved]**

7.7 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company:

New York Power Authority
Attn: Andrew Boulais, Project Manager
123 Main Street
White Plains, New York 10601
Phone: (914) 287-3050
Email: andrew.boulais@nypa.gov

7.8 All payments made by Customer under this Agreement shall be made in immediately available funds by the method contemplated in the Customer Prompt Payment Policy.

8.0 Final Payment

8.1 Within one hundred and eighty (180) Days following the earlier of (i) the completion of the Company Work, and (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs actually incurred is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs actually incurred, Company shall reimburse the difference to Customer ("*Refund Amount*"). The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 **[Reserved]**

10.0 **Project Managers; Meetings**

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party's Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager ("*Project Manager*"). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW FACILITIES, THE PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

12.0 **Liability and Indemnification**

12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, an "*Indemnified Party*" and, collectively, the "*Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, for economic damage, and for claims brought by third parties for personal injury, property damage or other damages, incurred by any Indemnified Party, to the extent caused by the negligence, unlawful act or omission, or intentional misconduct of the Customer, its parents or affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, and employees, arising out of or in connection with this Agreement, the Project, or any Work (collectively, "*Damages*"), except to the extent such Damages are caused by the negligence, intentional misconduct or unlawful act of the Indemnified Party as determined by a court of competent final jurisdiction.

12.2 Without limiting the foregoing, Customer shall defend, indemnify and save harmless Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees servants, agents, contractors, and representatives, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Customer's contractors, subcontractors or suppliers in connection with any Work, the Project or the Customer Project.

12.3 Without limiting the foregoing, Customer shall protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

12.4 To the fullest extent permitted by applicable law, the Company's total cumulative liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not exceed the aggregate amount of all payments actually paid to Company by Customer as Company Reimbursable Costs under this Agreement.

12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.6 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of Customer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Customer under this Agreement (including, without limitation, the Customer Required Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

12.8 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer's insurance.

12.9 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

13.0 **Insurance; Employee and Contractor Claims**

13.1 Prior to the commencement of any Work and during the term of the Agreement, each Party, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement. Either Party may elect to self-insure to the extent authorized or licensed to do so under the applicable laws of the State of New York, provided, that, the electing Party provides written notice of any such election to the other Party. Company hereby notifies Authority that it is a qualified self-insurer under the applicable laws of the State of New York and that it elects to self-insure to satisfy its obligations under this Article. The Authority hereby notifies the Company that it is a qualified self-insurer under the applicable laws of the State of New York and that it may elects to self-insure to satisfy its obligations under this Article. Each Party shall be separately responsible for insuring its own property and operations.

13.2 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this paragraph shall survive the termination, cancellation, completion or expiration of this Agreement.

13.3 Unless the Customer elects to self-insure in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to the commencement of any Work under this Agreement.

14.0 **Assignment and Subcontracting**

14.1 The Company may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **[Reserved]**

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the performance contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("*OSHA*"), as amended from time to time. While performing the Company Work, Company shall at all times abide by Company's safety standards and policies and Company's switching and tagging rules. During the term of this Agreement, the Party owning or controlling the applicable property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities in connection with any performance under this Agreement if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors in connection with any such performance.

18.0 **Required Approvals**

18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases (including, without limitation and as applicable, the Existing Facilities Approvals and New Facilities Approvals) from any local, state, or federal regulatory agency or other governmental agency or authority (which shall include the FERC and may also include, without limitation and as applicable, the NYPSC) and from any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of the Company's actual costs in connection with seeking any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on any Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or which the Company, its Affiliates or contractors, their respective officers, directors,

employees, agents, servants, or representatives may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the

Company, and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, release, threat of release or generation of Hazardous Substances at or on any Customer- or third party- owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property), or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.) in connection with this Agreement, the Project and/or the Customer Project, except to the extent such presence, discovery, release, threat of release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the expiration, completion, cancellation or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement.

20.0 **[Reserved]**

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5)

business days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) calendar days in the case of a failure

to pay amounts when due), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement, provided that, in the case of an unpaid amount disputed by the Breaching Party, the Non-Breaching Party shall not be entitled to provide such written prior notice of termination to the Breaching Party until expiration of any Negotiation Period applicable to such unpaid amount dispute under Section 22.1 of this Agreement. Subject to compliance with Section 22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding sixty (60) consecutive days as the result of any continuing dispute between the Parties, or (ii) under the circumstances contemplated by, and in accordance with, Section 7.1 or Section 18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.

21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Customer shall also pay Company for:

(i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to

the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days ("*Negotiation Period*") may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and/or permit requests necessary in connection with the Company Work or the Customer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent

affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force

Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this Agreement.

23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **Compliance with Law**

24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving Party) and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Project or the Customer Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Article; or

25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of

the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include "Critical Energy / Electrical Infrastructure Information" under applicable FERC rules and policies ("*CEII*") and critical infrastructure protection information as defined under applicable NERC standards and procedures ("*CIP*"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any termination, expiration, completion or cancellation of this Agreement.

26.0 **Effect of Applicable Requirements; Governing Law**

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgement is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3^{rd}) Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

To Customer: New York Power Authority
Attn: Andrew Boulais, Project Manager
123 Main Street
White Plains, New York 10601
Phone: (914) 287-3050
Email: andrew.boulais@nypa.gov

To Company: Niagara Mohawk Power Corporation
Attn: Ms. Kathryn Cox-Arslan
Director, Commercial Services
40 Sylvan Road
Waltham, MA 02451
(781) 907-2406

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.

27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[Signatures are on following page.]

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

NEW YORK POWER AUTHORITY

By: John Canale
Name: John Canale
Title: VP Strategic Supply Management

NIAGARA MOHAWK POWER CORPORATION

By: _____
Name: Kathryn Cox-Arslan
Title: Director, Commercial Services

LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A	Scope of Company Work
Exhibit A-1	Facilities Study Report
Exhibit B	Preliminary Milestone Schedule
Exhibit C	Customer Required Actions
Exhibit D	Insurance Requirements
Schedule A	Customer Prompt Payment Policy

Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Perform engineering work and other tasks necessary to develop a detailed project plan (the "*Detailed Project Plan*") to implement the Company work contemplated by the Facilities Study Report.

2. Design, engineer, procure, and, subject to Section 5.6 of this Agreement, construct, test and place into service the new Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, as contemplated in the Facilities Study Report and/or the Detailed Project Plan, including, without limitation, the New Facilities. Perform engineering review and field verifications as required on the Customer's facilities described in the Facilities Study Report and/or the Detailed Project Plan.

3. Prepare, file for, and use reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies (including, without limitation and as applicable, the NYPSC, and FERC), NYISO and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the "*New Facilities Approvals*").

   Prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state or federal governmental agencies (including, without limitation and as applicable, the NYPSC, and FERC), NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Facilities (the "*Existing Facilities Approvals*").

4. Decommission, dismantle and remove the existing facilities of the Company as contemplated by the Facilities Study Report and/or the Detailed Project Plan (the "*Existing Facilities*").

5. Prepare, file for, and use reasonable efforts to obtain any other Required Approvals that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.

6. Inspect, review, witness, examine and test, from time to time, Company's work contemplated herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

7. Review, from time to time, permitting, licensing and other materials relating to the work contemplated herein, including, without limitations, all documents and materials related to any Required Approvals.

8. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.

9. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

The Company Work may be performed in any order as determined by the Company. For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Project, the Customer Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include granting, securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

NOTE: Company's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time.

Exhibit A-1: Facilities Study Report

Critical Energy/Electric Infrasture Information Removed Pursuant to 18 C.F.R. § 388.113

Exhibit B: Preliminary Milestone Schedule

PRELIMINARY MILESTONE SCHEDULE

Task	Milestone	Estimated Timeframe	Responsible Party
1.	Execute Agreement	3/2019	Customer/Company
2.	Initial Prepayment provided	3/2019	Customer
3.	Engineering & Procurement Completed	8/2019	Company
4.	Construction start	8/2019	Company
5.	Construction Completed	9/2019	Company
6.	As-Builts Completed	10/2019	Company
7.	Project Close out & Final invoicing Completed	2/2020	Company/Customer

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with any Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals are not included in such preliminary schedule.

Exhibit C: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

2. If and to the extent applicable or under the control of the Customer, provide complete and accurate information regarding the Customer Project and all applicable data, drawings and specifications.

3. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

Exhibit D: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of New York.

  (A) Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation/Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of $1,000,000. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act (44 U.S.Stat 1424) and the Jones Act (41 U.S. Stat 988). Under Sections 57 & 220 Subd. 8 of the New York State Workers' Compensation Law, it is required that Contractors doing business with a Municipal or State entity evidence proof of workers' compensation coverage on approved forms, as listed below:

  1.

  2. If the business entity has been approved by the Workers' Compensation Board's Office of Self Insurance as a qualified self insurer, a completed SI-12 form is required. The SI-12 form is provided by the Board's Office of Self Insurance.

- Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

  Combined Single Limit $1,000,000 per occurrence

- Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of: Combined Single Limit - $1,000,000 per occurrence.

- Umbrella or Excess Liability, coverage with a minimum limit of $4,000,000.

- Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.

- Customer shall include the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Project and associated Work.

- Company shall name the Customer as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the

Customer with protection from liability arising out of activities of Company relating to the Project and associated Work.

- **Contractors**: In the event either party uses Contractor(s) in connection with this Agreement, it is expressly agreed that said party shall have the sole responsibility to make certain that all Contractor(s) are in compliance with these insurance requirements and that Contractor(s) remain in compliance throughout the course of this Agreement, and thereafter as required. Said party shall remain liable for the performance of the Contractor(s), and such sub-contract relationship shall not relieve either party of its obligations under this Agreement.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage per Section 13. Insurance: Employee and Contractor Claims. Customer shall provide such certificates or evidence of insurance to Company at the following address:

To: National Grid c/o Niagara Mohawk Power Corporation
Attention: Director, Commercial Services
FERC Jurisdiction
40 Sylvan Road, Waltham, MA 02451

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: New York Power Authority
Attention: Insurance / 17B
123 Main Street
White Plains, NY 10601

2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent to the furnishing Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work under this Agreement.

5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other Party that it will have full policy limits available and shall notify the other Party in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

Schedule A: Customer Prompt Payment Policy

A. GENERAL

1. This statement is intended to establish rules and regulations as required under Section 2880 of the Public Authorities Law describing the policy of the Power Authority of the State of New York (the "Authority") to promptly pay all proper invoices submitted by any Contractor. Subject to the conditions and exceptions set forth in Section 2880 and herein, in the event any proper invoice is not paid promptly, the Authority shall be liable for the payment of interest on late payments. This policy shall apply to all Contracts entered into on or after April 30, 1988.

B. DEFINITIONS

1. "CONTRACT" means an enforceable agreement entered into between the Authority and a Contractor.

2. "CONTRACTOR" means any person, partnership, private corporation or association: a) selling materials, equipment or supplies or leasing property or equipment to the Authority; b) constructing, reconstructing or repairing buildings, highways or other improvements for or on behalf of the Authority; or c) rendering or providing services to the Authority pursuant to a Contract.

3. "DESIGNATED PAYMENT OFFICE" means the office designated by the Authority to which a proper invoice is to be submitted by a Contractor.

4. "PROPER INVOICE" means a written request for a Contract Payment that is submitted by a Contractor to the Authority's designated payment office setting forth the description, price and quantity of goods, property or services delivered or rendered in accordance with the terms of the Contract, in such form and supported by such other substantiating documentation as the Authority may reasonably require.

5. "RECEIPT OF AN INVOICE" and "INVOICE RECEIVED DATE" mean (a) the date on which proper invoice is actually received in the designated payment office, or (b) the date on which the Authority receives the purchased goods, property or services covered by the proper invoice, whichever is later. With regard to final payments on construction contracts, (b) shall mean the date on which all the Contract Work has been accepted as completed by the Authority in accordance with the Contract terms.

6. "SET-OFF" means the reduction by the Authority of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

C. RESPONSIBILITY FOR PROMPT PAYMENT

1. The Authority's Controller shall have the responsibility for the implementation of the Prompt Payment Policy and the prompt payment of all proper invoices under the general guidance and supervision of the Executive Vice President & Chief Financial Officer.

D. PROMPT PAYMENT PROCEDURE

1. A Contractor shall request payment under a Contract by submitting a proper invoice to the Authority at its designated payment office at the time and in the manner specified in the Contract.

2. The Authority shall have fifteen (15) calendar days after receipt of an invoice at its designated payment office to notify the Contractor of certain facts and conditions, including but not limited to those listed below, which, in the opinion of the Authority's Controller, justify extension of the statutory payment period:

   a) there is a defect in the delivered goods, property or services;

   b) there is a defect in the invoice;

   c) there are suspected defects or improprieties of any kind the existence of which prevent the commencement of the statutory payment period;

   d) prior to payment, a statutory or contractual provision requires an inspection period or an audit to determine the resources applied or used by the Contractor in fulfilling the contract terms;

   e) a proper invoice must be examined by the federal government prior to payment;

   f) the Authority is prevented from making payment by reason of the filing of a lien, attachment, other legal process or requirement of law.

   Any time taken to submit or rectify any such facts or conditions shall extend the date by which contract payment must be made in order for the Authority not to become liable for interest payments by an equal period of time.

3. Should the Authority fail to notify a Contractor of such facts and conditions within fifteen calendar days of the invoice received date, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the Contractor. Should the Authority, in such situations, fail to provide reasonable grounds for its contention that a fact or condition justifying a time extension exists, the date by which contract payment must be made in order for the Authority not to become liable for interest payment shall be calculated from the invoice received date.

4. The Authority shall make payment within forty five (45) calendar days after the invoice received date. Effective July 1, 1989, the Authority shall make payment within thirty (30) calendar days, excluding legal holidays, after invoice received dates occurring after that date.

5. Except for the payments described in Paragraph E, every payment by the Authority to a Contractor pursuant to a Contract is eligible for interest should the Authority fail to make such payment within forty five (45) days after the invoice received date for contracts entered into between April 30, 1988 and June 30, 1989 and within thirty (30) days for contracts entered into on or after July 1, 1989.

6. The Authority shall not be liable for interest on any retention amounts withheld by the Authority in accordance with the terms of the Contract.

7. Interest shall be computed at the rate set by the state tax commission for corporate taxes pursuant to paragraph one of subsection (a) of section 1096 of the tax law, but the Authority shall not be liable for payment of interest when such interest is less than ten dollars.

8. The Authority has available funds in its custody to pay all interest penalties.

E. EXCEPTIONS

1. Payments are not eligible for interest when they are due and owing by the Authority:

   a) under the eminent domain procedure law;

   b) as interest allowed on a judgement by a court pursuant to any provision of law other than section 2880 of the Public Authorities Law;

   c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including but not limited to; counties, cities, towns, villages, school districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

   d) in situations where the Authority exercises a legally authorized set-off against all or part of the payment due the Contractor.

Service Agreement No. 2528 EXECUTION VERSION

COST REIMBURSEMENT AGREEMENT

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as of February 21st, 2020 (the "*Effective Date*"), by and between **LAKE PLACID VILLAGE, INC.**, a municipal corporation with offices located at 2693 Main Street, Lake Placid, New York *("Customer")* and **NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer is planning a westward expansion of its existing Lake Placid Municipal Substation Number 1 ("*Lake Placid Substation*") located in the Village of Lake Placid, New York (the "*Customer Expansion Project*"); and

WHEREAS, Customer has requested that Company perform certain work, as more specifically described below, to accommodate the Customer Expansion Project, including, without limitation, reconfiguration of the portion of the Company's 115kV Lake Colby - Lake Placid #3 transmission line located at Lake Placid Substation, and modification of Company's transmission structure #1.5 at Lake Placid Substation to a dead end structure; and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) Customer's acquisition and delivery of certain real property interests as contemplated in this Agreement, (iii) Customer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below); and (iv) receipt of any and all "*Required Approvals*", as set forth in Section 18.1, in a form acceptable to Company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person or entity; "control" of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, licenses, authorizations, approvals and other duly authorized actions of 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, NYISO, NYSRC and NPCC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*CIP*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Company*" shall have the meaning set forth in the preamble to this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Customer Expansion Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Customer Expansion Project, all applicable overhead, overtime costs, all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

"*Company Work*" means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

"*Customer*" shall have the meaning set forth in the preamble to this Agreement.

"*Customer Expansion Project*" shall have the meaning set forth the preamble to this Agreement.

"*Customer Grants of Easement*" shall have the meaning set forth in Exhibit C to this Agreement.

Lake Placid Cost Reimbursement Agreement - February 2020

"*Customer Required Actions*" means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Defect Notice*" shall have the meaning specified in Section 3.2 of this Agreement.

"*Detailed Project Plan*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Dollars*" and "$" mean United States of America dollars.

"*Effective Date*" shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Due Diligence Procedure*" is set forth in Schedule II to this Agreement.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*ESB(s)*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Existing Facilities*" means that portion of the existing Company 115kV Lake Colby - Lake Placid #3 transmission line located at the Lake Placid Substation and related facilities.

"*Existing Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Facilities Approvals*" shall mean the New Facilities Approvals and the Existing Facilities Approvals.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*FERC Approval Date*" shall mean the date as of which FERC grants approval of this Agreement without condition or modification.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Site is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC NYISO and NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" and "*Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Initial Prepayment*" shall have the meaning set forth in Section 7.2 of this Agreement.

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

"Lake Colby #3 Transmission Line" shall mean the 10.48 mile line originating at the Lake Colby Substation in the town of St. Armond and terminating at the Lake Placid Municipal Substation in the town of North Elba, NY

"*Land Use Approvals*" shall have the meaning set forth in Exhibit C to this Agreement.

"*National Grid Reconfiguration*" shall have the meaning set forth in Exhibit A to this Agreement.

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*New Facilities*" means the new or modified Company personal property assets and related facilities to be constructed and/or modified and placed in service by Company as contemplated by the National Grid Reconfiguration and/or the Detailed Project Plan referred to in Exhibit A to this Agreement.

"*New Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*New Facilities Property Rights*" shall have the meaning set forth in Exhibit C of this Agreement.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization thereto

"*NYPSC*" shall mean the New York Public Service Commission.

"*NYS DOT*" shall mean the New York Department of Transportation.

"*NYSRC*" shall mean the New York State Reliability Council or any successor organization thereto.

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Preliminary Milestone Schedule*" shall have the meaning set forth in Section 5.2 of this Agreement.

"*Project Manager*" means the respective representatives of each of the Customer and Company appointed pursuant to Section 10.1 of this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Real Property Standards*" are set forth in Schedule I to this Agreement.

"*Receiving Party*" shall mean the Party receiving Proprietary Information.

"*Refund Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

Lake Placid Cost Reimbursement Agreement - February 2020

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Requesting Party*" shall have the meaning set forth in the Real Property Standards.

"*Required Approvals*" shall have the meaning set forth in Section 18.1 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Site*" shall mean the Lake Placid Substation.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall mean the Customer Required Actions and/or the Company Work, as applicable.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Company Work*").

3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Company Work, Customer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2 (each, a "*Defect Notice*"). If the Company Work is defective within the meaning of the prior sentence, then, following its receipt of a timely Defect Notice with respect thereto, the Company shall promptly correct, repair or replace such defective Company Work, as appropriate, provided, that, Company shall not have any obligation to correct, repair or replace such defective Company Work unless the defect in the Company Work has (or is reasonably likely to have) a material adverse impact on the Customer Expansion Project as contemplated by the Parties as of the Effective Date. The remedy set forth in this Section is the sole and exclusive remedy granted or

available to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall perform the actions and comply with the requirements described in Exhibit C attached to this Agreement (the "*Customer Required Actions*"). All of the Customer Required Actions shall be performed at Customer's sole cost and expense.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Wor

4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any Customer requests for material additions, modifications, or changes to the Work shall be communicated in writing by the Party making the request, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Customer as part of Company Reimbursable Costs.

4.2 The foregoing notwithstanding, the Company is not required to notify Customer of, or to obtain the consent or agreement of the Customer for, any change to the Company Work if such change (a) will not materially interfere with Customer's ability to implement the Customer Expansion Project as contemplated by the Parties as of the Effective Date, or (b) is made in order to comply with any Applicable Requirement(s), Good Utility Practice, the Company's applicable standards, specifications, requirements and practices, or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable codes and standards. The Preliminary Milestone Schedule shall be adjusted accordingly and any additional costs arising from such change shall be paid by the Customer as part of Company Reimbursable Costs.

5.0 Performance and Preliminary Milestone Schedule; Conditions to Proceed

5.1 If Company Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.

5.2 The preliminary project milestone schedule for the Company Work and the Customer Required Actions is set forth in Exhibit B, attached hereto and incorporated herein by reference ("*Preliminary Milestone Schedule*"). The

Preliminary Milestone Schedule is a projection only and is subject to change with

or without a written adjustment to such Schedule. Neither Party shall be liable for failure to meet the Preliminary Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Company Work.

5.3 Commencement of Company Work. Company will proceed with the Company Work promptly following the later of (i) the FERC Approval Date, or (ii) Company's receipt of the Initial Prepayment.

5.4 **[Reserved]**

5.5 **[Reserved]**

5.6 Construction Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any construction in connection with the Company Work unless and until all of the following conditions have been satisfied:

(i) Customer has delivered, or arranged to deliver, and Company has received, all real property rights necessary for Company to complete the Company Work, including, without limitation, the New Facilities Property Rights,

(ii) all Required Approvals for the Company Work (including, without limitation, the New Facilities Approvals, the Existing Facilities Approvals and the Land Use Approvals) have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of such construction is permitted under the terms and conditions of such Required Approvals,

(iii) all outages necessary to commence and complete such Company Work have been approved and can be taken, and

(iv) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

5.7 Decommissioning Commencement. Company shall not be obligated to proceed with de-energizing, decommissioning or removing the Existing Facilities unless and until all of the following conditions have been satisfied:

(i) the New Facilities have been completed, energized and placed in commercial operation by the Company,

(ii) all Required Approvals for the Work (including, without limitation, the New Facilities Approvals, the Existing Facilities Approvals and the Land Use Approvals) have been received, are in form and substance satisfactory to the Parties and have become final and non-appealable,

(iii) all outages necessary to commence and complete such Company Work have been approved and can be taken, and

(iv) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **[Reserved]**

7.0 **Customer Obligation to Pay Company Reimbursable Costs; Invoicing; Taxes**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.

7.2 Once the FERC Approval Date has occurred, Customer shall provide Company with a prepayment of **$125,000** ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Company Work. The Company shall invoice Customer for the Initial Prepayment; Customer shall pay such amount to Company within five (5) Days of the invoice due date. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.

7.3 **[Reserved]**

7.4 Company may invoice Customer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any payment due to Company under this Agreement is not made when due, Customer shall pay Company interest on the unpaid amount in accordance with Section 9.1 of this Agreement. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement is not received within five (5) Days after the applicable invoice due date, Company may suspend any or all Work pending receipt of all amounts due from Customer; any such suspension shall be without recourse or liability to Company.

7.5 If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("*Sales Tax Exemption Certificate*"). During the term of this Agreement, Customer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.6 **[Reserved]**

7.7 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company:

Name: Village Treasurer
Address: 2693 Main St, Lake Placid, NY 12946

7.8 All payments made under this Agreement shall be made in immediately available funds.

Unless otherwise directed by the Company, payments to the Company shall be made by wire transfer to:

Wire Payment: JP Morgan Chase
ABA#. 021000021
Account#. 777149642

8.0 **Final Payment**

8.1 Within one hundred and eighty (180) Days following the earlier of (i) the completion of the Company Work, and (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer ("*Refund Amount*"). The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 **Interest on Overdue Amounts**

9.1 If any payment due under this Agreement is not made when due, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount calculated in accordance with Section 35.19a of the FERC's regulations (18 C.F.R. 35.19a) from and including the due date until payment is made in full.

Lake Placid Cost Reimbursement Agreement - February 2020

10.0 **Project Managers; Meetings**

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party's Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager ("*Project Manager*"). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party's Project Manager shall attend meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW FACILITIES, THE CUSTOMER EXPANSION PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

Lake Placid Cost Reimbursement Agreement - February 2020

12.0 **Liability and Indemnification**

12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, an "*Indemnified Party*" and, collectively, the "*Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, for economic damage, and for claims brought by third parties for personal injury, property damage or other damages, incurred by any Indemnified Party to the extent arising out of or in connection with this Agreement, the Customer Expansion Project, or any Work (collectively, "*Damages*"), except to the extent such Damages are directly caused by the negligence, intentional misconduct or unlawful act of the Indemnified Party as determined by a court of competent final jurisdiction.

12.2 Without limiting the foregoing, Customer shall defend, indemnify and save harmless Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees servants, agents, contractors, and representatives, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from (i) any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Customer's contractors, subcontractors or suppliers in connection with any Work or the Customer Expansion Project, or (ii) any claim of trespass, or other third party cause of action arising from or are related to reliance upon or use of the New Facilities Property Rights by the Company or any other Indemnified Parties for the purposes contemplated herein.

Lake Placid Cost Reimbursement Agreement - February 2020

12.3 Without limiting the foregoing, Customer shall protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate. To the fullest extent permitted by applicable law, the Company's total cumulative liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Customer Expansion Project or the Work, shall not exceed the aggregate amount of all payments made to Company by Customer as Company Reimbursable Costs under this Agreement.

12.4 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

Lake Placid Cost Reimbursement Agreement - February 2020

12.6 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of Customer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Customer under this Agreement (including, without limitation, the Customer Required Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

12.7 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer's insurance.

12.8 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

13.0 **Insurance; Employee and Contractor Claims**

13.1 Prior to the commencement of any Company Work and during the term of the Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or the Company may elect to self-insure one or more of the insurance coverage amounts set forth in Exhibit D of this Agreement.

Lake Placid Cost Reimbursement Agreement - February 2020

13.2 Prior to the commencement of any Work and during the term of the Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or Customer may elect to self-insure one or more of such coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York, provided, that, the Customer provides written notice of any such election to the Company prior to the commencement of any Work under this Agreement.

13.3 Unless the Customer elects to self-insure in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to the commencement of any Work under this Agreement.

13.4 Each Party shall be separately responsible for insuring its own property and operations.

13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this Section shall survive the termination, cancellation, completion or expiration of this Agreement.

14.0 **Assignment and Subcontracting**

14.1 The Company may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

Lake Placid Cost Reimbursement Agreement - February 2020

16.0 **[Reserved]**

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the performance contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("*OSHA*"), as amended from time to time. While performing the Company Work, Company shall at all times abide by Company's safety standards and policies and Company's switching and tagging rules. During the term of this Agreement, the Party owning or controlling the applicable property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities in connection with any performance under this Agreement if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors in connection with any such performance.

18.0 **Required Approvals**

18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases (including, without limitation and as applicable, the Existing Facilities Approvals, New Facilities Approvals and Land Use Approvals) from any local, state, or federal regulatory agency or other governmental agency or authority (which shall include the FERC and may also include, without limitation and as applicable, the NYPSC) and from any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

Lake Placid Cost Reimbursement Agreement - February 2020

18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of the Company's actual costs in connection with seeking any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on the Site or any Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or which the Company, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the Company, and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, release, threat of release or generation of Hazardous Substances at or on the Site or any Customer- or third party- owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property), or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.) in connection with this Agreement, the Company Work or the Customer Expansion Project, except to the extent such presence, discovery, release, threat of release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section

shall survive the expiration, completion, cancellation or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in the Site or any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement. Prior to Company's commencement of the Company Work, Customer shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to adequately investigate the presence and nature of any such Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, and to promptly, fully, and in writing, communicate the results thereof to the Company. Customer's provision to the Company of the information contemplated in this Section shall in no event give rise to any liability or obligation on the part of the Company, nor shall Customer's obligations under this Agreement, or under law, be decreased or diminished thereby.

20.0 **[Reserved]**

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement. Subject to compliance with Section 22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding sixty (60) consecutive days as the result of any continuing dispute between the Parties, or (ii) under the circumstances contemplated by, and in accordance with, Section 18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this

Agreement as contemplated by any provision of this Agreement, each Party shall

discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.

21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Customer shall also pay Company for:

(i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and

Lake Placid Cost Reimbursement Agreement - February 2020

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and/or permit requests necessary in connection with the Company Work or the Customer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the

Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this Agreement.

23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **Compliance with Law**

24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving Party) and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Customer Expansion Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Article; or

25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

Lake Placid Cost Reimbursement Agreement - February 2020

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include information or data that the Disclosing Party deems or determines to be "Critical Energy / Electrical Infrastructure Information" consistent with applicable FERC rules and policies ("*CEII*") and critical infrastructure protection information consistent with applicable NERC standards and procedures ("*CIP*"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any termination, expiration, completion or cancellation of this Agreement.

26.0 **Effect of Applicable Requirements; Governing Law**

Lake Placid Cost Reimbursement Agreement - February 2020

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgement is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3rd) Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

To Customer:
Lake Placid Village, Inc.
Attn: Kimball F. Daby
2693 Main Street
Lake Placid, NY 12946
Phone: (518) 637-3132
Facsimile: (518) 523-9910

With a copy to:

Lake Placid Village, Inc.
Attn: Mayor Craig Randall
2693 Main Street
Lake Placid, NY 12946
Phone: (518)523-2584
Facsimile: (518) 523-1321

To Company:
Kevin Reardon
Director, Commercial Services
40 Sylvan Road

Waltham, MA 02451

(781) 907-2411

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.

27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or

invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[Signatures are on following page.]

Lake Placid Cost Reimbursement Agreement - February 2020

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

LAKE PLACID VILLAGE, INC.

By: _____

Name: Craig Randall

Title: Mayor

NIAGARA MOHAWK POWER CORPORATION

By: _____

Name: Kevin Reardon

Title: Director, Commercial Services

Lake Placid Cost Reimbursement Agreement - February 2020

LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Lake Placid Cost Reimbursement Agreement - February 2020

Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Perform the following reconfiguration of the Company's facilities at Customer's Lake Placid Substation (the "*National Grid Reconfiguration*") to accommodate the Customer Expansion Project:

    - Modify: Structure #1.5 to a dead-end structure
    - Install:
        - (6) Guy and Anchor assembly
        - (3) 10-disc Insulator Assembly
    - Transferred from Structure #1 to Lake Placid Substation Receiving Structure
        - 336 4 kcmil 18/1 Merlin Conductor 245 circuit feet
        - 3/8" 7 Strand H.S. Steel Shield Wire 245 linear feet
    - Remove:
        - (1) Wood Structure #1
        - (3) Guy and Anchor assembly
        - (3) 8-disc Insulator assembly.

2. Company shall revise, test and return to service the Lake Colby #3 Transmission Line protective relays.

3. Company shall review for acceptance Customer's materials and design elements, including, but not limited to, protective relay settings, for the Customer-owned Lake Placid Substation expansion to ensure compliance with applicable Company Electric Service Bulletins (each, an "*ESB*" and, collectively, "*ESBs*").

4. Company shall review for acceptance Customer's testing, commissioning and energization plans for the Customer-owned Lake Placid Substation expansion, and Customer's drawings for all major equipment at the reconfigured point of interconnection of the Customer-owned Lake Placid Substation expansion, to ensure compliance with applicable Company ESBs.

5. Company shall inspect and witness for acceptance (i) the substation receiving structure and connection to Company's facilities, and (ii) any other major equipment at the reconfigured point of interconnection, for the Lake Placid Substation expansion before allowing energization of the reconfigured interconnection with Company's facilities.

6. Perform engineering work, studies and other tasks necessary to develop a detailed project plan (the "*Detailed Project Plan*") to implement the National Grid Reconfiguration.

7. With the exception of any Land Use Approvals, prepare, file for, and use reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for

Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the "*New Facilities Approvals*").

With the exception of any Land Use Approvals, prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state or federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Facilities (the "*Existing Facilities Approvals*").

The terms "New Facilities Approvals" and "Existing Facilities Approvals" shall not include any Land Use Approvals; Customer shall be solely responsible for obtaining all Land Use Approvals.

8. Design, engineer, procure, and, subject to Section 5.6 of the Agreement, construct, test and place into service the new Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, as contemplated by the National Grid Reconfiguration and/or in the Detailed Project Plan, including, without limitation, the New Facilities. Perform engineering review and field verifications as required on Customer's facilities.

9. Subject to Sections 5.7 of the Agreement, decommission, dismantle and remove the Existing Facilities.

10. Prepare, file for, and use reasonable efforts to obtain any other Required Approvals (other than Land Use Approvals) that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.

11. Inspect, review, witness, examine and test, from time to time, Company's work contemplated herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

12. Review, from time to time, permitting, licensing, real property, and other materials relating to the work contemplated herein, including, without limitations, all documents and materials related to the New Facilities Property Rights and any Required Approvals.

13. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.

14. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

The Company Work may be performed in any order as determined by the Company. Any review inspection, witnessing, or testing by or on behalf of Company of any Customer work, facilities, equipment, documents, plans, materials, assets or other items (i) shall not be construed as an endorsement or confirmation of any aspect, element or condition of such work, facilities, equipment, documents, plans, materials, assets or other items or the operation thereof, or as a warranty or representation as to the fitness, suitability, safety, desirability, or reliability of same and Customer shall be and remain solely responsible therefor, and (ii) shall not reduce or otherwise

affect any of Customer's obligations under this Agreement or otherwise.

For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Customer Expansion Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

NOTE: Company's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-751, ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time.

Lake Placid Cost Reimbursement Agreement - February 2020

Exhibit B: Preliminary Milestone Schedule

PRELIMINARY MILESTONE SCHEDULE

Task	Milestone	Estimated Timeframe	Responsible Party
1.	Execute Agreement	Effective Date	Customer/Company
2.	Make Initial Prepayment	Upon Effective Date	Customer
3.	Completion of engineering and design and scheduling.	May 2020	Company
4.	Complete outage planning, and construction planning	September 2020	Company/Customer
5.	Complete construction and removal	November 2020	Company
6.	Closeout	January 2021	Company

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with the Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals or the acquisition of New Facilities Property Rights are not included in such preliminary schedule.

Exhibit C: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall provide the full Lake Placid Substation expansion design stamped by a New York State licensed Professional Engineer for Company review for acceptance.

2. Customer shall provide for acceptance drawings of all major equipment at the reconfigured point of interconnection of the Customer-owned Lake Placid Substation expansion.

3. Customer shall submit the Lake Placid Substation expansion testing and commissioning plans for Company review for acceptance.

4. Customer shall submit the Lake Placid Substation energization plan for Company review for acceptance.

5. Customer shall provide 24-hour contacts for access and emergency issues concerning the Customer-owned Lake Placid Substation.

6. In implementing the Customer Expansion Project and all work related thereto Customer and its contractors shall comply with Good Utility Practice and with all applicable ESBs including, without limitation, ESB-751, ESB-752 and ESB-755. Customer acknowledges and agrees that Customer's full compliance with this paragraph 6 of Exhibit C, as verified by Company as part of the Company Work, shall be a precondition to Customer's energization of the reconfigured interconnection between the Company's facilities and the Lake Placid Substation following completion of the Customer Expansion Project.

7. Customer shall grant to Company certain perpetual easements and rights for the construction, installation, testing, ownership, use, operation, and maintenance of the portions of the New Facilities to be located on, over, across, through Customer's property, which grants of easement shall be in substantially the same form attached hereto as Exhibit C-1 (the "*Customer Grants of Easement*"). Customer shall further use reasonable efforts to acquire all other easements, access rights, rights-of-way, fee interests, and other rights in property necessary to accommodate Company's construction, installation, testing, ownership, use, operation, and maintenance of the New Facilities, as determined to Company's satisfaction in its sole discretion (together with the Customer Grants of Easement, collectively the "*New Facilities Property Rights*"). Customer shall convey, or arrange to have conveyed, to the Company all New Facilities Property Rights, each such conveyance to be in form and substance satisfactory to Company in its sole discretion and without charge or cost to Company.

   Customer acknowledges and agrees that the Company is required to abide by all Applicable Requirements, including, without limitation, any and all land use, zoning, planning and other such Requirements. To the extent necessary, Customer shall prepare, file for, and use reasonable efforts to obtain, on the Company's behalf, all required subdivision, zoning and other special, conditional use or other such land use permits or other discretionary permits,

approvals, licenses, consents, permissions, certificates, variances, zoning changes, entitlements or any other such authorizations from all local, state and federal governmental

agencies (including, without limitation, from the NYS DOT) and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities and for Company to decommission, dismantle and remove the Existing Facilities (the "*Land Use Approvals*").

8. In undertaking or performing any work required of it under the terms of this Agreement, including, without limitation, securing the New Facilities Property Rights and Land Use Approvals, Customer shall comply, at all times, with (i) the Real Property Standards, including, without limitation, performing all obligations of the Requesting Party as contemplated by the Real Property Standards, and (ii) the Environmental Due Diligence Procedure, as each may be updated, amended or revised from time to time. Customer shall coordinate with the Company's Environmental Department; the Company's Project Manager will provide Customer with the name and contact information for an appropriate Company representative in the Company's Environmental Department.

9. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

10. If and to the extent applicable or under the control of the Customer, provide complete and accurate information regarding the Customer Expansion Project and the site(s) where Work is to be performed, including, without limitation, constraints, space requirements, underground or hidden facilities and structures, and all applicable data, drawings and specifications.

11. Customer shall provide adequate and continuous access to the site(s) where Company Work is to be performed. Such access is to be provided to Company and its contractors and representatives for the purpose of enabling them to perform the Company Work as and when needed and shall include adequate and secure parking for Company and contractor vehicles, stores and equipment.

12. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

Lake Placid Cost Reimbursement Agreement - February 2020

Exhibit C-1: Form of Grant of Easement

THIS INDENTURE, made this day of 20 , between Lake Placid Village, Inc**.** having an address of 2693 Main Street, Lake Placid, NY (hereinafter referred to as "Grantor"), and Niagara Mohawk Power Corporation, a New York corporation, having an address of 300 Erie Boulevard West, Syracuse, New York 13202 (hereinafter referred to as "Grantee"),

W I T N E S S E T H:

That the Grantor owns lands situate in the Town of North Elba, County of Essex, and State of New York, which lands are more particularly described in that certain Deed recorded in the Essex County Clerk's Office as Instrument No. _____ and are commonly known as Tax Parcel I.D. No. 42.220-1-1.100 (the "Grantor's Lands").

That the Grantor, in consideration of ONE DOLLAR AND MORE ($1.00 & More) lawful money of the United States paid by the Grantee, does hereby grant and release unto the Grantee, its successors and assigns forever, the perpetual right, privilege and easement to construct, reconstruct, relocate, extend, repair, maintain, operate, inspect, patrol, and, at its pleasure, remove any poles or lines of towers or poles, or both, or any combination of the same, with wires and cables strung upon and from the same (any of which may be erected and/or constructed at the same or different times) together with all supporting structures, cables, crossarms, overhead and underground wires, guys, guy stubs, insulators, transformers, braces, fittings, foundations, anchors, lateral service lines, communications facilities, and any other equipment or appurtenances (collectively, the "Facilities"), which the Grantee shall require now and from time to time and which may be erected and/or constructed at the same or different times, for the transmission and distribution of high and low voltage electric current and for the transmission of intelligence and communication purposes, by any means, whether now existing or hereafter devised, for public or private use, in, upon, over, under and across that portion of the Grantor's Lands described below (the "Easement Area"), and the highways abutting or running through the Grantor's Lands, and to renew, replace, add to, and otherwise change the Facilities and each and every part thereof and the location thereof within the Easement Area, and utilize the Facilities within the Easement Area for the purpose of providing service to the Grantor or others.

The Easement Area consists of all that tract or parcel of land situate in the Town of North Elba, County of Essex, and State of New York which is more particularly described in **Exhibit A** attached hereto and made a part hereof.

Together with the perpetual right, privilege and easement to place, replace, renew, repair, maintain, operate and remove any supporting structures such as guys, stubs, anchors, span guys, and any other appurtenant structures within the bounds of the Easement Area which the Grantee may from time to time deem necessary.

Together with the perpetual right, privilege and easement to clear the Easement Area of any buildings, not previously agreed to herein, improvements, obstructions and structures, and to trim, cut and remove any and all trees and brush, either mechanically or by the use of federal and/or

state-registered herbicides, within the bounds of the Easement Area, and also any and all trees and brush beyond the bounds of the Easement Area which, in the sole judgment of the Grantee, may

be a source of danger to Grantee's Facilities, all as the Grantee may from time to time deem necessary; and together with the further right of access to and from the Easement Area across the Grantor's Lands for the purposes herein stated.

The said Grantor, as an undertaking and covenant running with the land for themselves, their heirs, representatives, successors and assigns, hereby covenant and agree with respect to the Easement Area that:

(a) No new buildings or other structures shall be erected, moved or placed upon or permitted to be erected, moved or placed upon said Easement Area, nor shall any trees be planted thereon without the consent of Grantee. Grantee acknowledges that existing buildings, as shown on Exhibit A, are located with the Easement Area. Grantee consents to the location of the buildings as shown on Exhibit A; provided however, any additions/modifications to the outside of the existing buildings shall require Grantee's further consent.

(b) No equipment, mechanical or otherwise, any part of which may extend within fifteen (15) feet of the lowest electric conductor constructed, maintained and operated over said Easement Area shall be used, operated or moved over, across and along said Easement Area.

(c) Materials or equipment may be stored or permitted to be stored upon said Easement Area, so long as such materials or equipment do not impede Grantee's access to the Facilities or its ability to operate and maintain the Facilities safely.

(d) The grade of said Easement Area as same now exists shall not be disturbed nor shall any excavating, mining or blasting be undertaken within the bounds thereof, without Grantee's prior written consent.

(e) Grantor shall not have the right to relocate the Easement Area or amend or modify the Easement without Grantee's written consent, and no acts shall be permitted within the Easement Area inconsistent with the rights and easements granted herein.

TO HAVE AND TO HOLD the premises and rights herein granted unto the Grantee, its successors and assigns forever.

Said Grantor further covenants with respect to the Easement Area, that:

1. Grantor is seized of said premises in fee simple and has good right to grant and convey the above-described rights, privileges and easements.

2. Said premises are free from encumbrances.

3. Grantee shall quietly enjoy said premises.

4. Grantor will execute or procure any further necessary assurance of the title to said premises.

5. Grantor will forever warrant the title to said premises.

It is agreed that the Facilities shall remain the property of the Grantee, its successors and assigns. The Grantee, its successors and assigns, are hereby expressly given and granted the right to assign this Easement, or any part thereof, or interest therein, and the same shall be divisible between or among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full right, privilege, and authority herein granted, to be owned and enjoyed either in common or severally. This Easement is a commercial easement in gross and shall at all times be deemed to be and shall be a continuing covenant running with the Grantor's Land and shall inure to and be binding upon the successors, heirs, legal representatives, and assigns of the parties named in this Easement.

The Grantor hereby acknowledges and agrees that the persons and/or entities entitled to exercise this Easement and enter upon any use the Easement Area include the Grantee, the Grantee's successors and assigns, and their respective officers, employees, agents, contractors, subcontractors, representatives and invitees.

It is the intention of the Grantor to grant to the Grantee, its successors and assigns, all the rights and easements aforesaid and any and all additional and/or incidental rights needed to construct, reconstruct, install, repair, maintain, operate, use, inspect, patrol, renew, replace, add to, and otherwise change, for the transmission and distribution of high and low voltage electric energy and the transmission of intelligence, the Facilities over, under, through, across, within, and upon the Easement Area, and the Grantor hereby agrees to execute, acknowledge, and deliver to the Grantee, its successors and assigns, such further deeds or instruments as may be necessary to secure to them the rights and easements intended to be herein granted.

This Easement shall be construed in accordance with the laws of the State of New York. No change or modification of this Easement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any provisions of this Easement shall be valid unless the same is in writing and signed by the party against which it is sought to be enforced.

IN WITNESS WHEREOF, the Grantor have hereunto set their hands and seals the day and year first above written.

BY: _____ BY: _____

(Sign) *(Sign)*

_____ _____

(Print Name and/or Title if Corporation) *(Print Name and/or Title if Corporation)*

Lake Placid Cost Reimbursement Agreement - February 2020

STATE OF NEW YORK }
COUNTY OF } SS.:

On this day of , 20 , before me, the undersigned a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) , and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK }
COUNTY OF } SS.:

On this day of , 20 , before me, the undersigned a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) , and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Lake Placid Cost Reimbursement Agreement - February 2020

Exhibit D: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of New York. If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.

- Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

  (A) Bodily Injury - $1,000,000/$1,000,000
  Property Damage - $1,000,000/$1,000,000
  OR
  (B) Combined Single Limit - $1,000,000
  OR
  (C) Bodily Injury and Property Damage per Occurrence - $1,000,000
  General Aggregate & Product Aggregate - $2,000,000 each

- Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of: Combined Single Limit - $1,000,000 per occurrence.

- Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

- Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

   To: National Grid c/o Niagara Mohawk Power Corporation
   Attention: Michael Keys
   Lead Account Manager
   Commercial Services
   300 Erie Blvd West
   Syracuse, NY 13202

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: Lake Placid Village, Inc. c/o Village Clerk
2693 Main Street
Lake Placid, NY 12946

2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Lake Placid Cost Reimbursement Agreement - February 2020

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent to the furnishing Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work under this Agreement.

5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other Party that it will have full policy limits available and shall notify the other Party in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

7. Customer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Customer Expansion Project and associated Work.

Lake Placid Cost Reimbursement Agreement - February 2020

Schedule I: Real Property Standards

STANDARDS AND REQUIREMENTS RELATING TO THIRD PARTY ACQUISITION AND TRANSFER OF REAL PROPERTY INTERESTS TO NIAGARA MOHAWK POWER CORPORATION FOR ELECTRIC FACILITIES

Note Regarding Application/Reservation of Rights

The standards set forth herein are intended to apply generally in cases where real property interests shall be acquired by third parties and transferred to Niagara Mohawk Power Corporation ("NMPC") in connection with the construction of new electric facilities, including, without limitation, the relocation of existing NMPC electric facilities (collectively, the "New Facilities"). NMPC advises, however, that it may impose additional or modified requirements in its sole discretion and/or on a case-by-case basis and, therefore, reserves the right to amend, modify or supplement these standards at any time prior to transfer/acceptance. Third parties shall not deviate from these standards unless expressly authorized in writing by NMPC.

1. General Requirements

Unless otherwise expressly authorized in writing by NMPC, a third party requesting relocation of NMPC electric facilities and/or responsible for siting and constructing the New Facilities (the "Requesting Party") shall acquire all rights and interests in real property that, in the opinion of NMPC, are necessary for the construction, reconstruction, relocation, operation, repair, maintenance, and removal of such New Facilities. Further subject to the standards set forth herein, the Requesting Party shall obtain NMPC's written approval of the proposed site or sites prior to the Requesting Party's acquisition or obtaining site control thereof. As a general rule, the Requesting Party shall acquire a fee-ownership interest for all parcels upon which a substation, point of interconnection station or other station facility will be located and transferred to NMPC, and either a fee-ownership interest or a fully-assignable/transferable easement for all parcels upon which any other New Facilities will be located and transferred to NMPC. The Requesting Party shall pay and be solely responsible for paying all costs and expenses incurred by the Requesting Party and/or NMPC that relate to the acquisition of all real property interests necessary and proper to construct, reconstruct, relocate, operate, repair, maintain and remove, as applicable, the New Facilities. The Requesting Party shall pay and be solely responsible for paying all costs associated with the transfer of real property interests to NMPC, including, but not limited to, closing costs, subdivision costs, transfer taxes and recording fees. The Requesting Party shall reimburse NMPC for all costs NMPC may incur in connection with transfers of real property interests. Title shall be transferred only after having been determined satisfactory by NMPC. Further, NMPC reserves the right to condition its acceptance of title until such time as the New Facilities have been constructed, operational tests have been completed, and the New Facilities placed in service (or

Lake Placid Cost Reimbursement Agreement - February 2020

determined by NMPC to be ready to be placed in service), and the Requesting Party is strongly advised to consult with NMPC's project manager as to the anticipated sequencing of events.

The Requesting Party will be responsible for payment of all real estate taxes (i.e., county, village, city/town and/or school) until such time as title has been transferred to NMPC (allocation of responsibility for payment of real estate taxes following the transfer to be determined on a case-by-case basis).

Prior to such transfer, the Requesting Party shall furnish to NMPC the original costs of any improvements by type/category of property; i.e., conductors, towers, poles, station equipment, etc. These original costs will show year of construction by location of such improvements. This information may be transmitted by NMPC to Federal, State or local governmental authorities, as required by law.

1.1 Title Documentation; Compliance with Appropriate Conveyancing Standards

The real property interests necessary for the construction, reconstruction, relocation, operation, repair, maintenance and removal of the New Facilities shall be conveyed to NMPC in fee simple (by warranty deed) or by fully-assignable/transferable easement approved by NMPC, with good and marketable title free and clear of all liens, encumbrances, and exceptions to title for a sum of $1.00. With respect to any approved conveyance of easements, the Requesting Party shall subordinate pertinent mortgages to the acquired easement rights. The Requesting Party shall indemnify, defend, and hold harmless NMPC, its agents and employees, officers, directors, parent(s) and affiliates, and successors in interest, from all liens and encumbrances against the property conveyed. The Requesting Party further agrees to provide to NMPC a complete field survey (with iron pin markers delineating the perimeter boundaries of the parcel or the centerline of the entire right-of-way in the case of an electric transmission line), an abstract of title (of at least 40 years or such longer period as may be required by NMPC on a case-by-case basis), and a 10-year tax search for real property interests to be transferred to NMPC. The Requesting Party shall be required to provide NMPC with a title insurance commitment with a complete title report issued by a reputable and independent title insurance company for any real property rights in fee or easement that are to be transferred to NMPC. At the time of the transfer of such interests to NMPC, the Requesting Party shall provide a title insurance policy naming NMPC as the insured covering the real property interests, in fee or easement, that are to be transferred to NMPC.

Lake Placid Cost Reimbursement Agreement - February 2020

The Requesting Party shall provide such title documentation and title insurance as shall be required by the NMPC real estate attorney assigned to review and close the transfer of ownership from the Requesting Party to NMPC. The Requesting Party shall request direction from such attorney with respect to preparation of abstracts of title, title insurance commitments and policies, and preparation of boundary surveys that comply with ALTA/NSPS Land Title Survey Standards and which must conform to proposed legal descriptions. The Requesting Party will be provided legal forms which include acceptable language and format for title transfer. Title shall be determined satisfactory by the NMPC real estate attorney in his or her sole discretion.

Title requirements of NMPC shall be of a reasonable nature and consistent with legally sound title practice in the applicable jurisdiction. Without limiting the foregoing, title shall not be encumbered by any liens or encumbrances superior to or on par with any applicable lien of NMPC's indentures or otherwise deemed objectionable by the NMPC real estate attorney so assigned. All title insurance fees and premiums (including, without limitation, costs of title insurance policy endorsements) shall be paid by the Requesting Party at or prior to the date of transfer.

The Requesting Party shall provide to NMPC conformed copies of all necessary real property interests not prepared by, or directly for, or issued to NMPC.

1.2 Forms

The Requesting Party shall use NMPC-approved forms (including form subordination agreements) for obtaining, recording and transferring fee-owned right-of-way and easements. Proposed changes to such forms shall be discussed with and agreed upon with the assigned NMPC real estate attorney.

2 Areas Where Easements/Permits Are Acceptable

2.1 Railroads

Where the New Facilities shall cross railroads, the Requesting Party shall obtain railroad crossing permits or other standard railroad crossing rights prior to constructing the crossing.

2.2 Public Land

Where the New Facilities shall cross public land, the Requesting Party shall obtain an easement for the crossing and/or any permits necessary to construct, operate and thereafter maintain such Facilities.

Lake Placid Cost Reimbursement Agreement - February 2020

2.3 Highways and Other Public Roads

Where the New Facilities shall cross highways or other public roads, the Requesting Party shall obtain crossing permits, easements, or other standard highway crossing rights prior to constructing the crossing, from the agency or agencies authorized to issue such rights.

2.4 Off Right-of-Way Access

In all cases, the Requesting Party shall obtain access/egress rights to the New Facilities acceptable to NMPC. Where construction and maintenance access along the fee-owned or easement strip is not possible or feasible, the Requesting Party shall obtain easements for off right-of-way access and construct, where necessary, permanent access roads for construction and future operation and maintenance of the New Facilities. NMPC will review the line route for maintenance access and advise the Requesting Party of locations requiring permanent off right-of-way access. The Requesting Party shall obtain permanent easements and construct the permanent maintenance access roads. Typically, a width easement of 25 feet maximum shall be obtained for off right-of-way access, but the dimensions shall be per NMPC requirements on a case-by-case basis.

The Requesting Party shall obtain all necessary rights of access and licenses, including adequate and continuing rights of access to NMPC's property, as necessary for NMPC to construct, operate, maintain, replace, or remove the New Facilities, to read meters, and to exercise any other of its obligations from time to time. The Requesting Party hereby agrees to execute any such further grants, deeds, licenses, assignments, instruments or other documents as NMPC may require to enable it to record such rights-of-way, easements, and licenses.

2.5 Temporary Roads

The Requesting Party shall obtain temporary easements for access roads which are necessary for construction, but not for future operation and maintenance of, the New Facilities. NMPC shall concur with respect to any temporary roads being acquired versus permanent roads. If any disagreements occur with respect to the type of road being needed, NMPC's decision shall be final. In the event NMPC determines that permanent roads will not be required for operation and maintenance (including repair or replacement), easements for temporary roads shall not be assigned or otherwise transferred to NMPC by the Requesting Party.

2.6 Danger Trees

If it is determined that the fee-owned or principal easement strip is not wide enough to eliminate danger tree concerns, the Requesting Party shall obtain additional permanent easements for danger tree removal beyond the bounds of

the principal strip. The additional danger tree easement rights may be general in their coverage area, however if a width must be specified, NMPC Forestry shall make that determination but in no case shall less than 25' feet be acquired beyond the bounds of the principal strip.

2.7 Guy and Anchor Rights

The Requesting Party shall obtain an additional permanent fee-owned strip or easement for guys and anchors when the fee-owned or principal easement strip is not wide enough to fully contain guys, anchors and, other such appurtenant facilities.

3. Dimensions

Dimensional requirements with respect to electric station/substation facilities will vary on a case-by-case basis. In all cases, however, the Requesting Party shall obtain sufficient area to allow safe construction, operation and maintenance of the New Facilities, in conformity with applicable land use and environmental laws, rules and regulations, including, without limitation, bulk, setback and other intensity requirements of applicable zoning ordinances, subdivision regulations, and wetlands setback requirements. Basic width for the fee-owned or easement strip for 115kV transmission lines shall be 100 feet, with the transmission facility constructed in the center of the strip. NMPC will advise the Requesting Party if there will be any additional right-of-way requirements. This requirement may be modified by the agreement of the parties as the scope of the project is further developed or if there are changes to the project. Where extreme side-hill exists, additional width beyond the 25 feet may be required on the uphill side of the strip to allow additional danger tree removal.

Where guyed angle structures are to be installed, additional fee strip widths or permanent easement shall be obtained by the Requesting Party on the outside of the angle to provide for installation of guys and anchors within the fee-owned strip or permanent easement. The width of the additional strip shall be a minimum of 25 feet. The length of the strip shall be sufficient to assure that all guys and anchors will fall within the fee-owned strip. A 125' strip will then be typically required.

Lake Placid Cost Reimbursement Agreement - February 2020

4. Eminent Domain

If condemnation in NMPC's name is required, the Requesting Party shall contact NMPC's project manager for additional details on any assistance NMPC may provide. Typically, the Requesting Party shall prepare all acquisition maps, property descriptions and appraisals. Contact shall be made with NMPC's surveyor, right-of-way supervisor and legal department, and all requirements shall be closely followed. The Requesting Party shall also prepare an Environmental Assessment and Public Need report (Environmental Impact Statement or equivalent) and any other report or reports which may be required. A certified survey may also be required. NMPC must approve the Requesting Party's attorney for all condemnation hearings and proceedings. NMPC participation in such proceedings will be required at the Requesting Party's sole cost and expense. The Requesting Party shall contact NMPC attorneys prior to undertaking any condemnation proceedings for proper procedures to follow. To the extent legally permissible, NMPC reserves the right to refuse the use of condemnation by the Requesting Party (if the Requesting Party has the legal authority to commence and conduct an eminent domain proceeding), or by itself, in its sole discretion.

5. Use of Existing NMPC Right-of-Way

Existing NMPC right-of-way will not be available for use for the New Facilities unless NMPC Engineering, Planning and Operating departments agree to the contrary. The Requesting Party will pay a mutually acceptable cost to use such lands if NMPC gives internal approval.

6. Public Right-of-Way

If the Requesting Party must use public right-of-way for the New Facilities, the Requesting Party shall arrange for and reimburse NMPC and/or other utilities for any relocation which may be necessary.

7. General Environmental Standards

The Requesting Party agrees that, prior to the transfer by the Requesting Party of any real property interest to NMPC, the Requesting Party shall conduct, or cause to be conducted, and be responsible for all costs of sampling, soil testing, and any other methods of investigation which would disclose the presence of any Hazardous Substance which has been released on the Property or which is present upon the Property by migration from an external source, and which existed on the Property prior to the transfer, and shall notify NMPC in writing as soon as reasonably practicable after learning of the presence of Hazardous Substance upon said Property interest. The Requesting Party agrees to indemnify, defend, and save NMPC, its agents and employees, officers, directors, parents and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge (including reasonable attorneys' fees), expense, or cause of action, for the removal or management of any Hazardous Substance and relating to any damages to any person or property resulting from presence of such Hazardous Substance. The

Requesting Party shall be required, at its sole cost and expense, to have a Phase I Environmental Site Assessment ("Phase I ESA") conducted on any such property which

may be legally relied upon by NMPC and which shall be reviewed and approved by NMPC prior and as a condition to transfer. NMPC further reserves the right, in its sole discretion, to require that the Requesting Party have a Phase II Environmental Site Assessment conducted on any such property, also at the Requesting Party's sole cost and expense, if NMPC determines the same to be necessary or advisable, which (if required) shall be reviewed and approved by NMPC prior and as a condition to transfer. NMPC further reserves the right, in its sole discretion, to disapprove and reject any proposed site and/or real property interest to be conveyed to NMPC based upon the environmental condition thereof.

8. Indemnity

The Requesting Party shall be responsible for defending and shall indemnify and hold harmless NMPC, its directors, officers, employees, attorneys, agents and affiliates, from and against all liabilities, expense (including litigation costs and attorney's fees) damages, losses, penalties, claims, demands, actions and proceedings of any nature whatsoever for construction delays, construction or operations cessations, claims of trespass, or other events of any nature whatsoever that arise from or are related to an issue as to the sufficiency of the real property interests acquired or utilized by the Requesting Party for the construction, reconstruction, relocation, operation, repair, and maintenance of the New Facilities. In no event shall NMPC be held liable to the Requesting Party or third parties for consequential, incidental or punitive damages arising from or any way relating to an issue as to the sufficiency of the real property interests acquired or utilized by the Requesting Party (including, but not limited to, those real property interests from NMPC) for the construction, reconstruction, relocation, operation, repair, and maintenance of the New Facilities.

Lake Placid Cost Reimbursement Agreement - February 2020

Schedule II: Environmental Due Diligence Procedure

Lake Placid Cost Reimbursement Agreement - February 2020

Service Agreement No. 2680

COST REIMBURSEMENT AGREEMENT

This **COST REIMBURSEMENT AGREEMENT** (this "*Agreement*"), is made and entered into as of December 22, 2021 (the "*Effective Date*"), by and between **ROCHESTER GAS & ELECTRIC CORPORATION,** a New York corporation, with offices located at 89 East Avenue, Rochester, NY 14649 *(*"*Customer*"*)*, and **NIAGARA MOHAWK POWER CORPORATION**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*" or "*National Grid*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer is proposing to expand its Station 56 substation located near Pittsford, NY (the "*Station 56 Substation*") and interconnect such proposed expanded Station with existing National Grid owned T1610 Mortimer-Quaker #23 115kV, T1560 Mortimer-Hook Road #1 115kV, T1570 Mortimer-Elbridge #2 115kV, T 1590 Mortimer-Pannell #24 115kV, and the T1600 Mortimer-Pannell #25 115kV electrical transmission circuits; and

WHEREAS, Customer has requested that Company perform certain Company Work, as more specifically described below; and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) Customer's delivery of certain real property interests as contemplated in this Agreement, (iii) Customer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below), and (iv) receipt of any and all Required Approvals, as set forth in Section 18.1.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person or entity; "control" of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, licenses, authorizations, approvals and other duly authorized actions of 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, NYISO, NYSRC and NPCC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*CIP*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Company*" shall have the meaning set forth in the preamble to this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Project, all applicable overhead, overtime costs (subject to Section 5.1), all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

"*Company Work*" means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

"*Convenience Termination Notice*" shall have the meaning set forth in Section 7.3 of this Agreement.

"*Customer*" shall have the meaning set forth in the preamble to this Agreement.

"*Customer Grants of Easement*" shall have the meaning set forth in Exhibit C to this Agreement.

"*Customer Required Actions*" means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Defect Notice*" shall have the meaning specified in Section 3.2 of this Agreement.

"*Detailed Project Plan*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Disputed Payment Amount(s)*" shall have the meaning specified in Section 7.4 of this Agreement.

"*Dollars*" and "$" mean United States of America dollars.

"*Effective Date*" shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*Existing Facilities*" means that portion of the existing Company Gardenville Arcadia 151 transmission line located in Erie County Orchard Park NY, and related facilities.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices,

methods, or acts generally accepted in the region in which the Project is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC and NYISO, NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" and "*Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Initial Prepayment*" shall have the meaning set forth in Section 7.2 of this Agreement.

"*Land Use Approvals*" shall have the meaning set forth in Exhibit C to this Agreement.

"*National Grid*" shall have the meaning set forth in the preamble to this Agreement.

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*New Facilities*" shall have the meaning set forth in Exhibit A to this Agreement.

"*New Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*New Facilities Property Rights*" shall have the meaning set forth in Exhibit C of this Agreement.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*Notice to Proceed*" shall have the meaning set forth in Section 7.3 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

"*NYPSC*" shall mean the New York Public Service Commission.

"*NYSRC*" shall mean the New York State Reliability Council or any successor organization thereto.

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Phase II Notice*" shall have the meaning set forth in Section 7.3 of this Agreement.

"*Phase I Portion*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Phase II Portion*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Phase II Prepayment*" shall have the meaning set forth in Section 7.3 of this Agreement.

"*Preliminary Milestone Schedule*" shall have the meaning set forth in Section 5.2 of this Agreement.

"*Project*" shall mean the Company Work to be performed under this Agreement.

"*Project Manager*" means the respective representatives of each of the Customer and Company appointed pursuant to Section 10.1 of this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Real Property Standards*" are set forth in Schedule I to this Agreement.

"*Receiving Party*" shall mean the Party receiving Proprietary Information.

"*Refund Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Required Approvals*" shall have the meaning set forth in Section 18.1 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Site*" shall mean Customer's Station 56 Substation.

"*Station 56 Expansion Project*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Station 56 Substation*" shall have the meaning set forth in the preamble to this Agreement.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall mean the Customer Required Actions and/or the Company Work, as applicable.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Company Work*").

3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Company Work, Customer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2 (each, a "*Defect Notice*"). If the Company Work is defective within the meaning of the prior sentence, then, following its receipt of a timely Defect Notice with respect thereto, the Company shall, at its sole expense, promptly correct, repair or replace such defective Company Work, as appropriate. The remedy set forth in this Section 3.2 is the sole and exclusive remedy granted or available to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall use reasonable efforts to perform the actions described in Exhibit C attached to this Agreement (the "*Customer Required Actions*"). All of the Customer Required Actions shall be performed at Customer's sole cost and expense.

[redacted]

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Wor

4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any Customer requests for material additions, modifications, or changes to the Work shall be communicated in writing, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Customer as part of Company Reimbursable Costs.

4.2 The foregoing notwithstanding, the Company is not required to notify Customer of, or to obtain the consent or agreement of the Customer for, any change to the Company Work that is not material (a "*Material Change*") as defined below. Company shall provide Customer with not less than fifteen (15) Days advanced written notice of any proposed Material Change, except if legal or regulatory compliance requirements, safety considerations, or other exigent circumstances, make providing such advanced written notice impractical, notice of the Material Change shall be provided by the Company to Customer as soon as reasonably practicable under the circumstances. Notice by the Company shall include a good faith estimate of the impact of the Material Change on the Preliminary Milestone Schedule (as such schedule may be amended to accommodate the Phase II Portion, the "Project Schedule") and an explanation of why such Material Change is being made. A Material Change is any change that may result in a delay in the Project Schedule (as such delay is estimated in good faith by the Company at the time of the notice) greater than one (1) month, any increase of the cost to be reimbursed by the Customer (as estimated in good faith by the Company at the time of the notice) in excess of $200,000, and any change that requires an additional governmental approval.

5.0 **Performance and Preliminary Milestone Schedule; Conditions to Proceed**

5.1 The Company shall use commercially reasonable efforts to have any Company Work performed by its direct employees performed during normal working hours. The foregoing notwithstanding, if Company Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred

in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs, provided, that, with respect to Company

Work to be performed by Company's direct employees outside of normal working hours ("*Overtime Work*"), Company provides at least five (5) Days prior written notice to Customer (each, an "*Overtime Notice*") when Company schedules such Overtime Work other than at the request of Customer. Upon Customer's written request delivered to Company prior to the scheduled commencement of the Overtime Work referred to in the applicable Overtime Notice (each, a "*Deferral Notice*"), Company shall defer the scheduled performance of such Overtime Work and instead perform this Company Work during normal working hours. The foregoing notwithstanding, the Company shall not be required to provide an Overtime Notice, nor shall the Company be required to comply with any Deferral Notice, with respect to any Overtime Work that is reasonably required (i) due to emergency circumstances, (ii) for safety, security or reliability reasons (including, without limitation, to protect any facility from damage or to protect any person from injury), (iii) to return any facility to service in accordance with applicable standards, or (iv) to comply with Good Utility Practice or any Applicable Requirement. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.

5.2 The preliminary project milestone schedule for the Company Work and the Customer Required Actions is set forth in Exhibit B, attached hereto and incorporated herein by reference ("*Preliminary Milestone Schedule*"). The Preliminary Milestone Schedule is a projection only and is subject to change with or without a written adjustment to such Schedule. Neither Party shall be liable for failure to meet the Preliminary Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Project.

5.3 Commencement of Company Work. Company will proceed with the Phase I Portion of the Company Work promptly following Company's receipt of the Initial Prepayment.

5.4 Construction Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any construction in connection with the Company Work unless and until all of the following conditions have been satisfied:

(i) Customer has delivered, or arranged to deliver, and Company has received, all real property rights necessary for Company to complete the Company Work, including, without limitation, the New Facilities Property Rights, and Customer acknowledges that, prior to accepting the New Facilities Property Rights, Company shall have completed all due diligence contemplated by this Agreement with respect thereto, and determined in its reasonable discretion that Customer has satisfied, or shall have satisfied, the applicable obligations set forth in the Real Property Standards (it being agreed that such obligations shall be (a) established by the Parties as soon as practicable following determination as to the nature and scope of the New Facilities Property Rights, and the Real Property Standards shall be amended at that time to reflect such obligations and (b) of a reasonable nature, consistent with established conveyancing practices of the Parties,) and

(ii) all Required Approvals for such Company Work (including, without limitation, the New Facilities Approvals and the Land Use Approvals) have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of such construction is permitted under the terms and conditions of such Required Approvals, and

(iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **[Reserved]**

7.0 **Customer Obligation to Pay Company Reimbursable Costs; Invoicing; Taxes**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.

Customer shall provide Company with a prepayment of **$500,000** ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Phase I Portion of the Company Work.

7.2 The Company shall invoice Customer for the Initial Prepayment; Customer shall pay such amount to Company within five (5) Days of the invoice due date. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence

any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.

7.3 Following completion of the Phase I Portion of the Company Work, Company shall provide Customer with a written notice (the "*Phase II Notice*") of the Company's good faith estimate of the additional total Company Reimbursable Costs to perform the Phase II Portion of the Company Work (the "*Phase II Prepayment*"), which notice will include a reasonable summary of the anticipated work to be performed for the Phase II Portion of the Company Work, and the related costs and expenses, and an invoice for the Phase II Prepayment amount. Upon issuance of the Phase II Notice, Company shall suspend performance of the Company Work pending Company's receipt of a Notice to Proceed (as defined below) from Customer. Promptly following issuance of the Phase II Notice, Customer shall determine whether it wishes to (a) deliver an unconditional written direction to Company to commence and complete performance of the Phase II Portion of the Company Work accompanied by payment in full of the invoiced Phase II Prepayment amount ("*Notice to Proceed*") or (b) terminate this Agreement for convenience by delivering a written notice thereof to Company ("*Convenience Termination Notice*"). Following Company's receipt of a Notice to Proceed signed by an authorized representative of Customer, Company will commence performance of the Phase II Portion of the Company Work in accordance with and subject to the terms and conditions of this Agreement. In the event that Customer does not deliver either a Notice to Proceed or a Convenience Termination Notice on or before thirty (30) Days following the date of the Phase II Notice, this Agreement shall be deemed terminated for convenience by Customer. Any costs or expenses incurred by Company as the result of any suspension of Company Work contemplated by this Section 7.3, including, without limitation, demobilization and remobilization costs, shall be included in the Company Reimbursable Costs to be reimbursed by Customer. Any termination of this Agreement contemplated by this Section 7.3 shall be subject to Sections 21.3 and 21.4 of this Agreement. For the avoidance of doubt: the Phase II Prepayment amount is an estimate only and shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.

7.4 Company may invoice Customer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all amounts reflected on such invoices, other than amounts disputed by Customer in good faith in writing prior to the applicable due date (each, a "*Disputed Payment Amount*" and, collectively, the "*Disputed Payment Amounts*"), shall be due and payable thirty (30) Days from date of invoice. All invoices shall contain reasonable detail reasonably substantiating the invoiced Company Reimbursable Costs and shall be accompanied by reasonable supporting documentation; *provided, however*, that Company shall not have any obligation to provide confidential or privileged information as part of any such documentation. Except for Disputed Payment Amounts that have been finally determined (by mutual

written agreement of the Parties or by a court or agency with jurisdiction over the dispute) not to be due and payable by Customer, if any payment due to Company

under this Agreement is not made when due, Customer shall pay Company interest on the unpaid amount in accordance with Section 9.1 of this Agreement. In addition to any other rights and remedies available to Company, (i) if any payment amount due from Customer under this Agreement is not received within five (5) Days after the applicable invoice due date and such amount is not an unresolved Disputed Payment Amount, then following written notice to Customer, Company may suspend any or all Work pending receipt of all amounts currently due from Customer under this Agreement, or (ii) if the cumulative total of all unpaid Disputed Payment Amounts exceeds $200,000 at any time, then following written notice to Customer, Company may suspend any or all of its Work pending resolution of such disputes. Any suspension of Company Work by Company shall be without recourse or liability to Company.

7.5 Each month during the term of this Agreement, the Company shall provide Customer with a report (each, a "*Monthly Report*") containing (i) unless invoiced, the Company's current estimate of the Company Reimbursable Costs incurred in the prior calendar month, and (ii) the Company's current forecast (20% to 40% variance) of the Company Reimbursable Costs expected to be incurred in the next calendar month, provided, however, that such Monthly Reports (and any forecasted or estimated amounts reflected therein) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company or its Affiliates.

7.6 If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("*Sales Tax Exemption Certificate*"). During the term of this Agreement, Customer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.7 Company shall maintain reasonably detailed records to document the Company Reimbursable Costs. So long as a request for access is made within one (1) year of completion of the Work and subject to the Company's safety and security protocols, including, COVID-19 protocols, Customer and its chosen auditor shall, during normal business hours and upon reasonable advanced written notice of not less than ten (10) days, be provided with access to such records for the sole purpose of verification by Customer that the Company Reimbursable Costs have been incurred by Company.

7.8 Company's invoices to Customer for all sums owed under this Agreement shall be

sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company:

Name: Jesus Castro
Address: Avangrid Service Company,
3 City Center
180 South Clinton
Rochester, New York 14604

7.9 All payments made under this Agreement shall be made in immediately available funds.

Payments to the Company shall be made by wire transfer to the account specified by the Company in the applicable invoice.

8.0 **Final Payment**

8.1 Not later than one hundred and eighty (180) Days following the earlier of (i) the completion of the Company Work, and (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"); such final invoice shall contain reasonable detail sufficient to reasonably substantiate the claimed Balance Amount and shall be accompanied by reasonable supporting documentation; *provided, however*, that Company shall not have any obligation to provide confidential or privileged information as part of any such documentation. If the Total Payments Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer ("*Refund Amount*"). The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 **Interest on Overdue Amounts**

9.1 If any payment due under this Agreement is not made when due, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount calculated in accordance with Section 35.19a of the FERC's regulations (18 C.F.R. 35.19a) from and including the due date until payment is made in full.

10.0 **Project Managers; Meetings**

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party's Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager ("*Project Manager*"). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2, COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW FACILITIES, THE STATION 56 EXPANSION PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the completion, expiration or earlier termination of this Agreement.

12.0 **Liability and Indemnification**

12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), each Party (the "*Indemnifying Party*") shall indemnify and hold harmless, and defend the other Party, its parents and Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees (each, individually, an "*Indemnified Party*" and, collectively, the "*Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without

limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments

of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "*Damages*"), incurred by any Indemnified Party to the extent caused by the negligence, unlawful act or omission, or intentional misconduct of the Indemnifying Party, its Affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, and employees, arising out of or in connection with this Agreement, the Project, or the Indemnifying Party's Work, except to the extent such Damages are directly caused by the negligence, intentional misconduct or unlawful act of the Indemnified Party or its contractors, officers, directors, servants, agents, representatives, or employees.

12.2 Each Party shall defend, indemnify and save harmless the other Party, its parents and Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien (collectively, "*Liens*") asserted by any of the Indemnifying Party's subcontractors or suppliers in connection with the Indemnifying Party's Work or the Project, except to the extent such Liens are directly caused by the negligence, intentional misconduct or unlawful act of the Indemnified Party or its contractors, officers, directors, servants, agents, representatives, or employees. Customer shall defend, indemnify and save harmless Company, its parents and Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees, from and against any claim of trespass, or other third party cause of action arising from or are related to reliance upon or use of the New Facilities Property Rights by the Company or any other Indemnified Parties for the purposes contemplated by this Agreement.

12.3 Customer shall defend, indemnify and hold harmless Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates as the result of payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

12.4 Prior to the start of construction activities hereunder by Company, Company's total cumulative liability to Customer and its Affiliates for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall be capped at an amount not to exceed the total of all Company Reimbursable Costs actually paid to Company by Customer under this Agreement. Following commencement of construction activities by Company hereunder, Company's total cumulative liability to Customer and its Affiliates for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall be capped at an amount not to exceed the greater of: (a) fifty percent (50%) of the total estimated costs of the Company Work; or (b) the total of all Company Reimbursable Costs actually paid to Company by Customer under this Agreement. For the avoidance of doubt, the Initial Prepayment paid by Customer to Company under this Agreement shall be included in the estimated and actual costs in determining the cumulative liability cap above.

12.5 Notwithstanding any other provision contained in this Agreement, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.6 Notwithstanding any other provision contained in this Agreement, neither Party shall be liable to the other Party for claims or damages for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or negligent or unlawful omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

12.8 For the avoidance of doubt: neither Party, as applicable, shall have any responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or results from (a) the inability or failure of the other Party or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by such other Party under this Agreement, (b) any unforeseen conditions or occurrences beyond the reasonable control of the Party (including, without limitation, conditions of or at the site of the Work, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

12.9 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer's or Company's insurance.

12.10 Notwithstanding any other provision of this Agreement, this Article shall survive the completion, expiration or earlier termination of this Agreement.

13.0 **Insurance; Employee and Contractor Claims**

13.1 Prior to the commencement of any Company Work and during the term of this Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or the Company may elect to self-insure one or more of such insurance coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York.

13.2 Prior to the commencement of any Work on the Project and during the term of this Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit E of this Agreement, or Customer may elect to self-insure one or more of such coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York. Customer hereby elects to self-insure to maintain the insurance coverage amounts set forth in Exhibit E of this Agreement.

13.3 [Reserved]

13.4 Each Party shall be separately responsible for insuring its own property and operations.

13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this Section shall survive the completion, expiration or earlier termination of this Agreement.

14.0 Assignment and Subcontracting

14.1 Either Party may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Any assignment of this Agreement in violation of the foregoing shall be voidable at the option of the non-assigning Party. Each Party has the right to subcontract some or all of the Work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 Independent Contractor; No Partnership; No Agency; No Utility Services

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 Examination, Inspection and Witnessing

16.1 Subject to Customer's and its representatives' compliance with Company's security, safety, escort and other access requirements, including, without limitation, COVID-19 protocols, the Customer and/or its representatives shall have the right to inspect and examine the Company Work, or witness any test with respect to the Company Work, from time to time, when and as mutually agreed by the Parties, at Customer's sole cost and expense, and with reasonable prior notice to Company.

Unless otherwise agreed between the Parties, such inspections, examinations and tests shall be scheduled during normal business hours.

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the activities contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970, as amended from time to time. While on the property (including, without limitation, easements or rights of way) of, or accessing the facilities of, the other Party, each Party's employees and/or contractors and agents shall at all times abide by the other Party's safety standards and policies, switching and tagging rules, and escort and other applicable access requirements. The Party owning or controlling the property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors.

18.0 **Required Approvals**

18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases (including, without limitation and as applicable, the New Facilities Approvals and Land Use Approvals) from any local, state, or federal regulatory agency or other governmental agency or authority (which shall include the FERC and may also include, without limitation and as applicable, the NYPSC) and from any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of the Company's actual costs in connection with seeking any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 Except as otherwise expressly set forth herein, Company shall not, in connection with the Company Work or this Agreement, be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on the Site or any other Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or which the Company, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, Release or generate at or on such properties or facilities through no negligent or unlawful act of the Company, and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, Release, Threat of Release or generation of Hazardous Substances at or on the Site or at or on any other Customer- or third party - owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) in connection with the Company Work or this Agreement, or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.) in connection with this Agreement or the Project, except to the extent related to (i) or (ii) above, such presence, discovery, Release, Threat of Release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the

Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation

on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the completion, expiration or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are known to the Customer as of the Effective Date or become known to the Customer thereafter during the term of this Agreement and are present on, under, over, or in any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) that is used or accessed in connection with the Company Work or this Agreement. Prior to Company's commencement of the Company Work, Customer shall be obligated to use commercially reasonable efforts (including, without limitation, the use of DIGSAFE or other similar services) to adequately investigate the presence and nature of any such Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, on any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed by the Company in connection with the Company Work or this Agreement, and to promptly, fully, and in writing, communicate the results thereof to the Company. Customer's provision to the Company of the information contemplated in this Section 19.2 shall in no event give rise to any liability or obligation on the part of the Company, nor shall Customer's obligations under this Agreement, or under law, be decreased or diminished thereby.

20.0 **Suspension of Work**

20.1 Subject to Section 20.2, below, Customer may interrupt, suspend, or delay the Company Work by providing written notice to the Company specifying the nature and expected duration of the interruption, suspension, or delay. Company will use commercially reasonable efforts to suspend performance of the Company Work as requested by Customer. Customer shall be responsible to pay Company (as part of Company Reimbursable Costs) for all costs incurred by Company that arise as a result of such interruption, suspension or delay.

20.2 As a precondition to the Company resuming the Work following a suspension under this Section 20.1, the Preliminary Milestone Schedule and the total estimated cost to complete the Company Work shall be revised as mutually agreed by the Parties to reflect the interruption, suspension, or delay. Adjustments to the Company Reimbursable Costs shall include any costs or expenses the Company incurs as a result of the interruption, suspension, or delay.

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement. Subject to compliance with Section 22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding sixty (60) consecutive Days as the result of any continuing dispute between the Parties, or (ii) under the circumstances contemplated by, and in accordance with, Section 18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.

21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Customer shall pay Company for the Company Reimbursable Costs set forth below, except if the early termination or cancellation is a result of a breach by Company, the costs indicated in subparagraphs (iii), (iv) and (v) below shall not be considered Company Reimbursable Costs and Company shall not be required to pay such costs:

(i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, pandemics epidemics, infectious disease outbreaks or other public health emergencies, crises

or restrictions, including, without limitation, quarantines or other related employee or contractor restrictions, acts of God, strikes or labor slow-downs, court injunction

or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and/or permit requests necessary in connection with the Company Work or the Customer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this Agreement.

23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **Compliance with Law**

24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums,

and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance

under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving Party and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith and agrees to comply with the terms of this Article) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Article; or

25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the completion, expiration or earlier termination of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or this Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include information or data that the Disclosing Party deems or determines to be "Critical Energy / Electric Infrastructure Information" consistent with applicable FERC rules and policies ("*CEII*") and critical infrastructure protection information consistent with applicable NERC standards and procedures ("*CIP*"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any completion, expiration or earlier termination of this Agreement.

26.0 **Effect of Applicable Requirements; Governing Law**

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgement is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3^{rd}) Day after being deposited in the United States mails,

postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery

and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

To Customer: Rochester Gas & Electric Corporation
c/o Avangrid Service Company
Attn: Jose Melgar, BES Program Manager
3 City Center
180 South Clinton
Rochester, New York 14604
Phone: (585) 943-3680

To Company: Kevin Reardon
Director, Commercial Services
40 Sylvan Road
Waltham, MA 02451
(781) 907-2411

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.

27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[Signatures are on following page.]

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

ROCHESTER GAS & ELECTRIC CORPORATION

By: _____
Name: CARL A. TAYLOR
Title: PRESIDENT & CEO

LEGAL SERVICES
AVANGRID

ROCHESTER GAS & ELECTRIC CORPORATION

By: _____
Name: Joseph J. Syta
Title: VP, Controller & Treasurer

NIAGARA MOHAWK POWER CORPORATION

By: _____
Name: Kevin Reardon
Title: Director, Commercial Services

LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A	Scope of Company Work
Exhibit B	Preliminary Milestone Schedule
Exhibit C	Customer Required Actions
Exhibit D	Company Insurance Requirements
Exhibit E	Customer Insurance Requirements
Schedule I	Real Property Standards

Exhibit A: Scope of Company Work

Customer is expanding the Station 56 Substation located in/near Pittsford, NY. The proposed expanded Station 56 Substation is located adjacent to the existing National Grid owned T1610 Mortimer-Quaker #23 115kV, T1560 Mortimer-Hook Road #1 115kV, T1570 Mortimer-Elbridge #2 115kV, T 1590 Mortimer-Pannell #24 115kV, and the T1600 Mortimer-Pannell #25 115kV electrical transmission circuits (the "*Circuits*").

Each of the Circuits is currently in either a double-circuit or single-circuit configuration and all proposed modifications to each of these Circuits in support of the Station 56 Expansion Project will allow them to remain in such Circuit's configuration.

A. The initial phase of the Company Work shall consist of the following work (the "*Phase I Portion*"):

To support the Station 56 Expansion Project, National Grid is proposing to replace existing structures and to install various new "tap" structures to connect the #23 & #24 Circuit line(s) to the proposed expanded Station 56 Substation. The #23 Circuit is proposed to be re-located west to the station A-Frame/Terminal Structure that is currently occupied by National Grid Circuit #24. Existing National Grid Circuit #24 is proposed to be relocated and re-arranged to an "in-out" configuration connecting two (2) 115kV circuits to the proposed A-frame structures at the expanded Station 56. Substation

Although preliminary engineering is not complete, National Grid currently anticipates installing six (6) to eight (8) galvanized steel, mono-pole, deadend structures on concrete caisson foundations. Proposed pole heights vary from 60-80ft above grade with all foundations expected to be 5-8ft. in diameter and approximately 18-40ft. in depth; pending the soil boring and geotechnical design data. Since preliminary engineering is not complete, the foregoing remains subject to change.

In addition to the structure replacements; new 795 kcmil "Drake" ACSR conductor and new OPGW and/or 3/8 EHS shieldwire will be installed.

Access to the work Site will be through Customer or Customer affiliate- owned property where available. There is potential for additional matting to cross various underground facilities and to protect environmentally sensitive areas.

- **Procurement of Long Lead Purchase Items**
  - Steel Poles

Perform preliminary engineering, field investigation and other work, including, without limitation soil borings, hydrovacing, retaining wall investigation work (and related

matting) to identify the modifications required to the Company's electrical transmission system and other facilities to accommodate the proposed interconnection of the Customer's expanded Station 56 Substation to the Company's Line 151 and related facilities (the "*New*

Facilities") and the all related required work, and to develop an estimate of the total Company Reimbursable Cost required to perform the work needed to implement and place the New Facilities in service.

B. Following receipt from Customer of a Notice to Proceed and payment in full of the Phase II Prepayment amount, the final phase of the Company Work shall consist of the following work to the extent not included as part of the Phase I Portion (the "*Phase II Portion*"):

1. Perform engineering work, studies and other tasks necessary to develop a detailed project plan (the "*Detailed Project Plan*") to implement the work contemplated below.

2. With the exception of any Land Use Approvals, prepare, file for, and use reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the "*New Facilities Approvals*").

   The term "New Facilities Approvals" shall not include any Land Use Approvals; Customer shall be solely responsible for obtaining all Land Use Approvals.

3. Design, engineer, procure, construct, test and place into service the new Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, as contemplated by this Exhibit and the Detailed Project Plan, including, without limitation, the New Facilities. Perform engineering review and field verifications as required on the Customer's facilities.

4. Prepare, file for, and use reasonable efforts to obtain any other Required Approvals (other than Land Use Approvals) that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.

5. Inspect, review, witness, examine and test, from time to time, Company's work contemplated herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

6. Review, from time to time, permitting, licensing, real property, and other materials relating to the work contemplated herein, including, without limitations, all documents and materials related to the New Facilities Property Rights and any Required Approvals.

7. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.

8. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

NOTE: The Company has not completed its review and identification of required modifications to Company facilities and related work necessary to accommodate interconnection of the Company's transmission system to the proposed expanded Station 56 Substation.

For the avoidance of doubt: Company's scope of work for each of the Phase I Portion and Phase II Portion of the Company Work shall include all study, documentation, design, engineering, project management, permitting, procurement, construction, testing, commissioning, review, and inspection work, as well as other necessary or advisable activities, to perform and complete the tasks contemplated for the applicable Phase of the Company Work.

The Company Work may be performed in any order as determined by the Company. For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

NOTE: Company's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time.

Exhibit B: Preliminary Milestone Schedule

	PRELIMINARY MILESTONE SCHEDULE		
Task	**Milestone**	**Estimated Timeframe**	**Responsible Party**
1.	Make Initial Prepayment	Effective Date	Customer
2.	Complete Phase I of the Company Work and deliver Phase II Notice	150 Days following completion of Task 1.	Company
3.	Deliver Estimated Schedule for Phase II Portion of the Company Work	150 Days following completion of Task 1.	Company
4.	Deliver Notice to Proceed and pay Phase II Prepayment	30 Days following completion of Task 3	Customer

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with the Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals or the acquisition of New Facilities Property Rights are not included in such preliminary schedule.

Exhibit C: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall grant to Company certain perpetual easements and rights for the construction, installation, testing, ownership, use, operation, and maintenance of the portions of the New Facilities to be located on, over, across, through Customer's property, which grants of easement shall be in form and substance reasonably acceptable to the Parties (the "*Customer Grants of Easement*"). Customer shall further use reasonable efforts to acquire any other easements, access rights, rights-of-way, fee interests, and other rights in property that may be necessary to accommodate Company's construction, installation, testing, ownership, use, operation, and maintenance of the New Facilities, as determined to Company's satisfaction in its reasonable discretion (together with the Customer Grants of Easement, collectively the "*New Facilities Property Rights*"). Customer shall convey, or arrange to have conveyed, to the Company all New Facilities Property Rights, each such conveyance to be in form and substance satisfactory to Company in its reasonable discretion and without charge or cost to Company.

2. Customer acknowledges and agrees that the Company is required to abide by all Applicable Requirements. To the extent necessary, Customer shall prepare, file for, and use reasonable efforts to obtain, on the Company's behalf, all required subdivision, zoning and other special, conditional use or other such land use permits or other discretionary permits, approvals, licenses, consents, permissions, certificates, variances, zoning changes, entitlements or any other such authorizations from all local, state and federal governmental agencies and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the "*Land Use Approvals*"). The Parties acknowledge that, as of the Effective Date, neither Party is aware of any required Land Use Approvals.

3. In undertaking or performing any work required of it under the terms of this Agreement, Customer shall use appropriate environmental due diligence commensurate with the type of real property transactions contemplated by this Agreement and shall coordinate with the Company's Environmental Department in connection therewith. The Company's Project Manager will provide Customer with the name and contact information for an appropriate Company representative in the Company's Environmental Department.

4. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

5. If and to the extent applicable or under the control of the Customer, provide complete and accurate information regarding the Project and the site(s) where Work is to be performed, including, without limitation, constraints, space requirements, underground or hidden facilities and structures, and all applicable data, drawings and specifications.

6. Customer shall provide adequate and continuous access to the portion of the Site(s) where

Company Work is to be performed. Such access is to be provided to Company and its

contractors and representatives for the purpose of enabling them to perform the Company Work as and when needed.

7. Other responsibilities and access reasonably deemed necessary by Company to facilitate performance of the Company Work.

Exhibit D: Company Insurance Requirements

Workers Compensation and Employers Liability Insurance as required by State of New York. If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.

Commercial General Liability (CGL) (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

Bodily Injury and Property Damage per Occurrence - $3,000,000
General Aggregate & Product Aggregate - $3,000,000 each

Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of:

Combined Single Limit - **$1,000,000** per occurrence.

Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.

Prior to starting work and upon request, the Company shall promptly provide the Customer with evidence of self-insurance and/or certificates of insurance evidencing the insurance coverage above.

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: AVANGRID Service Company
Procurement Department/Insurance Cert
89 East Avenue
Rochester, NY 14649

Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

If the Company fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and the Company fails immediately to procure such insurance as specified herein, the Customer has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the Company or deduct the cost thereof from any sum due the Company under this Agreement.

The Company shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

By the date that such coverage is required, the Company represents to the Customer that it will have full policy limits available and shall notify the Customer in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

The Company shall include the Customer as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Customer with protection from liability arising out of activities of Company relating to this Agreement and associated Work. A Waiver of Subrogation in favor of the Customer shall be provided on insurance requirements in this Exhibit.

Exhibit E: Customer Insurance Requirements

Workers Compensation and Employers Liability Insurance as required by the State of New York. If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.

Commercial General Liability (CGL) (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

Bodily Injury and Property Damage per Occurrence - $1,000,000
General Aggregate & Product Aggregate - $2,000,000 each

• Coverage shall include contractual liability (with this Agreement, and any associated verbal agreements, being included under the definition of "Insured Contract" thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U).

• If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.

• Additional Insured as required below.

• The policy shall contain a separation of insureds condition.

• A liability insurance policy containing an annual aggregate limit of liability shall be amended to reflect that the annual aggregate limit applies on a per project basis.

Owners & Contractors Protective Liability Insurance, with a limit of liability not less than $1,000,000, if required by use of subcontractors in the work being performed and mutually agreed to by the Company and the Customer. Proof of coverage under the Contractor's CGL policy will satisfy this requirement.

Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of the Customer under or in connection with this Agreement with minimum limits of:

Combined Single Limit - $1,000,000 per occurrence.

Umbrella or Excess Liability, coverage with a minimum limit of $ 10,000,000.

Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.

Contractors Pollution Liability (CPL): covering any sudden and accidental pollution liability (on a per project basis) which may arise out of, under, or in connection with this Agreement, including all operations to be performed by or on behalf of Customer, or that arise out of the Customer's use of any owned, nonowned or hired vehicles, with a **minimum** liability limit of:

Combined Single Limit - $1,000,000 per occurrence

This requirement may be satisfied by providing either this CPL policy, which would include naming the Insured Entities, including their officers and employees, as additional insured's as outlined below; **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above - limited solely by the Insurance Services Organization (ISO) standard pollution exclusion, or its equivalent.

In the event the Customer is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, the Customer agrees to indemnify and hold the Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement.

Prior to starting work, the Customer shall promptly provide the Company with evidence of insurance self-insurance and/or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

To: National Grid c/o Niagara Mohawk Power Corporation
Attention: Kevin Reardon
Director, Commercial Services
40 Sylvan Road
Waltham, MA 02451

Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

If the Customer fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and fails immediately to procure such insurance as specified herein, then the Company has the right but not the obligation to procure such insurance and bill the cost thereof to the Customer.

Customer shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

By the date that such coverage is required, the Customer represents to the Company that it will have full policy limits available and shall notify the Company in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

Customer shall include the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to this Agreement and associated Work.
National Grid USA, and its direct and indirect parents, subsidiaries and affiliates shall be included as additional insured. A Waiver of Subrogation in favor of the Company shall be provided on insurance requirements in this Exhibit.

Schedule I: Real Property Standards

5.0 STANDARDS AND REQUIREMENTS RELATING TO THIRD PARTY ACQUISITION AND TRANSFER OF REAL PROPERTY INTERESTS TO NIAGARA MOHAWK POWER CORPORATION FOR ELECTRIC FACILITIES

Note Regarding Application/Reservation of Rights

The standards set forth herein are intended to apply generally in cases where real property interests shall be acquired by third parties and transferred to Niagara Mohawk Power Corporation ("NMPC") in connection with the construction of new electric facilities, including, without limitation, the relocation of existing NMPC electric facilities (collectively, the "New Facilities"). NMPC advises, however, that it may impose additional or modified requirements in its sole discretion and/or on a case-by-case basis and, therefore, reserves the right to amend, modify or supplement these standards at any time prior to transfer/acceptance. Third parties shall not deviate from these standards unless expressly authorized in writing by NMPC.

5.1 General Requirement

Unless otherwise expressly authorized in writing by NMPC, a third party requesting relocation of NMPC electric facilities and/or responsible for siting and constructing the New Facilities (the "Requesting Party") shall acquire all rights and interests in real property that, in the opinion of NMPC, are necessary for the construction, reconstruction, relocation, operation, repair, maintenance, and removal of and access to such New Facilities. Further subject to the standards set forth herein, the Requesting Party shall obtain NMPC's written approval of the proposed site or sites prior to the Requesting Party's acquisition or obtaining site control thereof. As a general rule, the Requesting Party shall acquire a fee-ownership interest for all parcels upon which a substation, point of interconnection station or other station facility will be located and transferred to NMPC, and either a fee-ownership interest or a fully-assignable/transferable easement for all parcels upon which any other New Facilities will be located and transferred to NMPC. The Requesting Party shall pay and be solely responsible for paying all costs and expenses incurred by the Requesting Party and/or NMPC that relate to the acquisition of all real property interests necessary and proper to construct, reconstruct, relocate, operate, repair, maintain and remove, as applicable, the New Facilities. The Requesting Party shall pay and be solely responsible for paying all costs associated with the transfer of real property interests to NMPC, including, but not limited to, closing costs, subdivision costs, transfer taxes and recording fees. The Requesting Party shall reimburse NMPC for all costs NMPC may incur in connection with transfers of real property interests. Title shall be transferred only after having been determined satisfactory by NMPC. Further, NMPC reserves the right to condition its acceptance of title and/or release of any existing rights until such time as the New Facilities have been constructed, operational tests have been completed, and the New Facilities placed in service (or determined by NMPC to be ready to be placed in service),

and the Requesting Party is strongly advised to consult with NMPC's project manager as to the anticipated sequencing of events.

The Requesting Party will be responsible for payment of all real estate taxes (i.e., county, village, city/town and/or school) until such time as title has been transferred to NMPC (allocation of responsibility for payment of real estate taxes following the transfer to be determined on a case-by-case basis).

Prior to such transfer, the Requesting Party shall furnish to NMPC the original costs of any improvements by type/category of property; i.e., conductors, towers, poles, station equipment, etc. These original costs will show year of construction by location of such improvements. This information may be transmitted by NMPC to Federal, State or local governmental authorities, as required by law.

5.1.1 Title Documentation; Compliance with Appropriate Conveyancing Standards

The real property interests necessary for the construction, reconstruction, relocation, operation, repair, maintenance and removal of the New Facilities shall be conveyed to NMPC in fee simple (by warranty deed) or by fully-assignable/transferable easement approved by NMPC, with good and marketable title free and clear of all liens, encumbrances, and exceptions to title for a sum of $1.00. With respect to any approved conveyance of easements, the Requesting Party shall subordinate pertinent mortgages to the acquired easement rights. The Requesting Party shall indemnify, defend, and hold harmless NMPC, its agents and employees, officers, directors, parent(s) and affiliates, and successors in interest, from all liens and encumbrances against the property conveyed. The Requesting Party further agrees to provide to NMPC a complete field survey (with iron pin markers delineating the perimeter boundaries of the parcel or the centerline of the entire right-of-way in the case of an electric transmission line), an abstract of title (of at least 40 years or such longer period as may be required by NMPC on a case-by-case basis), and a tax search for real property interests to be transferred to NMPC. The Requesting Party shall be required to provide NMPC with a title insurance commitment with a complete title report issued by a reputable and independent title insurance company for any real property rights in fee or easement that are to be transferred to NMPC. At the time of the transfer of such interests to NMPC, the Requesting Party shall provide a title insurance policy naming NMPC as the insured covering the real property interests, in fee or easement, that are to be transferred to NMPC.

The Requesting Party shall provide such title documentation and title insurance as shall be required by the NMPC real estate attorney assigned to review and close the transfer of ownership from the Requesting Party to NMPC. The Requesting Party shall request direction from such attorney with respect to preparation of abstracts of title, title insurance commitments and policies, and preparation of boundary surveys that comply with ALTA/NSPS Land Title Survey Standards and which must conform to proposed legal descriptions. The Requesting Party will be provided legal forms which include acceptable language and format for title transfer. Title shall be determined satisfactory by the NMPC real estate attorney in his or her sole discretion.

Title requirements of NMPC shall be of a reasonable nature and consistent with legally sound title practice in the applicable jurisdiction. Without limiting the foregoing, title shall not be encumbered by any liens or encumbrances superior to or on par with any applicable lien of NMPC's indentures or otherwise deemed objectionable by the NMPC real estate attorney so assigned. All title insurance fees and premiums (including, without limitation, costs of title insurance policy endorsements) shall be paid by the Requesting Party at or prior to the date of transfer.

The Requesting Party shall provide to NMPC conformed copies of all necessary real property interests not prepared by, or directly for, or issued to NMPC.

5.1.2 Forms

The Requesting Party shall use NMPC-approved forms (including form subordination agreements) for obtaining, recording and transferring fee-owned right-of-way and easements. Proposed changes to such forms shall be discussed with and agreed upon with the assigned NMPC real estate attorney.

5.2 Areas Where Easements/Permits Are Acceptable

5.2.1 Railroad

Where the New Facilities shall cross railroads, the Requesting Party shall obtain railroad crossing permits or other standard railroad crossing rights prior to constructing the crossing.

5.2.2 Public Land

Where the New Facilities shall cross public land, the Requesting Party shall obtain an easement for the crossing and/or any permits necessary to construct, operate and thereafter maintain such Facilities.

5.2.3 Highways and other Public Roads

Where the New Facilities shall cross highways or other public roads, the Requesting Party shall obtain crossing permits, grants of location/franchises, easements, or other standard highway crossing rights prior to constructing the crossing, from the agency or agencies authorized to issue such rights.

5.2.4 Off Right-of-Way Access

In all cases, the Requesting Party shall obtain access/egress rights to the New Facilities acceptable to NMPC. Where construction and maintenance access along the fee-owned or easement strip is not possible or feasible, the Requesting Party shall obtain easements for off right-of-way access and construct, where necessary, permanent access roads for construction and future operation and maintenance of the New Facilities. NMPC will review the line route for maintenance access and advise the Requesting Party of locations requiring permanent off right-of-way access. The Requesting Party shall obtain permanent easements and construct the permanent maintenance access roads. Typically, a width easement of 25 feet maximum shall be obtained for off right-of-way access, but the dimensions shall be per NMPC requirements on a case-by-case basis.

The Requesting Party shall obtain all necessary rights of access and licenses, including adequate and continuing rights of access to NMPC's property, as necessary for NMPC to construct, operate, maintain, replace, or remove the New Facilities, to read meters, and to

exercise any other of its obligations from time to time. The Requesting Party hereby agrees to execute any such further grants, deeds, licenses, assignments, instruments or other

documents as NMPC may require to enable it to record such rights-of-way, easements, and licenses.

5.2.5 Temporary Roads

The Requesting Party shall obtain temporary easements for access roads which are necessary for construction, but not for future operation and maintenance of, the New Facilities. NMPC shall concur with respect to any temporary roads being acquired versus permanent roads. If any disagreements occur with respect to the type of road being needed, NMPC's decision shall be final. In the event NMPC determines that permanent roads will not be required for operation and maintenance (including repair or replacement), easements for temporary roads shall not be assigned or otherwise transferred to NMPC by the Requesting Party.

5.2.6 Danger Trees

If it is determined that the fee-owned or principal easement strip is not wide enough to eliminate danger tree concerns, the Requesting Party shall obtain additional permanent easements for danger tree removal beyond the bounds of the principal strip. The additional danger tree easement rights may be general in their coverage area, however if a width must be specified, NMPC Forestry shall make that determination but in no case shall less than 25' feet be acquired beyond the bounds of the principal strip.

5.2.7 Guy and Anchor Rights

The Requesting Party shall obtain an additional permanent fee-owned strip or easement for guys and anchors when the fee-owned or principal easement strip is not wide enough to fully contain guys, anchors and, other such appurtenant facilities.

5.3 Dimensions

Dimensional requirements with respect to electric station/substation facilities will vary on a case-by-case basis. In all cases, however, the Requesting Party shall obtain sufficient area to allow safe construction, operation and maintenance of the New Facilities, in conformity with applicable land use and environmental laws, rules and regulations, including, without limitation, bulk, setback and other intensity requirements of applicable zoning ordinances, subdivision regulations, and wetlands setback requirements. Basic width for the fee-owned or easement strip for 115kV transmission lines shall be 100 feet, with the transmission facility constructed in the center of the strip. NMPC will advise the Requesting Party if there will be any additional right-of-way requirements. This requirement may be modified by the agreement of the parties as the scope of the project is further developed or if there are changes to the project. Where extreme side-hill exists, additional width beyond the 25 feet may be required on the uphill side of the strip to allow additional danger tree removal.

Where guyed angle structures are to be installed, additional fee strip widths or permanent easement shall be obtained by the Requesting Party on the outside of the angle to provide for installation of guys and anchors within the fee-owned strip or permanent easement. The width of the additional strip shall be a minimum of 25 feet. The length of the strip shall be sufficient to assure that all guys and anchors will fall within the fee-owned strip. A 125' strip will then be typically required.

5.4 Eminent Domain

If condemnation in NMPC's name is required, the Requesting Party shall contact NMPC's project manager for additional details on any assistance NMPC may provide. Typically, the Requesting Party shall prepare all acquisition maps, property descriptions and appraisals. Contact shall be made with NMPC's surveyor, right-of-way supervisor and legal department, and all requirements shall be closely followed. The Requesting Party shall also prepare an Environmental Assessment and Public Need report (Environmental Impact Statement or equivalent) and any other report or reports which may be required. A certified survey may also be required. NMPC must approve the Requesting Party's attorney for all condemnation hearings and proceedings. NMPC participation in such proceedings will be required at the Requesting Party's sole cost and expense. The Requesting Party shall contact NMPC attorneys prior to undertaking any condemnation proceedings for proper procedures to follow. To the extent legally permissible, NMPC reserves the right to refuse the use of condemnation by the Requesting Party (if the Requesting Party has the legal authority to commence and conduct an eminent domain proceeding), or by itself, in its sole discretion.

5.5 Use of Existing NMPC Right-of-Way

Existing NMPC right-of-way will not be available for use for the New Facilities unless NMPC Engineering, Planning and Operating departments agree to the contrary. The Requesting Party will pay a mutually acceptable cost to use such lands if NMPC gives internal approval.

5.6 Public Right-of-Way

If the Requesting Party must use public right-of-way for the New Facilities, the Requesting Party shall arrange for and reimburse NMPC and/or other utilities for any relocation which may be necessary.

5.7 General Environmental Standards

The Requesting Party agrees that, prior to the transfer by the Requesting Party of any real property interest to NMPC, the Requesting Party shall conduct, or cause to be conducted, and be responsible for all costs of sampling, soil testing, and any other methods of investigation which would disclose the presence of any Hazardous Substance which has

been released on the Property or which is present upon the Property by migration from an external source, and which existed on the Property prior to the transfer, and shall notify

NMPC in writing as soon as reasonably practicable after learning of the presence of Hazardous Substance upon said Property interest. The Requesting Party agrees to indemnify, defend, and save NMPC, its agents and employees, officers, directors, parents and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge (including reasonable attorneys' fees), expense, or cause of action, for the removal or management of any Hazardous Substance and relating to any damages to any person or property resulting from presence of such Hazardous Substance. The Requesting Party shall be required, at its sole cost and expense, to have a Phase I Environmental Site Assessment ("Phase I ESA") conducted on any such property which may be legally relied upon by NMPC and which shall be reviewed and approved by NMPC prior and as a condition to transfer. NMPC further reserves the right, in its sole discretion, to require that the Requesting Party have a Phase II Environmental Site Assessment conducted on any such property, also at the Requesting Party's sole cost and expense, if NMPC determines the same to be necessary or advisable, which (if required) shall be reviewed and approved by NMPC prior and as a condition to transfer. NMPC further reserves the right, in its sole discretion, to disapprove and reject any proposed site and/or real property interest to be conveyed to NMPC based upon the environmental condition thereof.

5.8 Indemnity

The Requesting Party shall be responsible for defending and shall indemnify and hold harmless NMPC, its directors, officers, employees, attorneys, agents and affiliates, from and against all liabilities, expense (including litigation costs and attorney's fees) damages, losses, penalties, claims, demands, actions and proceedings of any nature whatsoever for construction delays, construction or operations cessations, claims of trespass, or other events of any nature whatsoever that arise from or are related to an issue as to the sufficiency of the real property interests acquired or utilized by the Requesting Party for the construction, reconstruction, relocation, operation, repair, and maintenance of the New Facilities. In no event shall NMPC be held liable to the Requesting Party or third parties for consequential, incidental or punitive damages arising from or any way relating to an issue as to the sufficiency of the real property interests acquired or utilized by the Requesting Party (including, but not limited to, those real property interests from NMPC) for the construction, reconstruction, relocation, operation, repair, and maintenance of the New Facilities.

SERVICE AGREEMENT NO. 2772

SERVICE AGREEMENT NO. 2772

TRANSMISSION FACILITY

INTERCONNECTION AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

AND

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

AND

NEW YORK POWER AUTHORITY

AND

CHPE LLC

Dated as of April 21, 2023

(Interconnection of Astoria-Rainey Cable at Rainey Substation and Upgrades Concerning Champlain Hudson Power Express Project)

SERVICE AGREEMENT NO. 2772

TABLE OF CONTENTS

SERVICE AGREEMENT NO. 2772

SERVICE AGREEMENT NO. 2772

SERVICE AGREEMENT NO. 2772

SERVICE AGREEMENT NO. 2772

TRANSMISSION FACILITY INTERCONNECTION AGREEMENT

THIS TRANSMISSION FACILITY INTERCONNECTION AGREEMENT ("Agreement") is made and entered into this 21st day of April 2023, by and among: (i) Consolidated Edison Company of New York, Inc. a transportation corporation organized and existing under the laws of the State of New York ("Con Edison"), (ii) New York Power Authority, a corporate municipal instrumentality organized and existing under the laws of the State of New York ("NYPA"); (iii) CHPE LLC, a limited liability company organized and existing under the laws of the State of New York ("Developer"); and (iv) the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York ("NYISO"). Con Edison, NYPA, NYISO, or Developer each may be referred to as a "Party" or collectively referred to as the "Parties," unless otherwise indicated in this Agreement.

RECITALS

WHEREAS, NYISO operates the New York State Transmission System, and Con Edison and NYPA own certain facilities included in the New York State Transmission System;

WHEREAS, Developer is developing a 1000 MW HVDC transmission facility (NYISO Queue No. 631) with a 250 MW expansion of the transmission facility (NYISO Queue No. 887) (collectively, the "Merchant Transmission Facility") that will interconnect to NYPA's 345 kV Astoria Annex gas insulated switchgear substation ("Astoria Annex Substation") that is part of the New York State Transmission System;

WHEREAS, Developer will construct the Merchant Transmission Facility in accordance with the requirements in the Merchant Transmission Facility Interconnection Agreement for the Merchant Transmission Facility among the NYISO, NYPA, and Developer dated June 3, 2022 (NYISO OATT Service Agreement No. 2710), as such agreement may be amended from time to time;

WHEREAS, Developer has elected to reconductor the overhead 138 kV portion of Con Edison's Feeder # 34091 as an Elective System Upgrade Facility in connection with the Merchant Transmission Facility ("Reconductoring Upgrades");

WHEREAS, Developer has also elected to develop a 345 kV cable running from NYPA's Astoria Annex Substation to Con Edison's Rainey Substation ("Astoria-Rainey Cable") and related System Upgrade Facilities at the Rainey Substation ("Rainey Substation Upgrades") as Elective System Upgrade Facilities in connection with the Merchant Transmission Facility;

WHEREAS, Developer will construct the Astoria-Rainey Cable in accordance with the requirements in the Merchant Transmission Facility Interconnection Agreement, and NYPA will own, operate, and maintain the Astoria-Rainey Cable;

WHEREAS, the Merchant Transmission Facility is participating in the Interconnection

Facilities Study for Class Year for 2021 ("Class Year Study), the Class Year Study has determined that the Merchant Transmission Facility will have certain impacts on Con Edison's

SERVICE AGREEMENT NO. 2772

system as an Affected System, and the Class Year Study has identified certain System Upgrade Facilities required to reliably interconnect at the Rainey Substation ("Affected System Upgrade Facilities");

WHEREAS, for purposes of this Agreement, the Reconductoring Upgrades, Rainey Station Upgrades, and Affected System Upgrade Facilities will be collectively known as the "Upgrades";

WHEREAS, Developer has accepted its Project Cost Allocation, and posted to Con Edison the Security, for the Upgrades identified in connection with the Merchant Transmission Facility in the Class Year Study in accordance with the requirements in Attachment S of the NYISO OATT;

WHEREAS, the Parties have agreed to enter into this Agreement for the purpose of NYPA interconnecting the Astoria-Rainey Cable with Con Edison's Rainey Substation, which is part of the New York State Transmission System; and

WHEREAS, the Parties have also agreed to enter into this Agreement for purposes of allocating the responsibilities for the engineering, procurement, and construction of the Upgrades ("EPC Services");

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

ARTICLE 1. DEFINITIONS

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

Affected System shall mean an electric system other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection. For purposes of this Agreement, the Affected System shall mean Con Edison's system.

Affected System Operator shall mean the entity that operates an Affected System. For purposes of this Agreement, the Affected System Operator shall mean Con Edison.

Affected System Upgrade Facilities shall have the meaning set forth in the recitals and shall be specified in Appendix A of this Agreement.

Affiliate shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization,

directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term "control" shall mean the possession, directly or indirectly, of the power to

SERVICE AGREEMENT NO. 2772

direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

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

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

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable Reliability Councils and of Con Edison's Transmission District, 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.

Astoria-Rainey Cable shall have the meaning set forth in the Recitals.

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

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

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

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

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

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

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 recitals of this Agreement.

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

Elective System Upgrade Facility shall mean a System Upgrade Facility elected by the Developer pursuant to Section 25.6.1.4.1 of Attachment S to the ISO OATT that is more extensive than the minimum facilities required to reliably interconnect the Merchant Transmission Facility and is reasonably related to the interconnection of the project.

3

SERVICE AGREEMENT NO. 2772

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

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

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

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

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

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

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

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

SERVICE AGREEMENT NO. 2772

In-Service Date(s) shall mean the date(s) upon which the Astoria-Rainey Cable and the Upgrades, as applicable, are energized consistent with the provisions of this Agreement and available to provide Transmission Service under the NYISO's Tariffs, which date(s) shall be set forth in the milestones table in Appendix B. Developer must provide notice of the In-Service Date of the Astoria-Rainey Cable to the other Parties in the form of Appendix E-1 to this Agreement. Con Edison must provide notice of the In-Service Date of the Upgrades to the other Parties in the form of Appendix E-2 to this Agreement.

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

IRS shall mean the Internal Revenue Service.

ISO/TO Agreement shall mean the *Agreement Between the New York Independent System Operator and Transmission Owners*, as filed with and accepted by the Commission in *Cent. Hudson Gas & Elec. Corp., et al.*, 88 FERC ¶ 61,138 (1999) in Docket Nos. ER97-1523, *et al.,* and as amended or supplemented from time to time, or any successor agreement thereto.

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.

Merchant Transmission Facility shall have the meaning set forth in the recitals of this Agreement.

Merchant Transmission Facility Interconnection Agreement shall have the meaning set forth in the recitals of this Agreement.

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.

5

SERVICE AGREEMENT NO. 2772

Party or Parties shall mean NYISO, Con Edison, NYPA, or Developer or any combination of the above, except as otherwise indicated in this Agreement.

Point(s) of Change of Ownership shall mean the point(s), as set forth in Appendix C to this Agreement, where the Astoria-Rainey Cable connects to Con Edison's system.

Point(s) of Interconnection shall mean the point(s), as set forth in Appendix C to this Agreement, where the Astoria-Rainey Cable connects to the New York State Transmission System.

Rainey Substation Upgrades shall have the meaning set forth in the recitals and shall be specified in Appendix A of this Agreement.

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.

Reconductoring Upgrades shall have the meaning set forth in the recitals and shall be specified in Appendix A of this Agreement.

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

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

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 Astoria-Rainey Cable and (2) protect the Astoria-Rainey Cable from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

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. In the case of proposed interconnection projects, System Upgrade Facilities are the modifications or additions to the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard.

6

SERVICE AGREEMENT NO. 2772

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

Transmission Facility Interconnection Agreement shall mean this Agreement.

Trial Operation shall mean the period during which Developer or Con Edison, as applicable, is engaged in on-site test operations and commissioning of the Astoria-Rainey Cable or the Upgrades prior to the In-Service Date.

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

Upgrades Estimated Total Costs shall be the costs for the engineering, procurement, and construction of the Upgrades identified in the Class Year Study for Class Year 2021. The Upgrades Estimated Total Costs are included in Appendix A.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date.

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

2.2 Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of thirty (30) years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination.

2.3.1 Completion of EPC Services

Upon the later date of: (i) the Completion Date, and (ii) the date on which the final payment of all invoices issued under this Agreement for the EPC Services have been made pursuant to Articles 12.2 and 12.3 and any remaining Security has been released or refunded pursuant to Article 11.5, the Developer's role in this Agreement shall be complete, and the Developer shall not have further rights or obligations under this Agreement, except as set forth in Article 2.6 of this Agreement as it relates to the EPC Services and Articles 18.3.8 and 18.3.15 concerning Developer's insurance requirements.

2.3.2 Written Notice.

This Agreement may be terminated (i) by any Party after giving the other Parties ninety

(90) Calendar Days advance written notice following the termination of the Merchant

SERVICE AGREEMENT NO. 2772

Transmission Facility Interconnection Agreement prior to the completion and energization of the Merchant Transmission Facility, or (ii) by the mutual agreement in writing of all Parties.

2.3.3 Default.

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

2.3.4 Compliance.

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

2.4 Termination Costs.

If this Agreement is terminated pursuant to Articles 2.3.2 or 2.3.3 above, Developer shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Upgrades and equipment) or charges assessed by the other Parties, as of the date of the Parties' mutual agreement to terminate or the Parties' receipt of notice of termination, that are the responsibility of the Developer under this Agreement. In the event of termination, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of the Upgrades that have not yet been constructed or installed, Con Edison 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 Con Edison shall deliver such material and equipment, and, if necessary, assign such contracts, to Developer as soon as practicable, at Developer's expense. To the extent that Developer has already paid Con Edison for any or all such costs of materials or equipment not taken by Developer, Con Edison shall promptly refund such amounts to Developer, less any costs, including penalties incurred by the Con Edison to cancel any pending orders of or return such materials, equipment, or contracts.

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

2.4.3 If this Agreement is terminated prior to the Upgrades entering into service, Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of the materials, equipment, or facilities for any portion of the

8

SERVICE AGREEMENT NO. 2772

Upgrades, and any other facilities already installed or constructed pursuant to the terms of this Agreement.

2.5 Disconnection.

Upon termination of this Agreement, NYPA and Con Edison will take all appropriate steps to disconnect the Astoria-Rainey Cable from Con Edison's transmission system and to perform such work as may be necessary to ensure that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of NYPA, Con Edison, and NYISO. Con Edison and NYPA shall be responsible for their own costs required to effectuate such disconnection, unless such termination resulted from the non-terminating Party's Default of this Agreement or such nonterminating Party otherwise is responsible for these costs under this Agreement.

2.6 Survival.

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; 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, NYPA, and Con Edison each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

ARTICLE 3. REGULATORY FILINGS

NYISO, Con Edison, and NYPA 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 ISO OATT. If the Developer has executed this Agreement, or any amendment thereto, the Developer shall reasonably cooperate with NYISO, Con Edison, and NYPA with respect to such filing and to provide any information reasonably requested by NYISO, Con Edison, and NYPA needed to comply with Applicable Laws and Regulations.

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE

4.1 Interconnection of Transmission Facilities.

NYPA's Astoria-Rainey Cable and Con Edison's transmission system shall interconnect at the Point(s) of Interconnection set forth in Appendix C of this Agreement in accordance with the terms and conditions of this Agreement.

4.2 No Transmission Delivery Service.

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

SERVICE AGREEMENT NO. 2772

4.3 No Other Services.

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

ARTICLE 5. EPC SERVICES

5.1 Performance of EPC Services.

Con Edison shall perform the EPC Services, as set forth in Appendix A hereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forth in Appendix B hereto. Con Edison 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 Con Edison reasonably expects that it will not be able to complete the Upgrades by the specified dates, Con Edison shall promptly provide written notice to Developer, NYPA, and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.2 Equipment Procurement.

Con Edison shall commence design of the Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Developer and Con Edison otherwise agree in writing:

5.2.1 NYISO and Con Edison have completed the Interconnection Facilities Study pursuant to the Interconnection Facilities Study Agreement;

5.2.2 The NYISO has completed the required cost allocation analyses, and Developer has accepted its share of the costs for necessary Upgrades in accordance with the provisions of Attachment S of the ISO OATT;

5.2.3 Con Edison has received written authorization to proceed with design and procurement from the Developer by the date specified in Appendix B hereto; and

5.2.4 Developer has provided Security to Con Edison in accordance with Article 11.5 by the dates specified in Appendix B hereto.

5.3 Construction Commencement.

Con Edison shall commence construction of the Upgrades as soon as practicable after the following additional conditions are satisfied:

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

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

SERVICE AGREEMENT NO. 2772

5.3.3 Con Edison has received written authorization to proceed with construction from the Developer by the date specified in Appendix B hereto; and

5.3.4 The Developer has provided Security to Con Edison in accordance with Article 11.5 by the dates specified in Appendix B hereto.

5.4 Work Progress.

NYPA and Developer will keep the other Parties advised periodically as to the progress of the design, procurement and construction efforts of the Astoria-Rainey Cable under the Merchant Transmission Facilities Interconnection Agreement. Con Edison will keep the other Parties advised periodically as to the progress of its performance of the EPC Services under this Agreement. Any Party may, at any time, request a progress report from Con Edison, NYPA, or Developer.

5.5 Information Exchange.

As soon as reasonably practicable after the Effective Date, the Developer, Con Edison, and NYPA shall exchange information, and provide NYISO the same information, regarding the design of the Astoria-Rainey Cable and the Upgrades and the compatibility of the Astoria-Rainey Cable and the Upgrades with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.6 Upgrades

Con Edison shall design and construct the Upgrades in accordance with Good Utility Practice. Con Edison shall deliver to the other Parties pursuant to the dates set forth in Appendix B "as-built" drawings, information and documents for the Upgrades.

Con Edison shall transfer to the NYISO operational control of the Upgrades at a voltage level of 345 kV, but shall not transfer operational control to the NYISO of the Upgrades at a voltage level of 138 kV.

5.7 Access Rights.

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, Con Edison, NYPA, or Developer ("Granting Party") shall furnish to the other Parties ("Access Party") at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the Point(s) of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Astoria-Rainey Cable with the New York State Transmission System; (ii) perform the EPC Services, and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this Agreement. In exercising such licenses, rights of way and

easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in

advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

5.8 Lands of Other Property Owners.

If any part of the Upgrades is to be installed on property owned by persons other than Developer or Con Edison, Con Edison 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 Upgrades upon such property.

5.9 Permits.

NYISO, Con Edison, NYPA, and Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to perform the EPC Services set forth in Appendix A and to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Con Edison and NYPA shall provide permitting assistance to the Developer comparable to that provided to the Con Edison's or NYPA's own, or an Affiliate's generation, if any.

5.10 Reserved.

5.11 Suspension.

If the Developer suspends work on the Merchant Transmission Facility pursuant to the Merchant Transmission Facility Interconnection Agreement, Developer may suspend, with written notice to Con Edison, NYPA and NYISO, at any time all work by Con Edison associated with the construction and installation of the Upgrades under this Agreement required in connection with the Merchant Transmission Facility with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of Con Edison, NYPA, and NYISO. In such event, Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment S to the ISO OATT including those which Con Edison or NYPA (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 Con Edison or NYPA, as applicable, cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Con Edison or NYPA, as applicable, shall obtain Developer's authorization to do so.

Con Edison or NYPA, as applicable, 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 Con Edison or NYPA required under this Agreement pursuant to this Article 5.11, and

SERVICE AGREEMENT NO. 2772

has not requested Con Edison or NYPA to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Con Edison, NYPA, and NYISO, if no effective date is specified.

5.12 Taxes.

5.12.1 Developer Payments.

Reserved.

5.12.2 Representations and Covenants.

Reserved.

5.12.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon Con Edison.

Reserved.

5.12.4 Tax Gross-Up Amount.

Under Internal Revenue Code (IRC) section 118(b)(1), contributions in aid of construction paid by non-shareholders are taxable for U.S. federal income tax purposes. Con Edison intends to take the position for U.S. federal income tax purposes that the amount paid for the Upgrades is a taxable contribution in aid of construction by Developer. Without conceding any argument contrary to the position in the foregoing sentence, Con Edison and Developer have agreed that Developer's liability for the cost consequences of the current tax liability under this Article 5.12 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Developer will pay Con Edison, in addition to the amount paid for the Upgrades, an amount equal to (1) the current taxes imposed on Con Edison ("Current Taxes") on the excess of (a) the gross income realized by Con Edison as a result of payments or property transfers made by Developer to Con Edison under this Agreement (without regard to any payments under this Article 5.12) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Con Edison 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 Con Edison's composite federal, state and local tax rates at the time the payments or property transfers are received and Con Edison 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 Con Edison's anticipated tax depreciation deductions as a result of

such payments or property transfers by Con Edison's current weighted average cost of capital. Thus, the formula for calculating Developer's liability to Con Edison pursuant to this Article

SERVICE AGREEMENT NO. 2772

5.12.4 can be expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value Depreciation Amount))/(1 - Current Tax Rate). Developer's estimated tax liability is stated in Appendix A, Upgrades.

5.12.5 Private Letter Ruling or Change or Clarification of Law.

At Developer's request and expense, Con Edison 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 Con Edison 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. Con Edison and Developer shall cooperate in good faith with respect to the submission of such request. Con Edison shall file the request in its name and have final authority, exercised in good faith after reasonable consultation with Developer, to determine the content of its request and its representatives.

Con Edison shall keep Developer fully informed of the status of such request for a private letter ruling and shall allow Developer to participate in all discussions with the IRS regarding such request for a private letter ruling. Con Edison 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.

5.12.6 Subsequent Taxable Events.

Reserved.

5.12.7 Contests.

Upon Developer's written request and sole expense, Con Edison shall file a claim for refund with respect to any taxes paid under this Article 5.12. Con Edison 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 Con Edison shall keep Developer informed, shall consider in good faith suggestions from Developer about the conduct of the contest, and shall reasonably permit Developer or a Developer representative to attend contest proceedings.

Developer shall pay to Con Edison on a periodic basis, as invoiced by Con Edison, Con Edison's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest, including any costs associated with obtaining the opinion of independent tax counsel described in this Article 5.12.7. Con Edison may abandon any contest if the Developer fails to provide payment to Con Edison within thirty (30) Calendar Days of receiving such invoice. At any time during the contest, Con Edison may agree to a settlement either with Developer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Con Edison, 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

SERVICE AGREEMENT NO. 2772

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. Con Edison may also settle any tax controversy without receiving the Developer's consent or any such written advice; however, any such settlement will relieve the Developer from any obligation to indemnify Con Edison for the tax at issue in the contest (unless the failure to obtain written advice is attributable to the Developer's unreasonable refusal to the appointment of independent tax counsel).

5.12.8 Refund.

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

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

(ii) Interest on any amounts paid by Developer to Con Edison for such taxes which Con Edison 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 Con Edison refunds such payment to Developer, and

(iii) With respect to any such taxes paid by Con Edison, any refund or credit Con Edison 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 Con Edison for such overpayment of taxes (including any reduction in interest otherwise payable by Con Edison to any Governmental Authority resulting from an offset or credit); provided, however, that Con Edison will remit such amount promptly to Developer only after and to the extent that Con Edison has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Con Edison's Upgrades.

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

15

SERVICE AGREEMENT NO. 2772

5.12.9 Taxes Other Than Income Taxes.

Upon the timely request by Developer, and at Developer's sole expense, Con Edison shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Con Edison for which Developer may be required to reimburse Con Edison under the terms of this Agreement. Developer shall pay to Con Edison on a periodic basis, as invoiced by Con Edison, Con Edison's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Developer and Con Edison 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 Con Edison 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 Con Edison.

5.13 Tax Status; Non-Jurisdictional Entities.

5.13.1 Tax Status.

Each Party shall cooperate with the other Parties to maintain the other Parties' tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of any Connecting Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, NYPA and Con Edison 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 NYPA and Con Edison, the interest on which is not included in gross income under the Internal Revenue Code.

5.13.2 Non-Jurisdictional Entities.

NYPA does not waive its exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

5.14 Modification.

5.14.1 General.

NYPA or Con Edison may undertake modifications to its facilities covered by this Agreement. If NYPA or Con Edison plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, the Party proposing the modification shall provide to the other Parties, and to NYISO, sufficient information regarding such modification so that the other Parties and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information

hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Astoria-

SERVICE AGREEMENT NO. 2772

Rainey Cable. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Parties and NYISO at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of modifications to the Astoria-Rainey Cable that do not require Developer or NYPA to submit an Interconnection Request, the NYISO shall provide, within sixty (60) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the New York State Transmission System or Upgrades necessitated by such modification and a good faith estimate of the costs thereof. The Party requesting the modification shall be responsible for the cost of any such additional modifications, including the cost of studying the impact of the modification.

5.14.2 Standards.

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

5.14.3 Modification Costs.

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

ARTICLE 6. TESTING AND INSPECTION

6.1 Pre-In-Service Date Testing and Modifications.

Prior to the In-Service Date of the Astoria-Rainey Cable, Developer shall test the AstoriaRainey Cable to ensure its safe and reliable operation and shall provide the test results to NYPA and Con Edison. NYPA and Con Edison shall review Developer's test results within 30 Calendar Days of receipt, or such other time period agreed upon by the Parties, and, based on such review, shall accept the results or direct Developer to make modifications as set forth below. Prior to the In-Service Date of the Upgrades, Con Edison shall test the Upgrades to ensure their safe and reliable operation. Similar testing may be required after initial operation of the Astoria-Rainey Cable and Upgrades. Developer and Con Edison shall each make modifications to its facilities that are found to be necessary as a result of such testing. Developer shall bear the costs of all such testing and modifications. Developer, NYPA, and Con Edison shall coordinate with NYISO prior to performing the testing of the Astoria-Rainey Cable and Upgrades and prior to the facilities entering into service.

17

SERVICE AGREEMENT NO. 2772

6.2 Post-In-Service Date Testing and Modifications.

Con Edison and NYPA shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the AstoriaRainey Cable with Con Edison's transmission system in a safe and reliable manner. Con Edison and NYPA 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.

Con Edison and NYPA shall each notify the other Parties, and the NYISO, in advance of its performance of tests set forth in Articles 6.1 and 6.2. The other Parties, and the NYISO, shall each have the right, at its own expense, to observe such testing.

6.4 Right to Inspect.

Con Edison and NYPA shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of NYPA and Con Edison. 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 ISO OATT.

ARTICLE 7. RESERVED.

ARTICLE 8. COMMUNICATIONS

8.1 NYPA Obligations.

NYPA shall maintain satisfactory operating communications, including providing analog and digital real-time telemetry, with Con Edison and NYISO in accordance with the requirements in this Agreement, the ISO/TO Agreement (including Section 2.05, *Local Control Center, Metering and Telemetry*), NYISO Tariffs, and ISO Procedures, as such requirements are amended from time to time. NYPA shall provide standard voice line, dedicated voice line and facsimile communications at its control center for the Astoria-Rainey Cable through use of either the public telephone system, or a voice communications system that does not rely on the public

telephone system. NYPA shall also provide the dedicated data circuit(s) necessary to provide NYPA's data to Con Edison and NYISO as set forth in Appendix D hereto. The data circuit(s)

SERVICE AGREEMENT NO. 2772

shall extend from the Astoria-Rainey Cable to the location(s) specified by Con Edison and NYISO. Any required maintenance of such communications equipment shall be performed by NYPA. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 Remote Terminal Unit.

If Con Edison determines that a suitable Remote Terminal Unit is not in place at its Rainey Substation to satisfy the requirements of this Article 8.2, Con Edison shall install, at Developer's expense, prior to the In-Service Date of the Astoria-Rainey Cable, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Con Edison and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Con Edison and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Con Edison and NYISO.

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

8.3 No Annexation.

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

ARTICLE 9. OPERATIONS

9.1 General.

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

9.2 NYISO and Con Edison Obligations.

Con Edison and NYISO shall cause the New York State Transmission System to be operated, maintained and controlled in a safe and reliable manner in accordance with this

Agreement, the NYISO Tariffs, ISO Procedures, and the ISO/TO Agreement. Con Edison and NYISO may provide operating instructions to NYPA consistent with this Agreement, NYISO procedures, and Con Edison's operating protocols and procedures as they may change from time

SERVICE AGREEMENT NO. 2772

to time. Con Edison and NYISO will consider changes to their respective operating protocols and procedures proposed by NYPA.

9.3 NYPA Obligations.

NYPA shall at its own expense operate, maintain and control the Astoria-Rainey Cable in a safe and reliable manner and in accordance with this Agreement, the NYISO Tariffs, ISO Procedures, and the ISO/TO Agreement. NYPA shall operate the Astoria-Rainey Cable in accordance with NYISO and Con Edison requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.

9.4 Outages and Interruptions.

9.4.1 Outages.

9.4.1.1 Outage Authority and Coordination.

NYPA and Con Edison 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 Astoria-Rainey Cable facilities or Upgrades 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 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 NYPA and Con Edison. 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.

9.4.1.2 Outage Schedules.

NYPA or Con Edison, as applicable, and pursuant to ISO Procedures, shall post scheduled outages of its respective transmission facilities on the NYISO OASIS.

9.4.1.3 Outage Restoration.

If an outage of the Astoria-Rainey Cable or Upgrades 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.

20

SERVICE AGREEMENT NO. 2772

9.4.2 Interruption of Service. If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO, Con Edison, or NYPA may require Con Edison or NYPA to interrupt the transmission of electricity if such transmission of electricity could adversely affect the ability of NYISO and, as applicable, Con Edison or NYPA 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 9.4.2:

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

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

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

9.4.2.4 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Astoria-Rainey Cable, Upgrades, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

9.4.3 System Protection and Other Control Requirements.

9.4.3.1 System Protection Facilities. Developer shall install, at Developer's expense, and NYPA shall operate and maintain, at NYPA's expense, System Protection Facilities at the Astoria Annex Substation as a part of the Astoria-Rainey Cable. Con Edison shall install, at Developer's expense, and operate and maintain, at Con Edison's expense, any System Protection Facilities that may be required on the New York State Transmission System as a result of the interconnection of the Astoria-Rainey Cable.

9.4.3.2 The protection facilities of both NYPA and Con Edison shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

9.4.3.3 NYPA and Con Edison shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.

SERVICE AGREEMENT NO. 2772

9.4.3.4 The protective relay design of NYPA and Con Edison 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 Astoria-Rainey Cable.

9.4.3.5 NYPA and Con Edison will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice, NERC and NPCC criteria.

9.4.3.6 Prior to the In-Service Dates of the Astoria-Rainey Cable and the Upgrades, NYPA and Con Edison 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, NYPA and Con Edison shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.4.4 Requirements for Protection.

In compliance with NPCC requirements and Good Utility Practice, NYPA shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Astoria-Rainey Cable to any short circuit occurring on the New York State Transmission System not otherwise isolated by Con Edison's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Astoria-Rainey Cable and the New York State Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of NYPA and Con Edison. NYPA shall be responsible for protection of the Astoria-Rainey Cable and NYPA's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. NYPA shall be solely responsible to disconnect the Astoria-Rainey Cable and NYPA's other equipment if conditions on the New York State Transmission System could adversely affect the Astoria-Rainey Cable.

9.4.5 Power Quality.

Neither the facilities of NYPA nor the facilities of Con Edison 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.

SERVICE AGREEMENT NO. 2772

9.5 Switching and Tagging Rules.

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

9.6 Disturbance Analysis Data Exchange.

The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Astoria-Rainey Cable 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 Con Edison Obligations.

Con Edison shall maintain its transmission facilities, including the Upgrades, in a safe and reliable manner and in accordance with this Agreement.

10.2 NYPA Obligations.

NYPA shall maintain the Astoria-Rainey Cable in a safe and reliable manner and in accordance with this Agreement.

10.3 Coordination.

NYPA and Con Edison shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Astoria-Rainey Cable and the Upgrades. NYPA and Con Edison shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance in accordance with NYISO procedures.

10.4 Secondary Systems.

NYPA and Con Edison 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 NYPA or Con Edison's facilities and equipment which may reasonably be expected to impact the other Party. NYPA and Con Edison shall each provide advance notice to the other Party, and to NYISO, before undertaking any

work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

SERVICE AGREEMENT NO. 2772

10.5 Operating and Maintenance Expenses.

Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, NYPA shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Astoria-Rainey Cable. Con Edison shall be responsible for all reasonable expenses including overheads, associated with owning, operating, maintaining, repairing, and replacing the Upgrades.

ARTICLE 11. PERFORMANCE OBLIGATION

11.1 Astoria-Rainey Cable.

Developer shall design, procure, construct, and install the Astoria-Rainey Cable, at its sole expense, in accordance with the terms in the Merchant Transmission Facility Interconnection Agreement. NYPA shall own and control the Astoria-Rainey Cable.

11.2 Upgrades.

Con Edison shall design, procure, construct, and install the Upgrades described in Appendix A hereto, at the sole expense of the Developer up to the Upgrades Estimated Total Costs. Developer's and Con Edison's respective responsibilities for the costs of Con Edison's performance of the EPC Services greater than the Upgrades Estimated Total Costs amount shall be determined in accordance with Section 25.8.6 of Attachment S to the ISO OATT. Con Edison shall have ownership and control of the Upgrades.

11.3 Reserved.

11.4 Reserved.

11.5 Provision of Security.

Developer has provided Con Edison with Security in the amount of the Upgrade Estimated Total Costs for the Upgrades in accordance with Attachment S to the ISO OATT. The Security is subject to the Security requirements set forth in Attachment S of the ISO OATT.

11.6 Reserved.

ARTICLE 12. INVOICE

12.1 General.

The Developer and Con Edison shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month or as otherwise agreed by such Parties and as set forth in Section 2 of Appendix B. Each invoice shall state the month to which the invoice

applies and fully describe the services and equipment provided. Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in

SERVICE AGREEMENT NO. 2772

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 Paying Party.

12.2 Final Invoice.

Within six months after completion of the construction of the Upgrades, Con Edison shall provide Developer with an invoice of the final cost of the construction of the Upgrades determined in accordance with Attachment S to the ISO OATT, 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. Con Edison shall refund to Developer any amount by which the actual payment by Developer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice. Following the later of (i) the completion of the construction of the Upgrades and Con Edison's acceptance of the Upgrades or (ii) Developer's payment of any final invoice issued under this Article 12.2, Con Edison shall refund to the Developer any remaining portions of its Security, except as set forth in Article 11.5. Con Edison shall provide Developer with the refunded amount within thirty (30) Calendar Days of the Parties' satisfaction of the requirements in this Article 12.2.

12.3 Payment.

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

12.4 Disputes.

In the event of a billing dispute between Con Edison and Developer, Con Edison shall continue to perform under this Agreement as long as Developer: (i) continues to make all payments not in dispute; and (ii) pays Con Edison 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 Con Edison may provide notice to Developer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 13. EMERGENCIES

13.1 Obligations.

Each Party shall comply with the Emergency State procedures of NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee. NYPA and Con Edison agree to coordinate with NYISO

to develop procedures that will address the operation of the Astoria-Rainey Cable during Emergency conditions.

13.2 Notice.

Each Party shall notify the other Parties promptly when it becomes aware of an Emergency or Emergency State that affects, or may reasonably be expected to affect, the Astoria-Rainey Cable or the New York State Transmission System. To the extent information is known, the notification shall describe the Emergency or Emergency State, the extent of the damage or deficiency, the expected effect on the operation of NYPA's or Con Edison'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 NYPA's reasonable judgment, immediate action is required, NYPA shall obtain the consent of Con Edison, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Astoria-Rainey Cable in response to an Emergency State either declared by NYISO, Con Edison, or otherwise regarding New York State Transmission System.

13.4 NYISO, NYPA, and Con Edison Authority.

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

13.5 Limited Liability.

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

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW

14.1 Regulatory Requirements.

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period

associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Developer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power

SERVICE AGREEMENT NO. 2772

Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

14.2 Governing Law.

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

14.2.2 This Agreement is subject to all Applicable Laws and Regulations.

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

ARTICLE 15. NOTICES

15.1 General.

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

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

15.2 Billings and Payments.

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

15.3 Alternative Forms of Notice.

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

15.4 Operations and Maintenance Notice.

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

ARTICLE 16. FORCE MAJEURE

16.1 Economic hardship is not considered a Force Majeure event.

SERVICE AGREEMENT NO. 2772

16.2 A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, (including obligations under Article 4 of this Agreement), other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 17. DEFAULT

17.1 General.

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

17.2 Right to Terminate.

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

ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

18.1 Indemnity.

Each Party (the "Indemnifying Party") shall at all times indemnify, defend, and save harmless, as applicable, the other Parties (each an "Indemnified Party") from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, the alleged violation of any Environmental Law, or the release or

threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties (any and all of these a

SERVICE AGREEMENT NO. 2772

"Loss"), arising out of or resulting from (i) the Indemnified Party's performance of its obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any Hazardous Substance.

18.1.1 Indemnified Party.

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

18.1.2 Indemnifying Party.

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

18.1.3 Indemnity Procedures.

Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and

control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential

SERVICE AGREEMENT NO. 2772

imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

18.2 No Consequential Damages.

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

18.3 Insurance.

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

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

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

18.3.4 If applicable, the Commercial General Liability and Comprehensive Automobile Liability Insurance policies should include contractual liability for work in

SERVICE AGREEMENT NO. 2772

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

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

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

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

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

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

18.3.10 The requirements contained herein as to the types and limits of all insurance to be maintained by NYPA and Con Edison are not intended to and shall not in any

manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

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

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

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

18.3.14 Subcontractors of each party must maintain the same insurance requirements stated under Articles 18.3.1 through 18.3.9 and comply with the Additional Insured requirements herein. In addition, their policies must state that they are primary and non-contributory and contain a waiver of subrogation.

18.3.15 At least ninety (90) days prior to the interconnection of the Astoria Rainey Cable to the Rainey Substation, the Developer and its subcontractors shall procure and maintain the same insurance requirements stated under Articles 18.3.1 through 18.3.9 and comply with the additional insured requirements herein. Developer shall provide to Con Edison certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer. Developer's obligation to maintain insurance requirements pursuant to Article 18.3.15 shall terminate on the Completion Date, except as otherwise provided in Article 18.3.8. For the avoidance of doubt, any insurance requirements under this Agreement will not be additive to any insurance requirements required in any related agreements.

ARTICLE 19. ASSIGNMENT

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

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

SERVICE AGREEMENT NO. 2772

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 the Developer shall have the right to assign this Agreement, without the consent of the NYISO, Con Edison, or NYPA, for collateral security purposes to aid in providing financing for the Merchant Transmission Facility, provided that the Developer will promptly notify the NYISO, Con Edison, and NYPA of any such assignment. Any financing arrangement entered into by the Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO, Con Edison, and NYPA of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO, Con Edison, and NYPA with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 20. SEVERABILITY

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

ARTICLE 21. COMPARABILITY

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

ARTICLE 22. CONFIDENTIALITY

22.1 Confidentiality.

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

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

SERVICE AGREEMENT NO. 2772

22.2 Term.

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

22.3 Confidential Information.

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

22.4 Scope.

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

22.5 Release of Confidential Information.

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

22.6 Rights.

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Parties of

SERVICE AGREEMENT NO. 2772

Confidential Information shall not be deemed a waiver by any Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.7 No Warranties.

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

22.8 Standard of Care.

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

22.9 Order of Disclosure.

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

22.10 Termination of Agreement.

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

22.11 Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 22. Each Party accordingly agrees

that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable

SERVICE AGREEMENT NO. 2772

relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

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

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

22.13 Required Notices Upon Requests or Demands for Confidential Information

Except as otherwise expressly provided herein, no Party shall disclose Confidential Information to any person not employed or retained by the Party possessing the Confidential Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

SERVICE AGREEMENT NO. 2772

ARTICLE 23. DEVELOPER, NYPA, AND CON EDISON NOTICES OF ENVIRONMENTAL RELEASES

Developer, NYPA, and Con Edison shall each notify the other Parties, 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 Astoria-Rainey Cable or the Upgrades, each of which may reasonably be expected to affect the other Parties. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to 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.

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

24.2 Information Submission Concerning Upgrades.

The initial information submission by Con Edison shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation of the Astoria-Rainey Cable 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, NYPA and Con Edison. On a monthly basis Con Edison shall provide Developer, NYPA, and NYISO a status report on the construction and installation of the Upgrades: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission Concerning the Astoria-Rainey Cable

The updated information submission by NYPA, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation of the Astoria-Rainey Cable. NYPA shall provide the most current Astoria-Rainey Cable design and expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Developer and NYPA will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Developer's data is different from what was determined for the Class Year Study and this difference may be reasonably expected to affect Con Edison's facilities or the New York State Transmission System, but does not require the submission of a new Interconnection Request, then NYISO will conduct appropriate studies to determine the impact on the New York

State Transmission System based on the actual data submitted pursuant to this Article 24.3. Such studies will provide an estimate of any additional modifications to the New York State

SERVICE AGREEMENT NO. 2772

Transmission System or the Upgrades based on the actual data and a good faith estimate of the costs thereof. The Developer shall not begin Trial Operation until such studies are completed. The Developer shall be responsible for the cost of any modifications required by the actual data, including the cost of any required studies.

24.4 Information Supplementation.

Prior to the In-Service Date of, as applicable, the Astoria-Rainey Cable or Upgrades, the Developer and Con Edison shall supplement their information submissions described above in this Article 24 with any and all "as-built" information or "as-tested" performance information concerning, as applicable, the Astoria-Rainey Cable and the Upgrades that differ from the initial submissions or, alternatively, written confirmation that no such differences exist. The Developer shall conduct tests on the Astoria-Rainey Cable as required by Good Utility Practice.

Subsequent to the In-Service Date of the Astoria-Rainey Cable, NYPA shall provide Con Edison and NYISO with any information changes concerning the Astoria-Rainey Cable due to equipment replacement, repair, or adjustment. Subsequent to the In-Service Date of the Upgrades, Con Edison shall provide NYPA and NYISO with any information changes concerning the Upgrades due to equipment replacement, repair or adjustment in Con Edison's Rainey Substation or any adjacent Con Edison substation that may affect the Astoria-Rainey's equipment ratings, protection or operating requirements. Con Edison and NYPA shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS

25.1 Information Access.

Each Party ("Disclosing Party") shall make available to another Party ("Requesting Party") information that is in the possession of the Disclosing Party and is necessary in order for the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 of this Agreement and to enforce their rights under this Agreement.

25.2 Reporting of Non-Force Majeure Events.

Each Party (the "Notifying Party") shall notify the other Parties when the Notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information

provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

SERVICE AGREEMENT NO. 2772

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 the Upgrades shall be subject to audit for a period of twenty-four months following Con Edison's issuance of a final invoice in accordance with Article 12.2 of this Agreement.

25.4.2 Audit Rights Period for All Other Accounts and Records.

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

25.5 Audit Results.

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

ARTICLE 26. SUBCONTRACTORS

26.1 General.

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

SERVICE AGREEMENT NO. 2772

26.2 Responsibility of Principal.

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO, Con Edison, or NYPA be liable for the actions or inactions of the 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 (a "Dispute"), such Party shall provide the other Parties with written notice of the Dispute ("Notice of Dispute"). Such Dispute shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated representatives are unable to resolve the Dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Parties' receipt of the Notice of Dispute, such Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

27.2 External Arbitration Procedures.

Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, the Parties shall invoke the assistance of the FERC's Dispute Resolution Service to select an arbitrator. In each case, the arbitrator 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 shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

40

SERVICE AGREEMENT NO. 2772

27.3 Arbitration Decisions.

Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator 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 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 may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or Upgrades.

27.4 Costs.

Each Party shall be responsible for its own costs incurred during the arbitration process and for its per capita share of the costs of the single arbitrator.

27.5 Termination.

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

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS

28.1 General.

Each Party makes the following representations, warranties and covenants:

28.1.1 Good Standing.

Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in New York State; 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).

SERVICE AGREEMENT NO. 2772

28.1.3 No Conflict.

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

28.1.4 Consent and Approval.

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

ARTICLE 29. MISCELLANEOUS

29.1 Binding Effect.

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

29.2 Conflicts.

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

SERVICE AGREEMENT NO. 2772

Interconnection Procedures or such Appendix to the Standard Large Facility Interconnection Procedures, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

29.4 Compliance.

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

29.5 Joint and Several Obligations.

Except as otherwise stated herein, the obligations of NYISO, Developer, NYPA, and Con Edison are several, and are neither joint nor joint and several.

29.6 Entire Agreement.

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

29.7 No Third Party Beneficiaries.

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

29.8 Waiver.

The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this

Agreement. Termination or Default of this Agreement for any reason by the Developer shall not constitute a waiver of the Developer's legal rights to obtain Capacity Resource Interconnection

SERVICE AGREEMENT NO. 2772

Service and Energy Resource Interconnection Service in accordance with the provisions of the ISO OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

29.9 Headings.

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

29.10 Multiple Counterparts.

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

29.11 Amendment.

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

29.12 Modification by the Parties.

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

29.13 Reservation of Rights.

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

29.14 No Partnership.

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

44

SERVICE AGREEMENT NO. 2772

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 a Party shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Upgrades.

45

SERVICE AGREEMENT NO. 2772

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

New York Independent System Operator, Inc. Date:

By:

Name:

Title:

Date:

Consolidated Edison Company of New York, Inc.

By:

Name:

Title:

Date:

New York Power Authority

By:

Name:

Title:

CHPE LLC

By: _____

Name: _____

Title: _____

Date: _____

SERVICE AGREEMENT NO. 2772

APPENDICES

Appendix A
EPC Services

Appendix B
Milestones

Appendix C
Interconnection Details

Appendix D
Security Arrangements Details

Appendix E-1
In-Service Date for Astoria-Rainey Cable

Appendix E-2
In-Service Date for Upgrades

Appendix F
Addresses for Delivery of Notices and Billings

SERVICE AGREEMENT NO. 2772

APPENDIX A

EPC SERVICES

1. Upgrades

Con Edison shall design, procure, obtain all required permits for, construct, and install the Upgrades identified in this Appendix A. The Upgrades include the following major electrical and physical equipment.

A. Upgrades at Rainey Substation

The Astoria-Rainey Cable will interconnect to the New York State Transmission System at Con Edison's Rainey Substation. The Upgrades at the Rainey Substation include the following.

i. Affected System Upgrade Facilities

- Remove the following existing 12 disconnect switches, support structures, associated auxiliary switches, ground switches, alarm circuits, cables and conduits: 1W-8, 1W-1, 2W-1, 2W-2, 3W-2, 3W-3, 4W-3, 4W-4, 7W-6, 7W-7, 8W-7, 8W-8;
- Furnish and install new Southern States 345kV RDA-1 3000A motor operated switches, associated support structures, auxiliary and ground switches and LAPP Resistance Graded type supporting insulators for the 12 disconnect switches listed above;
    - Excavate and remove existing concrete footings supporting structures;
    - Design and install new concrete footings as required;

ii. Rainey Substation Upgrades

- Furnish and install two (2) new 345kV gas insulated switchgear ("GIS") to Solid Dielectric potheads to accept the two sets of feeder cables from the Astoria Annex Substation, including necessary structural support and termination structure;
- Furnish and install ground conductor tying existing station grounding grid to new pothead structures;
- Furnish and install two sets of current transformers ("CTs") on each feeder cable;
- Utilize AC and DC circuits from the Rainey Substation North West Auxiliary Relay House to facilitate all relay installations, and all other power circuits required by this installation;
- Furnish and install two (2) new 345kV GIS disconnect switches with ground Switches;
- Remove GIS end caps, modify and extend GIS bus as required to connect both 345kV disconnect switches to common GIS bus;
- Furnish and install a 345kV GIS potential transformer ("PT") on each phase and provide structural support as necessary;

- Install outdoor termination stands at both 345kV pothead with 120V/60Hz/15A power supply for Partial Discharge /Distributed Temperature Sensing systems;

SERVICE AGREEMENT NO. 2772

- Relays - removal:
  - Disconnect and remove the 11B-1/11W and 11B-2/11W relays and all associated devices currently protecting bus section 11W;
- Relays - installation:
  - Provide and install new relay for protection and control;
    - ✦ First line of protection will consist of an SEL 411L relay and SEL 487B relay;
    - ✦ Second line of protection will consist of an ABB RED670 relay;
  - Transmitter Switch, Trip Cut-out and 87L Block switches are also required with the feeder relays; and
  - Appropriate support equipment will also be required, including the appropriate LAN switches, flexi-switches, terminal blocks, patch panels, heater, networked temperature monitor, and accesses for local area network ("LAN") and power via the front of the cabinet.

Con Edison shall perform all final inspections and testing of all listed Upgrades.

- Astoria Rainey Cable testing and commissioning:
  - Con Edison will support and participate as applicable in the required end to end testing and commissioning of the Astoria Rainey Cable to ensure all Upgrades and the Astoria Rainey Cable are ready for energization.

B. Reconductoring Upgrades

The Upgrades concerning the reconductoring of feeder 34091 will include the following major electrical and physical equipment:

- Remove the existing 795 kcmil ACSR phase conductors (3) and all associated hardware from H-Frame #5 that spans over the transformer to H-Frame #1 (4 spans totaling 530'); and

- Procure and install new 1590 ACSR conductors (3), insulators and all other associated hardware from existing H-Frame #5 to H-Frame #1.

2. Upgrades Estimated Total Costs

The total estimated costs of the work associated with the Upgrades, associated exclusions, and assumptions required for the interconnection of the Large Generating Facility are as per the Q#631/Q887 Part 1 Study report (Final Version, dated June 28, 2022) and Part 2 Study report dated August 18, 2022 and presented in the table below.

The Upgrades Estimated Total Costs for the Upgrades are:

Description	**Estimated Cost**

Rainey Substation Upgrades and Reconductoring Upgrades	$11,176,000.00

SERVICE AGREEMENT NO. 2772

Affected System Upgrade Facilities		**$21,220,000.00**
	Total	**$32,396,000.00**

3. Security

Developer accepted the Project Cost Allocation for the Upgrades identified in connection with its Merchant Transmission Facility project (NYISO Queue Nos. 631 and 887) in the Class Year Study for Class Year 2021 and posted Security to Con Edison, in the form of a Letter of Credit, in the amount of $32,396,000.00, which reflects the estimated costs for the Upgrades.

Description	**Estimated Cost**
Rainey Substation Upgrades and Reconductoring Upgrades	$11,176,000.00
Affected System Upgrade Facilities	**$21,220,000.00**
Required Security Deposit to be Posted	**$32,396,000.00**

A-3

SERVICE AGREEMENT NO. 2772

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A-4

SERVICE AGREEMENT NO. 2772

APPENDIX B

MILESTONES

1. Milestones

The following milestones shall apply to the performance of the EPC Services under this Agreement. The timeframes projected for the milestones are non-binding estimates; *provided, however,* that pursuant to Article 5.1 of the Agreement, the Developer and Con Edison shall each use Reasonable Efforts to complete the tasks by the dates set forth in such milestones or sooner as practicable. The actual dates for completion of the milestones are highly dependent upon system reliability, lead times for the procurement of equipment and material, release of engineering packages by the Developer and approval of the "issued for construction" packages by Con Edison, the availability of labor, approved outage scheduling, receipt of regulatory approvals, and the results of equipment testing.

A. Reconductoring Upgrades

Item	Milestone
1.	Issue notice to proceed
2.	Begin engineering design
3.	Begin material procurement
4.	Complete engineering design
5.	Begin construction
6.	Complete material procurement
7.	Complete construction
8.	In-Service Date
9.	Completion Date

B. Rainey Station Upgrades

Item	Milestone
1.	Issue notice to proceed
2.	Begin engineering design
3.	Begin material procurement
4.	Complete engineering design
5.	Begin construction
6.	Complete material procurement
7.	Complete construction
8.	In-Service Date

Date	Responsible Party
5/2023	Developer
7/2023	Con Edison
8/2023	Con Edison
7/2024	Con Edison
9/2025	Con Edison
8/2025	Con Edison
1/2026	Con Edison
2/2026	Con Edison
2/2026	Con Edison

Date	Responsible Party
5/2023	Developer
7/2023	Con Edison
8/2023	Con Edison
7/2024	Con Edison
9/2025	Con Edison
8/2025	Con Edison
1/2026	Con Edison
2/2026	Con Edison

		B-1	

SERVICE AGREEMENT NO. 2772

9.	Completion Date	2/2026	Con Edison

C. Affected System Upgrade Facilities

Item	Milestone	Date	Responsible Party
1.	Issue notice to proceed	5/2023	Developer
2.	Begin engineering design	7/2023	Con Edison
3.	Begin material procurement	8/2023	Con Edison
4.	Complete engineering design	7/2024	Con Edison
5.	Complete material procurement	8/2025	Con Edison
6.	Begin construction	9/2024	Con Edison
7.	Complete construction	1/2026	Con Edison
8.	In-Service Date	2/2026	Con Edison
9.	Completion Date	2/2026	Con Edison

2. Prepayment for Work Performed by Con Edison

Included within the total cost estimates provided in Section 2 of Appendix A are the cost estimates for Con Edison's engineering, procurement, construction, and associated services related to the Upgrades described in Section 1 of Appendix A.

Developer shall be required to pay Con Edison a deposit in the amount of five hundred thousand dollars ($500,000) as mutually agreed-upon by Con Edison and Developer. This amount shall be held by Con Edison in immediately available funds in an account established by Con Edison in accordance with its internal procedures (the "Disbursement Account"). The funds in the Disbursement Account shall be drawn upon by Con Edison in the manner described below to pay Con Edison for its performance of the engineering, procurement and/or construction services as identified in Appendix A.

The price for the services described in Section 1 of Appendix A shall be based on the applicable hourly rates and other charges and costs set forth in the document entitled *Consolidated Edison Company of New York, Inc. 2022 Accommodation Billing Rates* ("2022 Accommodation Billing Schedule"). Developer acknowledges and agrees that the rates, charges, and costs set forth in the 2022 Accommodation Billing Schedule are subject to periodic revision by Con Edison upon written notice to Developer and that, after the date of the notice, the revised rates, charges, and costs referenced in the notice shall be applicable to the provided services. The rates, charges, and costs set forth in the 2022 Accommodation Billing Schedule, and any successor billing schedule, do not include any charge or fee for any governmental or non-governmental permits, authorization, consents or approvals that may be required in connection

with the provided services. Developer agrees to pay any such charges and fees and to reimburse Con Edison for any such charges and fees that Con Edison is required to pay.

B-2

SERVICE AGREEMENT NO. 2772

Con Edison shall issue invoices monthly and shall describe the period covered by the invoice, the hours of services furnished during such period, and the applicable hourly rates and reimbursable charges and costs. For purposes of the provided services described in Section 1 of Appendix A, Con Edison is authorized to withdraw the amount of each such invoice from the Disbursement Account as payment for such invoice. If, at any time, the balance in the Disbursement Account falls below one hundred fifty thousand dollars ($150,000) or is insufficient to cover the amount of any invoice, Developer shall replenish the Disbursement Account within five (5) Calendar Days of receiving notice thereof by the payment of an additional amount equal to the greater of (i) one hundred thousand dollars ($100,000) and (ii) the amount of any such insufficiency plus an additional two hundred fifty thousand dollars ($250,000). As the work progresses through engineering, procurement and construction, Con Edison and Developer will agree in writing, as applicable, to revise the disbursement and replenishment amounts, commensurate with the planned activities.

Following the completion of the provided services, Con Edison shall issue a final statement (the "Final Statement") pursuant to Article 12.2 of this Agreement to Developer showing the payments made by Developer concerning the provided services and the amount of the invoices applied against the aggregate amount of such payments. In the event that the balance of the Disbursement Account remaining after application of all prior invoices is not sufficient to cover the amount of any outstanding invoice, Developer shall, within thirty (30) Calendar Days of receipt of notice from Con Edison, pay Con Edison the amount of such insufficiency. To the extent that such remaining balance of the escrow fund exceeds the amount necessary to cover all invoices payable to Con Edison for purposes of the provided services performed in accordance with Section 1 of Appendix A, Con Edison shall, within thirty (30) Calendar Days of issuing the Final Statement to Developer, pay Developer the amount of such balance.

B-3

SERVICE AGREEMENT NO. 2772

APPENDIX C

INTERCONNECTION DETAILS

1. Description of the Astoria-Rainey Cable and Upgrades Required for Developer's Merchant Transmission Facility

As part of Developer's Merchant Transmission Facility project (NYISO Queue Nos. 631 and 887), which facility will interconnect to NYPA's Astoria Annex Substation in accordance with the Merchant Transmission Facility Interconnection Agreement, Developer must install the Astoria-Rainey Cable. The Astoria-Rainey Cable is a 345 kV cable that will run from the 345 kV cable potheads exiting at NYPA's Astoria Annex Substation to Con Edison's Rainey Substation. Developer will construct the Astoria-Rainey Cable in accordance with the requirements in the Merchant Transmission Facility Interconnection Agreement. Con Edison is not a party to the Merchant Transmission Facility Interconnection Agreement. The Astoria-Rainey Cable will interconnect to Con Edison's system in accordance with this Agreement. In addition to the Astoria-Rainey Cable, the Merchant Transmission Facility project also requires the Upgrades set forth in Appendix A to this Agreement, including the reconductoring of Feeder 34091 at the Astoria Annex Substation in order to complete the interconnection.

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

The Points of Interconnection ("POI") and Points of Change in Ownership ("PCO") are identified in the table below and are also shown in the Figure A-1. The POI and PCO are the same location since the Astoria Rainey Cable will not require any Connecting Transmission Owner's Attachment Facilities, as the transfer of ownership of the feeders occurs at the Pothead Stands. The POI/PCO locations are:

Astoria Rainey Cable	Line # Designation	Structure Number where POI/PCO Is Located	Structure Description where POI/PCO Is Located	Description of Change in Ownership
Con Edison to NYPA Transition	TBD	Disconnect switch F11-W	Pothead stands	NYPA ownership will include the Astoria Rainey Cable and hardware required to attach to the pothead stands. Con Edison will own the pothead stand and other Upgrades at the Rainey Substation

C-1

SERVICE AGREEMENT NO. 2772

3. Operating Requirements

(a) The Parties shall comply with all provisions of the NYISO tariffs and procedures, as amended from time to time.

(b) Con Edison and NYPA will address the required access and support activities associated with the Astoria-Rainey Cable in the to be issued easement (as referenced in section 7 below) and/or any necessary operating procedures, as amended from time to time, to the extent not inconsistent with the terms of this Agreement or the NYISO OATT.

4. Special Protection Facilities

For purposes of Section 9.4.3 of this Agreement, Con Edison does not permit the installation of any special protection facilities on its transmission system.

5. Con Edison's Specifications.

Within 20 days of FERC's acceptance of this Agreement, Con Edison shall provide Developer all relevant standards and specifications that Con Edison will comply with in its design, engineering, procurement and/or construction of the Upgrades. Con Edison shall use its standards and specifications that were included as the Applicable Reliability Requirements used in the Class Year Study process for the Merchant Transmission Facility; *provided, however*, Con Edison may use updated standards and specifications to the extent they are required to comply with Applicable Laws and Regulations and/or the requirements and guidelines of Applicable Reliability Councils to which Con Edison is subject. If the use of any updated standards and specifications results in costs for the Upgrades greater than the cost estimate for such Upgrades determined in the Class Year Study, the increase in costs will be allocated between Con Edison and Developer in accordance with the requirements in Section 25.8.6.4 of Attachment S to the OATT. Notwithstanding the above, revisions to such specifications and standards that occur after the 30% design packages have been issued by Con Edison will not be imposed on the Upgrades to avoid the need for any redesigns. In the event that a Party becomes aware that Applicable Laws and Regulations or the requirements and guidelines of Applicable Reliability Counsels have been modified that could affect the safe or reliable operations of the Upgrades, the Party shall notify the other Parties promptly, so that the Parties can mutually agree upon an amendment, if needed, of this Agreement.

6. Con Edison Operational Metering Requirements

NYPA shall provide operational metering information (MW, MVAr, etc.) to Con Edison control center from NYPA's operational meter at Astoria Annex 345kV substation via the Remote Terminal Unit.

7. Additional Agreements

(1) The Developer and Con Edison have entered into a Security Agreement described in subsection (2). The Developer, Con Edison, and NYPA will also enter into agreements

SERVICE AGREEMENT NO. 2772

concerning the use and occupancy of Con Edison's real property described in subsection (3) below. The Security Agreement and real property agreements will be collectively described as the "Additional Agreements". Except as otherwise described below, it is the belief and intention of the Developer, NYPA, and Con Edison that nothing in the Additional Agreements conflict in any material way with this Agreement. If Con Edison, NYPA, or Developer becomes aware of a conflict, such party shall notify the other party promptly so that, as applicable, Con Edison, NYPA, and Developer can mutually agree upon an amendment, if needed, of such Additional Agreement. The NYISO is not a party to, has no responsibility under, and shall have no liability in connection with these Additional Agreements.

(2) Security Agreement: The Developer and Con Edison has entered into a Security Agreement, dated December 16, 2022.

(3) Other Agreements Concerning the Use and Occupancy of Connecting Transmission Owner's Real Property: Prior to any access by Developer or its subcontractors onto the real property of Con Edison for the purposes provided for in this Agreement, including any construction-related activity, Developer, NYPA, and Con Edison have entered or will enter into one or more agreements acceptable to Con Edison in its sole discretion, to provide Developer and/or NYPA access for the use and occupancy of Con Edison's real property ("**U&O Agreements**"). The U&O Agreements shall exclusively govern the rights and obligations of Con Edison, NYPA, and Developer arising out of the use of occupancy of the real property described therein, including, but not limited to, NYPA and/or Developer's environmental obligations and indemnity to Con Edison for Hazardous Substances; *provided, however,* that the U&O Agreements do not and shall not be construed to limit Con Edison's, NYPA's, or Developer's responsibilities, as applicable, under this Agreement to satisfy applicable Environmental Laws, to provide notification concerning environmental releases pursuant to Article 23 of this Agreement, and to indemnify the NYISO pursuant to Article 18.1 in connection with the violation of any Environmental Law or the release of any Hazardous Substance. As of the date of this Agreement, the following U&O Agreements are in effect:

- A License Agreement, dated December 28, 2021 between CHPE LLC and Consolidated Edison Company of New York, Inc.

C-3

SERVICE AGREEMENT NO. 2772

APPENDIX D

SECURITY ARRANGEMENTS DETAILS

Infrastructure security of New York State Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day New York State Transmission System reliability and operational security. The Commission will expect the NYISO, all Transmission Owners, all 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.

D-1

SERVICE AGREEMENT NO. 2772

APPENDIX E-1

IN-SERVICE DATE FOR ASTORIA-RAINEY CABLE

[**Date**]

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

Consolidated Edison Company of New York, Inc.
Attn: Walter Alvarado
Vice President, System and Transmission Operations
4 Irving Place
New York, NY 10004
Phone: (212-460-1210)
Email: alvaradow@coned.com

Re: Astoria-Rainey Cable In-Service

Dear :

On **[Date]** NYPA has completed Trial Operation of the Astoria-Rainey Cable. This letter confirms that the Astoria-Rainey Cable has commenced service, effective as of **[Date plus one day]**.

Thank you.

[**Signature**]

[**NYPA Representative**]

E-1-1

SERVICE AGREEMENT NO. 2772

APPENDIX E-2

IN-SERVICE DATE FOR UPGRADES

[Date]

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

CHPE LLC
C/o Transmission Developers
Attn: General Counsel
Pieter Schuyler Building
600 Broadway
Albany, NY 12207
With electronic copy to:
jeremiah.sheehan@transmissiondevelopers.com
Bob.Harrison@transmissiondevelopers.com

New York Power Authority
Sr. Vice President Power Supply
New York Power Authority
Blenheim-Gilboa Power Project
397 Power Plant Access Road Gilboa, NY 12076

Re: Upgrades in Connection with Champlain Hudson Express Project

Dear _____:

On **[Date]** Con Edison has completed Trial Operation of the Upgrades. This letter confirms that the Upgrades have commenced service, effective as of **[Date plus one day]**.

Thank you.

[Signature]

[Con Edison Representative]

SERVICE AGREEMENT NO. 2772

APPENDIX F

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

Before the In-Service Date of the Astoria-Rainey Cable:

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

After the In-Service Date of the Astoria-Rainey Cable:

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

Con Edison:

Consolidated Edison Company of New York, Inc.
Attn: Walter Alvarado
Vice President, System and Transmission Operations
4 Irving Place
New York, NY 10004
Phone: (212-460-1210)
Email: alvaradow@coned.com

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

CHPE

C/o Transmission Developers, Inc.
Attn: General Counsel

F-1

SERVICE AGREEMENT NO. 2772

Pieter Schuyler Building
600 Broadway
Albany, NY 12207
Phone: (917) 886-6832
With electronic copy to:
jeremiah.sheehan@transmissiondevelopers.com
Bob.Harrison@transmissiondevelopers.com

Billings and Payments:

Con Edison

Consolidated Edison Company of New York, Inc.
Attn: Walter Alvarado
Vice President, System and Transmission Operations
4 Irving Place
New York, NY 10004
Phone: (212-460-1210)
Email: alvaradow@coned.com

CHPE:
C/o Transmission Developers, Inc.
Attn: General Counsel
Pieter Schuyler Building
600 Broadway
Albany, NY 12207
Phone: (917) 886-6832
With electronic copy to:
jeremiah.sheehan@transmissiondevelopers.com
Bob.Harrison@transmissiondevelopers.com

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

Or

Wire payments to:
New York Power Authority
Operating Fund c/o

JP Morgan Chase, N.A.
ABA No.: 21000021

F-2

SERVICE AGREEMENT NO. 2772

Account No.: 573-804206

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

NYISO:

Before the In-Service Date of the Astoria-Rainey Cable:

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

After the In-Service Date of the Astoria-Rainey Cable:

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

Con Edison:

Consolidated Edison Company of New York, Inc.
Attn: Walter Alvarado
Vice President, System and Transmission Operations
4 Irving Place
New York, NY 10004
Phone: (212-460-1210)
Email: alvaradow@coned.com

NYPA:
Brian Saez
New York Power Authority
Sr. Vice President Power Supply
New York Power Authority
Blenheim-Gilboa Power Project
397 Power Plant Access Road
Gilboa, NY 12076

Phone: (518) 287 6301
Email address: Brian.Saez@nypa.gov

F-3

SERVICE AGREEMENT NO. 2772

CHPE LLC:
C/o Transmission Developers
Attn: Bob Harrison, Senior Vice President, Engineering
Pieter Schuyler Building
600 Broadway
Albany, NY 12207
Phone: (646) 937-4130
With electronic copy to:
Bob.Harrison@transmissiondevelopers.com

F-4

COST REIMBURSEMENT AGREEMENT

Service Agreement No. 2781

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as of May 3, 2023 (the "*Effective Date*"), by and between the **VILLAGE OF WESTFIELD**, a New York State municipal corporation, having an office and place of business at 23 Elm Street, Westfield New York *("Customer")* and **NIAGARA MOHAWK POWER CORPORATION**, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer is proposing to install new switch structures at the existing "point of interconnection" as specified in Exhibit E attached to this Agreement (the "*POI*") and to remove its existing switch structures at the POI (the "*Customer Project*"); and

WHEREAS, Customer and Company contemplate negotiation of an interconnection agreement with respect to the interconnection of Customer's interconnection facilities located approximately 128 feet west of Company pole 107 as specified in Exhibit E attached to this Agreement and Company's Dunkirk Falconer #160 - 115kV line as specified in Exhibit E attached to this Agreement ("*Interconnection Agreement*"); and

WHEREAS, Customer has requested that Company perform certain work, as more specifically described below, prior to the Parties entering into an Interconnection Agreement; and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) Customer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below); and (iii) receipt of any and all "*Required Approvals*", as set forth in Section 18.1, in a form acceptable to Company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Additional Prepayment(s)*" shall have the meaning set forth in Section 7.3 of this

Agreement.

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person or entity; "control" of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, licenses, authorizations, approvals and other duly authorized actions of 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, NYISO, NYSRC and NPCC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*CIP*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Company*" shall have the meaning set forth in the preamble to this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Project, all applicable overhead, overtime costs, all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

"*Company Work*" means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

"*Customer*" shall have the meaning set forth in the preamble to this Agreement.

"*Customer Required Actions*" means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

"*Customer Project*" shall have the meaning set forth in the preamble to this Agreement.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Defect Notice*" shall have the meaning specified in Section 3.2 of this Agreement.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Dollars*" and "$" mean United States of America dollars.

"*Effective Date*" shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*Existing Facilities*" shall have the meaning set forth in Exhibit A to this Agreement..

"*Existing Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Facilities Approvals*" shall mean the New Facilities Approvals and the Existing Facilities Approvals.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*FERC Approval Date*" shall mean the date as of which FERC grants approval of this Agreement without condition or modification.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC, NYISO, and NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities. When applied to Customer, the term Good Utility Practice shall include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" and "*Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Initial Prepayment*" shall have the meaning set forth in Section 7.2 of this Agreement.

"*Interconnection Agreement*" shall have the meaning set forth in the preamble to this Agreement.

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

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*New Facilities*" shall have the meaning set forth in Exhibit A to this Agreement.

"*New Facilities Approvals*" shall have the meaning set forth in Exhibit A to this Agreement.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

"*NYPSC*" shall mean the New York Public Service Commission.

"*NYSRC*" shall mean the New York State Reliability Council or any successor organization thereto.

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Preliminary Milestone Schedule*" shall have the meaning set forth in Section 5.2 of this Agreement.

"*Project*" means the Company Work to be performed under this Agreement.

"*Project Manager*" means the respective representatives of each of the Customer and Company appointed pursuant to Section 10.1 of this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Receiving Party*" shall mean the Party receiving Proprietary Information.

"*Refund Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Required Approvals*" shall have the meaning set forth in Section 18.1 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall mean the Customer Required Actions and/or the Company Work, as applicable.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Company Work*"). This Agreement does not provide for, and the Company Work shall not include, provision of generation interconnection service or transmission service.

3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Company Work, Customer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2 (each, a "*Defect Notice*"). If the Company Work is defective within the meaning of the prior sentence, then, following its receipt of a timely Defect Notice with respect thereto, the Company shall promptly correct, repair or replace such defective Company Work, as appropriate, provided, that, Company shall not have any obligation to correct, repair or replace such defective Company Work unless the defect in the Company Work has (or is reasonably likely to have) a material adverse impact on the Customer's implementation of the Customer Project. The remedy set forth in this Section is the sole and exclusive remedy granted or available to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall use reasonable efforts to perform the actions described in Exhibit C attached to this Agreement (the "*Customer Required Actions*"). All of the Customer Required Actions shall be performed at Customer's sole cost and expense.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Company Work.

4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any requests for material additions, modifications, or changes to the Work shall be communicated in writing by the Party making the request, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Customer as part of Company Reimbursable Costs.

4.2 The foregoing notwithstanding, the Company is not required to notify Customer of, or to obtain the consent or agreement of the Customer for, any change to the Company Work if such change is made in order to comply with any Applicable Requirement(s), Good Utility Practice, the Company's applicable standards, specifications, requirements and practices, or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable codes and standards. The Preliminary Milestone Schedule shall be adjusted accordingly and any additional costs arising from such change shall be paid by the Customer as part of Company Reimbursable Costs.

5.0 Performance and Preliminary Milestone Schedule; Conditions to Proceed

5.1 If Company Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.

5.2 The preliminary project milestone schedule for the Company Work and the Customer Required Actions is set forth in Exhibit B, attached hereto and incorporated herein by reference ("*Preliminary Milestone Schedule*"). The Preliminary Milestone Schedule is a projection only and is subject to change with or without a written adjustment to such Schedule. Neither Party shall be liable for failure to meet the Preliminary Milestone Schedule, any milestone, or any other schedule in connection with this Agreement or the Project.

5.3 Commencement of Company Work. Company will proceed with the Company Work promptly following the later of (i) the FERC Approval Date, or (ii) Company's receipt of the Initial Prepayment.

5.4 Engineering Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any engineering activities in connection with the Company Work unless and until all of the Company Reimbursable Costs invoiced to date have been paid in full to the Company.

5.5 Construction Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any construction in connection with the Company Work unless and until all of the following conditions have been satisfied:

(i) all Required Approvals for the Company Work have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of such construction is permitted under the terms and conditions of such Required Approvals, and

(ii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **[Reserved]**

7.0 **Customer Obligation to Pay Company Reimbursable Costs; Additional Prepayments; Invoicing; Taxes**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.

7.2 Customer shall provide Company with a prepayment of One Hundred Nine Thousand Three Hundred US dollars ($109,300) ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Company Work. The Company shall invoice Customer for the Initial Prepayment; Customer shall pay such amount to Company within five (5) Days of the invoice due date. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

7.3 If, during the performance of the Company Work, Company determines that one or more additional prepayments are required before completing the Company Work, Company may, but is not required to, request additional prepayment (each, an "*Additional Prepayment*") from Customer; any such requests will be in writing and be accompanied by an invoice. If an Additional Prepayment is requested and is not received from Customer on or before the date specified in the applicable request, or if no date is specified, within 30 days of receipt of such written request, Company may (but shall not be obligated to) cease work upon the depletion of the Initial Prepayment and any other Additional Prepayments made by Customer hereunder to date, as applicable. Upon Company's receipt of the Additional Prepayment from Customer (such Additional Prepayment to be additional to the Initial Prepayment and any other prepayments made by Customer to date), Company will recommence performance of the Company Work.

7.4 Company may invoice Customer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any payment due to Company under this Agreement is not made when due, Customer shall pay Company interest on the unpaid amount in accordance with Section 9.1 of this Agreement. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement (including, without limitation, any Additional Prepayment) is not received within five (5) Days after the applicable invoice due date, Company may suspend any or all Company Work pending receipt of all amounts due from Customer; any such suspension shall be without recourse or liability to Company.

7.5 If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("*Sales Tax Exemption Certificate*"). During the term of this Agreement, Customer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.6 **[Reserved]**

7.7 Company's invoices to Customer for all sums owed under this Agreement shall be

sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company :

Name: [_____]
Address: [_____]

7.8 All payments made under this Agreement shall be made in immediately available funds.

Unless otherwise directed by the Company, payments to the Company shall be made by wire transfer to the account specified by the Company in the applicable invoice.

8.0 **Final Payment**

8.1 Within one hundred and eighty (180) Days following the earlier of (i) the completion of the Company Work, or (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs actually incurred is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs actually incurred, Company shall reimburse the difference to Customer ("*Refund Amount*"). The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 **Interest on Overdue Amounts**

9.1 If any payment due under this Agreement is not made when due, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount calculated in accordance with Section 35.19a of the FERC's regulations (18 C.F.R. 35.19a) from and including the due date until payment is made in full.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

10.0 **Project Managers; Meetings**

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party's Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager ("*Project Manager*"). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW FACILITIES, THE PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the completion, expiration or earlier termination of this Agreement.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

12.0 **Liability and Indemnification**

12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, an "*Indemnified Party*" and, collectively, the "*Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, for economic damage, and for claims brought by third parties for personal injury, property damage or other damages, incurred by any Indemnified Party to the extent arising out of or in connection with this Agreement, the Project, or any Work (collectively, "*Damages*"), except to the extent such Damages are directly caused by the gross negligence, intentional misconduct or unlawful act of the Indemnified Party as determined by a court of competent final jurisdiction.

12.2 Without limiting the foregoing, Customer shall defend, indemnify and save harmless Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees servants, agents, contractors, and representatives, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Customer's contractors, subcontractors or suppliers in connection with any Work, the Project or the Customer Project.

12.3 Without limiting the foregoing, Customer shall protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

12.4 To the fullest extent permitted by applicable law, the Company's total cumulative liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not

exceed the aggregate amount of all payments made to Company by Customer as Company Reimbursable Costs under this Agreement.

12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.6 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of Customer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Customer under this Agreement (including, without limitation, the Customer Required Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

12.8 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer's insurance.

12.9 Notwithstanding any other provision of this Agreement, this Article shall survive the completion, expiration or earlier termination of this Agreement.

13.0 **Insurance; Employee and Contractor Claims**

13.1 Prior to the commencement of any Company Work and during the term of this Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or the Company may elect to self-insure one or more of the insurance coverage amounts set forth in Exhibit D of this Agreement.

13.2 Prior to the commencement of any Work and during the term of this Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or Customer may elect to self-insure one or more of such coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York, provided, that, the Customer provides written notice of any such election to the Company prior to the commencement of any Work under this Agreement.

13.3 Unless the Customer elects to self-insure in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to the commencement of any Work under this Agreement.

13.4 Each Party shall be separately responsible for insuring its own property and operations.

13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this Section shall survive the completion, expiration or earlier termination of this Agreement.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

14.0 **Assignment and Subcontracting**

14.1 The Company may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **[Reserved]**

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the performance contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("*OSHA*"), as amended from time to time. While performing the Company Work, Company shall at all times abide by Company's safety standards and policies and Company's switching and tagging rules. During the term of this Agreement, the Party owning or controlling the applicable property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities in connection with any performance under this Agreement if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors in connection with any such performance.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

18.0 **Required Approvals**

18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases (including, without limitation and as applicable, the Existing Facilities Approvals, New Facilities Approvals and Land Use Approvals) from any local, state, or federal regulatory agency or other governmental agency or authority (which shall include the FERC and may also include, without limitation and as applicable, the NYPSC, and from any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of the Company's actual costs in connection with seeking any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on any Customer or third party owned, occupied, used, or operated property or facility (including, without

limitation, easements, rights-of-way, or other third-party property) or which the Company, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, release, or generate

at or on such properties or facilities through no negligent or unlawful act of the Company, and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, release, threat of release or generation of Hazardous Substances at or on any Customer- or third party- owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property), or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.) in connection with this Agreement, the Project and/or the Customer Project, except to the extent such presence, discovery, release, threat of release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the completion, expiration or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement. Prior to Company's commencement of the Company Work, Customer shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to adequately investigate the presence and nature of any such Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, on, under, over, or in any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement and to promptly, fully, and in writing, communicate the results thereof to the Company. Customer's provision to the Company of the information contemplated in this Section shall in no event give rise to any liability or obligation on the part of the Company, nor shall Customer's obligations under this Agreement, or under law, be decreased or diminished thereby.

20.0 **[Reserved]**

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement. Subject to compliance with Section 22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding sixty (60) consecutive days as the result of any continuing dispute between the Parties, or (ii) under the circumstances contemplated by, and in accordance with, Section 18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.

21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Customer shall also pay Company for:

(i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, pandemics epidemics, infectious disease outbreaks or other public health emergencies, crises or restrictions, including, without limitation, quarantines or other related employee or contractor restrictions, acts of God, strikes or labor slow-downs,

court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and/or permit requests

necessary in connection with the Company Work or the Customer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this Agreement.

23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

24.0 **Compliance with Law**

24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving Party*)* and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith and agrees to comply with the terms of this Article) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Project or the Customer Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Article; or

25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such

disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or this Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include information or data that the Disclosing Party deems or determines to be "Critical Energy / Electric Infrastructure Information" consistent with applicable FERC rules and policies ("*CEII*") and critical infrastructure protection information consistent with applicable NERC standards and procedures ("*CIP*"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any completion, expiration or earlier termination of this Agreement.

26.0 **Effect of Applicable Requirements; Governing Law**

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts

in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgement is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3rd) Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

To Customer: [_____]
Attn: [_____]
[_____]
[_____]
Phone: [(___) _____]
Email: [_____]

To Company: Niagara Mohawk Power Corporation
Attn: Kevin Reardon
Director, Commercial Services
170 Data Drive
Waltham, MA 02451
781-906-3988
Email: kevin.reardon@nationalgrid.com

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.

27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[Signatures are on following page.]

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

VILLAGE OF WESTFIELD

By: _____

Name: Dennis Lutes
Title: Mayor

NIAGARA MOHAWK POWER CORPORATION

By: _____

Name: Kevin Reardon
Title: Director, Commercial Services

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A	Scope of Company Work
Exhibit B	Preliminary Milestone Schedule
Exhibit C	Customer Required Actions
Exhibit D	Insurance Requirements
Exhibit E	Existing Point of Interconnection

Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Perform engineering work, studies and other tasks necessary to develop a project plan to :

   - Remove existing conductors between Company pole 107 located between Company structures 106 and 107 and Customer's existing switch Structure located at as identified on Exhibit E attached hereto (the "*Existing Facilities*").

   - Install new conductors and related hardware and materials (the "*New Facilities*") between Company pole 107 and pole 67 located as shown on Exhibit E attached hereto.

2. Subject to Sections 5.3, 5.4 and 5.5 of this Agreement, design, engineer, procure, construct, test and place into service the New Facilities to be owned by Company.

3. Prepare, file for, and use reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the "*New Facilities Approvals*").

   Prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state or federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Facilities (the "*Existing Facilities Approvals*").

4. Subject to Sections 5.7 of the Agreement, decommission, dismantle and remove the Existing Facilities.

5. Prepare, file for, and use reasonable efforts to obtain any other Required Approvals that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.

6. Inspect, review, witness, examine and test, from time to time, Company's work contemplated herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

7. Review, from time to time, permitting, licensing and other materials relating to the work contemplated herein, including, without limitations, all documents and materials related to any Required Approvals.

8. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.

9. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

The Company Work may be performed in any order as determined by the Company. For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Project, the Customer Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include granting, securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

Exhibit B: Preliminary Milestone Schedule

PRELIMINARY MILESTONE SCHEDULE

Task	Milestone	Estimated Timeframe	Responsible Party
1.	Execute Agreement	April 2023	Customer/Company
2.	Make Initial Prepayment	April 2023	Customer
3.	Completion of engineering and design, permitting, and licensing.	April 2023	Company
4.	Commence procurement of materials	April 2023	Company
5.	Commence construction of the New Facilities	May 2023	Company
6.	[Commence removal of Existing Facilities]	May 2023	Company

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with any Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals are not included in such preliminary schedule.

Exhibit C: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

2. If and to the extent applicable or under the control of the Customer, provide complete and accurate information regarding the Customer Project and all applicable data, drawings and specifications.

3. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

Exhibit D: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of New York. If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.

- Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

  (A) Bodily Injury - $1,000,000/$1,000,000
  Property Damage - $1,000,000/$1,000,000
  OR
  (B) Combined Single Limit - $1,000,000
  OR
  (C) Bodily Injury and Property Damage per Occurrence - $1,000,000
  General Aggregate & Product Aggregate - $2,000,000 each

- Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of: Combined Single Limit - $1,000,000 per occurrence.

- Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

- Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

   To: National Grid c/o Niagara Mohawk Power Corporation
   Attention: National Grid Risk & Insurance
   300 Erie Blvd, West A-4
   Syracuse NY 13202

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: [_____]
[_____]
[_____]

2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent to the furnishing Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work under this Agreement.

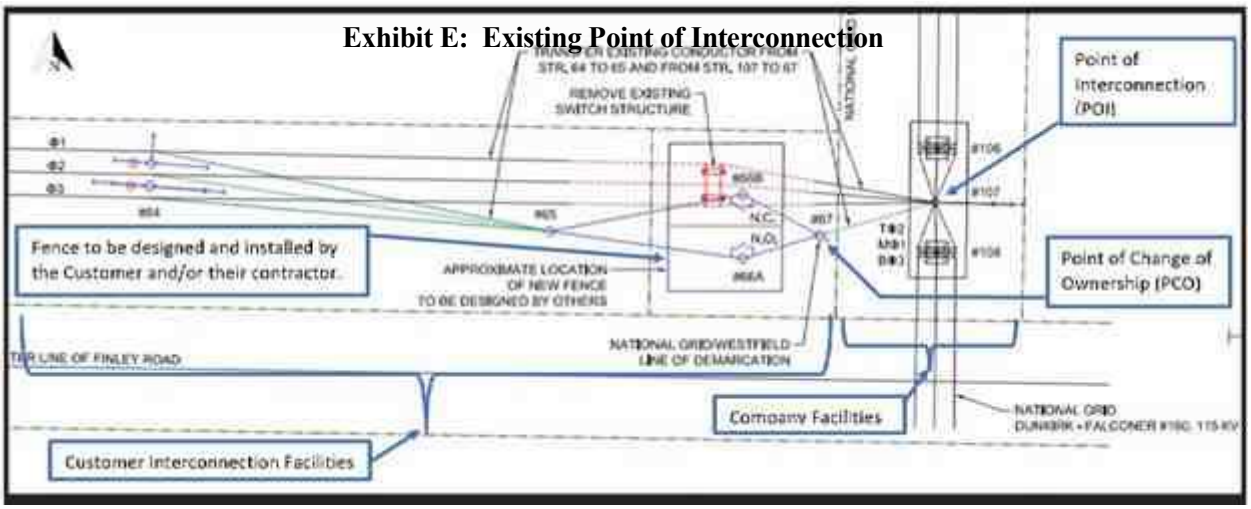
5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other Party that it will have full policy limits available and shall notify the other Party in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

7. Customer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Project and associated Work.

Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

Exhibit E: Existing Point of Interconnection



Cost Reimbursement Agreement -
NMPC / Westfield - May 2023

COST REIMBURSEMENT AGREEMENT
Service Agreement No. 2784

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as of May 9, 2023 (the "*Effective Date*"), by and between **CITY OF SHERRILL**, a New York State municipal corporation having an office and place of business at 377 Sherrill Rd. Sherrill, NY 13461 *(*"*Customer*"*)* and **NIAGARA MOHAWK POWER CORPORATION,** a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "*Company*"). Customer and Company may be referred to hereunder, individually, as a "*Party*" or, collectively, as the "*Parties*".

WITNESSETH

WHEREAS, Customer is proposing to conduct maintenance and repair work at its City of Sherrill South Substation (the "*Customer Project*"); and

WHEREAS, Customer has requested that Company perform certain work with respect to Company's system, as more specifically described below, to facilitate such Customer maintenance and repair work; and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) Customer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below); and (iii) receipt of any and all "*Required Approvals*", as set forth in Section 18.1, in a form acceptable to Company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"*Additional Prepayment(s)*" shall have the meaning set forth in Section 7.3 of this Agreement.

"*Affiliate*" means any person or entity controlling, controlled by, or under common control with, any other person or entity; "control" of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

"*Agreement*" means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

"*Applicable Requirements*" shall mean all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, licenses, authorizations, approvals and other duly authorized actions of 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, NYISO and NPCC requirements, and any applicable reliability standards.

"*Balance Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*CEII*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*CIP*" shall have the meaning set forth in Section 25.4 of this Agreement.

"*Company*" shall have the meaning set forth in the preamble to this Agreement.

"*Company Reimbursable Costs*" means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Project, all applicable overhead, overtime costs, all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

"*Company Work*" means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

"*Customer*" shall have the meaning set forth in the preamble to this Agreement.

"*Customer Required Actions*" means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

"*Customer Project*" shall have the meaning set forth in the preamble to this Agreement.

"*Damages*" shall have the meaning set forth in Section 12.1 of this Agreement.

"*Day*" means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

"*Defect Notice*" shall have the meaning specified in Section 3.2 of this Agreement.

"*Disclosing Party*" shall mean the Party disclosing Proprietary Information.

"*Dollars*" and "$" mean United States of America dollars.

"*Effective Date*" shall have the meaning specified in the preamble of this Agreement.

"*Environment*" shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

"*Environmental Law*" shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

"*FERC*" shall mean the Federal Energy Regulatory Commission.

"*Force Majeure Event*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Good Utility Practice*" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC, NYISO, and NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities. When applied to Customer, the term Good Utility Practice shall include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

"*Hazardous Substances*" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42

U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"*Indemnified Party*" and "*Indemnified Parties*" shall have the meanings set forth in Section 12.1 of this Agreement.

"*Initial Prepayment*" shall have the meaning set forth in Section 7.2 of this Agreement.

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

"*NERC*" shall mean the North American Electric Reliability Corporation or any successor organization.

"*Non-Breaching Party*" shall have the meaning set forth in Section 21.1 of this Agreement.

"*Non-Disclosure Term*" shall have the meaning set forth in Section 25.3.4 of this Agreement.

"*NPCC*" shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"*NYISO*" shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

"*NYPSC*" shall mean the New York Public Service Commission.

"*NYSRC*" shall mean the New York State Reliability Council or any successor organization thereto.

"*Party*" and "*Parties*" shall have the meanings set forth in the preamble to this Agreement.

"*Project*" means the Company Work to be performed under this Agreement.

"*Proprietary Information*" means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

"*Receiving Party*" shall mean the Party receiving Proprietary Information.

"*Refund Amount*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Release*" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"*Representatives*" shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party's and its Affiliates' officers, directors, employees, contractors, counsel and representatives.

"*Required Approvals*" shall have the meaning set forth in Section 18.1 of this Agreement.

"*Resources*" shall have the meaning set forth in Section 23.1 of this Agreement.

"*Threat of Release*" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"*Total Payments Made*" shall have the meaning set forth in Section 8.1 of this Agreement.

"*Work*" shall mean the Customer Required Actions and/or the Company Work, as applicable.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "*Company Work*"). This Agreement does not provide for, and the Company Work shall not include, provision of generation interconnection service or transmission service.

3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Company Work, Customer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2 (each, a "*Defect Notice*"). If the Company Work is defective within the meaning of the prior sentence, then, following its receipt of a timely Defect Notice with respect thereto, the Company shall promptly correct, repair or replace such defective Company Work, as appropriate, provided, that, Company shall not have any obligation to correct, repair or replace such defective Company Work unless the defect in the Company Work has (or is reasonably likely to have) a material adverse impact on the Customer's implementation of the Customer Project. The remedy set forth in this Section is the sole and exclusive remedy granted or available to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall use reasonable efforts to perform the actions described in Exhibit B attached to this Agreement (the "*Customer Required Actions*"). All of the Customer Required Actions shall be performed at Customer's sole cost and expense.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Company Work.

4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any requests for material additions, modifications, or changes to the Work shall be communicated in writing by the Party making the request, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Customer as part of Company Reimbursable Costs.

4.2 The foregoing notwithstanding, the Company is not required to notify Customer of, or to obtain the consent or agreement of the Customer for, any change to the Company Work if such change is made in order to comply with any Applicable Requirement(s), Good Utility Practice, the Company's applicable standards, specifications, requirements and practices, or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable codes and standards.

5.0 **Performance; Conditions to Proceed**

5.1 If Company Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.

5.2 Company will proceed with the Company Work promptly following Company's receipt of the Initial Prepayment. For the avoidance of doubt: performance of the Company Work is subject to implementation of any necessary outages. Neither Party shall be liable for failure to meet any milestones or schedule dates in connection with this Agreement.

Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any Company Work unless and until the Initial Prepayment has been paid in full to Company.

6.0 **[Reserved]**

7.0 **Customer Obligation to Pay Company Reimbursable Costs; Additional Prepayments; Invoicing; Taxes**

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.

7.2 Customer shall provide Company with a prepayment of Ten Thousand Dollars (US **$10,000.00)** ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Company Work. The Company shall invoice Customer for the Initial Prepayment; Customer shall pay such amount to Company within five (5) Days of the invoice due date. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.

7.3 If, during the performance of the Company Work, Company determines that one or more additional prepayments are required before completing the Company Work, Company may, but is not required to, request additional prepayment (each, an "*Additional Prepayment*") from Customer; any such requests will be in writing

and be accompanied by an invoice. If an Additional Prepayment is requested and is not received from Customer on or before the date specified in the applicable request, or if no date is specified, within 30 days of receipt of such written request, Company may (but shall not be obligated to) cease work upon the depletion of the Initial Prepayment and any other Additional Prepayments made by Customer hereunder to date, as applicable. Upon Company's receipt of the Additional Prepayment from Customer (such Additional Prepayment to be additional to the Initial Prepayment and any other prepayments made by Customer to date), Company will recommence performance of the Company Work.

7.4 Company may invoice Customer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any payment due to Company under this Agreement is not made when due, Customer shall pay Company interest on the unpaid amount in accordance with Section 9.1 of this Agreement. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement (including, without limitation, any Additional Prepayment) is not received within five (5) Days after the applicable invoice due date, Company may suspend any or all Company Work pending receipt of all amounts due from Customer; any such suspension shall be without recourse or liability to Company.

7.5 If Customer claims exemption from sales tax, Customer agrees to provide Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("*Sales Tax Exemption Certificate*"). During the term of this Agreement, Customer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.6 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company :

Name: Michael Holmes
Address: 377 Sherrill Road
Sherrill, NY 13461

7.7 All payments made under this Agreement shall be made in immediately available funds.

Unless otherwise directed by the Company, payments to the Company shall be made by wire transfer to:

Wire Payment: JP Morgan Chase
ABA#. 021000021
Account#. 777149642

8.0 **Final Payment**

8.1 Within one hundred and eighty (180) Days following the earlier of (i) the completion of the Company Work, and (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all Company Reimbursable Costs actually incurred is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "*Balance Amount*"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs actually incurred, Company shall reimburse the difference to Customer ("*Refund Amount*"). The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 **Interest on Overdue Amounts**

9.1 If any payment due under this Agreement is not made when due, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount calculated in accordance with Section 35.19a of the FERC's regulations (18 C.F.R. 35.19a) from and including the due date until payment is made in full.

10.0 **Project Managers; Meetings**

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party's Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager ("*Project Manager*"). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE CUSTOMER PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the completion, expiration or earlier termination of this Agreement.

12.0 **Liability and Indemnification**

12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, an "*Indemnified Party*" and, collectively, the "*Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, for economic damage, and for claims brought by third parties for personal injury, property damage or other damages, incurred by any Indemnified Party to the extent arising out of or in connection with this Agreement, the Customer Project, or any Work (collectively, "*Damages*"), except to the extent such Damages are directly caused by the gross negligence, intentional misconduct or unlawful act of the Indemnified Party as determined by a court of competent final jurisdiction.

12.2 Without limiting the foregoing, Customer shall defend, indemnify and save harmless Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees servants, agents, contractors, and representatives, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Customer's contractors, subcontractors or suppliers in connection with any Work or the Customer Project.

12.3 Without limiting the foregoing, Customer shall protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

12.4 To the fullest extent permitted by applicable law, the Company's total cumulative liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Customer Project or the Work, shall not exceed the aggregate amount of all payments made to Company by Customer as Company Reimbursable Costs under this Agreement.

12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.6 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of Customer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Customer under this Agreement (including, without limitation, the Customer Required Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

12.8 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer's insurance.

12.9 Notwithstanding any other provision of this Agreement, this Article shall survive the completion, expiration or earlier termination of this Agreement.

13.0 **Insurance; Employee and Contractor Claims**

13.1 Prior to the commencement of any Company Work and during the term of this Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit C of this Agreement, or the Company may elect to self-insure one or more of the insurance coverage amounts set forth in Exhibit C of this Agreement.

13.2 Prior to the commencement of any Work and during the term of this Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit C of this Agreement, or Customer may elect to self-insure one or more of such coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York provided, that, the Customer provides written notice of any such election to the Company prior to the commencement of any Work under this Agreement.

13.3 Unless the Customer elects to self-insure in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to the commencement of any Work under this Agreement.

13.4 Each Party shall be separately responsible for insuring its own property and operations per the requirements specified in Exhibit C of this Agreement.

13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this Section shall survive the completion, expiration or earlier termination of this Agreement.

14.0 **Assignment and Subcontracting**

14.1 The Company may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create 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, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **[Reserved]**

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the performance contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("*OSHA*"), as amended from time to time. While performing the Company Work, Company shall at all times abide by Company's safety standards and policies and Company's switching and tagging rules. During the term of this Agreement, the Party owning or controlling the applicable property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities in connection with any performance under this Agreement if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party's employees, agents, representatives or contractors in connection with any such performance.

18.0 **Required Approvals**

18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases from any local, state, or federal regulatory agency or other governmental agency or authority (which shall include the FERC and may also include, without limitation and as applicable, the NYPSC) and from any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "*Required Approvals*"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.

18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of the Company's actual costs in connection with seeking any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on any Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or which the Company, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the Company, and Company hereby disclaims any and all such liability to the fullest

extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, release, threat of release or generation of Hazardous Substances at or on any Customer- or third party- owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property), or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.) in connection with this Agreement, the Project and/or the Customer Project, except to the extent such presence, discovery, release, threat of release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the completion, expiration or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement.

20.0 **[Reserved]**

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement. Subject to compliance with Section

22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding sixty (60) consecutive days as the result of any continuing dispute between the Parties, or (ii) under the circumstances contemplated by, and in accordance with, Section 18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.

21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Customer shall also pay Company for:

(i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

23.0 **Force Majeure**

23.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, pandemics epidemics, infectious disease outbreaks or other public health emergencies, crises or restrictions, including, without limitation, quarantines or other related employee or contractor restrictions, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and/or permit requests necessary in connection with the Company Work or the Customer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("*Resources*") due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price

and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided, however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this Agreement.

23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **Compliance with Law**

24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.

25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving Party) and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith and agrees to comply with the terms of this Article) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Project or the Customer Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this Article; or

25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later (the "*Non-Disclosure Term*"); or

25.3.5 is disclosed following receipt of the Disclosing Party's written consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or this Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party's efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include information or data that the Disclosing Party deems or determines to be "Critical Energy / Electric Infrastructure Information" consistent with applicable FERC rules and policies ("*CEII*") and critical infrastructure protection information consistent with applicable NERC standards and procedures ("*CIP*"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party's or Disclosing Party's Affiliates' facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party's and its Affiliate's prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party's obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any completion, expiration or earlier termination of this Agreement.

26.0 **Effect of Applicable Requirements; Governing Law**

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgement is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3rd) Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

To Customer: Jim Whitcombe
Supt. Sherrill Power & Light
161 Sherrill Rd.
Sherrill, NY 13461
Phone: (315)363-6479
Email:sherrillpower@sherrillny.org

To Company: Niagara Mohawk Power Corporation
Attn: Kevin Reardon
Director, Commercial Services
170 Data Drive
Waltham, MA 02451
(781) 906-3988

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.

27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

[Signatures are on following page.]

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

CITY OF SHERRILL

By: _____

Name: Michael Holmes

Title: City Comptroller

NIAGARA MOHAWK POWER CORPORATION

By: _____

Name: Kevin Reardon

Title: Director, Commercial Services

LIST OF EXHIBITS

Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Perform outage coordination and opening and closing of the loops on Company's transmission system to temporarily remove Customer's Sherrill South Substation from service to allow Customer to perform maintenance and repair work contemplated for the Customer Project.

2. Perform and complete Hi-Pot & contact resistance testing required upon completion of Customer's work on the Customer Project and as required for re-energization to return Customer's Sherrill South Substation to service on Company's transmission system.

The Company Work may be performed in any order as determined by the Company. For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Project, the Customer Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include granting, securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

The Company does not and cannot guarantee or covenant that any outage necessary in connection with any Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals are not included in any preliminary schedule.

NOTE: Company's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time.

Exhibit B: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

2. If and to the extent applicable or under the control of the Customer, provide complete and accurate information regarding the Customer Project and all applicable data, drawings and specifications.

3. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

Exhibit C: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of New York . If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.

- Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:

  (A) Bodily Injury - $1,000,000/$1,000,000
  Property Damage - $1,000,000/$1,000,000
  OR
  (B) Combined Single Limit - $1,000,000
  OR
  (C) Bodily Injury and Property Damage per Occurrence - $1,000,000
  General Aggregate & Product Aggregate - $2,000,000 each

- Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of: Combined Single Limit - $1,000,000 per occurrence.

- Umbrella or Excess Liability, coverage with a minimum limit of $ 4,000,000.

- Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

   To: National Grid c/o Niagara Mohawk Power Corporation
   Attention: George Musak
   Account Manager
   Commercial Services
   300 Erie Blvd West
   Syracuse, NY 13202

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: Michael D. Holmes
City Clerk / Comptroller
377 Sherrill Road
Sherrill, NY 13461

2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent to the furnishing Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work under this Agreement.

5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other Party that it will have full policy limits available and shall notify the other Party in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

7. Customer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Customer Project and associated Work.