

**New York Independent System Operator, Inc. submits
Service Agreement No. 2298 – Cost Reimbursement Agreement**

Between

New York State Electric & Gas Corporation

And

Pennsylvania Electric Company

**Tariff Program Code: E
Option Code: A
Tariff Record Title: Service Agreement No. 2298
to be effective August 19, 2016**

COST REIMBURSEMENT AGREEMENT

This **COST REIMBURSEMENT AGREEMENT** (the “*Agreement*”), is made and entered into as of June 30, 2016 (the “*Effective Date*”), by and between Pennsylvania Electric Company (“*Customer*” or “Penelec”) and NEW YORK STATE ELECTRIC & GAS CORPORATION (the “*Company*” or “*NYSEG*”). Customer and Company may be referred to hereunder, individually, as a “*Party*” or, collectively, as the “*Parties*”.

WITNESSETH

WHEREAS, the Customer was required to perform certain upgrades to its transmission system pursuant to PJM Interconnection L.L.C. (“PJM”) queue project RTEP X1-109; and

WHEREAS, Customer has requested that Company perform certain Work as defined 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 in accordance with this Agreement;

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.

“CEI” 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 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. 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.

“Initial Prepayment” shall have the meaning set forth in Section 7.1 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.

“Phase I Work” shall have the meaning specified in Exhibit A to this Agreement.

“Phase II Work” shall have the meaning specified in Exhibit A to this Agreement.

“Projected Milestone Schedule” shall have the meaning set forth in Section 5.3 and Exhibit B 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.

“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 Hillside Substation, Elmira Division, 907 East Ave, Elmira NY 14901.

“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, (iv) to complete construction, engineering, or testing and commissioning activities necessary to meet Customers in-service date; or (v) 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 Company Reimbursable Costs, exclusive of any applicable taxes, is Six Hundred Eighty-two Thousand Dollars (\$682,000). (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 Three Hundred Forty-One Thousand Dollars (\$341,000) ("Initial Prepayment") and Customer shall pay the Initial Prepayment 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 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 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: Michael J. Thorn
Manager, FERC and Wholesale Connections Support

Address: 76 South Main A-GO-10
Akron, Ohio 44308

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

Company’s contact for payment matters is:

Name: Todd Foster

Address: NYSEG
18 Link Dr.
Binghamton, NY 13902-5224

Payments to the Company shall be made by wire transfer or automated clearing house (ACH) to:

Wire Payment:	Citibank, N.A
ABA#:	021000089
Account#	00040387

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), a 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 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 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.

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 Representatives 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 or waive the enforcement or non-performance of any term or condition 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 - Engineering Services
NYSEG
83 Edison Drive,
Augusta, ME.04336
207-522-8984
ellen.miller@cmpco.com

To Customer: FirstEnergy Service Company
Legal Department
76 South Main Street
A-GO-15
Attn: Attorney for FERC & Wholesale Connection Support

And


Agreements Support Manager
FirstEnergy Services Company
76 South Main street
Akron, Ohio 44308
Attn: Michael J. Thorn

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: MARK S LYNCH
Title: PRESIDENT & CEO

PENNSYLVANIA ELECTRIC COMPANY

By: 
Name: Scott R. Wyman
Title: President

LIST OF EXHIBITS

Exhibit A	Scope of Work
Exhibit B	Projected Milestone Schedule
Exhibit C	Insurance Requirements

Exhibit A: Scope of Work

General Scope Description: Based on the replacement by Penelec of the relaying on the Hillside line at East Towanda, NYSEG will replace existing relays with a new SEL 421, which will communicate via a new RFL 9785, and add an SEL 451 breaker control at the Hillside Substation. The Work to be performed by NYSEG is as follows:

A Protection:

- All old electromechanical relays (50/50N FDP CHC, 21/GCY, 68/CEB, 67NC/CLPG, A/W/VAR SHARK) will be replaced with SEL421 on "A" Line protection.
- A new SEL451 Breaker Control relay will be added. The A Line Relay will communicate through existing Power line carrier using RFL9785 with a check back system.

B Protection:

- Existing Hillside Station "B" protection relay will stay with the exception of a modification on Cross tripping.
- B protection relays will use the existing power line carrier as is.
- DME: Existing DME will have to update and accommodate new relays.

Key Assumptions:

- No new cables will need to be run.
- No integration one-line exists and therefore does not need updating.
- No HMI to update. Relay fail alarm will be integrated.
- Equipment connected to 70PD (Line tuning CCVT) shall be verified only. Should mitigation be required, that will be performed as additional scope (i.e., not included in this estimate).
- The changes can be incorporated within the existing footprint.

The work is currently not intended to be performed in phases.

Exhibit B: Projected Milestone Schedule

The following schedule is based on a signed CRA and money in-place. That date has been defined as "H" day.

Task	Milestone	Completion Date
1	Conceptual Engineering	H + 1 month
2	Detailed Engineering	H + 5 months (4 months)
3	Procurement	H + 9 months (4 months)
4	Engineering / Construction	H + 10 months (1 month)
5	Testing & Commissioning	H + 11 months (1 month)
6	Closeout	H + 12 months (1 month)

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension.

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:

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.
 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.