

Attachment A
Service Agreement No. 2531

ENGINEERING & PROCUREMENT AGREEMENT

This **ENGINEERING & PROCUREMENT AGREEMENT** (the “Agreement”), is made and entered into as of March 18, 2020 (the “Effective Date”), by and between **NEW YORK TRANSCO, LLC**, a limited liability company organized and existing under the laws of the State of New York, having an office and place of business at 1 Hudson City Center, Hudson, New York 12534 (“Developer”) 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”). Developer and the Company may be referred to hereunder, individually, as a “Party” or, collectively, as the “Parties”.

WITNESSETH

WHEREAS, Developer and the Company proposed a Public Policy Transmission Project to satisfy an identified Public Policy Transmission Need (“Transmission Project”); and

WHEREAS, the New York Independent System Operator, Inc. (“NYISO”) selected the Transmission Project as the more efficient or cost-effective transmission solution to satisfy an identified Public Policy Transmission Need and has directed Developer to proceed with the Transmission Project; and

WHEREAS, Developer and the Company are negotiating a development agreement with NYISO with respect to Developer’s implementation of the Transmission Project to satisfy the Public Policy Transmission Need (“Development Agreement”); and

WHEREAS, Developer is proposing to interconnect its Transmission Project at various locations on the Company’s transmission system; and

WHEREAS, the Transmission Project was evaluated pursuant to the NYISO’s Transmission Interconnection Procedures contained in Attachment P of the NYISO Open Access Transmission Tariff (“OATT”) and issuance of a Facilities Study Report (as such term is defined below) is pending; and

WHEREAS, following the issuance of the Facilities Study Report, Developer and the Company contemplate negotiation of (i) a Transmission Project Interconnection Agreement in connection with the proposed interconnection of the Transmission Project to the Company’s transmission system (“Interconnection Agreement”), and (ii) an Engineering, Procurement and Construction Agreement pursuant to Section 22.10 of the OATT with respect to the engineering, procurement, and construction of the Affected System Upgrade Facilities (as such term is defined in Section 30.1 of the OATT required to mitigate Transmission Project impacts to the Company’s transmission system (the “EPC Agreement”); and

WHEREAS, Developer has requested that the Company undertake certain engineering and procurement activities with respect to the mitigation of the Transmission Project's impact on, and the proposed interconnection of the Transmission Project to, the Company's transmission system, as more specifically described below, prior to issuance of the Facilities Study Report; and

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

"Additional Prepayment Payment Date" 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 Engineering & Procurement 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.

"Bid(s)" shall have the meaning set forth in Exhibit A of this Agreement.

“Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.

“CEIF” 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’s Network Upgrade Facilities” shall have the meaning set forth in Exhibit A 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 this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates in connection with the Company Work or this Agreement 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, 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 3.2 and/or Exhibit A of this Agreement.

“Company Work Cost Reports” shall have the meaning set forth in Section 5.5 of this Agreement.

“Convenience Termination Notice” shall have the meaning set forth in Section 7.3 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 3.3 of this Agreement.

“Developer” shall have the meaning set forth in the preamble to this Agreement.

“Developer Required Actions” means all duties, responsibilities, and obligations to be performed by Developer as contemplated by Section 3.4 of this Agreement.

“Development Agreement” shall have the meaning set forth in the preamble 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.

“EPC Agreement” shall have the meaning set forth in the preamble to this Agreement.

“Facilities Study Report” shall mean that certain Facilities Study Report expected to be finalized as part of Developer’s interconnection request submitted and pending with the NYISO (NYISO Queue No. 543).

“FERC” shall mean the Federal Energy Regulatory Commission.

“FERC IA Acceptance Date” shall have the meaning specified in Section 2.2 of 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 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.

“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 mean have the meaning set forth in the preamble to this Agreement.

“IRS” shall mean the US Internal Revenue Service.

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“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-Cancellable Equipment” shall have the meaning set forth in Section 21.4(b) 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 have the meaning set forth in the preamble to this Agreement.

“NYSRC” shall mean the New York State Reliability Council or any successor organization thereto.

“OATT” shall have the meaning specified in the preamble of this Agreement.

“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.

“Project Manager” means the respective representatives of each of the Developer 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.

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“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.

“RFP” shall have the meaning set forth in Exhibit A of this Agreement.

“Selected FSR Section Work” shall have the meaning set forth in Exhibit A of this Agreement.

“System Impact Study” shall mean the study conducted pursuant to Section 22.8 of Attachment P of the OATT that evaluates the impact of the proposed Transmission Project on the safety and reliability of the New York State Transmission System and, if applicable, an Affected System, to determine what Network Upgrade Facilities are needed for the proposed Transmission Project to connect reliably to the New York State Transmission System in a manner that meets the NYISO Transmission Interconnection Standard described in the OATT, Section 22.6.4 of Attachment P.

“Threshold Notice” shall have the meaning set forth in Section 7.3 of this Agreement.

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

“Transmission Project” shall have the meaning set forth in the Preamble of this Agreement.

“Work” shall mean the Developer 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.
- 2.2 The foregoing notwithstanding, in the event that an Interconnection Agreement is filed with FERC during the term of this Agreement, (i) upon the date FERC accepts such Interconnection Agreement (the “FERC IA Acceptance Date”), the Company shall have no further obligation to perform any Work under this Agreement (any Work not completed hereunder to be performed subject to, and in accordance with, the terms and conditions of such Interconnection Agreement to the extent contemplated therein), and (ii) this Agreement shall terminate upon final payment by Developer of all Company Reimbursable Costs incurred during the term of this Agreement.

3.0 Scope of Work

- 3.1 Developer acknowledges that it has elected to enter into this Agreement prior to the completion of a Facilities Study Report and that it understands and accepts the associated risks, including, without limitation, the risk that, based on the final Facilities Study Report, the Company Work, and any materials procured in connection therewith, will not be useful or appropriate for or in connection with the Transmission Project or may need to be re-performed or re-procured, in whole or in part. Accordingly, Developer desires the Company to perform the Company Work (as defined below), and Company agrees to perform the Company Work consistent with and subject to the provisions of this Agreement.
- 3.2 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, any construction or breach of ground surface at any property, or any provision of generation interconnection service or transmission service.
- 3.3 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, Developer 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 3.3 (each, a "Defect Notice"), provided, however, that, the fact that Company Work is not useful, or must be re-performed, in whole or in part, as contemplated by Section 3.1, shall not be deemed to constitute a defect in such Company Work. 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 implementation of the Transmission Project. The remedy set forth in this Section is the sole and exclusive remedy granted or available to Developer for any failure of the Company to meet the performance standards or requirements set forth in this Agreement.
- 3.4 Subject to the terms of this Agreement, Developer shall use reasonable efforts to perform the actions described in Exhibit B attached to this Agreement (the "Developer Required Actions"). All of the Developer Required Actions shall be performed at Developer's sole cost and expense.
- 3.5 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 Developer as part of Company Reimbursable Costs.
- 4.2 The foregoing notwithstanding, the Company is not required to obtain the consent or agreement of Developer for any change to the Company Work if such change is made in order to comply with any Applicable Requirement(s), Good Utility Practice, or the Company's applicable standards, specifications, requirements and practices; provided, however, that the Company shall notify Developer of such change to the Company Work as soon as reasonably practicable after the Company determines that the change is necessary to comply with any Applicable Requirement(s), Good Utility Practice, or the Company's applicable standards, specifications, requirements and practices. Any additional costs arising from such change shall be paid by Developer as part of Company Reimbursable Costs.

5.0 Performance; Conditions to Proceed

- 5.1 If Company Work is performed outside of normal working hours, Developer 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 Neither Party shall be liable for failure to meet any estimated, projected, preliminary, milestone or other schedule in connection with this Agreement or the Transmission Project.
- 5.3 Commencement of Company Work. The Company will proceed with the Company Work promptly following the Company's receipt of the Initial Prepayment (as defined below).
- 5.4 Procurement Commencement. Anything in this Agreement to the contrary notwithstanding, the Company shall not be obligated to proceed with any procurement in connection with the Company Work unless and until all Additional Prepayments and all Company Reimbursable Costs invoiced to date have been paid in full to the Company.

- 5.5 Company Work Cost Reports. Company agrees to provide written reports (“*Company Work Cost Reports*”) to Developer on a semi-annual basis, due each July 15 and January 15. Each Company Work Cost Report shall include the following information with respect to the preceding six-month period: (i) a summary of Company Reimbursable Costs incurred during such period, (ii) a statement of the hours of Company Work furnished during such period, (iii) a listing of average hourly labor rates, and (iv) a reasonably detailed description of the tasks performed by Company (or its Affiliates) for the Company Work during such period.

6.0 **Representations and Warranties**

- 6.1 Each Party represents and warrants to the other that it has the requisite capacity and authority to enter into this Agreement and, subject to receipt of all Required Approvals as contemplated by Section 18.1, if any, fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite corporate action, that this document is legal, valid and enforceable to the best of its knowledge, and that, subject to receipt of all Required Approvals as contemplated by Section 18.1, if any, and compliance with all Applicable Requirements, the entering into this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of the Party giving the representation or warranty.
- 6.2 Each Party represents and warrants to the other that no suit, action or arbitration, or legal, administrative or other proceeding is pending or has, to the best of its knowledge, been threatened against the representing Party that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of the representing Party to fulfill its obligations hereunder.

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

- 7.1 Developer shall pay or reimburse the Company for all Company Reimbursable Costs actually incurred by the 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 Developer’s obligation to pay the Company for all Company Reimbursable Costs actually incurred by the Company and/or its Affiliates.

- 7.2 Developer shall provide the Company with a prepayment of **\$1,000,000** ("Initial Prepayment"), such amount representing the Company's current estimate of the total amount of Company Reimbursable Costs to perform the portion of the Company Work that Company anticipates performing during the initial eighteen (18) months following the Effective Date. The Company shall invoice Developer for the Initial Prepayment; Developer shall pay such amount to Company within thirty (30) 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 for the Company Work, Company may, but is not required to, request additional prepayment (each, an "Additional Prepayment") from Developer; any such requests will be in writing and be accompanied by a reasonably itemized invoice. If an Additional Prepayment is requested and is not received from Developer 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 (each, an "Additional Prepayment Payment Date"), Company may (but shall not be obligated to) suspend work (including, without limitation, halting any planned procurement related to such requested Additional Prepayment) upon the depletion of the Initial Prepayment and any other Additional Prepayments made by Developer hereunder to date, as applicable. Upon Company's receipt of the Additional Prepayment from Developer (such Additional Prepayment to be additional to the Initial Prepayment and any other prepayments made by Developer to date), Company will recommence performance of the Company Work. In the event that Developer does not pay any requested Additional Prepayment in full on or before ninety (90) Days following the applicable Additional Prepayment Payment Date, this Agreement, at Company's election, shall be deemed terminated for convenience by Developer. Company shall provide written notice to Developer ("Threshold Notice") when the total Company Reimbursable Costs are estimated to have reached \$1,500,000. 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 Developer's receipt of the Threshold Notice, Company and Developer shall consult and Developer shall determine whether it wishes to (a) deliver an unconditional written direction to Company to continue performance of 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 Developer, 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 Developer does not deliver either a Notice to Proceed or a Convenience Termination Notice on or before ninety (90) Days following the date of the Threshold Notice, this Agreement, at Company's election, shall be deemed terminated for convenience by Developer.

- 7.4 Company may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments, as described in Sections 7.2 and 7.3 herein, and invoice Developer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from receipt of such invoice. If any undisputed payment due to Company under this Agreement is not made when due, or if any unpaid disputed payment is later determined to have been due and payable, Developer 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 (i) any payment due from Developer under this Agreement (including, without limitation, any Additional Prepayment) is not received within five (5) Days after the applicable invoice due date (except to the extent such payment has been previously disputed by Developer in good faith and in compliance with the last sentence of this Section 7.4.), or (ii) at any time, the total invoiced payment amounts disputed and remaining unpaid by Developer hereunder exceed \$100,000 in aggregate amount, Company may suspend any or all Company Work pending receipt of all amounts due from Developer; any such suspension shall be without recourse or liability to Company. If Developer disputes, in good faith, any payment amount invoiced hereunder, Developer shall (i) timely pay the undisputed portion of such payment amount in accordance with the terms of this Agreement, and (ii) provide written notice to Company with respect to the disputed portion of such payment amount, such notice shall (x) be provided to Company prior to the date such disputed payment is otherwise due under this Agreement and (y) contain a reasonably detailed explanation of Developer's basis for disputing the payment.
- 7.5 If Developer claims exemption from sales tax, Developer 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 Developer ("Sales Tax Exemption Certificate"). During the term of this Agreement, Developer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Developer's exemption status. If Developer 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 Developer.

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- 7.6 If the FERC IA Acceptance Date occurs before the Initial Prepayment or any Additional Prepayment has been fully used to reimburse for Company Work performed by the Company under this Agreement, the Company shall be authorized to apply the remaining balance of the Initial Prepayment and/or any Additional Prepayments to invoices charged to Developer under the Interconnection Agreement or the EPC Agreement. The Company shall adjust the security to be provided under the Interconnection Agreement or the EPC Agreement, as applicable, to reflect the Initial Prepayment and any Additional Prepayments received by the Company under this Agreement. Anything in this Agreement to the contrary notwithstanding, this Section 7.6 shall survive the termination of this Agreement if this Agreement is terminated pursuant to Section 2.2 hereof.
- 7.7 Company's invoices to Developer 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 Developer may designate, from time to time, by written notice to the Company:
- Name: Robert Caso
Address: Central Hudson Gas & Electric Corp.
284 South Avenue
Poughkeepsie, NY 12601
Robert.Case@NYTransco.com
- 7.8 At any time during the term of this Agreement, Developer may request, in writing, from Company a reconciliation of the Company Reimbursable Costs incurred by Company as of the date Company receives written notice of the request. Company shall provide the reconciliation within thirty (30) Days of receiving such request.
- 7.9 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

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

Bank: JP Morgan Chase
ABA#: 021000021
Account #: 665653296

8.0 **Final Payment**

8.1 Within one hundred and eighty (180) Days following the earlier of (i) the completion of the Company Work, (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, and (iii) the FERC IA Acceptance Date, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Developer 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 Developer 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 Developer (“*Refund Amount*”) or, if applicable, may apply the Refund Amount as contemplated in Section 7.6 of this Agreement. 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 DEVELOPER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR PROCUREMENT 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 DEVELOPER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.3. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE TRANSMISSION 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), Developer 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.

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- 12.2 Without limiting the foregoing, Developer 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.
- 12.3 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 (including the Initial Prepayment and any Additional Prepayments) made to Company by Developer as Company Reimbursable Costs under this Agreement.
- 12.4 Subject to the obligations set forth in Sections 12.1 and 12.2, 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 and 12.2, 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.

- 12.6 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 Developer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Developer under this Agreement (including, without limitation, the Developer Required Actions), (b) subject to Article 23.0, any Force Majeure Event, (c) the inability or failure of Developer 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 such 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 Developer'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 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 the Agreement, the Developer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit C of this Agreement, or Developer 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 Developer provides written notice of any such election to the Company prior to the commencement of any Work under this Agreement.

- 13.3 Unless such Party elects to self-insure in accordance with Section 13.1 or Section 13.2 hereof, as applicable, each Party shall have its insurer furnish to the other Party 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. Developer agrees that the reasonable costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Developer as part of the Company Reimbursable Costs.

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

- 15.1 Company and Developer 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.

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, 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. Each Party represents that, as of the Effective Date, it is not aware of any Required Approvals that will need to be obtained for such Party to perform its obligations under this Agreement.
- 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 Developer’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 Developer.

19.0 **[Reserved]**

20.0 **[Reserved]**21.0 **Right to Terminate Agreement; Remedies**

- 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 21.4 and 21.5 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 or Section 26.2 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.
- 21.4 (a) Subject to Section 21.4(b) below, in the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Company shall apply any unused monies available from the Initial Prepayment or any Additional Prepayments to reimburse itself, and, to the extent such Initial Prepayment or any Additional Prepayments have been depleted, Company shall invoice Developer, and Developer agrees to pay, for the following:
- (i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

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- (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, engineering and other items, assets or services which cannot reasonably be avoided, mitigated or cancelled; and
 - (iii) 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.
- (b) To the extent that any equipment procured or ordered hereunder as part of the Company Work cannot be reasonably cancelled (the “Non-Cancellable Equipment”), Company may elect:
 - (i) to take title to the Non-Cancellable Equipment, in which event Company shall refund or credit the Developer, as applicable, for any amounts paid by the Developer as Company Reimbursable Costs for the Non-Cancellable Equipment and shall pay the cost of delivery of such Non-Cancellable Equipment; or
 - (ii) to transfer title to and deliver the Non-Cancellable Equipment to Developer, in which event the Developer shall pay, as part of Company Reimbursable Costs, any unpaid balance with respect to the Non-Cancellable Equipment and the cost of delivery of the Non-Cancellable Equipment, such transfer to be on an ‘as is’ basis, without warranty from or recourse to Company, and to be implemented pursuant to a mutually acceptable Bill of Sale containing terms and conditions consistent with such an ‘as is’ transfer.

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 Developer 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. A Force Majeure Event shall not include acts of negligence or intentional wrongdoing by the Party claiming such Force Majeure Event.

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, Developer shall pay the Company all of the

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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.

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- 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. Developer agrees that any Proprietary Information will be used solely for the Project or the Transmission Project and will not be used, either directly or indirectly, for the Developer'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 information 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; Change in Law; 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 If, during the term of this Agreement, the Applicable Requirements are changed or new Applicable Requirements are enacted, and such changed or new Applicable Requirements result in the imposition of charges or costs that are materially different than the terms agreed to in this Agreement as of the Effective Date, or makes the performance of the obligations hereunder impossible, then promptly following the written request of the affected Party delivered to the other Party and made no later than six (6) months after the effective date of such change or addition to the Applicable Requirements, the Company shall suspend the Company Work and the Parties shall meet to negotiate in good faith such mutually acceptable amendments to this Agreement as the Parties determined to be necessary to fulfill the purposes of this Agreement and to give effect to the original intentions of the Parties as negotiated and agreed to herein. In the event the Parties are unable to reach agreement on and execute such mutually acceptable amendments within thirty (30) Days following the delivery date of such written request, this Agreement shall be deemed to be terminated for convenience by the affected Party effective as of the end of such thirty (30) Day period.
- 26.3 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 Developer 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 be deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgment is not a Day, then the date of receipt shall be 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 Developer: New York Transco, LLC
Attn: Victor Mullin
President
1 Hudson City Center
Hudson, New York 12534
Phone: (212) 460-6637

New York Transco, LLC
Attn: Kathleen Carrigan
General Counsel
1 Hudson City Center
Hudson, New York 12534
Phone: (617) 455-5329

To Company: Niagara Mohawk Power Corporation
Attn: Kevin C. Reardon
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.

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- 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.]

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

NEW YORK TRANSCO LLC

By:  3/16/2020
Name: Victor Mullin
Title: President

NIAGARA MOHAWK POWER CORPORATION

By: 
Name: Kevin C. Reardon
Title: Director, Commercial Services

LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A	Scope of Company Work
Exhibit B	Developer Required Actions
Exhibit C	Insurance Requirements

Exhibit A: Scope of Company Work

I. Background

The Transmission Project contemplates, and the NYISO has studied during the System Impact Study phase of the NYISO Interconnection Process, the following:

- A new 54 mile 345/115 kV double circuit transmission line from Schodack to Pleasant Valley
- A new Knickerbocker 345 kV switching station;
- The demolition and complete rebuild of the Churchtown Substation;
- Modifications to the existing Pleasant Valley 345 kV substation,
- A new Van Wagner Capacitor Bank Substation; and
- The retirement of various 115 kV lines between the Greenbush 115 kV station and Pleasant Valley 115 kV station.

The Agreement has been entered into prior to the issuance of a Facilities Study Report with respect to the Transmission Project, with the intention of allowing Company Work to commence at the risk of the Developer as contemplated by the Agreement.

II. Scope of Work

The Company Work shall consist of the following:

Following the Effective Date, the Company will determine, in its sole discretion, the set of design, engineering, and long-lead procurement work that is appropriate and practicable to undertake under this Agreement with respect to the Company's Network Upgrade Facilities (as such term is defined below) that are covered or addressed by the System Impact Study as they are identified in the Company's draft facility study reports.

The term "Company's Network Upgrade Facilities" means the Network Upgrade Facilities (as such term is defined in the OATT) on or for the Company's transmission system that will be required to mitigate impacts resulting from, or that are otherwise required to accommodate, the Transmission Project.

Any Company Work would be performed only if it relates to the following substations:

- Schodack
- Greenbush
- Blue Stores
- Valkin
- Hudson
- New Scotland
- Alps

- Buckley Corners

With respect to procurement activities, Company Work may include, without limitation, some or all of the following as required in connection with the foregoing:

- A. Develop technical documents to solicit bid proposals for the selected procurement.
- B. Issuance of the Request for Proposals (“RFP”), soliciting bid proposals, clarifying queries from bidders, and receiving bid proposals (“Bid(s)”).
- C. Bid evaluation and recommendation, which includes scoring of Bids based on technical, quality, price and identification of proposed vendors.
- D. Award to selected vendor and placement of order for the applicable materials and/or services.
- E. Coordination and involvement of project team members and stakeholders for the above listed tasks and to secure required internal approvals (including, without limitation, the creation of sanction papers and presentation thereof to internal committees/bodies for approval).
- F. Engineering and procurement activities to support temporary configurations as needed.

NOTE: The above procurement activities are focused only on the procurement the Company determines, in its sole discretion, to perform under this Agreement and does not include all procurement that may be required with respect to the Company’s facilities or system expected to be impacted by the Transmission Project.

The Company recognizes the Developer’s construction schedule and NYISO required in-service date of December 31, 2023 and will work under this Agreement to start tasks typically not initiated until after the completion of the applicable NYISO Facilities Study Report.

Notwithstanding the above: (i) the Company does not commit to any particular order of work or to any deadline or schedule to have any design, engineering, procurement or any other work completed and (ii) the work contemplated by this Exhibit and this Agreement does not encompass the full scope of work or services contemplated to be performed by an Affected Transmission Owner with respect to its Affected Transmission System pursuant to Section 22.4.4 of the OATT (“Affected Transmission Owner Work”) and shall, in no event, include any work or services other than such Affected Transmission Owner Work.

The Company Work may also include, without limitation, the following activities as required in connection with the foregoing:

1. Prepare, file for, and use reasonable efforts to obtain any Required Approvals that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.
2. Review, from time to time, proposed outage schedules, construction sequencing, and other development activities.
3. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.
4. Attendance at and preparation for monthly Work management and outage planning meetings, as required by the Work.
5. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

The work contemplated by this Exhibit and this Agreement does not include any permitting activities or any construction, relocations, alterations, modifications, or upgrades with respect to any Company, Developer or third party facilities, the Transmission Project or any interconnection thereof to the Company's Transmission System ("Implementation Work"), nor does Company make any commitment to undertake such Implementation Work. If the Parties elect, in their respective sole discretion, to proceed with any Implementation Work: (i) such Implementation Work would be performed pursuant to a separate, detailed, written, and mutually acceptable Transmission Project Interconnection Agreement and/or EPC Agreement to be entered into by the Parties and the NYISO, in accordance with the applicable provisions of the NYISO Open Access Transmission Tariff prior to the commencement of any such Implementation Work and (ii) payment of all actual costs incurred by Company or its Affiliates in connection with or related to such Implementation Work shall be the responsibility of Developer and Developer shall reimburse Company for all such costs.

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 Transmission 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 Developer 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.

Exhibit B: Developer Required Actions

The Developer Required Actions shall consist of the following:

1. Developer 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 Developer, provide complete and accurate information regarding the Developer's project and all applicable data, drawings and specifications if and when requested by Company.
3. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

Exhibit C: Insurance Requirements-Transco checking

The Parties agree to provide Certificates of Insurance or Memorandums of Insurance evidencing the existence of insurance policies issued to them or self-insured coverage limits, satisfactory to the coverages and minimum limitations set forth below, and not subject to cancellation or material change without one Party giving thirty (30) days prior written notice to the other Party which policies or equally satisfactory renewals or extensions thereof shall be maintained in force during the term of this Agreement, as follows:

- 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, and Product/Completed Operations Liability Insurance covering all insurable operations required under the provisions of this Agreement with the following minimum limits of liability:

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.

Each Party shall be included as an Additional Insured on the other Party's liability insurance policy(ies) with respect to the activities governed by this Agreement.

For Company, the Additional Insured wording is: **NIAGARA MOHAWK POWER CORPORATION** d/b/a National Grid, shall be included as Additional Insureds.

For Developer, the Additional Insured wording is: **NEW YORK TRANSCO, LLC** shall be included as Additional Insureds.

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. Developer 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
40 Sylvan Road
Waltham, MA 02451

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

To: New York Transco LLC
One Hudson City Center

3rd Floor
Hudson, NY 12534
Attn: Victor Mullin, President
Email: Victor.Mullin@NYTransco.com

With a copy to:
New York Transco LLC
One Hudson City Center
3rd Floor
Hudson, NY 12534
Attn: Kathleen Carrigan, General Counsel
Email: Kathleen.Carrigan@NYTransco.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, 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.