ENGINEERING & PROCUREMENT AGREEMENT

This ENGINEERING & PROCUREMENT AGREEMENT (the “Agreement”), is

made and entered into as of November 24, 2020 (the “Effective Date”), by and between KCE NY 6, LLC a limited liability company, having an office and place of business at 25 Monroe Street #301, Albany, New York 12210 (“Developer” or “Interconnection Customer”) and NIAGARA MOHAWK POWER CORPORATION, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the “Company”). Developer and Company may be referred to hereunder, individually, as a “Party” or, collectively, as the “Parties”.

WITNESSETH

WHEREAS, Developer is proposing to interconnect its KCE NY 6 Battery Energy Storage System 20 MW Small Generating Facility to the Company’s Gardenville-Bethlehem Steel Winds Line 150 (the “Interconnection Project”); and

WHEREAS, Developer and Company contemplate negotiation of a Small Generator Interconnection Agreement (“Interconnection Agreement”) in connection with the proposed Interconnection Project; and

WHEREAS, Developer has requested that Company perform certain engineering and   
procurement activities for certain long-lead items in connection with the Interconnection Project,   
as more specifically described below, prior to the Parties entering into the Interconnection   
Agreement; and

WHEREAS, the NYISO Open Access Transmission Tariff provides that prior to executing a Small Generator Interconnection Agreement, a Developer may request, in order to advance the implementation of its interconnection, and the Company shall offer the Developer, an Engineering & Procurement Agreement that authorizes the Company to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection; and

WHEREAS, 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 any and all “Required Approvals”, as set forth in Section 18.1, in a form acceptable to Company;

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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

1.0 Certain Definitions

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

“Additional Prepayment(s)” shall have the meaning set forth in Section 7.3 of this Agreement.

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

“Agreement” means this 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.   
“Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.   
“CEII” shall have the meaning set forth in Section 25.4 of this Agreement.   
“CIP” shall have the meaning set forth in Section 25.4 of this Agreement.   
“Company” shall have the meaning set forth in the preamble to this Agreement.

“Company Reimbursable Costs” means the actual costs and expenses incurred by Company   
and/or its Affiliates in connection with performance of the Company Work or otherwise   
incurred by Company and/or its Affiliates in connection with the Project or this Agreement,   
and including, without limitation, any such costs that may have been incurred by Company   
and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall   
include, without limitation, the actual expenses for labor (including, without limitation, internal   
labor), services, materials, subcontracts, equipment or other expenses incurred in the execution   
of the Company Work or otherwise in connection with the Project, all applicable overhead,   
overtime costs, all federal, state and local taxes incurred (including, without limitation, all taxes

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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 thirdparty fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

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

“Damages” shall have the meaning set forth in Section 12.1 of this Agreement.

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

“Defect Notice” shall have the meaning specified in Section 3.2 of this Agreement.   
“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 3.3 of this Agreement.

“Disclosing Party” shall mean the Party disclosing Proprietary Information. “Dollars” and “$” mean United States of America dollars.

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

“Facilities Study Report” shall mean that certain Facilities Study Report for the KCE NY6 BESS Facility 20 MW (Queue #759), Version 2.0, dated September 24, 2020.

“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

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

and NYISO, NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities. When

applied to Developer, the term Good Utility Practice shall include standards applicable to a   
utility generator connecting to the distribution or transmission facilities or system of another   
utility.

“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.

“Interconnection Project” shall have the meaning set forth in the preamble to this Agreement. “IRS” shall mean the US Internal Revenue Service.

“NERC” shall mean the North American Electric Reliability Corporation or any successor organization.

“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.

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

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

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

“Party” and “Parties” shall have the meanings set forth in the preamble to this Agreement. “Project” means the Company Work to be performed under this Agreement.

“Project Manager” means the respective representatives of each of the Developer and Company appointed pursuant to Section 10.1 of this Agreement.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

“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.

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

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759



3.0 Scope of Work

3.1 The Company’s scope of work is set forth in Exhibit A of this Agreement, attached

hereto and incorporated herein by reference (the “Company Work”). This

Agreement does not provide for, and the Company Work shall not include, any construction or breach of ground surface at any property, or any provision of generation interconnection service or transmission service.

3.2 The Company shall use commercially reasonable efforts to perform the Company

Work in accordance with Good Utility Practice. Prior to the expiration of one (1)   
year following completion of the Company Work, 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 3.2 (each, a “Defect Notice”).   
If the Company Work is defective within the meaning of the prior sentence, then,   
following its receipt of a timely Defect Notice with respect thereto, the Company   
shall promptly correct, repair or replace such defective Company Work, as   
appropriate, provided, that, Company shall not have any obligation to correct, repair   
or replace such defective Company Work unless the defect in the Company Work   
has (or is reasonably likely to have) a material adverse impact on implementation   
of the Interconnection Project. The remedy set forth in this Section is the sole and   
exclusive remedy granted or available to Developer for any failure of Company to   
meet the performance standards or requirements set forth in this Agreement.

3.3 Subject to the terms of this Agreement, 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.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with

such other Party’s contractors, subcontractors and representatives, as needed to

facilitate the Company Wor

4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any requests for material additions, modifications,

or changes to the Work shall be communicated in writing by the Party making the   
request, and (b) if the Parties mutually agree to such addition, modification, or   
change to the applicable Work, such agreement shall be set forth in a written   
document signed by both Parties specifying such addition, modification or change.   
Any additional costs arising from such addition, modification or change to the   
Work shall be paid by Developer as part of Company Reimbursable Costs.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

4.2 The foregoing notwithstanding, the Company is not required to notify Developer

of, or to obtain the consent or agreement of the 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. Any additional costs arising from such   
change shall be paid by the 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 or

preliminary schedule in connection with this Agreement or the Project.

5.3 Commencement of Company Work. Company will proceed with the Company

Work promptly following Company’s receipt of the Initial Prepayment.

5.4 Procurement Commencement. Anything in this Agreement to the contrary

notwithstanding, 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   
Company.

6.0 [Reserved]

7.0 Developer Obligation to Pay Company Reimbursable Costs; Additional

Prepayments; Invoicing; Taxes

7.1 Developer shall pay or reimburse Company for all Company Reimbursable Costs

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

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

7.2 Developer shall provide Company with a prepayment of $210,000 (“Initial

Prepayment”), such amount representing Company’s current estimate of the   
Company Reimbursable Costs to perform the Company Work. The Company shall   
invoice Developer for the Initial Prepayment; Developer shall pay such amount to   
Company within five (5) Days of the invoice due date. Unless it elects to do so in   
its sole discretion, Company shall not be obligated to commence any Company   
Work under this Agreement prior to Company’s receipt of the Initial Prepayment.

7.3 If, during the performance of the Company Work, Company determines that one or

more additional prepayments are required before completing the Company Work,   
Company may, but is not required to, request additional prepayment (each, an   
“Additional Prepayment”) from Developer; any such requests will be in writing and   
be accompanied by an 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, Company   
may (but shall not be obligated to) cease work 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.

7.4 Company may invoice Developer, from time to time, for unpaid Company

Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue   
performance hereunder after the depletion of any prepayments and invoice   
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 date of   
invoice. If any payment due to Company under this Agreement is not made when   
due, 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 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, 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.

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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

7.6 If the FERC IA Acceptance Date occurs before the Initial Prepayment or any

Additional Prepayment has been fully used to pay invoices issued 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. The Company shall adjust the security to be provided   
under the Interconnection Agreement 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 electronic mail notice

to the Company:

Name: Taylor Quarles

Address: 25 Monroe Street # 301

Albany, NY 12210

Email: taylor.quarles@keycaptureenergy.com

accountspayable@keycaptureenergy.com

7.8 All payments made under this Agreement shall be made in immediately available

funds.

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

Wire Payment: JP Morgan Chase ABA#.021000021

Account#. 777149642

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

Bank: Bank of America   
ABA#: 026009593

Credit: Key Capture Energy, LLC Account #: 488066090566

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

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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 3.2. COMPANY MAKES NO   
WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION   
WITH THIS AGREEMENT, THE INTERCONNECTION PROJECT, OR ANY   
COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY,   
EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE   
IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A   
PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY   
EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive

the completion, expiration or earlier termination of this Agreement.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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.

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 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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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) any unforeseen conditions or occurrences beyond the reasonable   
control of Company (including, without limitation, delays in shipments of   
materials and equipment and the unavailability of materials), (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 peak demand periods or such   
other times as may be reasonably required to minimize or avoid risks to utility   
system reliability in accordance with Good Utility Practice.

12.7 Anything in this Agreement to the contrary notwithstanding, if any Party’s liability

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

12.8 Notwithstanding any other provision of this Agreement, this Article shall survive

the completion, expiration or earlier termination of this Agreement.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

13.0 Insurance; Employee and Contractor Claims

13.1 Prior to the commencement of any Company Work and during the term of this

Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit C of this Agreement, or the Company may elect to self-insure one or more of the insurance coverage amounts set forth in Exhibit C of this Agreement.

13.2 Prior to the commencement of any Work and during the term of this Agreement,

the 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 the Developer elects to self-insure in accordance with Section 13.2 hereof,

the Developer shall have its insurer furnish to the Company certificates of   
insurance, on forms approved by the Insurance Commissioner of the State of New   
York, evidencing the insurance coverage required by this Article, such certificates   
to be provided prior to the commencement of any Work under this Agreement.

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

13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be

solely responsible for the claims of its respective employees and contractors against   
such Party and shall release, defend, and indemnify the other Party, its Affiliates,   
and their respective officers, directors, employees, and representatives, from and   
against such claims. Notwithstanding any other provision of this Agreement, this   
Section shall survive the completion, expiration or earlier termination of this   
Agreement.

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 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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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

21.1 If either Party (the “Breaching Party”) (a) fails to pay any amount when due under

the terms of this Agreement or fails to comply with or perform, in any material   
respect, any of the other terms or conditions of this Agreement; (b) sells or transfers   
all or substantially all of its assets; (c) enters into any voluntary or involuntary   
bankruptcy proceeding or receivership; or (d) makes a general assignment for the   
benefit of its creditors, then the other Party (the “Non-Breaching Party”) shall have   
the right, without prejudice to any other right or remedy and after giving five (5)   
Days’ written prior notice to the Breaching Party and a reasonable opportunity for   
cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when   
due), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this   
Agreement. Subject to compliance with Section 22.1 of this Agreement, if   
applicable, the Non-Breaching Party shall also have the right to pursue any and all   
rights it may have against the Breaching Party under applicable law, subject to other   
applicable terms and conditions of this Agreement (including, without limitation,   
any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be

terminated upon prior written notice (i) by Company in the event that Company   
Work under this Agreement is suspended or delayed for a period exceeding sixty

(60) consecutive days as the result of any continuing dispute between the Parties,   
or (ii) under the circumstances contemplated by, and in accordance with, Section

18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this

Agreement as contemplated by any provision of this Agreement, each Party shall   
discontinue its performance hereunder to the extent feasible and make every   
reasonable effort to procure cancellation of existing commitments, orders and

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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, Developer shall also pay Company for:

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

(ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment,, 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

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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.

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   
Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving

Party) and its Representative shall keep in strict confidence and not disclose to any   
person (with the exception of the Representatives of the Receiving Party, to the   
extent each such Representative has a need to know in connection herewith and   
agrees to comply with the terms of this Article) any of the Disclosing Party’s   
Proprietary Information except as otherwise provided by the terms and conditions   
of this Agreement. The Receiving Party and its Representatives shall not use such   
Proprietary Information except for the purposes identified herein without the prior   
written approval of the Disclosing Party. The Receiving Party shall be solely liable   
for any breach of this Article to the extent caused by its Representatives. Developer   
agrees that any Proprietary Information will be used solely for the Project or the   
Interconnection 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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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

25.4 Each Party acknowledges that information and/or data disclosed under this

Agreement may include information that the Disclosing Party deems or determines   
to be “Critical Energy / Electric Infrastructure Information” consistent with   
applicable FERC rules and policies (“CEII”) and critical infrastructure protection   
information consistent with applicable NERC standards and procedures (“CIP”).   
Receiving Party shall, and shall cause its Representatives to, strictly comply with   
any and all laws, rules and regulations (including, without limitation, FERC and   
NERC regulations, rules, orders, standards, procedures and policies) applicable to   
any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that   
relates to any of Disclosing Party’s or Disclosing Party’s Affiliates’ facilities.

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

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

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets,

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

25.6 This Article shall survive any completion, expiration or earlier termination of this

Agreement.

26.0 Effect of Applicable Requirements; Governing Law

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking,

any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and

enforced in accordance with the laws of the State of New York, without reference to such State’s conflict-of-laws doctrine, and applicable Federal law. The Company and 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 delivered via electronic mail and shall be deemed received upon written confirmation of receipt of notice via electronic mail, such notice not to be unreasonably delayed (provided, that, if the date of acknowledgement is not a Day, then the date of receipt shall deemed to be the immediately succeeding Day).

27.2 Either Party may choose to provide supplemental notice the other Party by any of

the following methods, but such methods alone shall not be considered notice under   
this Agreement: (i) facsimile, (ii) United States mail, postage prepaid, certified or   
registered mail, or (ii) next-day delivery and prepaid for overnight delivery with a   
national overnight courier, addressed to the other Party at the following address:

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

To Developer: Key Capture Energy

Attn: Legal

25 Monroe Street, #301   
Albany, NY 12210

Phone: 516-279-2955, ext. 1003

Email: contracts@keycaptureenergy.com

cc: taylor.quarles@keycaptureenergy.com

To Company: Niagara Mohawk Power Corporation

Attn: Kevin Reardon

Director, Commercial Services

40 Sylvan Road

Waltham, MA 02451 (781) 907-2411

Email: kevin.reardon@nationalgrid.com

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.3 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.

27.4 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.

27.5 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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

27.6 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.

27.7 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.

27.8 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.

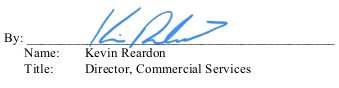
27.9 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer   
 on any person, other than the Parties, any rights or remedies under or by reason of   
 this Agreement.

27.10 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.]

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759



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

KCE NY 6, LLC

NIAGARA MOHAWK POWER CORPORATION

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A Scope of Company Work

Exhibit A-1 Facilities Study Report

Exhibit B Developer Required Actions

Exhibit C Insurance Requirements

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Subject to Sections 5.3 of this Agreement, perform the following design and engineering in

connection with the Interconnection Project consistent with the Facilities Study Report:

A. Project management and engineering services for the review of submitted Developer design documents for the Interconnection Customer’s Interconnection Facilities (“ICIF”) in connection with the Interconnection Project.

B. Project management and engineering services for the review of submitted Developer design documents for Connecting Transmission Owner’s Interconnection Facilities (“CTO IF”) in connection with the Interconnection Project.

C. Initiate engineering design for the Company's System Upgrade Facilities (“SUF”) in

connection with the Interconnection Project.

The terms "Interconnection Customer’s Interconnection Facilities",

"Connecting Transmission Owner’s Interconnection Facilities" and "System Upgrade

Facilities", as referred to above, shall have the meaning contemplated for each such term in the

Facilities Study Report or the NYISO Open Access Transmission Tariff, as applicable.

2. Subject to Section 5.4 of this Agreement, perform the following procurement and related

procurement activities in connection with the Interconnection Project consistent with the Facilities

Study Report:

A. Initiative engineering for three combination current/voltage transformer units as

described in Section V, subsection A of the Facilities Study Report (the “CT/VT Units”),.

B. Initiate procurement of the CT/VT Units.

C. Initiate engineering for all structures and associated foundations, as described in

Section V, subsection C of the Facilities Study Report (the “Tap Structures”).

D. Initiate procurement of Tap Structures.

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).

3. 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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

4. Review, from time to time, Company’s work contemplated herein and conduct other project

management, administration and oversight activities in connection with the work contemplated by this Exhibit.

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

work contemplated herein, including, without limitations, all documents and materials related to any Required Approvals.

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

contemplated herein.

7. Perform any other reasonable tasks necessary or advisable in connection with the work

contemplated by this Exhibit (including, without limitation, any changes thereto).

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 or the Interconnection Project (“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 Small Generator Interconnection 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.

The Company Work may be performed in any order as determined by the Company. For the   
avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any   
real property rights in connection with the Company Work, the Project, the Interconnection 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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

Exhibit A-1: Facilities Study Report

CRITICAL ENERGY/ELECTRIC INFRASTRUCTURE INFORMATION REDACTED   
 PURSUANT TO 18 C.F.R. §§ 388.112-113

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

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.

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

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

Exhibit C: Insurance Requirements

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: Key Capture Energy, LLC and KCE NY 6 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: Michael Keys

Lead Account Manager   
Commercial Services   
300 Erie Blvd West   
Syracuse, NY 13202

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

To: Key Capture Energy

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759

Attn: Taylor Quarles

25 Monroe Street, #301   
Albany, NY 12210   
Phone: 516-279-2955

Email: contracts@keycaptureenergy.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.

Engineering & Procurement Agreement - NMPC/KCE NY 6, LLC Q759