**SERVICE AGREEMENT NO. 2812**

**SERVICE AGREEMENT NO. 2812**

**AMENDED AND RESTATED**

**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**AMONG THE**

**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

**AND**

**NEXTERA ENERGY TRANSMISSION NEW YORK, INC.**

**AND**

**NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID**

**AND**

**ALLE-CATT WIND ENERGY LLC**

**Dated as of October 25, 2024**

**(East Stolle Road Substation Upgrades)**

**SERVICE AGREEMENT NO. 2812**

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**SERVICE AGREEMENT NO. 2812**

**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**THIS AMENDED AND RESTATED ENGINEERING, PROCUREMENT, AND**

**CONSTRUCTION AGREEMENT** (“Agreement”) is made and entered into this 25th day of

October 2024, by and among: (i) Alle-Catt Wind Energy LLC, a limited liability company

organized and existing under the laws of the State of Delaware (“Developer”), (ii) NextEra

Energy Transmission New York, Inc., a corporation organized and existing under the laws of the

State of New York (“Affected System Operator”); (iii) Niagara Mohawk Power Corporation

d/b/a National Grid a corporation organized and existing under the laws of the State of New

York (“Connecting Transmission Owner”); and (iv) the New York Independent System

Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of

New York (“NYISO”). The Developer, Affected System Operator or the NYISO each may be

referred to as a “Party” or collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS,** Developer is developing a wind generating facility, identified as the Alle Catt II

Wind project with NYISO Interconnection Queue No. 596 (“Large Generating Facility”) that

will interconnect to certain transmission facilities of Connecting Transmission Owner that are

part of the New York State Transmission System operated by the NYISO;

**WHEREAS,** Developer has entered into an interconnection agreement among the NYISO,

Connecting Transmission Owner, and Developer concerning the interconnection of the Large

Generating Facility;

**WHEREAS,** the Large Generating Facility will interconnect at the Connecting Transmission

Owner’s Lime Lake Substation and the interconnection will have certain impacts on the Affected

System owned by the Affected System Operator;

**WHEREAS**, the Class Year Interconnection Facilities Study for Class Year 2019 requires that

certain System Upgrade Facilities be constructed on the Affected System owned by Affected

System Operator to enable the Large Generating Facility to interconnect reliably to the New

York State Transmission System in a manner that meets the NYISO Minimum Interconnection

Standard (“Affected System Upgrade Facilities”);

**WHEREAS,** Developer has accepted, and provided security to the Affected System Operator to

cover, the costs identified in the Class Year Interconnection Facilities Study for Class Year 2019

for the Affected System Upgrade Facilities (“ASO Estimated Total Costs”);

**WHEREAS,** Developer and Affected System Operator desire to have Affected System Operator

and Connecting Transmission Owner perform, and Affected System Operator and Connecting

Transmission Owner are willing to perform, the engineering, procurement, and construction

services required to construct the Affected System Upgrade Facilities (“EPC Services”) in

accordance with the terms and conditions hereinafter set forth; and

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**WHEREAS**, Developer, Affected System Operator, Connecting Transmission Owner, and the

NYISO have agreed to enter into this Agreement for the purpose of allocating the responsibilities

for the performance and oversight of the EPC Services required to construct the Affected System

Upgrade Facilities;

**NOW, THEREFORE,** in consideration of and subject to the mutual covenants contained herein,

it is agreed:

**ARTICLE 1. DEFINITIONS**

Whenever used in this Agreement with initial capitalization, the following terms shall have the

meanings specified in thi[s Article 1. Te](#br6)rms used in this Agreement with initial capitalization that

are not defined in t[his Article 1](#br6) shall have the meanings specified in Section 1 of the ISO OATT,

Appendix 1 of Section 32.5 of Attachment Z of the ISO OATT, Section 30.1 of Attachment X of

the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, the body of the LFIP, or the

body of this Agreement.

**Affected System** shall mean the electric system of the Affected System Operator that is affected

by the Large Generating Facility.

**Affected System Operator** shall have the meaning set forth in the introductory paragraph.

**Affected System Upgrade Facilities** shall have the meaning set forth in the recitals and shall

consist of the System Upgrade Facilities described in Appendix A of this Agreement.

**Affiliate** shall mean, with respect to a person or entity, any individual, corporation, partnership,

firm, joint venture, association, joint-stock company, trust or unincorporated organization,

directly or indirectly controlling, controlled by, or under common control with, such person or

entity. The term “control” shall mean the possession, directly or indirectly, of the power to

direct the management or policies of a person or an entity. A voting interest of ten percent or

more shall create a rebuttable presumption of control.

**Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and

local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or

administrative orders, permits and other duly authorized actions of any Governmental Authority,

including but not limited to Environmental Law.

**Applicable Reliability Councils** shall mean the NERC, the NPCC and the NYSRC.

**Applicable Reliability Standards** shall mean the requirements and guidelines of the Applicable

Reliability Councils, and the Transmission District in which the Affected System Upgrade

Facilities will be constructed, as those requirements and guidelines are amended and modified

and in effect from time to time; provided that no Party shall waive its right to challenge the

applicability or validity of any requirement or guideline as applied to it in the context of this

Agreement.

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**ASO Estimated Total Cost** shall be the costs for the engineering, procurement, and construction

of the Affected System Upgrade Facilities, which costs were identified in the Interconnection

Facilities Study and are specified in Appendix A.

**Breach** shall mean the failure of a Party to perform or observe any material term or condition of

this Agreement.

**Breaching Party** shall mean a Party that is in Breach of this Agreement.

**Business Day** shall mean Monday through Friday, excluding federal holidays.

**Calendar Day** shall mean any day including Saturday, Sunday or a federal holiday.

**Completion Date** shall mean the later date on which the Affected System Operator and

Connecting Transmission Owner have completed their respective EPC Services, as set forth in

Appendix A.

**Confidential Information** shall mean any information that is defined as confidentia[l by Article](#br29)

[16](#br29) of this Agreement.

**Connecting Transmission Owner** shall have the meaning set forth in the recitals.

**Default** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in

accordance [with Article 11](#br24) of this Agreement.

**Developer** shall have the meaning set forth in the introductory paragraph.

**Effective Date** shall mean the date determined under Artic[le 2.1](#br10) of this Agreement.

**Environmental Law** shall mean Applicable Laws and Regulations relating to pollution or

protection of the environment or natural resources.

**EPC Services** shall have the meaning set forth in the recitals and shall consist of the services

described in Appendix A.

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

(“FPA”).

**FERC** shall mean the Federal Energy Regulatory Commission (“Commission”) or its successor.

**Force Majeure** shall mean any act of God, labor disturbance, act of the public enemy, war,

insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or

equipment, any order, regulation or restriction imposed by governmental, military or lawfully

established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure

event does not include acts of negligence or intentional wrongdoing by the Party claiming Force

Majeure.

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**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved

by a significant portion of the electric industry during the relevant time period, or any of the

practices, methods and acts which, in the exercise of reasonable judgment in light of the facts

known at the time the decision was made, could have been expected to accomplish the desired

result at a reasonable cost consistent with good business practices, reliability, safety and

expedition. Good Utility Practice is not intended to be limited to the optimum practice, method,

or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts

generally accepted in the region.

**Governmental Authority** shall mean any federal, state, local or other governmental regulatory

or administrative agency, court, commission, department, board, or other governmental

subdivision, legislature, rulemaking board, tribunal, or other governmental authority having

jurisdiction over any of the Parties, their respective facilities, or the respective services they

provide, and exercising or entitled to exercise any administrative, executive, police, or taxing

authority or power; provided, however, that such term does not include Developer, NYISO,

Affected System Operator, Connecting Transmission Owner, or any Affiliate thereof.

**Hazardous Substances** shall mean any chemicals, materials or substances defined as or

included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,”

“hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,”

“toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or

words of similar meaning and regulatory effect under any applicable Environmental Law, or any

other chemical, material or substance, exposure to which is prohibited, limited or regulated by

any applicable Environmental Law.

**In-Service Date** shall mean the date upon which the Affected System Upgrade Facilities are

energized consistent with the provisions of this Agreement, notice of which must be provided to

the NYISO in the form of Appendix C.

**Interconnection Facilities Study** shall mean a study conducted by NYISO or a third party

consultant for the Developer to determine a list of facilities (including Connecting Transmission

Owner’s Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System

Deliverability Upgrades as identified in the Interconnection System Reliability Impact Study),

the cost of those facilities, and the time required to interconnect the Large Generating Facility

with the New York State Transmission System or with the Distribution System. The scope of

the study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

**Interconnection Facilities Study Agreement (“Class Year Study Agreement”)** shall mean the

form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection

Procedures for conducting the Interconnection Facilities Study.

**Interconnection Request** shall mean a Developer’s request, in the form of Appendix 1 to the

Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to

interconnect a new Large Generating Facility to the New York State Transmission System or to

the Distribution System, or to materially increase the capacity of, or make a material

modification to the operating characteristics of, an existing Large Generating Facility that is

interconnected with the New York State Transmission System or with the Distribution System.

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**IRS** shall mean the Internal Revenue Service.

**Large Generating Facility** shall have the meaning set forth in the recitals.

**Large Generator Interconnection Agreement (“LGIA”)** shall mean the interconnection

agreement for the Large Generating Facility among the NYISO, Connecting Transmission

Owner, and the Developer.

**Milestones** shall mean the milestones for the performance of the EPC Services, as set forth in

Appendix A.

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

**New York State Transmission System** shall mean the entire New York State electric

transmission system, which includes (i) the Transmission Facilities Under ISO Operational

Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining

transmission facilities within the New York Control Area.

**Notice of Dispute** shall mean a written notice of a dispute or claim that arises out of or in

connection with this Agreement or its performance.

**NPCC** shall mean the Northeast Power Coordinating Council or its successor organization.

**NYISO Minimum Interconnection Standard** – The reliability standard that must be met by

any generation facility or Class Year Transmission Project that is subject to NYISO’s Large

Facility Interconnection Procedures in Attachment X to the ISO OATT or the NYISO’s Small

Generator Interconnection Procedures in Attachment Z, that is proposing to connect to the New

York State Transmission System or Distribution System, to obtain ERIS. The Minimum

Interconnection Standard is designed to ensure reliable access by the proposed project to the

New York State Transmission System or to the Distribution System. The Minimum

Interconnection Standard does not impose any deliverability test or deliverability requirement on

the proposed interconnection.

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

**Party or Parties** shall have the meaning set forth in the introductory paragraph.

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a

Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and

are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Security** shall mean a bond, irrevocable letter of credit, parent company guarantee or other form

of security from an entity or Connecting Transmission Owner, as applicable, with an investment

grade rating, executed for the benefit of the Affected System Operator, meeting the

commercially reasonable requirements of the Affected System Operator or CTO, as applicable,

with which it is required to be posted pursuant to Artic[le 6.2, a](#br21)nd consistent with the Uniform

Commercial Code of the jurisdiction identified in Artic[le 8.2.1](#br23) of this Agreement.

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**Services Tariff** shall mean the NYISO Market Administration and Control Area Tariff, as filed

with the Commission, and as amended or supplemented from time to time, or any successor tariff

thereto.

**Standard Large Facility Interconnection Procedures (“Large Facility Interconnection**

**Procedures” or “LFIP”)** shall mean the interconnection procedures applicable to an

Interconnection Request pertaining to a Large Generating Facility that are included in

Attachment X of the ISO OATT.

**System Upgrade Facilities** shall mean the least costly configuration of commercially available

components of electrical equipment that can be used, consistent with Good Utility Practice and

Applicable Reliability Requirements, to make the modifications to the existing transmission

system that are required to maintain system reliability due to: (i) changes in the system,

including such changes as load growth and changes in load pattern, to be addressed in the form

of generic generation or transmission projects; and (ii) proposed interconnections. In the case of

proposed interconnection projects, System Upgrade Facilities are the modifications or additions

to the existing New York State Transmission System that are required for the proposed project to

connect reliably to the system in a manner that meets the NYISO Minimum Interconnection

Standard.

**Tariff** shall mean the NYISO Open Access Transmission Tariff (“OATT”), as filed with the

Commission, and as amended or supplemented from time to time, or any successor tariff.

**ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION**

**Effective Date.**

This Agreement shall become effective upon the date of execution by the Parties, subject

to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO

and Affected System Operator shall promptly file this Agreement with FERC upon execution.

Developer and Connecting Transmission Owner shall reasonably cooperate with the NYISO and

Affected System Operator with respect to the filing of this Agreement with FERC and provide

any information reasonably requested by the NYISO needed for such filing.

**Term of Agreement.**

Subject to the provisions of Article [2.3, thi](#br10)s Agreement shall remain in effect until the

later of: (i) the Completion Date, and (ii) the date on which the final payment of all invoices

issued under this Agreement have been made pursuant to Articles [7.1](#br22) a[nd 7.3](#br22) and any remaining

Security has been released or refunded pursuant to Article [7.2.](#br22)

**Termination.**

**Completion of Term of Agreement**

This Agreement shall terminate upon the completion of the term of the Agreement

pursuant to Artic[le 2.2.](#br10)

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**Written Notice.**

This Agreement may be terminated: (i) by all Parties agreeing in writing to terminate this

Agreement, or (ii) by the NYISO, Connecting Transmission Owner, and the Affected System

Operator after giving the Developer ten (10) Calendar Days advanced written notice after the

Large Generator Interconnection Agreement for the Large Generating Facility among the

NYISO, Connecting Transmission Owner, and Developer has been terminated and such notice of

termination has been accepted by FERC.

**Default.**

Any Party may terminate this Agreement to the extent permitted unde[r Article 11](#br24) and

[Article 21.](#br36)

**Compliance.**

Notwithstanding Artic[les 2.3.1,](#br10) [2.3.2, and 2.3.3, no ter](#br11)mination of this Agreement shall

become effective until the Parties have complied with all Applicable Laws and Regulations

applicable to such termination, including the filing with FERC of a notice of termination of this

Agreement, which notice has been accepted for filing by FERC.

**Termination Costs.**

If this Agreement is terminated pursuant to Article [2.3.2](#br11) above, the Developer shall be

responsible for all costs that are the responsibility of the Developer under this Agreement that are

incurred by the Developer or the other Parties through the date the Parties agree in writing to

terminate this Agreement or through the date of the Developer’s receipt of a notice of

termination. Such costs include any cancellation costs relating to orders or contracts. In the

event of termination, all Parties shall use commercially Reasonable Efforts to mitigate the costs,

damages and charges arising as a consequence of termination. Upon termination of this

Agreement, unless otherwise ordered or approved by FERC.

With respect to any portion of the EPC Services that have not yet been performed,

the Developer shall, to the extent possible and with the Affected System Operator’s or

Connecting Transmission Owner’s authorization, as applicable, cancel any pending orders of, or

return, any materials or equipment for, or contracts for construction of, the Affected System

Upgrade Facilities; provided that in the event the Affected System Operator or Connecting

Transmission Owner elects not to authorize such cancellation, the Affected System Operator or

Connecting Transmission Owner shall assume all payment obligations with respect to such

materials, equipment, and contracts, and Developer shall deliver such material and equipment,

and, if necessary, assign such contracts, to Affected System Operator or Connecting

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Transmission Owner as soon as practicable, at Affected System Operator’s or Connecting

Transmission Owner’s expense.

Developer may, at its option, retain any portion of such materials or equipment

that Affected System Operator or Connecting Transmission Owner, as applicable, chooses not to

accept delivery of, in which case Developer shall be responsible for all costs associated with

procuring such materials or equipment.

With respect to any portion of the EPC Services already performed pursuant to

the terms of this Agreement, Developer shall be responsible for all costs associated with the

removal, relocation or other disposition or retirement of such related materials, equipment, or

facilities.

**Survival.**

This Agreement shall continue in effect after termination to the extent necessary to

provide for final billings and payments and for costs incurred hereunder; including billings and

payments pursuant to this Agreement; and to permit the determination and enforcement of

liability and indemnification obligations arising from acts or events that occurred while this

Agreement was in effect.

**ARTICLE 3. EPC SERVICES**

**Performance of EPC Services.**

Affected System Operator and Connecting Transmission Owner shall perform the EPC

Services, as set forth in Appendix A hereto, using Reasonable Efforts to complete the EPC

Services by the Milestone dates set forth in Appendix A hereto. Affected System Operator and

Connecting Transmission Owner shall not be required to undertake any action which inconsistent

with their standard safety practices, material and equipment specifications, design criteria and

construction procedures, labor agreements, and Applicable Laws and Regulations. In the event

Affected System Operator or Connecting Transmission Owner reasonably expects that it will not

be able to complete the EPC Services by the specified dates, Affected System Operator or

Connecting Transmission Owner, as applicable, shall promptly provide written notice to the

other Parties, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. The

NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC

Services under this Agreement.

**Equipment Procurement**

Affected System Operator or Connecting Transmission Owner, as applicable, shall

commence design of the Affected System Upgrade Facilities and procure necessary equipment as

soon as practicable after it receives written authorization to proceed with design and procurement

from the Developer by the date specified in Appendix A hereto, unless the Developer and the

Affected System Operator or Connecting Transmission Owner, as applicable, otherwise agree in

writing.

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**Construction Commencement**

Affected System Operator or Connecting Transmission Owner, as applicable, shall

commence construction of the Affected System Upgrade Facilities as soon as practicable after

the following conditions are satisfied:

Approval of the appropriate Governmental Authority has been obtained, to the

extent required, for the construction of a discrete aspect of the Affected System Upgrade

Facilities;

Necessary real property rights and rights-of-way have been obtained, to the extent

required, for the construction of a discrete aspect of the Affected System Upgrade Facilities; and

The Affected System Operator or Connecting Transmission Owner, as applicable,

have received from the Developer written authorization to proceed with construction in

accordance with the Milestones set forth in Appendix A.

**Work Progress.**

Affected System Operator and Connecting Transmission Owner will keep the Developer

and NYISO advised periodically as to the progress of their respective design, procurement and

construction efforts. Developer or NYISO may, at any time, request a progress report from the

Affected System Operator or Connecting Transmission Owner.

**Information Exchange.**

As soon as reasonably practicable after the Effective Date, Developer, Affected System

Operator, and Connecting Transmission Owner shall exchange information, and provide NYISO

the same information, regarding the design of the Affected System Upgrade Facilities and

compatibility of the Affected System Upgrade Facilities with the New York State Transmission

System, and shall work diligently and in good faith to make any necessary design changes.

Developer shall inform the Affected System Operator, Connecting Transmission Owner, and

NYISO of any termination of the Large Generator Interconnection Agreement for the Large

Generating Facility within ten (10) days of the termination of the Large Generator

Interconnection Agreement.

**Ownership of Affected System Upgrade Facilities.**

Affected System Operator shall own the Affected System Upgrade Facilities.

**Access Rights.**

Upon reasonable notice and supervision by the Granting Party, and subject to any

required or necessary regulatory approvals, Affected System Operator (“Granting Party”) shall

furnish to Developer and Connecting Transmission Owner (“Access Party”) at no cost any rights

of use, licenses, rights of way and easements with respect to lands owned or controlled by the

Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate,

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that are necessary to enable the Access Party to obtain ingress and egress to construct, operate,

maintain, repair, test (or witness testing), inspect, replace or remove Affected System Upgrade

Facilities. In exercising such licenses, rights of way and easements, the Access Party shall not

unreasonably disrupt or interfere with normal operation of the Granting Party’s business and

shall adhere to the safety rules and procedures established in advance, as may be changed from

time to time, by the Granting Party and provided to the Access Party. The Access Party shall

indemnify the Granting Party against all claims of injury or damage from third parties resulting

from the exercise of the access rights provided for herein.

**Lands of Other Property Owners.**

If any part of the Affected System Operator’s Affected System Upgrade Facilities is to be

installed on property owned by persons other than Developer or Affected System Operator, the

Affected System Operator shall at Developer’s expense use efforts, similar in nature and extent

to those that it typically undertakes for its own or affiliated generation, including use of its

eminent domain authority, and to the extent consistent with state law, to procure from such

persons any rights of use, licenses, rights of way and easements that are necessary to construct,

operate, maintain, test, inspect, replace or remove the Affected System Operator’s Affected

System Upgrade Facilities upon such property.

**Permits.**

NYISO, Developer, Connecting Transmission Owner, and Affected System Operator

shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations

that are necessary to accomplish the EPC Services in compliance with Applicable Laws and

Regulations. With respect to this paragraph, Affected System Operator shall provide permitting

assistance to the Developer comparable to that provided to the Affected System Operator’s own,

or an Affiliate’s generation, if any.

**Suspension**

Developer reserves the right, upon written notice to Affected System Operator,

Connecting Transmission Owner, and NYISO, to suspend at any time all work associated with

the construction and installation of the Affected System Upgrade Facilities required for only that

Developer’s Large Generating Facility with the condition that the New York State Transmission

System shall be left in a safe and reliable condition in accordance with Good Utility Practice and

the safety and reliability criteria of Affected System Operator, Connecting Transmission Owner,

and NYISO. In such event, Developer shall be responsible for all reasonable and necessary costs

and/or obligations in accordance with Attachment S to the ISO OATT including those which

Affected System Operator and Connecting Transmission Owner (i) have incurred pursuant to this

Agreement prior to the suspension and (ii) incur in suspending such work, including any costs

incurred to perform such work as may be necessary to ensure the safety of persons and property

and the integrity of the New York State Transmission System during such suspension and, if

applicable, any costs incurred in connection with the cancellation or suspension of material,

equipment and labor contracts which Affected System Operator or Connecting Transmission

Owner, as applicable, cannot reasonably avoid; provided, however, that prior to canceling or

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suspending any such material, equipment or labor contract, Affected System Operator shall

obtain Developer’s authorization to do so.

Affected System Operator and Connecting Transmission Owner shall invoice Developer

for such costs pursuant t[o Article 7](#br22) and shall use due diligence to minimize its costs. In the event

Developer suspends work required under this Agreement pursuant to this Artic[le 3.10, a](#br14)nd has

not requested Affected System Operator and Connecting Transmission Owner to recommence

the work required under this Agreement on or before the expiration of three (3) years following

commencement of such suspension, this Agreement shall be deemed terminated. The three-year

period shall begin on the date the suspension is requested, or the date of the written notice to

Affected System Operator, Connecting Transmission Owner, and NYISO, if no effective date is

specified.

**Taxes.**

**Developer Payments Not Taxable.**

The Affected System Operator intends that all payments or property transfers made by

Developer for the installation of the Affected System Upgrade Facilities shall be non-taxable,

either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code

and any applicable state income tax laws and shall not be taxable as contributions in aid of

construction or otherwise under the Internal Revenue Code and any applicable state income tax

laws.

**Representations and Covenants.**

In accordance with IRS Notice 2016-36 and IRS Notice 16-36, Developer represents and

covenants that (i) ownership of the electricity generated at the Affected System Upgrade

Facilities will pass to another party prior to the transmission of the electricity on the New York

State Transmission System, (ii) for income tax purposes, the amount of any payments and the

cost of any property transferred to the Affected System Operator for the Affected System

Upgrade Facilities will be capitalized by Developer as an intangible asset and recovered using

the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the

Affected System Upgrade Facilities that is a “dual-use intertie,” within the meaning of IRS

Notice 2016-36, is reasonably expected to carry only a de minimis amount of electricity in the

direction of the Large Generating Facility. For this purpose, “de minimis amount” means no

more than 5 percent of the total power flows in both directions, calculated in accordance with the

“5 percent test” set forth in IRS Notice 2016-36. This is not intended to be an exclusive list of

the relevant conditions that must be met to conform to IRS requirements for non-taxable

treatment.

At Affected System Operator’s request, Developer shall provide Affected System

Operator with a report from an independent engineer confirming its representation in clause (iii),

above. Developer represents and covenants that the cost of the Affected System Upgrade

Facilities paid for by Developer will have no net effect on the base upon which rates are

determined.

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**Indemnification for the Cost Consequences of Current Tax Liability Imposed**

**Upon the Affected System Operator.**

Notwithstanding Artic[le 3.11.1,](#br15) Developer shall protect, indemnify and hold harmless

Affected System Operator from the cost consequences of any current tax liability imposed

against Affected System Operator as the result of payments or property transfers made by

Developer to Affected System Operator under this Agreement, as well as any interest and

penalties, other than interest and penalties attributable to any delay caused by Affected System

Operator.

Affected System Operator shall not include a gross-up for the cost consequences of any

current tax liability in the amounts it charges Developer under this Agreement unless (i) Affected

System Operator has determined, in good faith, that the payments or property transfers made by

Developer to Affected System Operator should be reported as income subject to taxation or (ii)

any Governmental Authority directs Affected System Operator to report payments or property as

income subject to taxation; provided, however, that Affected System Operator may require

Developer to provide security, in a form reasonably acceptable to Affected System Operator

(such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of

any current tax liability under this Artic[le 3.10.](#br14) Developer shall reimburse Affected System

Operator for such costs on a fully grossed-up basis, in accordance with Artic[le 3.11.4, withi](#br16)n

thirty (30) Calendar Days of receiving written notification from Affected System Operator of the

amount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the

ten-year testing period and the applicable statute of limitation, as it may be extended by the

Affected System Operator upon request of the IRS, to keep these years open for audit or

adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related

indemnification obligations as contemplated by this Artic[le 3.10.](#br14)

**Tax Gross-Up Amount.**

Developer’s liability for the cost consequences of any current tax liability under this

Artic[le 3.10](#br14) shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed

to by the parties, this means that Developer will pay Affected System Operator, in addition to the

amount paid for the Affected System Upgrade Facilities, an amount equal to (1) the current taxes

imposed on Affected System Operator (“Current Taxes”) on the excess of (a) the gross income

realized by Affected System Operator as a result of payments or property transfers made by

Developer to Affected System Operator under this Agreement (without regard to any payments

under this Artic[le 3.10) (](#br14)the “Gross Income Amount”) over (b) the present value of future tax

deductions for depreciation that will be available as a result of such payments or property

transfers (the “Present Value Depreciation Amount”), plus (2) an additional amount sufficient to

permit the Affected System Operator to receive and retain, after the payment of all Current

Taxes, an amount equal to the net amount described in clause (1).

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For this purpose, (i) Current Taxes shall be computed based on Affected System

Operator’s composite federal and state tax rates at the time the payments or property transfers are

received and Affected System Operator will be treated as being subject to tax at the highest

marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present Value

Depreciation Amount shall be computed by discounting Affected System Operator’s anticipated

tax depreciation deductions as a result of such payments or property transfers by Affected

System Operator’s current weighted average cost of capital. Thus, the formula for calculating

Developer’s liability to Affected System Operator pursuant to this Artic[le 3.11.4](#br16) can be

expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value Depreciation

Amount))/(1 - Current Tax Rate).

**Private Letter Ruling or Change or Clarification of Law.**

At Developer’s request and expense, Affected System Operator shall file with the IRS a

request for a private letter ruling as to whether any property transferred or sums paid, or to be

paid, by Developer to Affected System Operator under this Agreement are subject to federal

income taxation. Developer will prepare the initial draft of the request for a private letter ruling,

and will certify under penalties of perjury that all facts represented in such request are true and

accurate to the best of Developer’s knowledge. Affected System Operator and Developer shall

cooperate in good faith with respect to the submission of such request.

Affected System Operator shall keep Developer fully informed of the status of such

request for a private letter ruling and shall execute either a privacy act waiver or a limited power

of attorney, in a form acceptable to the IRS, that authorizes Developer to participate in all

discussions with the IRS regarding such request for a private letter ruling. Affected System

Operator shall allow Developer to attend all meetings with IRS officials about the request and

shall permit Developer to prepare the initial drafts of any follow-up letters in connection with the

request.

**Subsequent Taxable Events.**

If, within 10 years from the date on which the relevant Affected System Upgrade

Facilities are placed in service, (i) Developer Breaches the covenants contained in Artic[le 3.11.2,](#br15)

(ii) a “disqualification event” occurs within the meaning of IRS Notice 2016-36, or (iii) this

Agreement terminates and Affected System Operator retains ownership of Affected System

Upgrade Facilities, Developer shall pay a tax gross-up for the cost consequences of any current

tax liability imposed on Affected System Operator, calculated using the methodology described

in Artic[le 3.11.4](#br16) and in accordance with IRS Notice 2016-36.

**Contests.**

In the event any Governmental Authority determines that Affected System Operator’s

receipt of payments or property constitutes income that is subject to taxation, Affected System

Operator shall notify Developer, in writing, within thirty (30) Calendar Days of receiving

notification of such determination by a Governmental Authority. Upon the timely written

request by Developer and at Developer’s sole expense, Affected System Operator may appeal,

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protest, seek abatement of, or otherwise oppose such determination. Upon Developer’s written

request and sole expense, Affected System Operator may file a claim for refund with respect to

any taxes paid under this Artic[le 3.10, whe](#br14)ther or not it has received such a determination.

Affected System Operator reserves the right to make all decisions with regard to the prosecution

of such appeal, protest, abatement or other contest, including the selection of counsel and

compromise or settlement of the claim, but Affected System Operator shall keep Developer

informed, shall consider in good faith suggestions from Developer about the conduct of the

contest, and shall reasonably permit Developer or Developer’s representative to attend contest

proceedings.

Developer shall pay to Affected System Operator on a periodic basis, as invoiced by

Affected System Operator, Affected System Operator’s documented reasonable costs of

prosecuting such appeal, protest, abatement or other contest, including any costs associated with

obtaining the opinion of independent tax counsel described in this Article [3.11.7. The](#br17) Affected

System Operator may abandon any contest if Developer fail to provide payment to the Affected

System Operator within thirty (30) Calendar Days of receiving such invoice. At any time during

the contest, Affected System Operator may agree to a settlement either with Developer consent

or after obtaining written advice from nationally-recognized tax counsel, selected by Affected

System Operator, but reasonably acceptable to Developer, that the proposed settlement

represents a reasonable settlement given the hazards of litigation. Developer’s obligation shall

be based on the amount of the settlement agreed to by Developer, or if a higher amount, so much

of the settlement that is supported by the written advice from nationally-recognized tax counsel

selected under the terms of the preceding sentence. The settlement amount shall be calculated on

a fully grossed-up basis to cover any related cost consequences of the current tax liability. The

Affected System Operator may also settle any tax controversy without receiving Developer’s

consent or any such written advice; however, any such settlement will relieve Developer from

any obligation to indemnify Affected System Operator for the tax at issue in the contest (unless

the failure to obtain written advice is attributable to Developer’s unreasonable refusal to the

appointment of independent tax counsel).

**Refund.**

In the event that (a) a private letter ruling is issued to Affected System Operator which

holds that any amount paid or the value of any property transferred by Developer to Affected

System Operator under the terms of this Agreement is not subject to federal income taxation, (b)

any legislative change or administrative announcement, notice, ruling or other determination

makes it reasonably clear to Affected System Operator in good faith that any amount paid or the

value of any property transferred by Developer to Affected System Operator under the terms of

this Agreement is not taxable to Affected System Operator, (c) any abatement, appeal, protest, or

other contest results in a determination that any payments or transfers made by Developer to

Affected System Operator are not subject to federal income tax, or (d) if Affected System

Operator receives a refund from any taxing authority for any overpayment of tax attributable to

any payment or property transfer made by Developer to Affected System Operator pursuant to

this Agreement, Affected System Operator shall promptly refund to Developer the following:

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(i)

Any payment made by Developer under this Artic[le 3.10](#br14) for taxes that is

attributable to the amount determined to be non-taxable, together with interest thereon,

(ii)

Interest on any amounts paid by Developer to Affected System Operator for such

taxes which Affected System Operator did not submit to the taxing authority, calculated in

accordance with the methodology set forth in FERC’s regulations at 18 C.F.R. §35.19a(a)(2)(iii)

from the date payment was made by Developer to the date Affected System Operator refunds

such payment to Developer, and

(iii) With respect to any such taxes paid by Affected System Operator any refund or

credit Affected System Operator receives or to which it may be entitled from any Governmental

Authority, interest (or that portion thereof attributable to the payment described in clause (i),

above) owed to the Affected System Operator for such overpayment of taxes (including any

reduction in interest otherwise payable by Affected System Operator to any Governmental

Authority resulting from an offset or credit); provided, however, that Affected System Operator

will remit such amount promptly to Developer only after and to the extent that Affected System

Operator has received a tax refund, credit or offset from any Governmental Authority for any

applicable overpayment of income tax related to the Affected System Operator’s Attachment

Facilities.

The intent of this provision is to leave both Developer and Affected System Operator, to

the extent practicable, in the event that no taxes are due with respect to any payment for Affected

System Upgrade Facilities hereunder, in the same position they would have been in had no such

tax payments been made.

**Taxes Other Than Income Taxes.**

Upon the timely request by Developer, and at Developer’s sole expense, Affected System

Operator shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal

or state income tax) asserted or assessed against Affected System Operator for which Developer

may be required to reimburse Affected System Operator under the terms of this Agreement.

Developer shall pay to Affected System Operator on a periodic basis, as invoiced by Affected

System Operator, Affected System Operator’s documented reasonable costs of prosecuting such

appeal, protest, abatement, or other contest. Developer and Affected System Operator shall

cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a

prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by

Developer to Affected System Operator for such taxes until they are assessed by a final, non-

appealable order by any court or agency of competent jurisdiction. In the event that a tax

payment is withheld and ultimately due and payable after appeal, Developer will be responsible

for all taxes, interest and penalties, other than penalties attributable to any delay caused by

Affected System Operator.

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**Tax Status; Non-Jurisdictional Entities.**

**Tax Status.**

Each Party shall cooperate with the other Parties to maintain the other Parties’ tax status.

Nothing in this Agreement is intended to adversely affect the tax status of any Party including

the status of NYISO, or the status of Affected System Operator, Connecting Transmission

Owner or Developer with respect to the issuance of bonds including, but not limited to, Local

Furnishing Bonds.

**Modification.**

**General**

If, prior to the In-Service Date, the Affected System Operator proposes to modify the

Affected System Upgrade Facilities, the Affected System Operator must provide to the NYISO

at least ninety (90) Calendar Days in advance of the commencement of the work, or such shorter

period upon which the Parties may agree, sufficient information for the NYISO to evaluate the

impact of the proposed modification on the reliable interconnection of Developer’s Large

Generating Facility to the New York State Transmission System. The NYISO’s agreement to

the proposed modification shall not be unreasonably withheld, conditioned, or delayed if the

proposed modification is reasonably related to the interconnection of the Large Generating

Facility, will enable Developer’s Large Generating Facility to reliably interconnect to the New

York State Transmission System, and will not impose additional costs to the Developer greater

than the estimated cost for the Affected System Upgrade Facilities determined in accordance

with Attachment S of the ISO OATT.

**Standards.**

Any additions, modifications, or replacements made to a Party’s facilities shall be

designed, constructed and operated in accordance with this Agreement, NYISO requirements and

Good Utility Practice.

**Modification Costs.**

Developer shall not be assigned the costs of any additions, modifications, or replacements

that Affected System Operator makes to the Affected System Upgrade Facilities or the New

York State Transmission System to facilitate the interconnection of a third party to the Affected

System Upgrade Facilities or the New York State Transmission System, or to provide

Transmission Service to a third party under the ISO OATT, except in accordance with the cost

allocation procedures in Attachment S of the ISO OATT.

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**ARTICLE 4. TESTING AND INSPECTION**

**Initial Testing and Modifications.**

In accordance with the Milestones set forth in Appendix A, Affected System Operator

and Connecting Transmission Owner shall test the Affected System Upgrade Facilities to ensure

their safe and reliable operation. Similar testing may be required after initial operation. Affected

System Operator shall make any modifications to the facilities that are found to be necessary as a

result of such testing. Developer shall bear the cost of all such testing and modifications.

**Notice of Testing.**

Affected System Operator shall notify Developer in advance of its performance of tests

of the Affected System Upgrade Facilities.

**ARTICLE 5. COMMUNICATIONS**

**No Annexation.**

Any and all equipment placed on the premises of a Party during the term of this

Agreement shall be and remain the property of the Party providing such equipment regardless of

the mode and manner of annexation or attachment to real property, unless otherwise mutually

agreed by the Party providing such equipment and the Party receiving such equipment.

**ARTICLE 6. PERFORMANCE OBLIGATIONS**

**EPC Services and Cost Responsibilities.**

Affected System Operator and Connecting Transmission Owner shall perform their

respective EPC Services described in Appendix A hereto at Developer’s sole expense up to the

ASO Estimated Total Costs amount. The Developer’s and Affected System Operator’s

respective responsibilities for the cost of Affected System Operator’s and Connecting

Transmission Owner’s performance of the EPC Services above the ASO Estimated Total Costs

amount shall be determined in accordance with Section 25.8.6 of Attachment S to the NYISO

OATT.

**Provision and Application of Security**

Developer has provided Affected System Operator and Connecting Transmission Owner

with Security in the amount of the ASO Estimated Total Costs for the Affected System Upgrade

Facilities in accordance with Attachment S to the ISO OATT. If the Developer: (i) does not pay

an invoice issued by Affected System Operator or Connecting Transmission Owner pursuant to

Artic[le 7.1](#br22) within the timeframe set forth in Article [7.3](#br22) or (ii) does not pay any disputed amount

into an independent escrow account pursuant to Artic[le 7.4, the unpa](#br22)id Party may draw upon

Developer’s Security to recover such payment. The Developer’s Security shall be reduced on a

dollar-for-dollar basis for Developer’s payments made to the Affected System Operator or

Connecting Transmission Owner, as applicable, for its performance of the EPC Services.

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**ARTICLE 7. INVOICE**

**General.**

To the extent that any amounts are due to the Developer, Connecting Transmission

Owner or Affected System Operator under this Agreement, including amounts due for the

performance of EPC Services above the ASO Estimated Total Costs in accordance with Section

25.8.6 of Attachment S to the NYISO OATT, the Developer, Connecting Transmission Owner,

or Affected System Operator, as applicable, shall submit to the other Part(ies), on a monthly

basis, invoices of amounts due for the preceding month. Each invoice shall state the month to

which the invoice applies and fully describe the services and equipment provided. The

Developer and Affected System Operator or Connecting Transmission Owner, as applicable,

may discharge mutual debts and payment obligations due and owing to each other on the same

date through netting, in which case all amounts one Party owes to the other Party under this

Agreement, including interest payments or credits, shall be netted so that only the net amount

remaining due shall be paid by the owing Party. Within six months after the Completion Date,

Developer, Connecting Transmission Owner or Affected System Operator, as applicable, shall

provide a final invoice to the other Party of any remaining amounts due associated with the EPC

Services.

**Refund of Remaining Security/Case and Overpayment Amount**

The Affected System Operator or Connecting Transmission Owner, as applicable, shall

release or refund to the Developer any remaining portions of its Security or cash payment

provided by the Developer pursuant to Article [7.2](#br22) and any amount the Developer has overpaid as

described in Secti[on 7.4](#br22) within 30 days of the later of: (i) the Developer’s payment of any final

invoice to the Affected System Operator or Connecting Transmission Owner, as applicable, and

(ii) Affected System Operator and Connecting Transmission Owner’s completion of the EPC

Services.

**Payment.**

Invoices shall be rendered to the paying Party at the address specified in Appendix B

hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of

receipt. All payments shall be made in immediately available funds payable to the other Party,

or by wire transfer to a bank named and account designated by the invoicing Party. Payment of

invoices will not constitute a waiver of any rights or claims the paying Party may have under this

Agreement.

**Disputes.**

In the event of a billing dispute between Parties, the Party owed money shall continue to

perform under this Agreement as long as the other Party: (i) continues to make all payments not

in dispute; and (ii) pays to the Party owed money or into an independent escrow account the

portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes

money fails to meet these two requirements for continuation of service, then the Party owed

money may provide notice to the other Party of a Default pursuant t[o Article 11. W](#br24)ithin thirty

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(30) Calendar Days after the resolution of the dispute, the Party that owes money to the other

Party shall pay the amount due with interest calculated in accord with the methodology set forth

in FERC’s Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

**ARTICLE 8. REGULATORY REQUIRMENTS AND GOVERNING LAW**

**Regulatory Requirements**

Each Party’s obligations under this Agreement shall be subject to its receipt of any

required approval or certificate from one or more Governmental Authorities in the form and

substance satisfactory to the applying Party, or the Party making any required filings with, or

providing notice to, such Governmental Authorities, and the expiration of any time period

associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain

such other approvals. Nothing in this Agreement shall require a Party to take any action that

could result in its inability to obtain, or its loss of, status or exemption under the Federal Power

Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies

Act of 1978, as amended.

**Governing Law.**

The validity, interpretation and performance of this Agreement and each of its

provisions shall be governed by the laws of the state of New York, without regard to its conflicts

of law principles.

This Agreement is subject to all Applicable Laws and Regulations.

Each Party expressly reserves the right to seek changes in, appeal, or otherwise

contest any laws, orders, rules, or regulations of a Governmental Authority.

**ARTICLE 9. NOTICES**

**General.**

Unless otherwise provided in this Agreement, any notice, demand or request required or

permitted to be given by a Party to the other Parties and any instrument required or permitted to

be tendered or delivered by a Party in writing to the other Parties shall be effective when

delivered and may be so given, tendered or delivered, by recognized national courier, or by

depositing the same with the United States Postal Service with postage prepaid, for delivery by

certified or registered mail, addressed to the Party, or personally delivered to the Party, at the

address set out in Appendix B hereto.

A Party may change the notice information in this Agreement by giving five (5) Business

Days written notice prior to the effective date of the change.

**Billings and Payments.**

Billings and payments shall be sent to the addresses set out in Appendix B hereto.

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**Alternative Forms of Notice.**

Any notice or request required or permitted to be given by a Party to the other Parties and

not required by this Agreement to be given in writing may be so given by telephone, facsimile or

email to the telephone numbers and email addresses set out in Appendix B hereto.

**ARTICLE 10. FORCE MAJEURE**

**General**

Economic hardship is not considered a Force Majeure event. A Party shall not be

responsible or liable, or deemed, in Default with respect to any obligation hereunder, other than

the obligation to pay money when due, to the extent the Party is prevented from fulfilling such

obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an

obligation to pay money when due) by reason of Force Majeure shall give notice and the full

particulars of such Force Majeure to the other Parties in writing or by telephone as soon as

reasonably possible after the occurrence of the cause relied upon. Telephone notices given

pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall

specifically state full particulars of the Force Majeure, the time and date when the Force Majeure

occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall

exercise due diligence to remove such disability with reasonable dispatch, but shall not be

required to accede or agree to any provision not satisfactory to it in order to settle and terminate a

strike or other labor disturbance.

**ARTICLE 11. DEFAULT**

**General.**

No Breach shall exist where such failure to discharge an obligation (other than the

payment of money) is the result of Force Majeure as defined in this Agreement or the result of an

act or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give written

notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days

from receipt of the Breach notice within which to cure such Breach; provided however, if such

Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall

commence such cure within thirty (30) Calendar Days after notice and continuously and

diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach

notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

**Right to Terminate.**

If a Breach is not cured as provided in this Article [11.2, or if](#br24) a Breach is not capable of

being cured within the period provided for herein, the non-Breaching Parties acting together shall

thereafter have the right to declare a Default and terminate this Agreement by written notice at

any time until cure occurs, and be relieved of any further obligation hereunder and, whether or

not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due

hereunder, plus all other damages and remedies to which they are entitled at law or in equity.

The provisions of this Article will survive termination of this Agreement.

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**ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

**Indemnity.**

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save

harmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and all

damages, losses, claims, including claims and actions relating to injury to or death of any person

or damage to property, the alleged violation of any Environmental Law, or the release or

threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses,

court costs, attorney fees, and all other obligations by or to third parties (any and all of these a

“Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of its

obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the

Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the

gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the

Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any

Hazardous Substance.

**Indemnified Party.**

If a Party is entitled to indemnification unde[r this Article 12](#br25) as a result of a claim by a

third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed

under Artic[le 12.1.3, to](#br25) assume the defense of such claim, such Indemnified Party may at the

expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with

respect to, or pay in full, such claim.

**Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party

harmless under thi[s Article 12, the a](#br25)mount owing to the Indemnified Party shall be the amount of

such Indemnified Party’s actual Loss, net of any insurance or other recovery.

**Indemnity Procedures.**

Promptly after receipt by an Indemnified Party of any claim or notice of the

commencement of any action or administrative or legal proceeding or investigation as to which

the indemnity provided for in Artic[le 12.1](#br25) may apply, the Indemnified Party shall notify the

Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a

Party’s indemnification obligation unless such failure or delay is materially prejudicial to the

Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense

thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the

Indemnified Party. If the defendants in any such action include one or more Indemnified Parties

and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be

legal defenses available to it and/or other Indemnified Parties which are different from or

additional to those available to the Indemnifying Party, the Indemnified Party shall have the right

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to select separate counsel to assert such legal defenses and to otherwise participate in the defense

of such action on its own behalf. In such instances, the Indemnifying Party shall only be

required to pay the fees and expenses of one additional attorney to represent an Indemnified

Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action,

suit or proceeding, the defense of which has been assumed by the Indemnifying Party.

Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and

control the defense of any such action, suit or proceedings if and to the extent that, in the opinion

of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential

imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of

interest between the Indemnified Party and the Indemnifying Party, in such event the

Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not

settle or consent to the entry of any judgment in any action, suit or proceeding without the

consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or

delayed.

**No Consequential Damages.**

Other than the indemnity obligations set forth in Artic[le 12.1, in no eve](#br25)nt shall any Party

be liable under any provision of this Agreement for any losses, damages, costs or expenses for

any special, indirect, incidental, consequential, or punitive damages, including but not limited to

loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary

equipment or services, whether based in whole or in part in contract, in tort, including

negligence, strict liability, or any other theory of liability; provided, however, that damages for

which a Party may be liable to another Party under separate agreement will not be considered to

be special, indirect, incidental, or consequential damages hereunder.

**Insurance.**

Affected System Operator and Connecting Transmission Owner shall each, at its own

expense, procure and maintain in force throughout the period of this Agreement and until

released by the other Parties, the following minimum insurance coverages, with insurance

companies licensed to write insurance or approved eligible surplus lines carriers in the state of

New York with a minimum A.M. Best rating of A or better for financial strength, and an A.M.

Best financial size category of VIII or better:

Employers’ Liability and Workers’ Compensation Insurance providing

statutory benefits in accordance with the laws and regulations of New York State.

Commercial General Liability (“CGL”) Insurance including premises and

operations, personal injury, broad form property damage, broad form blanket contractual liability

coverage products and completed operations coverage, coverage for explosion, collapse and

underground hazards, independent contractors coverage, coverage for pollution to the extent

normally available and punitive damages to the extent normally available using Insurance

Services Office, Inc. Commercial General Liability Coverage (“ISO CG”) Form CG 00 01 04 13

or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two Million

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Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate combined

single limit for personal injury, bodily injury, including death and property damage.

Comprehensive Automobile Liability Insurance for coverage of owned

and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads,

with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for

bodily injury, including death, and property damage.

If applicable, the Commercial General Liability and Comprehensive

Automobile Liability Insurance policies should include contractual liability for work in

connection with construction or demolition work on or within 50 feet of a railroad, or a separate

Railroad Protective Liability Policy should be provided.

Excess Liability Insurance over and above the Employers’ Liability,

Commercial General Liability and Comprehensive Automobile Liability Insurance coverages,

with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence

and Twenty Million Dollars ($20,000,000) aggregate. The Excess policies should contain the

same extensions listed under the Primary policies.

The Commercial General Liability Insurance, Comprehensive Automobile

Insurance and Excess Liability Insurance policies of Connecting Transmission Owner and

Affected System Operator shall name the Developer, its parent, associated and Affiliate

companies and their respective directors, officers, agents, servants and employees (“Other Party

Group”) as additional insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04

13 or CG 20 10 04 13 and CG 20 37 04 13 or equivalent to or better forms. All policies shall

contain provisions whereby the insurers waive all rights of subrogation in accordance with the

provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar

days advance written notice to the Other Party Group prior to anniversary date of cancellation or

any material change in coverage or condition.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify

that the policies are primary and non-contributory. Affected System Operator and Connecting

Transmission Owner shall be responsible for its respective deductibles or retentions.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made

Basis, shall be maintained in full force and effect for at least three (3) years after termination of

this Agreement, which coverage may be in the form of tail coverage or extended reporting period

coverage if agreed by the Developer and Affected System Operator or Connecting Transmission

Owner, as applicable.

If applicable, Pollution Liability Insurance in an amount no less than

$7,500,000 per occurrence and $7,500,000 in the aggregate. The policy will provide coverage

for claims resulting from pollution or other environmental impairment arising out of or in

connection with work performed on the premises by the other party, its contractors and and/or

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subcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, third

party bodily injury and property damage and remediation and will be written on an occurrence

basis. The policy shall name the Other Party Group as additional insureds, be primary and

contain a waiver of subrogation.

The requirements contained herein as to the types and limits of all

insurance to be maintained by Affected System Operator and Connecting Transmission Owner

are not intended to and shall not in any manner, limit or qualify the liabilities and obligations

assumed by the Affected System Operator or Connecting Transmission Owner under this

Agreement.

Within thirty (30) days following execution of this Agreement, and as

soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and

in any event within ninety (90) days thereafter, Affected System Operator and Connecting

Transmission Owner shall each provide Developer with a certificate of insurance for all

insurance required in this Agreement, executed by each insurer or by an authorized

representative of each insurer.

Notwithstanding the foregoing, Affected System Operator and Connecting

Transmission Owner may each self-insure to meet the minimum insurance requirements of

Artic[les 12.3.1](#br26) [through 12.3.9](#br27) to the extent it maintains a self-insurance program; provided that

its senior debt is rated at investment grade, or better, by Standard & Poor’s and that its self-

insurance program meets the minimum insurance requirements of Artic[les 12.3.1](#br26) [through 12.3.9.](#br27)

In the event that a Party is permitted to self-insure pursuant to this Artic[le 12.3.12, it](#br28) shall notify

Developer that it meets the requirements to self-insure and that its self-insurance program meets

the minimum insurance requirements in a manner consistent with that specified in Artic[les 12.3.1](#br26)

[through 12.3.9](#br27) and provide evidence of such coverages. For any period of time that Affected

System Operator’s or Connecting Transmission Owner’s senior debt is unrated by Standard &

Poor’s or is rated at less than investment grade by Standard & Poor’s, Affected System Operator

or Connecting Transmission Owner, as applicable, shall comply with the insurance requirements

applicable to it under Artic[les 12.3.1](#br26) [through 12.3.9.](#br27)

Developer, Affected System Operator, and Connecting Transmission

Owner agree to report to each other in writing as soon as practical all accidents or occurrences

resulting in injuries to any person, including death, and any property damage arising out of this

Agreement.

Subcontractors of each party must maintain the same insurance

requirements stated under Artic[les 12.3.1](#br26) [through 12.3.9](#br27) and comply with the Additional Insured

requirements herein. In addition, their policies must state that they are primary and non-

contributory and contain a waiver of subrogation.

**ARTICLE 13. ASSIGNMENT**

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**Assignment.**

This Agreement may be assigned by a Party only with the written consent of the other

Parties; provided that a Party may assign this Agreement without the consent of the other Parties

to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal

authority and operational ability to satisfy the obligations of the assigning Party under this

Agreement; provided further that a Party may assign this Agreement without the consent of the

other Parties in connection with the sale, merger, restructuring, or transfer of a substantial

portion or all of its assets, so long as the assignee in such a transaction directly assumes in

writing all rights, duties and obligations arising under this Agreement; and provided further that

the Developer shall have the right to assign this Agreement, without the consent of the NYISO,

Connecting Transmission Owner, or Affected System Operator, for collateral security purposes

to aid in providing financing for the Large Generating Facility, provided that the Developer will

promptly notify the NYISO, Connecting Transmission Owner, and Affected System Operator of

any such assignment. Any financing arrangement entered into by the Developer pursuant to this

Article will provide that prior to or upon the exercise of the secured party’s, trustee’s or

mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or

mortgagee will notify the NYISO, Connecting Transmission Owner, and Affected System

Operator of the date and particulars of any such exercise of assignment right(s) and will provide

the NYISO, Connecting Transmission Owner and Affected System Operator with proof that it

meets the requirements of Artic[les 6.2](#br21) a[nd 12.3.](#br26) Any attempted assignment that violates this

Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of

its obligations, nor shall a Party’s obligations be enlarged, in whole or in part, by reason thereof.

Where required, consent to assignment will not be unreasonably withheld, conditioned or

delayed.

**ARTICLE 14. SEVERABILITY**

If any provision in this Agreement is finally determined to be invalid, void or

unenforceable by any court or other Governmental Authority having jurisdiction, such

determination shall not invalidate, void or make unenforceable any other provision, agreement or

covenant of this Agreement.

**ARTICLE 15. COMPARABILITY**

The Parties will comply with all applicable comparability and code of conduct laws, rules

and regulations, as amended from time to time.

**ARTICLE 16. CONFIDENTIALITY**

**Confidentiality.**

Certain information exchanged by the Parties during the term of this Agreement shall

constitute confidential information (“Confidential Information”) and shall be subject to this

[Article 16.](#br29)

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If requested by a Party receiving information, the Party supplying the information shall

provide in writing, the basis for asserting that the information referred to in this Article warrants

confidential treatment, and the requesting Party may disclose such writing to the appropriate

Governmental Authority. Each Party shall be responsible for the costs associated with affording

confidential treatment to its information.

**Term.**

During the term of this Agreement, and for a period of three (3) years after the expiration

or termination of this Agreement, except as otherwise provided in thi[s Article 16, e](#br29)ach Party

shall hold in confidence and shall not disclose to any person Confidential Information.

**Confidential Information.**

The following shall constitute Confidential Information: (1) any non-public information

that is treated as confidential by the disclosing Party and which the disclosing Party identifies as

Confidential Information in writing at the time, or promptly after the time, of disclosure; or (2)

information designated as Confidential Information by the NYISO Code of Conduct contained in

Attachment F to the ISO OATT.

**Scope.**

Confidential Information shall not include information that the receiving Party can

demonstrate: (1) is generally available to the public other than as a result of a disclosure by the

receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential

basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party

without restriction by a third party, who, to the knowledge of the receiving Party after due

inquiry, was under no obligation to the disclosing Party to keep such information confidential;

(4) was independently developed by the receiving Party without reference to Confidential

Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act

or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance

with Artic[le 16.9](#br31) of this Agreement, Order of Disclosure, to be disclosed by any Governmental

Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any

legal proceeding establishing rights and obligations under this Agreement. Information

designated as Confidential Information will no longer be deemed confidential if the Party that

designated the information as confidential notifies the other Party that it no longer is

confidential.

**Release of Confidential Information.**

No Party shall release or disclose Confidential Information to any other person, except to

its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees,

consultants, or to parties who may be considering providing financing to or equity participation

with Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis in

connection with this Agreement, unless such person has first been advised of the confidentiality

provisions [of this Article 16](#br29) and has agreed to comply with such provisions. Notwithstanding

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the foregoing, a Party providing Confidential Information to any person shall remain primarily

responsible for any release of Confidential Information in contravention of thi[s Article 16.](#br29)

**Rights.**

Each Party retains all rights, title, and interest in the Confidential Information that each

Party discloses to the other Party. The disclosure by each Party to the other Parties of

Confidential Information shall not be deemed a waiver by any Party or any other person or entity

of the right to protect the Confidential Information from public disclosure.

**No Warranties.**

By providing Confidential Information, no Party makes any warranties or representations

as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party

obligates itself to provide any particular information or Confidential Information to the other

Parties nor to enter into any further agreements or proceed with any other relationship or joint

venture.

**Standard of Care.**

Each Party shall use at least the same standard of care to protect Confidential Information

it receives as it uses to protect its own Confidential Information from unauthorized disclosure,

publication or dissemination. Each Party may use Confidential Information solely to fulfill its

obligations to the other Parties under this Agreement or its regulatory requirements, including the

ISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information it

receives in accordance with the requirements of Attachment F to the ISO OATT.

**Order of Disclosure.**

If a court or a Government Authority or entity with the right, power, and apparent

authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories,

requests for production of documents, administrative order, or otherwise, to disclose Confidential

Information, that Party shall provide the other Parties with prompt notice of such request(s) or

requirement(s) so that the other Parties may seek an appropriate protective order or waive

compliance with the terms of this Agreement. Notwithstanding the absence of a protective order

or waiver, the Party may disclose such Confidential Information which, in the opinion of its

counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to

obtain reliable assurance that confidential treatment will be accorded any Confidential

Information so furnished.

**Termination of Agreement.**

Upon termination of this Agreement for any reason, each Party shall, within ten (10)

Calendar Days of receipt of a written request from the other Parties, use Reasonable Efforts to

destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the

other Parties) or return to the other Parties, without retaining copies thereof, any and all written

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or electronic Confidential Information received from the other Parties pursuant to this

Agreement.

**Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for

another Party’s Breach of its obligations under thi[s Article 16. Ea](#br29)ch Party accordingly agrees

that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the

first Party Breaches or threatens to Breach its obligations under thi[s Article 16, whic](#br29)h equitable

relief shall be granted without bond or proof of damages, and the receiving Party shall not plead

in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an

exclusive remedy for the Breac[h of this Article 16,](#br29) but shall be in addition to all other remedies

available at law or in equity. The Parties further acknowledge and agree that the covenants

contained herein are necessary for the protection of legitimate business interests and are

reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential

or punitive damages of any nature or kind resulting from or arising in connection with this

[Article 16.](#br29)

**Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in t[his Article 16](#br29) to the contrary, and pursuant to 18 C.F.R.

section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests

information from one of the Parties that is otherwise required to be maintained in confidence

pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information

to FERC or its staff, within the time provided for in the request for information. In providing the

information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,

request that the information be treated as confidential and non-public by FERC and its staff and

that the information be withheld from public disclosure. Parties are prohibited from notifying

the other Parties to this Agreement prior to the release of the Confidential Information to the

Commission or its staff. The Party shall notify the other Parties to the Agreement when it is

notified by FERC or its staff that a request to release Confidential Information has been received

by FERC, at which time the Parties may respond before such information would be made public,

pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a

confidential investigation shall be treated in a similar manner if consistent with the applicable

state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise,

resulting from that Party divulging Confidential Information pursuant to a FERC or state

regulatory body request under this paragraph.

**Required Notices Upon Requests or Demands for Confidential Information**

Except as otherwise expressly provided herein, no Party shall disclose Confidential

Information to any person not employed or retained by the Party possessing the Confidential

Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the

disclosing Party to be required to be disclosed in connection with a dispute between or among

the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the

other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its

obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any

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disclosures of a Party’s Confidential Information under this subparagraph, or if any third party or

Governmental Authority makes any request or demand for any of the information described in

this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and

agrees to assert confidentiality and cooperate with the other Party in seeking to protect the

Confidential Information from public disclosure by confidentiality agreement, protective order or

other reasonable measures.

**ARTICLE 17. AFFECTED**

**SYSTEM**

**OPERATOR**

**AND**

**CONNECTING**

**TRANSMISSION OWNER NOTICES OF ENVIRONMENTAL RELEASES**

Affected System Operator or Connecting Transmission Owner, as applicable, shall notify

Developer, first orally and then in writing, of the release of any Hazardous Substances, any

asbestos or lead abatement activities, or any type of remediation activities related to the Affected

System Upgrade Facilities, each of which may reasonably be expected to affect the other Parties.

Affected System Operator or Connecting Transmission Owner, as applicable, shall: (i) provide

the notice as soon as practicable, provided such Party makes a good faith effort to provide the

notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii)

promptly furnish to the other Parties copies of any publicly available reports filed with any

Governmental Authorities addressing such events.

**ARTICLE 18. INFORMATION REQUIRMENT**

**Information Acquisition**

Affected System Operator, Connecting Transmission Owner and Developer shall each

submit specific information regarding the electrical characteristics of their respective facilities to

the other Parties and to the NYISO as described below and in accordance with Applicable

Reliability Standards.

**Information Submission by Affected System Operator**

On a monthly basis, Affected System Operator and Connecting Transmission Owner

shall provide Developer and NYISO a status report on the construction and installation of the

Affected System Upgrade Facilities, including, but not limited to, the following information: (1)

progress to date; (2) a description of the activities since the last report; (3) a description of the

action items for the next period; and (4) the delivery status of equipment ordered.

**Information Submission by Developer**

Developer shall submit to Affected System Operator and Connecting Transmission Owner a

completed copy of the Large Generating Facility data requirements contained in Appendix 1 to

the Standard Large Facility Interconnection Procedures. It shall also include any additional

information provided to Affected System Operator for the Interconnection Facilities Study.

Information in this submission shall be the most current Large Generating Facility design or

expected performance data. Information submitted for stability models shall be compatible with

NYISO standard models. If there is no compatible model, the Developer will work with a

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consultant mutually agreed to by the Parties to develop and supply a standard model and

associated information.

If the Developer’s data is different from what was originally provided to Affected System

Operator, Connecting Transmission Owner and NYISO and this difference may be reasonably

expected to affect the other Parties’ facilities or the New York State Transmission System, but

does not require the submission of a new Interconnection Request, then NYISO will conduct

appropriate studies to determine the impact on the New York State Transmission System based

on the actual data submitted pursuant to this Artic[le 18.3. S](#br33)uch studies will provide an estimate

of any additional modifications to the New York State Transmission System or Affected System

Upgrade Facilities based on the actual data and a good faith estimate of the costs thereof. The

Developer shall not begin Trial Operation until such studies are completed. The Developer shall

be responsible for the cost of any modifications required by the actual data, including the cost of

any required studies.

**Information Supplementation**

Affected System Operator, Connecting Transmission Owner and Developer shall

supplement its information submissions described above in t[his Article 18](#br33) with any and all “as

built” information or “as tested” performance information that differs from the initial

submissions or, alternatively, written confirmation that no such differences exist.

**ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS**

**Information Access.**

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting

Party”) information that is in the possession of the Disclosing Party and is necessary in order for

the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the

Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and

responsibilities under this Agreement. The Parties shall not use such information for purposes

other than those set forth in this Article [19.1](#br34) of this Agreement and to enforce their rights under

this Agreement.

**Reporting of Non-Force Majeure Events.**

Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Party

becomes aware of its inability to comply with the provisions of this Agreement for a reason other

than a Force Majeure event. The Parties agree to cooperate with each other and provide

necessary information regarding such inability to comply, including the date, duration, reason for

the inability to comply, and corrective actions taken or planned to be taken with respect to such

inability to comply. Notwithstanding the foregoing, notification, cooperation or information

provided under this Article shall not entitle the Party receiving such notification to allege a cause

for anticipatory breach of this Agreement.

**Audit Rights.**

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Subject to the requirements of confidentiality under [Article 16](#br29) of this Agreement, each

Party shall have the right, during normal business hours, and upon prior reasonable notice to

another Party, to audit at its own expense the other Party’s accounts and records pertaining to the

other Party’s performance or satisfaction of its obligations under this Agreement. Such audit

rights shall include audits of the other Party’s costs, and calculation of invoiced amounts. Any

audit authorized by this Article shall be performed at the offices where such accounts and

records are maintained and shall be limited to those portions of such accounts and records that

relate to the Party’s performance and satisfaction of obligations under this Agreement. Each

Party shall keep such accounts and records for a period equivalent to the audit rights periods

described in Artic[le 19.4](#br35) of this Agreement.

**Audit Rights Periods.**

**Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of

the Affected System Upgrade Facilities shall be subject to audit for a period of twenty-four

months following the issuance of a final invoice in accordance with Article [7.1](#br22) of this

Agreement.

**Audit Rights Period for All Other Accounts and Records.**

Accounts and records related to a Party’s performance or satisfaction of its obligations

under this Agreement other than those described in Article [19.4.1](#br35) of this Agreement shall be

subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights

period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to

such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit

rights period shall be twenty-four months after the event for which the audit is sought.

**Audit Results.**

If an audit by a Party determines that an overpayment or an underpayment has occurred, a

notice of such overpayment or underpayment shall be given to the other Party together with

those records from the audit which support such determination.

**ARTICLE 20. SUBCONTRACTORS**

**General.**

Nothing in this Agreement shall prevent a Party from utilizing the services of any

subcontractor as it deems appropriate to perform its obligations under this Agreement; provided,

however, that each Party shall require its subcontractors to comply with all applicable terms and

conditions of this Agreement in providing such services and each Party shall remain primarily

liable to the other Parties for the performance of such subcontractor.

**Responsibility of Principal.**

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The creation of any subcontract relationship shall not relieve the hiring Party of any of its

obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties

for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been

made; provided, however, that in no event shall the NYISO, Affected System Operator, or

Connecting Transmission Owner be liable for the actions or inactions of Developer or its

subcontractors with respect to obligations of the Developer unde[r Article 3](#br12) of this Agreement.

Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally

binding upon, and shall be construed as having application to, any subcontractor of such Party.

**No Limitation by Insurance.**

The obligations unde[r this Article 20](#br35) will not be limited in any way by any limitation of

subcontractor’s insurance.

**ARTICLE 21. DISPUTES**

**Submission.**

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection

with this Agreement or its performance (a “Dispute”), such Party shall provide the other Parties

with written notice of the Dispute (“Notice of Dispute”). Such Dispute shall be referred to a

designated senior representative of each Party for resolution on an informal basis as promptly as

practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated

representatives are unable to resolve the Dispute through unassisted or assisted negotiations

within thirty (30) Calendar Days of the other Parties’ receipt of the Notice of Dispute, such

Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in

accordance with the arbitration procedures set forth below. In the event the Parties do not agree

to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it

may have in equity or at law consistent with the terms of this Agreement.

**External Arbitration Procedures.**

Any arbitration initiated under this Agreement shall be conducted before a single neutral

arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten

(10) Calendar Days of the submission of the Dispute to arbitration, the Parties shall invoke the

assistance of the FERC’s Dispute Resolution Service to select an arbitrator. In each case, the

arbitrator shall be knowledgeable in electric utility matters, including electric transmission and

bulk power issues, and shall not have any current or past substantial business or financial

relationships with any party to the arbitration (except prior arbitration). The arbitrator shall

provide each of the Parties an opportunity to be heard and, except as otherwise provided herein,

shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the

American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations or

RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the

terms of thi[s Article 21, the te](#br36)rms of thi[s Article 21](#br36) shall prevail.

**Arbitration Decisions.**

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Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety

(90) Calendar Days of appointment and shall notify the Parties in writing of such decision and

the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions

of this Agreement and shall have no power to modify or change any provision of this Agreement

in any manner. The decision of the arbitrator shall be final and binding upon the Parties, and

judgment on the award may be entered in any court having jurisdiction. The decision of the

arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the

decision itself, violated the standards set forth in the Federal Arbitration Act or the

Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed

with FERC if it affects jurisdictional rates, terms and conditions of service, or Affected System

Upgrade Facilities.

**Costs.**

Each Party shall be responsible for its own costs incurred during the arbitration process

and for its per capita share of the costs of the single arbitrator.

**Termination.**

Notwithstanding the provisi[ons of this Article 21, a](#br36)ny Party may terminate this

Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue

of whether such a termination is proper shall not be considered a Dispute hereunder.

**ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**General.**

Each Party makes the following representations, warranties and covenants:

**Good Standing.**

Such Party is duly organized, validly existing and in good standing under the laws of the

state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do

business in the State of New York; and that it has the corporate power and authority to own its

properties, to carry on its business as now being conducted and to enter into this Agreement and

carry out the transactions contemplated hereby and perform and carry out all covenants and

obligations on its part to be performed under and pursuant to this Agreement.

**Authority.**

Such Party has the right, power and authority to enter into this Agreement, to become a

Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and

binding obligation of such Party, enforceable against such Party in accordance with its terms,

except as the enforceability thereof may be limited by applicable bankruptcy, insolvency,

reorganization or other similar laws affecting creditors’ rights generally and by general equitable

principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

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**No Conflict.**

The execution, delivery and performance of this Agreement does not violate or conflict

with the organizational or formation documents, or bylaws or operating agreement, of such

Party, or any judgment, license, permit, order, material agreement or instrument applicable to or

binding upon such Party or any of its assets.

**Consent and Approval.**

Such Party has sought or obtained, or, in accordance with this Agreement will seek or

obtain, each consent, approval, authorization, order, or acceptance by any Governmental

Authority in connection with the execution, delivery and performance of this Agreement, and it

will provide to any Governmental Authority notice of any actions under this Agreement that are

required by Applicable Laws and Regulations.

**ARTICLE 23. MISCELLANEOUS**

**Binding Effect.**

This Agreement and the rights and obligations hereof, shall be binding upon and shall

inure to the benefit of the successors and permitted assigns of the Parties hereto.

**Conflicts.**

If there is a discrepancy or conflict between or among the terms and conditions of this

cover agreement and the Appendices hereto, the terms and conditions of this cover agreement

shall be given precedence over the Appendices, except as otherwise expressly agreed to in

writing by the Parties.

**Rules of Interpretation.**

This Agreement, unless a clear contrary intention appears, shall be construed and

interpreted as follows: (1) the singular number includes the plural number and vice versa; (2)

reference to any person includes such person’s successors and assigns but, in the case of a Party,

only if such successors and assigns are permitted by this Agreement, and reference to a person in

a particular capacity excludes such person in any other capacity or individually; (3) reference to

any agreement (including this Agreement), document, instrument or tariff means such

agreement, document, instrument, or tariff as amended or modified and in effect from time to

time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to

any Applicable Laws and Regulations means such Applicable Laws and Regulations as

amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,

including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated

otherwise, reference to any Article, Section or Appendix means such Article of this Agreement

or such Appendix to this Agreement, or such Section to the Standard Large Facility

Interconnection Procedures or such Appendix to the Standard Large Facility Interconnection

Procedures, as the case may be; (6) “hereunder”, “hereof’, “herein”, “hereto” and words of

similar import shall be deemed references to this Agreement as a whole and not to any particular

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Article or other provision hereof or thereof; (7) “including” (and with correlative meaning

“include”) means including without limiting the generality of any description preceding such

term; and (8) relative to the determination of any period of time, “from” means “from and

including”, “to” means “to but excluding” and “through” means “through and including”.

**Compliance.**

Each Party shall perform its obligations under this Agreement in accordance with

Applicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT and Good

Utility Practice. To the extent a Party is required or prevented or limited in taking any action by

such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement

for its compliance therewith. When any Party becomes aware of such a situation, it shall notify

the other Parties promptly so that the Parties can discuss the amendment to this Agreement that is

appropriate under the circumstances.

**Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Developer, Affected System

Operator, and Connecting Transmission Owner are several, and are neither joint nor joint and

several.

**Entire Agreement.**

This Agreement, including all Appendices and Schedules attached hereto, constitutes the

entire agreement between the Parties with reference to the subject matter hereof, and supersedes

all prior and contemporaneous understandings or agreements, oral or written, between the Parties

with respect to the subject matter of this Agreement. There are no other agreements,

representations, warranties, or covenants which constitute any part of the consideration for, or

any condition to, either Party’s compliance with its obligations under this Agreement.

**No Third Party Beneficiaries.**

This Agreement is not intended to and does not create rights, remedies, or benefits of any

character whatsoever in favor of any persons, corporations, associations, or entities other than the

Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their

successors in interest and permitted their assigns.

**Waiver.**

The failure of a Party to this Agreement to insist, on any occasion, upon strict

performance of any provision of this Agreement will not be considered a waiver of any

obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either

Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a

waiver with respect to any other failure to comply with any other obligation, right, duty of this

Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

**Headings.**

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The descriptive headings of the various Articles of this Agreement have been inserted for

convenience of reference only and are of no significance in the interpretation or construction of

this Agreement.

**Multiple Counterparts.**

This Agreement may be executed in two or more counterparts, each of which is deemed

an original but all constitute one and the same instrument.

**Amendment.**

The Parties may by mutual agreement amend this Agreement, by a written instrument

duly executed by all of the Parties.

**Modification by the Parties.**

The Parties may by mutual agreement amend the Appendices to this Agreement, by a

written instrument duly executed by all of the Parties. Such an amendment shall become

effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

**Reservation of Rights.**

NYISO, Connecting Transmission Owner, and the Affected System Operator shall have

the right to make unilateral filings with FERC to modify this Agreement with respect to any

rates, terms and conditions, charges, classifications of service, rule or regulation under section

205 or any other applicable provision of the Federal Power Act and FERC’s rules and

regulations thereunder, and the Developer shall have the right to make a unilateral filing with

FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the

Federal Power Act and FERC’s rules and regulations thereunder; provided that each Party shall

have the right to protest any such filing by another Party and to participate fully in any

proceeding before FERC in which such modifications may be considered. Nothing in this

Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the

Federal Power Act and FERC’s rules and regulations thereunder, except to the extent that the

Parties otherwise mutually agree as provided herein.

**No Partnership.**

This Agreement shall not be interpreted or construed to create an association, joint

venture, agency relationship, or partnership among the Parties or to impose any partnership

obligation or partnership liability upon any Party. No Party shall have any right, power or

authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an

agent or representative of, or to otherwise bind, any other Party.

**Other Transmission Rights.**

Notwithstanding any other provision of this Agreement, nothing herein shall be construed

as relinquishing or foreclosing any rights, including but not limited to firm transmission rights,

capacity rights, or transmission congestion rights that the Developer shall be entitled to, now or

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**SERVICE AGREEMENT NO. 2812**

in the future under any other agreement or tariff as a result of or otherwise associated with, the

transmission capacity, if any, created by the Affected System Upgrade Facilities.

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement in duplicate originals,

each of which shall constitute and be an original effective Agreement between the Parties.

**New York Independent System Operator,**

**Inc.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NextEra Energy Transmission New York, Inc.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Niagara Mohawk Power Corporation d/b/a National Grid**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Alle-Catt Wind Energy LLC**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**APPENDICES**

**Appendix A**

EPC Services

**Appendix B**

Addresses for Delivery of Notices and Billings

**Appendix C**

In-Service Date

**SERVICE AGREEMENT NO. 2812**

**APPENDIX A**

**EPC SERVICES**

**1.**

**Affected System Upgrade Facilities**

The Affected System Upgrade Facilities consist of upgrades to electrical equipment and

facilities at Affected System Operator’s East Stolle Road switchyard, which will include the

following major electrical equipment and facilities to be designed, installed, and implemented by

Affected System Operator:

• modification of the relay settings to match relaying at Connecting Transmission

Owner’s new Lime Lake Substation. For the line to East Stolle Road switchyard,

Connecting Transmission Owner plans to implement system “A” and “B”

protection consisting of:

o “A” package:

▪ SEL-421 distance & directional overcurrent;

▪ RFL GARD Pro power line carrier, directional comparison

unblocking (“DCUB”) scheme; and

o “B” package:

▪ GE D60 distance & directional overcurrent;

▪ RFL GARD 8000 to interface with a microwave system, POTT

scheme;

o direct transfer trip (“DTT”) for breaker failure will be implemented as

follows:

▪ “A” package:

• RFL GARD Pro, FSK carrier; and

▪ “B” package:

• RFL IMUX 2000, 2 channels available;

• regarding the power line carrier frequency, the system “A” communications

between Lime Lake Substation and its remote end at East Stolle Road will need to

be coordinated for the DCUB protection schemes.

Developer will perform, and both the Affected System Operator and Connecting

Transmission Owner will review, an area network coordination study that will need to be

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performed to identify any additional relays at East Stolle Road that would need their relay

settings revised due to the interconnection of the Large Generating Facility.

Pursuant to the Large Generator Interconnection Agreement between the NYISO,

Connecting Transmission Owner, and Developer, for new system “B” communication,

Connecting Transmission Owner shall complete the microwave link installation between the

Lime Lake substation and the Connecting Transmission Owner’s Delevan Telecom site, where is

intercepted into the Connecting Transmission Owner’s communication network to the

Gardenville substation and then continue on to the East Stolle substation via the new microwave

link built by the East Stolle interconnection project between the Gardenville substation and the

East Stolle substation.

Once the communication path is established between the Lime Lake substation and the

East Stolle substation, the protective relaying circuit for B package will be installed, provisioned,

and tested end-to-end with the interface required by both the Connecting Transmission Owner

and the Affected System Operator.

Connecting Transmission Owner will perform or assist in testing and commissioning the

Affected System Upgrade Facilities.

**2.**

**ASO Estimated Total Costs**

Developer has accepted, and has provided Security to the Affected System Operator to

cover, the following ASO Estimated Total Costs identified in the Class Year Interconnection

Facilities Study for the Affected System Upgrade Facilities at the East Stolle Road switchyard:

$313,700.

**3.**

**Milestones**

**Item**

**Milestone**

**Date**

May 2025

**Responsible Party**

1.

Engineering Start

Engineering End

Procurement Start

Procurement End

Construction Start

Construction End

Affected System

Operator

2.

3.

4.

5.

6.

June 2025

June 2025

June 2025

July 2025

July 2025

Affected System

Operator

Affected System

Operator

Affected System

Operator

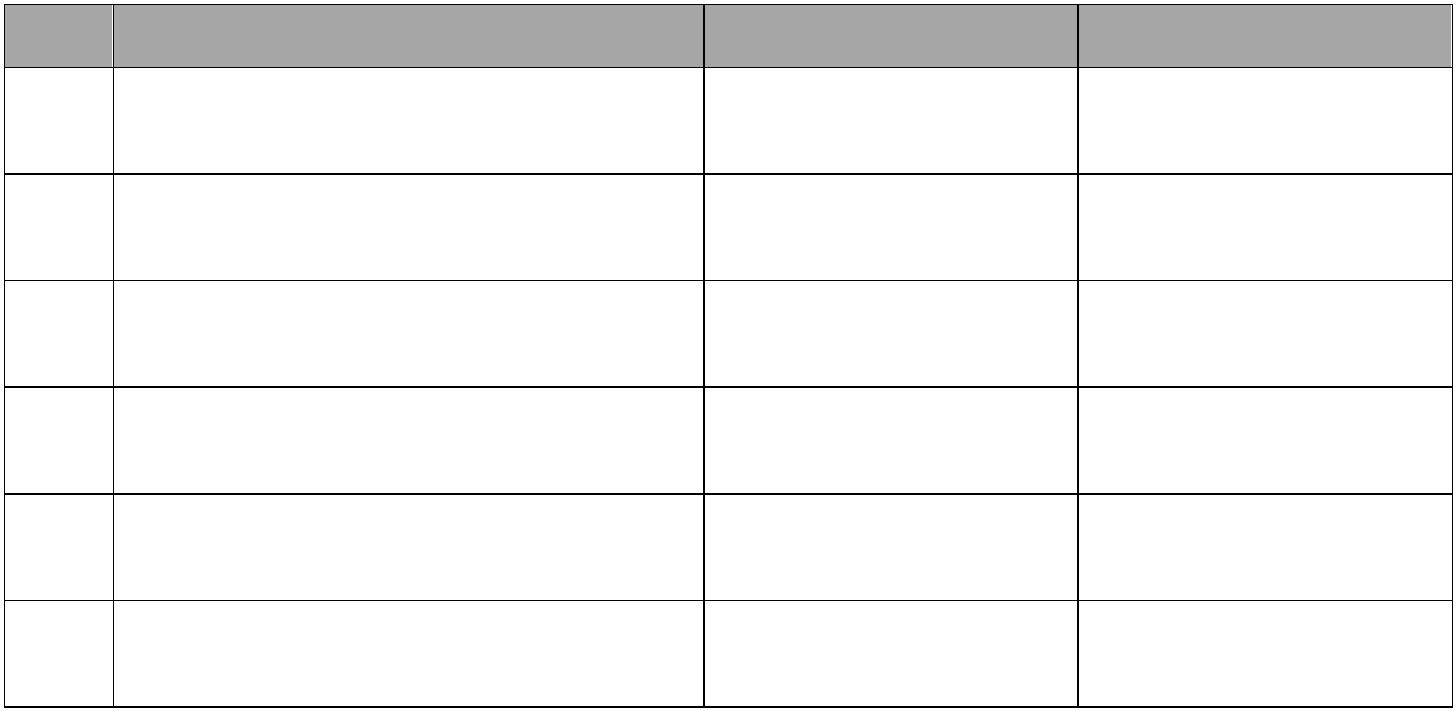
Affected System

Operator

Affected System

Operator

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9.

In-Service Date

Completion Date

November 2025

February 2026

Affected System

Operator

10.

Affected System

Operator

**4.**

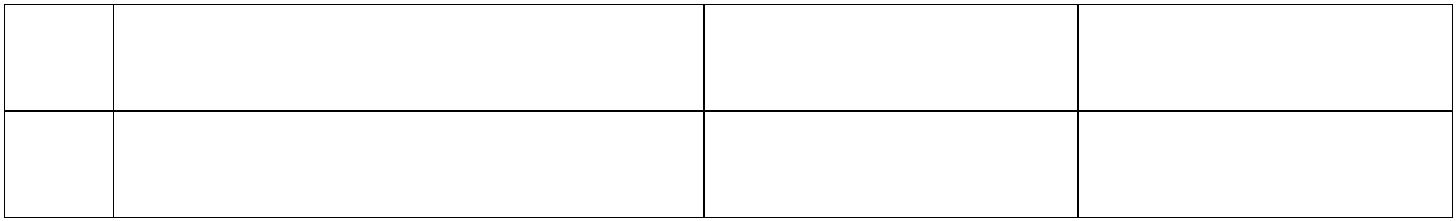
**Security**

In accordance with Section 6.2 of this Agreement, Developer has provided Affected

System Operator with Security in the amount of $313,700 in cash upon completion of Class Year

2019.

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**APPENDIX B**

**ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

**Notices:**

NYISO:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

Rensselaer, NY 12144

Phone: (518) 356-6000

Email: interconnectionsupport@nyiso.com

Affected System Operator:

NextEra Energy Transmission New York, Inc.

Attn: Interconnection Manager

13 Executive Park Drive

Clifton Park, NY 12065

Phone: 518-930-7867

Email: interconnections@neetny.com

Developer:

Alle Catt Wind Energy LLC

Attn: Asset Manager

One South Wacker Drive, Suite 1800

Chicago, IL 60606

Email: AlleCattAssetManagers@invenergy.com

Connecting Transmission Owner:

Niagara Mohawk Power Corporation d/b/a National Grid

Attn: Vishal Ahirrao, Director, Customer Energy Integration & Commercial Services

2 Hanson Place

Brooklyn, NY 11217

Phone: 781-906-4030

Email: vishal.ahirrao@nationalgrid.com

**Billings and Payments:**

Affected System Operator:

NextEra Energy Transmission New York, Inc.

Attn: Paula Madia

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13 Executive Park Drive

Clifton Park, NY 12065

Phone: (518) 930-7874

Email: paula.madia@nexteraenergy.com

Developer:

Alle Catt Wind Energy LLC

Attn: Asset Manager

One South Wacker Drive, Suite 1800

Chicago, IL 60606

Email: AlleCattAssetManagers@invenergy.com

Connecting Transmission Owner:

Niagara Mohawk Power Corporation d/b/a National Grid

Attn: Vishal Ahirrao, Director, Customer Energy Integration & Commercial Services

2 Hanson Place

Brooklyn, NY 11217

Phone: (781) 906-4030

Email: vishal.ahirrao@nationalgrid.com

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**APPENDIX C**

**IN-SERVICE DATE**

[**Date**]

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Re: Alle Catt II Wind – East Stolle Road Affected System Upgrade Facilities

Dear

:

On **[Date] [Affected System Operator/Connecting Transmission Owner]** has completed the

Affected System Upgrade Facilities. This letter confirms that [describe Affected System

Upgrade Facilities] have commenced service, effective as of [Date plus one day].

Thank you.

[**Signature**]

[**Affected System Operator’s/Connecting Transmission Owner’s Representative**]

**[Copy Developer]**

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