**SERVICE AGREEMENT NO. 2893**

**SERVICE AGREEMENT NO. 2893**

**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**AMONG THE**

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

**AND**

**HECATE ENERGY CIDER SOLAR, LLC**

**AND**

**NEXTERA ENERGY TRANSMISSION NEW YORK INC.**

**Dated as of March 25, 2025**

**(Dysinger Substation Upgrades)**

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**ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**

**THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT**(“Agreement”) is made and entered into this this 25th day of March, 2025, by and among: (i)Hecate Energy Cider Solar LLC, a limited liability company organized and existing under thelaws 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 SystemOperator”); and (iii) the New York Independent System Operator, Inc., a not-for-profitcorporation organized and existing under the laws of the State of New York (“NYISO”). TheDeveloper, Affected System Operator or the NYISO each may be referred to as a “Party” orcollectively referred to as the “Parties.”

**RECITALS**

**WHEREAS,** Developer is constructing a 500 MW photovoltaic solar farm identified as theCider Solar Project with NYISO Interconnection Queue No. 811 (“Large Generating Facility”)that will interconnect to certain transmission facilities of the New York Power Authority(“NYPA”), the Connecting Transmission Owner, that are part of the New York StateTransmission System operated by the NYISO;

**WHEREAS,** the Large Generating Facility will interconnect at NYPA’s new GrahamSubstation, and the interconnection will have certain impacts on the Affected System owned bythe Affected System Operator;

**WHEREAS**, the Class Year Interconnection Facilities Study for Class Year 2021 requires thatcertain System Upgrade Facilities be constructed on the Affected System owned by AffectedSystem Operator to enable the Developer to interconnect reliably the Large Generating Facilityto the New York State Transmission System in a manner that meets the NYISO MinimumInterconnection Standard (“Affected System Upgrade Facilities”);

**WHEREAS**, Developer has accepted, and provided security to the Affected System Operator tocover, the costs identified in the Class Year Interconnection Facilities Study for Class Year 2021for the Affected System Upgrade Facilities (“ASO Estimated Total Costs”);

**WHEREAS,** Developer and Affected System Operator desire to have Affected System Operatorperform, and Affected System Operator is willing to perform, the engineering, procurement, andconstruction services required to construct the Affected System Upgrade Facilities (“EPCServices”) in accordance with the terms and conditions hereinafter set forth;

**WHEREAS**, Developer, Affected System Operator, and the NYISO have agreed to enter intothis Agreement for the purpose of allocating the responsibilities for the performance andoversight 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:

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**ARTICLE 1. DEFINITIONS**

Whenever used in this Agreement with initial capitalization, the following terms shall have themeanings specified in this Article [1.](#br6) Terms used in this Agreement with initial capitalization thatare not defined in this 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 ofthe ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, or the body of thisAgreement.

**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.

**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 orentity. The term “control” shall mean the possession, directly or indirectly, of the power todirect the management or policies of a person or an entity. A voting interest of ten percent ormore shall create a rebuttable presumption of control.

**Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state andlocal laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial oradministrative 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 ApplicableReliability Councils, and the Transmission District in which the Affected System UpgradeFacilities will be constructed, as those requirements and guidelines are amended and modifiedand in effect from time to time; provided that no Party shall waive its right to challenge theapplicability or validity of any requirement or guideline as applied to it in the context of thisAgreement.

**ASO Estimated Total Costs** shall have the meaning set forth in the recitals and shall be thecosts for the engineering, procurement, and construction of the Affected System UpgradeFacilities identified in the Class Year Interconnection Facilities Study for Class Year 2021 asdescribed 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.

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

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

**Completion Date** shall mean the date on which the Affected System Operator has completed the EPC Services, as set forth in Appendix A.

**Confidential Information** shall mean any information that is defined as confidential [by Article 16](#br28) 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](#br23) of this Agreement.

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

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

**Electric Reliability Organization (“ERO”)** shall mean the North American Electric Reliability Corporation or its successor organization.

**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 orequipment, any order, regulation or restriction imposed by governmental, military or lawfullyestablished civilian authorities, or any other cause beyond a Party’s control. A Force Majeureevent does not include acts of negligence or intentional wrongdoing by the Party claiming ForceMajeure.

**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approvedby a significant portion of the electric industry during the relevant time period, or any of thepractices, methods and acts which, in the exercise of reasonable judgment in light of the factsknown at the time the decision was made, could have been expected to accomplish the desiredresult at a reasonable cost consistent with good business practices, reliability, safety andexpedition. 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 actsgenerally accepted in the region.

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**Governmental Authority** shall mean any federal, state, local or other governmental regulatoryor administrative agency, court, commission, department, board, or other governmentalsubdivision, legislature, rulemaking board, tribunal, or other governmental authority havingjurisdiction over any of the Parties, their respective facilities, or the respective services theyprovide, and exercising or entitled to exercise any administrative, executive, police, or taxingauthority 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 orincluded 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” orwords of similar meaning and regulatory effect under any applicable Environmental Law, or anyother chemical, material or substance, exposure to which is prohibited, limited or regulated byany applicable Environmental Law.

**In-Service Date** shall mean the date upon which the Affected System Upgrade Facilities areenergized consistent with the provisions of this Agreement, notice of which must be provided tothe NYISO in the form of Appendix C.

**Interconnection Facilities Study** shall mean a study conducted by NYISO or a third partyconsultant for the Developer to determine a list of facilities (including Connecting TransmissionOwner’s Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and SystemDeliverability Upgrades as identified in the Interconnection System Reliability Impact Study),the cost of those facilities, and the time required to interconnect the Large Generating Facilitywith the New York State Transmission System or with the Distribution System. The scope ofthe study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

**Interconnection Facilities Study Agreement (“Class Year Study Agreement”)** shall mean theform of agreement contained in Appendix 2 of the Standard Large Facility InterconnectionProcedures for conducting the Interconnection Facilities Study.

**Interconnection Request** shall mean a Developer’s request, in the form of Appendix 1 to theStandard Large Facility Interconnection Procedures, in accordance with the Tariff, tointerconnect a new Large Generating Facility to the New York State Transmission System or tothe Distribution System, or to materially increase the capacity of, or make a materialmodification to the operating characteristics of, an existing Large Generating Facility that isinterconnected with the New York State Transmission System or with the Distribution System.

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

**Large Generator Interconnection Agreement (“LGIA”)** shall mean the interconnection agreement for the Large Generating Facility among the NYISO, NYPA, and the Developer.

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

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

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**New York State Transmission System** shall mean the entire New York State electrictransmission system, which includes (i) the Transmission Facilities Under ISO OperationalControl; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remainingtransmission 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 byany generation facility or Class Year Transmission Project that is subject to NYISO’s LargeFacility Interconnection Procedures in Attachment X to the ISO OATT or the NYISO’s SmallGenerator Interconnection Procedures in Attachment Z, that is proposing to connect to the NewYork State Transmission System or Distribution System, to obtain ERIS. The MinimumInterconnection Standard is designed to ensure reliable access by the proposed project to theNew York State Transmission System or to the Distribution System. The MinimumInterconnection Standard does not impose any deliverability test or deliverability requirement onthe 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 aParty under this Agreement, efforts that are timely and consistent with Good Utility Practice andare 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 formof security from an entity with an investment grade rating, executed for the benefit of theAffected System Operator, meeting the commercially reasonable requirements of the AffectedSystem Operator with which it is required to be posted pursuant to Art[icle 6.2, and consi](#br20)stentwith the Uniform Commercial Code of the jurisdiction identified in Artic[le 8.2.1](#br22) of thisAgreement.

**Services Tariff** shall mean the NYISO Market Administration and Control Area Tariff, as filedwith the Commission, and as amended or supplemented from time to time, or any successor tariffthereto.

**Standard Large Facility Interconnection Procedures (“Large Facility InterconnectionProcedures” or “LFIP”)** shall mean the interconnection procedures applicable to anInterconnection Request pertaining to a Large Generating Facility that are included inAttachment X of the ISO OATT.

**System Upgrade Facilities** shall mean the least costly configuration of commercially availablecomponents of electrical equipment that can be used, consistent with Good Utility Practice andApplicable Reliability Requirements, to make the modifications to the existing transmissionsystem that are required to maintain system reliability due to: (i) changes in the system,

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including such changes as load growth and changes in load pattern, to be addressed in the formof generic generation or transmission projects; and (ii) proposed interconnections. In the case ofproposed interconnection projects, System Upgrade Facilities are the modifications or additionsto the existing New York State Transmission System that are required for the proposed project toconnect reliably to the system in a manner that meets the NYISO Minimum InterconnectionStandard.

**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, subjectto acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISOand Affected System Operator shall promptly file this Agreement with FERC upon execution.Developer shall reasonably cooperate with the NYISO and Affected System Operator withrespect to the filing of this Agreement with FERC and provide any information reasonablyrequested by the NYISO and Affected System Operator needed for such filing.

**Term of Agreement.**

Subject to the provisions of Article [2.3, thi](#br10)s Agreement shall remain in effect until thelater of: (i) the Completion Date, and (ii) the date on which the final payment of all invoicesissued under this Agreement have been made pursuant to Articles [7.1](#br21) and [7.3](#br21) and any remainingSecurity has been released or refunded pursuant to Article [7.2.](#br21)

**Termination.**

**Completion of Term of Agreement.**

This Agreement shall terminate upon the completion of the term of the Agreementpursuant to Artic[le 2.2.](#br10)

**Written Notice.**

This Agreement may be terminated: (i) by all Parties agreeing in writing to terminate thisAgreement, or (ii) by the NYISO and the Affected System Operator after giving the Developerten (10) Calendar Days advanced written notice after the Large Generator InterconnectionAgreement for the Large Generating Facility among the NYISO, NYPA, and Developer has beenterminated 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](#br23) and[Article 21.](#br34)

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**Compliance.**

Notwiths[tanding Articles 2.3.1, 2.3.2, and 2.3.3, no te](#br10)rmination of this Agreement shallbecome effective until the Parties have complied with all Applicable Laws and Regulationsapplicable to such termination, including the filing with FERC of a notice of termination of thisAgreement, which notice has been accepted for filing by FERC.

**Termination Costs.**

If this Agreement is terminated pursuant to Article [2.3.2](#br10) above, the Developer shall beresponsible for all costs that are the responsibility of the Developer under this Agreement that areincurred by the Developer or the other Parties through the date the Parties agree in writing toterminate this Agreement or through the date of the Developer’s receipt of a notice oftermination. Such costs include any cancellation costs relating to orders or contracts concerningthe EPC Services or Affected System Upgrade Facilities. In the event of termination, all Partiesshall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising asa consequence of termination. Upon termination of this Agreement, unless otherwise ordered orapproved 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’sauthorization, cancel any pending orders of, or return, any materials or equipment for, orcontracts for construction of, the Affected System Upgrade Facilities; provided that in the eventthe Affected System Operator elects not to authorize such cancellation, Affected SystemOperator shall assume all payment obligations with respect to such materials, equipment, andcontracts, and Developer shall deliver such material and equipment, and, if necessary, assignsuch contracts, to Affected System Operator as soon as practicable, at Affected SystemOperator’s expense.

Developer may, at its option, retain any portion of such materials or equipmentthat Affected System Operator chooses not to accept delivery of, in which case Developer shallbe responsible for all costs associated with procuring such materials or equipment.

With respect to any portion of the EPC Services already performed pursuant tothe terms of this Agreement, Developer shall be responsible for all costs associated with theremoval, relocation or other disposition or retirement of such related materials, equipment, orfacilities.

**Survival.**

This Agreement shall continue in effect after termination to the extent necessary toprovide for final billings and payments and for costs incurred hereunder; including billings andpayments pursuant to this Agreement; and to permit the determination and enforcement ofliability and indemnification obligations arising from acts or events that occurred while thisAgreement was in effect.

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**ARTICLE 3. EPC SERVICES**

**Performance of EPC Services.**

Affected System Operator shall perform the EPC Services, as set forth in Appendix Ahereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forthin Appendix A hereto. Affected System Operator shall not be required to undertake any actionwhich is inconsistent with its standard safety practices, its material and equipment specifications,its design criteria and construction procedures, its labor agreements, and Applicable Laws andRegulations. In the event Affected System Operator reasonably expects that it will not be able tocomplete the EPC Services by the specified dates, Affected System Operator shall promptlyprovide written notice to Developer and NYISO, and shall undertake Reasonable Efforts to meetthe earliest dates thereafter. The NYISO has no responsibility, and shall have no liability, for theperformance of any of the EPC Services under this Agreement.

**Equipment Procurement.**

Affected System Operator shall commence design of the Affected System UpgradeFacilities and procure necessary equipment as soon as practicable after it receives writtenauthorization to proceed with design and procurement from the Developer by the date specifiedin Appendix A hereto, unless the Developer and the Affected System Operator otherwise agreein writing.

**Construction Commencement.**

Affected System Operator shall commence construction of the Affected System UpgradeFacilities or a discrete aspect of the Affected System Upgrade Facilities, as applicable, as soon aspracticable after the following conditions are satisfied:

Approval of the appropriate Governmental Authority has been obtained, to theextent required, for the construction of the Affected System Upgrade Facilities or discrete aspectthereof, as applicable;

Necessary real property rights and rights-of-way have been obtained, to the extentrequired, for the construction of the Affected System Upgrade Facilities or discrete aspectthereof, as applicable; and

The Affected System Operator has received from the Developer writtenauthorization to proceed with construction in accordance with the Milestones set forth inAppendix A.

**Work Progress.**

Affected System Operator will keep the Developer and NYISO advised periodically as tothe progress of its respective design, procurement and construction efforts. Developer or NYISOmay, at any time, request a progress report from the Affected System Operator.

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**Information Exchange.**

As soon as reasonably practicable after the Effective Date, Developer and AffectedSystem Operator shall exchange information, and provide NYISO the same information,regarding the design of the Affected System Upgrade Facilities and compatibility of the AffectedSystem Upgrade Facilities with the New York State Transmission System, and shall workdiligently and in good faith to make any necessary design changes. Developer shall inform theAffected System Operator and NYISO of any termination of the Large GeneratorInterconnection Agreement for the Large Generating Facility within ten (10) days of thetermination of the Large Generator Interconnection Agreement.

**Ownership of Affected System Upgrade Facilities.**

Affected System Operator shall own the Affected System Upgrade Facilities.

**Reserved.**

**Reserved.**

**Permits.**

NYISO, Developer, and Affected System Operator shall cooperate with each other ingood faith in obtaining all permits, licenses and authorizations that are necessary to accomplishthe EPC Services in compliance with Applicable Laws and Regulations. With respect to thisparagraph, Affected System Operator shall provide permitting assistance to the Developercomparable 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 andNYISO, to suspend at any time all work associated with the construction and installation of theAffected System Upgrade Facilities required for only that Developer’s Large Generating Facilitywith the condition that the New York State Transmission System shall be left in a safe andreliable condition in accordance with Good Utility Practice and the safety and reliability criteriaof Affected System Operator, NYPA, and NYISO. In such event, Developer shall be responsiblefor all reasonable and necessary costs and/or obligations in accordance with Attachment S to theISO OATT including those which Affected System Operator (i) has incurred pursuant to thisAgreement prior to the suspension and (ii) incurs in suspending such work, including any costsincurred to perform such work as may be necessary to ensure the safety of persons and propertyand the integrity of the New York State Transmission System during such suspension and, ifapplicable, any costs incurred in connection with the cancellation or suspension of material,equipment and labor contracts which Affected System Operator cannot reasonably avoid;provided, however, that prior to canceling or suspending any such material, equipment or laborcontract, Affected System Operator shall obtain Developer’s authorization to do so.

Affected System Operator shall invoice Developer for such costs pursuant t[o Article 7](#br21) and shall use due diligence to minimize its costs. In the event Developer suspends work required

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under this Agreement pursuant to this Artic[le 3.10, and](#br13) has not requested Affected SystemOperator to recommence the work required under this Agreement on or before the expiration ofthree (3) years following commencement of such suspension, this Agreement shall be deemedterminated. The three-year period shall begin on the date the suspension is requested, or the dateof the written notice to Affected System Operator and NYISO, if no effective date is specified.

**Taxes.**

**Developer Payments Not Taxable.**

The Developer and Affected System Operator intend that all payments or propertytransfers made by Developer to Affected System Operator for the installation of the AffectedSystem Upgrade Facilities shall be non-taxable, either as contributions to capital, or as anadvance, in accordance with the Internal Revenue Code and any applicable state income tax lawsand shall not be taxable as contributions in aid of construction or otherwise under the InternalRevenue Code and any applicable state income tax laws.

**Representations and Covenants.**

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, the Parties intend that (i)ownership of the electricity generated at the Developer’s Large Generating Facility will pass toanother party prior to the transmission of the electricity on the New York State TransmissionSystem, (ii) for income tax purposes, the amount of any payments and the cost of any propertytransferred to Affected System Operator for the Affected System Upgrade Facilities will becapitalized by Developer as an intangible asset and recovered using the straight-line method overa useful life of twenty (20) years, and (iii) any portion of the Affected System Upgrade Facilitiesthat is a “dual-use intertie,” within the meaning of IRS Notice 88-129, is reasonably expected tocarry only a de minimis amount of electricity in the direction of the Developer’s LargeGenerating Facility. For this purpose, “de minimis amount” means no more than 5 percent of thetotal power flows in both directions, calculated in accordance with the “5 percent test” set forthin IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions thatmust be met to conform to IRS requirements for non-taxable treatment.

At Affected System Operator’s request, Developer shall provide Affected SystemOperator with a report from an independent engineer confirming its representation in clause (iii),above. Affected System Operator represents and covenants that the cost of the Affected SystemUpgrade Facilities paid for by Developer will have no net material effect on the base upon whichrates are determined.

**Indemnification for the Cost Consequences of Current Tax Liability ImposedUpon the Affected System Operator.**

Notwithstanding Article [3.11.1, Develope](#br14)r shall protect, indemnify and hold harmlessAffected System Operator from the cost consequences of any current tax liability imposedagainst Affected System Operator as the result of payments or property transfers made byDeveloper to Affected System Operator under this Agreement, as well as any interest and

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

Affected System Operator shall not include a gross-up for the cost consequences of anycurrent tax liability in the amounts it charges Developer under this Agreement unless (i) AffectedSystem Operator has determined, in good faith, that the payments or property transfers made byDeveloper 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 asincome subject to taxation; provided, however, that Affected System Operator may requireDeveloper 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 ofany current tax liability under this Ar[ticle 3.11.](#br14) Developer shall reimburse Affected SystemOperator for such costs on a fully grossed-up basis, in accordance with Articl[e 3.11.4,](#br15) withinthirty (30) Calendar Days of receiving written notification from Affected System Operator of theamount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of theten-year testing period and the applicable statute of limitation, as it may be extended by theAffected System Operator upon request of the IRS, to keep these years open for audit oradjustment, or (2) the occurrence of a subsequent taxable event and the payment of any relatedindemnification obligations as contemplated by this [Article 3.11.](#br14)

**Tax Gross-Up Amount.**

Developer’s liability for the cost consequences of any current tax liability under thisArtic[le 3.11](#br14) shall be calculated on a fully grossed-up basis. Except as may otherwise be agreedto by the parties, this means that Developer will pay Affected System Operator, in addition to theamount paid for the Affected System Upgrade Facilities, an amount equal to (1) the current taxesimposed on Affected System Operator (“Current Taxes”) on the excess of (a) the gross incomerealized by Affected System Operator as a result of payments or property transfers made byDeveloper to Affected System Operator under this Agreement (without regard to any paymentsunder this Ar[ticle 3.11) (the “](#br14)Gross Income Amount”) over (b) the present value of future taxdeductions for depreciation that will be available as a result of such payments or propertytransfers (the “Present Value Depreciation Amount”), plus (2) an additional amount sufficient topermit the Affected System Operator to receive and retain, after the payment of all CurrentTaxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Affected SystemOperator’s composite federal and state tax rates at the time the payments or property transfers arereceived and Affected System Operator will be treated as being subject to tax at the highestmarginal rates in effect at that time (the “Current Tax Rate”), and (ii) the Present ValueDepreciation Amount shall be computed by discounting Affected System Operator’s anticipatedtax depreciation deductions as a result of such payments or property transfers by AffectedSystem Operator’s current weighted average cost of capital. Thus, the formula for calculatingDeveloper’s liability to Affected System Operator pursuant to this Artic[le 3.11.4](#br15) can beexpressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value Depreciation

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Amount))/(1 - Current Tax Rate). Developer’s estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Affected System Upgrade Facilities.

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

At Developer’s request and expense, Affected System Operator shall file with the IRS arequest for a private letter ruling as to whether any property transferred or sums paid, or to bepaid, by Developer to Affected System Operator under this Agreement are subject to federalincome 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 andaccurate to the best of Developer’s knowledge. Affected System Operator and Developer shallcooperate in good faith with respect to the submission of such request.

Affected System Operator shall keep Developer fully informed of the status of suchrequest for a private letter ruling and shall execute either a privacy act waiver or a limited powerof attorney, in a form acceptable to the IRS, that authorizes Developer to participate in alldiscussions with the IRS regarding such request for a private letter ruling. Affected SystemOperator shall allow Developer to attend all meetings with IRS officials about the request andshall permit Developer to prepare the initial drafts of any follow-up letters in connection with therequest.

**Subsequent Taxable Events.**

If, within 10 years from the date on which the relevant Affected System UpgradeFacilities are placed in service, (i) Developer Breaches the covenants contained in Art[icle 3.11.2,](#br14)(ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) thisAgreement terminates and Affected System Operator retains ownership of the Affected SystemUpgrade Facilities, the Developer shall pay a tax gross-up for the cost consequences of anycurrent tax liability imposed on Affected System Operator, calculated using the methodologydescribed in Art[icle 3.11.4](#br15) and in accordance with IRS Notice 90-60.

**Contests.**

In the event any Governmental Authority determines that Affected System Operator’sreceipt of payments or property constitutes income that is subject to taxation, Affected SystemOperator shall notify Developer, in writing, within thirty (30) Calendar Days of receivingnotification of such determination by a Governmental Authority. Upon the timely writtenrequest by Developer and at Developer’s sole expense, Affected System Operator may appeal,protest, seek abatement of, or otherwise oppose such determination. Upon Developer’s writtenrequest and sole expense, Affected System Operator may file a claim for refund with respect toany taxes paid under this Artic[le 3.11, whether](#br14) or not it has received such a determination.Affected System Operator reserves the right to make all decisions with regard to the prosecutionof such appeal, protest, abatement or other contest, including the selection of counsel andcompromise or settlement of the claim, but Affected System Operator shall keep Developerinformed, shall consider in good faith suggestions from Developer about the conduct of the

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contest, and shall reasonably permit Developer or an Developer representative to attend contestproceedings.

Developer shall pay to Affected System Operator on a periodic basis, as invoiced byAffected System Operator, Affected System Operator’s documented reasonable costs ofprosecuting such appeal, protest, abatement or other contest, including any costs associated withobtaining the opinion of independent tax counsel describ[ed in this Article 3.11.7. The](#br16) AffectedSystem Operator may abandon any contest if the Developer fails to provide payment to theAffected System Operator within thirty (30) Calendar Days of receiving such invoice. At anytime during the contest, Affected System Operator may agree to a settlement either withDeveloper’s consent or after obtaining written advice from nationally-recognized tax counsel,selected by Affected System Operator, but reasonably acceptable to Developer, that the proposedsettlement represents a reasonable settlement given the hazards of litigation. Developer’sobligation shall be based on the amount of the settlement agreed to by Developer, or if a higheramount, 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 settlementamount shall be calculated on a fully grossed-up basis to cover any related cost consequences ofthe current tax liability. The Affected System Operator may also settle any tax controversywithout receiving the Developer’s consent or any such written advice; however, any suchsettlement will relieve the Developer from any obligation to indemnify Affected SystemOperator for the tax at issue in the contest (unless the failure to obtain written advice isattributable to the Developer’s unreasonable refusal to the appointment of independent taxcounsel).

**Refund.**

In the event that (a) a private letter ruling is issued to Affected System Operator whichholds that any amount paid or the value of any property transferred by Developer to AffectedSystem 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 determinationmakes it reasonably clear to Affected System Operator in good faith that any amount paid or thevalue of any property transferred by Developer to Affected System Operator under the terms ofthis Agreement is not taxable to Affected System Operator, (c) any abatement, appeal, protest, orother contest results in a determination that any payments or transfers made by Developer toAffected System Operator are not subject to federal income tax, or (d) if Affected SystemOperator receives a refund from any taxing authority for any overpayment of tax attributable toany payment or property transfer made by Developer to Affected System Operator pursuant tothis Agreement, Affected System Operator shall promptly refund to Developer the following:

(i) Any payment made by Developer under this Ar[ticle 3.11](#br14) for taxes that isattributable 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 suchtaxes which Affected System Operator did not submit to the taxing authority, calculated inaccordance with the methodology set forth in FERC’s regulations at 18 C.F.R. §35.19a(a)(2)(iii)

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from the date payment was made by Developer to the date Affected System Operator refundssuch payment to Developer, and

(iii) With respect to any such taxes paid by Affected System Operator, any refund orcredit Affected System Operator receives or to which it may be entitled from any GovernmentalAuthority, 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 anyreduction in interest otherwise payable by Affected System Operator to any GovernmentalAuthority resulting from an offset or credit); provided, however, that Affected System Operatorwill remit such amount promptly to Developer only after and to the extent that Affected SystemOperator has received a tax refund, credit or offset from any Governmental Authority for anyapplicable overpayment of income tax related to the Affected System Upgrade Facilities.

The intent of this provision is to leave both the Developer and Affected System Operator,to the extent practicable, in the event that no taxes are due with respect to any payment forAffected System Upgrade Facilities hereunder, in the same position they would have been in hadno such tax payments been made.

**Taxes Other Than Income Taxes.**

Upon the timely request by Developer, and at Developer’s sole expense, Affected SystemOperator shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federalor state income tax) asserted or assessed against Affected System Operator for which Developermay 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 AffectedSystem Operator, Affected System Operator’s documented reasonable costs of prosecuting suchappeal, protest, abatement, or other contest. Developer and Affected System Operator shallcooperate in good faith with respect to any such contest. Unless the payment of such taxes is aprerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable byDeveloper 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 taxpayment is withheld and ultimately due and payable after appeal, Developer will be responsiblefor all taxes, interest and penalties, other than penalties attributable to any delay caused byAffected System Operator.

**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 includingthe status of NYISO, or the status of Affected System Operator or Developer with respect to theissuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding anyother provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of NewYork, Inc. shall not be required to comply with any provisions of this Agreement that wouldresult in the loss of tax-exempt status of any of their Tax-Exempt Bonds or impair their ability toissue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall

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include the obligations of the Long Island Power Authority, NYPA and Consolidated EdisonCompany of New York, Inc., the interest on which is not included in gross income under theInternal Revenue Code.

**Non-Jurisdictional Entities.**

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA,from Commission jurisdiction with respect to the Commission’s exercise of the FPA’s generalratemaking authority.

**Modification.**

**General.**

If, prior to the In-Service Date, the Affected System Operator proposes to modify theAffected System Upgrade Facilities, the Affected System Operator must provide to the NYISOat least ninety (90) Calendar Days in advance of the commencement of the work, or such shorterperiod upon which the Parties may agree, sufficient information for the NYISO to evaluate theimpact of the proposed modification on the reliable interconnection of Developer’s LargeGenerating Facility to the New York State Transmission System. The NYISO’s agreement tothe proposed modification shall not be unreasonably withheld, conditioned, or delayed if theproposed modification is reasonably necessary for the interconnection of the Large GeneratingFacility, will enable Developer’s Large Generating Facility to reliably interconnect to the NewYork State Transmission System, and will not impose additional costs to the Developer greaterthan the estimated cost for the Affected System Upgrade Facilities determined in accordancewith Attachment S of the ISO OATT.

**Standards.**

Any additions, modifications, or replacements made to a Party’s facilities shall bedesigned, constructed and operated in accordance with this Agreement, NYISO requirements andGood Utility Practice.

**Modification Costs.**

Developer shall not be assigned the costs of any additions, modifications, or replacementsthat Affected System Operator makes to the Affected System Upgrade Facilities or the NewYork State Transmission System to facilitate the interconnection of a third party to the AffectedSystem Upgrade Facilities or the New York State Transmission System, or to provideTransmission Service to a third party under the ISO OATT, except in accordance with the costallocation 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 Operatorshall 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 anymodifications 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 testsof 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 thisAgreement shall be and remain the property of the Party providing such equipment regardless ofthe mode and manner of annexation or attachment to real property, unless otherwise mutuallyagreed by the Party providing such equipment and the Party receiving such equipment.

**ARTICLE 6. PERFORMANCE OBLIGATIONS**

**EPC Services and Cost Responsibilities.**

Affected System Operator shall perform the EPC Services described in Appendix Ahereto and as otherwise set forth by the terms of this Agreement at Developer’s sole expense upto the ASO Estimated Total Costs amount. The Developer’s and Affected System Operator’srespective responsibilities for the cost of Affected System Operator’s performance of the EPCServices above the ASO Estimated Total Costs amount shall be determined in accordance withSection 25.8.6 of Attachment S to the NYISO OATT.

**Provision and Application of Security.**

Developer has provided Affected System Operator with Security in the amount of theASO Estimated Total Costs for the Affected System Upgrade Facilities in accordance withAttachment S to the ISO OATT. If the Developer: (i) does not pay an invoice issued by AffectedSystem Operator pursuant to Art[icle 7.1](#br21) within the timeframe set forth in Artic[le 7.3](#br21) or (ii) doesnot pay any disputed amount into an independent escrow account pursuant to Article [7.4, the](#br21)Affected System Operator may draw upon Developer’s Security to recover such payment. TheDeveloper’s Security shall be reduced on a dollar-for-dollar basis for Developer’s paymentsmade to the Affected System Operator 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 or Affected System Operatorunder this Agreement, including amounts due for the performance of EPC Services above theASO Estimated Total Costs in accordance with Section 25.8.6 of Attachment S to the NYISOOATT, the Developer or Affected System Operator, as applicable, shall submit to the otherParty, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shallstate the month to which the invoice applies and fully describe the services and equipmentprovided. The Developer and Affected System Operator may discharge mutual debts andpayment obligations due and owing to each other on the same date through netting, in which caseall amounts one Party owes to the other Party under this Agreement, including interest paymentsor credits, shall be netted so that only the net amount remaining due shall be paid by the owingParty. Within six months after the Completion Date, Developer or Affected System Operator, asapplicable, shall provide a final invoice to the other Party of any remaining amounts dueassociated with the EPC Services.

**Refund of Remaining Security/Cash and Overpayment Amount.**

The Affected System Operator shall release or refund to the Developer any remainingportions of its Security or cash payment provided by the Developer pursuant to Art[icle 6.2](#br20) andany amount the Developer has overpaid as described in Article [7.4](#br21) within 30 days of the later of:(i) the Developer’s payment of any final invoice to the Affected System Operator, and (ii)Developer’s completion of the EPC Services.

**Payment.**

Invoices shall be rendered to the paying Party at the address specified in Appendix Bhereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days ofreceipt. 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 ofinvoices will not constitute a waiver of any rights or claims the paying Party may have under thisAgreement.

**Disputes.**

In the event of a billing dispute between Parties, the Party owed money shall continue toperform under this Agreement as long as the other Party: (i) continues to make all payments notin dispute; and (ii) pays to the Party owed money or into an independent escrow account theportion of the invoice in dispute, pending resolution of such dispute. If the Party that owesmoney fails to meet these two requirements for continuation of service, then the Party owedmoney may provide notice to the other Party of a Default pursuant t[o Article 11. W](#br23)ithin thirty(30) Calendar Days after the resolution of the dispute, the Party that owes money to the otherParty shall pay the amount due with interest calculated in accord with the methodology set forthin FERC’s Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

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

**Regulatory Requirements.**

Each Party’s obligations under this Agreement shall be subject to its receipt of anyrequired approval or certificate from one or more Governmental Authorities in the form andsubstance satisfactory to the applying Party, or the Party making any required filings with, orproviding notice to, such Governmental Authorities, and the expiration of any time periodassociated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtainsuch other approvals. Nothing in this Agreement shall require a Party to take any action thatcould result in its inability to obtain, or its loss of, status or exemption under the Federal PowerAct or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory PoliciesAct of 1978, as amended.

**Governing Law.**

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

This Agreement is subject to all Applicable Laws and Regulations.

Each Party expressly reserves the right to seek changes in, appeal, or otherwisecontest 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 orpermitted to be given by a Party to the other Parties and any instrument required or permitted tobe tendered or delivered by a Party in writing to the other Parties shall be effective whendelivered and may be so given, tendered or delivered, by recognized national courier, or bydepositing the same with the United States Postal Service with postage prepaid, for delivery bycertified or registered mail, addressed to the Party, or personally delivered to the Party, at theaddress set out in Appendix B hereto.

A Party may change the notice information in this Agreement by giving five (5) BusinessDays 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 andnot required by this Agreement to be given in writing may be so given by telephone, facsimile oremail 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 beresponsible or liable, or deemed, in Default with respect to any obligation hereunder, other thanthe obligation to pay money when due, to the extent the Party is prevented from fulfilling suchobligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than anobligation to pay money when due) by reason of Force Majeure shall give notice and the fullparticulars of such Force Majeure to the other Parties in writing or by telephone as soon asreasonably possible after the occurrence of the cause relied upon. Telephone notices givenpursuant to this Article shall be confirmed in writing as soon as reasonably possible and shallspecifically state full particulars of the Force Majeure, the time and date when the Force Majeureoccurred and when the Force Majeure is reasonably expected to cease. The Party affected shallexercise due diligence to remove such disability with reasonable dispatch, but shall not berequired to accede or agree to any provision not satisfactory to it in order to settle and terminate astrike or other labor disturbance.

**ARTICLE 11. DEFAULT**

**General.**

No Breach shall exist where such failure to discharge an obligation (other than thepayment of money) is the result of Force Majeure as defined in this Agreement or the result of anact or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give writtennotice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Daysfrom receipt of the Breach notice within which to cure such Breach; provided however, if suchBreach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shallcommence such cure within thirty (30) Calendar Days after notice and continuously anddiligently complete such cure within ninety (90) Calendar Days from receipt of the Breachnotice; 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 Artic[le 11.2, or i](#br23)f a Breach is not capable ofbeing cured within the period provided for herein, the non-Breaching Parties acting together shallthereafter have the right to declare a Default and terminate this Agreement by written notice atany time until cure occurs, and be relieved of any further obligation hereunder and, whether ornot those Parties terminate this Agreement, to recover from the defaulting Party all amounts duehereunder, 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 saveharmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and alldamages, losses, claims, including claims and actions relating to injury to or death of any personor damage to property, the alleged violation of any Environmental Law, or the release orthreatened 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 itsobligations under this Agreement on behalf of the Indemnifying Party, except in cases where theIndemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by thegross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by theIndemnifying Party of any Environmental Law or the release by the Indemnifying Party of anyHazardous Substance.

**Indemnified Party.**

If a Party is entitled to indemnification under th[is Article 12](#br24) as a result of a claim by athird party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceedunder Articl[e 12.1.3, to](#br24) assume the defense of such claim, such Indemnified Party may at theexpense of the Indemnifying Party contest, settle or consent to the entry of any judgment withrespect to, or pay in full, such claim.

**Indemnifying Party.**

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Partyharmless under th[is Article 12, th](#br24)e amount owing to the Indemnified Party shall be the amount ofsuch 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 thecommencement of any action or administrative or legal proceeding or investigation as to whichthe indemnity provided for in Article [12.1](#br24) may apply, the Indemnified Party shall notify theIndemnifying Party of such fact. Any failure of or delay in such notification shall not affect aParty’s indemnification obligation unless such failure or delay is materially prejudicial to theIndemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defensethereof with counsel designated by such Indemnifying Party and reasonably satisfactory to theIndemnified Party. If the defendants in any such action include one or more Indemnified Partiesand the Indemnifying Party and if the Indemnified Party reasonably concludes that there may belegal defenses available to it and/or other Indemnified Parties which are different from oradditional to those available to the Indemnifying Party, the Indemnified Party shall have the rightto select separate counsel to assert such legal defenses and to otherwise participate in the defense

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of such action on its own behalf. In such instances, the Indemnifying Party shall only berequired to pay the fees and expenses of one additional attorney to represent an IndemnifiedParty 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 andcontrol the defense of any such action, suit or proceedings if and to the extent that, in the opinionof the Indemnified Party and its counsel, such action, suit or proceeding involves the potentialimposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity ofinterest between the Indemnified Party and the Indemnifying Party, in such event theIndemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall notsettle or consent to the entry of any judgment in any action, suit or proceeding without theconsent of the Indemnified Party, which shall not be unreasonably withheld, conditioned ordelayed.

**No Consequential Damages.**

Other than the indemnity obligations set forth in Artic[le 12.1, in no e](#br24)vent shall any Partybe liable under any provision of this Agreement for any losses, damages, costs or expenses forany special, indirect, incidental, consequential, or punitive damages, including but not limited toloss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporaryequipment or services, whether based in whole or in part in contract, in tort, includingnegligence, strict liability, or any other theory of liability; provided, however, that damages forwhich a Party may be liable to another Party under separate agreement will not be considered tobe special, indirect, incidental, or consequential damages hereunder.

**Insurance.**

Affected System Operator shall, at its own expense, procure and maintain in forcethroughout the period of this Agreement and until released by the other Parties, the followingminimum insurance coverages, with insurance companies licensed to write insurance orapproved eligible surplus lines carriers in the state of New York with a minimum A.M. Bestrating of A or better for financial strength, and an A.M. Best financial size category of VIII orbetter:

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 andoperations, personal injury, broad form property damage, broad form blanket contractual liabilitycoverage products and completed operations coverage, coverage for explosion, collapse andunderground hazards, independent contractors coverage, coverage for pollution to the extentnormally available and punitive damages to the extent normally available using InsuranceServices Office, Inc. Commercial General Liability Coverage (“ISO CG”) Form CG 00 01 04 13or 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 combinedsingle limit for personal injury, bodily injury, including death and property damage.

Comprehensive Automobile Liability Insurance for coverage of ownedand 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 forbodily injury, including death, and property damage.

If applicable, the Commercial General Liability and ComprehensiveAutomobile Liability Insurance policies should include contractual liability for work inconnection with construction or demolition work on or within 50 feet of a railroad, or a separateRailroad 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 occurrenceand Twenty Million Dollars ($20,000,000) aggregate. The Excess policies should contain thesame extensions listed under the Primary policies.

The Commercial General Liability Insurance, Comprehensive AutomobileInsurance and Excess Liability Insurance policies of Affected System Operator shall name theother Party, its parent, associated and Affiliate companies and their respective directors, officers,agents, servants and employees (“Other Party Group”) as additional insureds using ISO CGEndorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG 20 37 04 13 orequivalent to or better forms. All policies shall contain provisions whereby the insurers waive allrights of subrogation in accordance with the provisions of this Agreement against the Other PartyGroup and provide thirty (30) Calendar days advance written notice to the Other Party Groupprior to anniversary date of cancellation or any material change in coverage or condition.

The Commercial General Liability Insurance, Comprehensive AutomobileLiability Insurance and Excess Liability Insurance policies shall contain provisions that specifythat the policies are primary and non-contributory. Affected System Operator shall beresponsible for its respective deductibles or retentions.

The Commercial General Liability Insurance, Comprehensive AutomobileLiability Insurance and Excess Liability Insurance policies, if written on a Claims First MadeBasis, shall be maintained in full force and effect for at least three (3) years after termination ofthis Agreement, which coverage may be in the form of tail coverage or extended reporting periodcoverage if agreed by the Developer and Affected System Operator.

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 coveragefor claims resulting from pollution or other environmental impairment arising out of or inconnection with work performed on the premises by the other party, its contractors and and/orsubcontractors. Such insurance is to include coverage for, but not be limited to, cleanup, thirdparty bodily injury and property damage and remediation and will be written on an occurrence

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basis. The policy shall name the Other Party Group as additional insureds, be primary andcontain a waiver of subrogation.

The requirements contained herein as to the types and limits of allinsurance to be maintained by Affected System Operator are not intended to and shall not in anymanner, limit or qualify the liabilities and obligations assumed by the Affected System Operatorunder this Agreement.

Within sixty [60] days following execution of this Agreement, and as soonas practicable after the end of each fiscal year or at the renewal of the insurance policy and inany event within ninety (90) days thereafter, Affected System Operator shall provide Developerwith a certificate of insurance for all insurance required in this Agreement, executed by eachinsurer or by an authorized representative of each insurer.

Notwithstanding the foregoing, Affected System Operator may self-insureto meet the minimum insurance requirements of Articles [12.3.1](#br25) thr[ough 12.3.9](#br26) to the extent itmaintains a self-insurance program; provided that, Affected System Operator’s senior debt israted at investment grade, or better, by Standard & Poor’s and that its self-insurance programmeets the minimum insurance requirements of Article[s 12.3.1](#br25) th[rough 12.3.9. In t](#br26)he event thatAffected System Operator is permitted to self-insure pursuant to this Article [12.3.12,](#br27) it shallnotify Developer that it meets the requirements to self-insure and that its self-insurance programmeets the minimum insurance requirements in a manner consistent with that specified in Articles

[12.3.1](#br25) throu[gh 12.3.9](#br26) and provide evidence of such coverages. For any period of time thatAffected System Operator’s senior debt is unrated by Standard & Poor’s or is rated at less thaninvestment grade by Standard & Poor’s, Affected System Operator shall comply with theinsurance requirements applicable to it under Art[icles 12.3.1](#br25) thr[ough 12.3.9.](#br26)

Developer and Affected System Operator agree to report to each other inwriting 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 insurancerequirements stated under [Articles 12.3.1](#br25) throug[h 12.3.9](#br26) and comply with the Additional Insuredrequirements herein. In addition, their policies must state that they are primary and non-contributory and contain a waiver of subrogation.

**ARTICLE 13. ASSIGNMENT**

**Assignment.**

This Agreement may be assigned by a Party only with the written consent of the otherParties; provided that a Party may assign this Agreement without the consent of the other Partiesto any Affiliate of the assigning Party with an equal or greater credit rating and with the legalauthority and operational ability to satisfy the obligations of the assigning Party under thisAgreement; provided further that a Party may assign this Agreement without the consent of theother Parties in connection with the sale, merger, restructuring, or transfer of a substantialportion or all of its assets, so long as the assignee in such a transaction directly assumes in

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writing all rights, duties and obligations arising under this Agreement; and provided further thatthe Developer shall have the right to assign this Agreement, without the consent of the NYISO orAffected System Operator, for collateral security purposes to aid in providing financing for theLarge Generating Facility, provided that the Developer will promptly notify the NYISO andAffected System Operator of any such assignment. Any financing arrangement entered into bythe Developer pursuant to this Article will provide that prior to or upon the exercise of thesecured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, thesecured creditor, the trustee or mortgagee will notify the NYISO and Affected System Operatorof the date and particulars of any such exercise of assignment right(s) and will provide theNYISO and Affected System Operator with proof that it meets the requirements of Article[s 6.2](#br20)[and 12.3. Any attempted assi](#br25)gnment that violates this Article is void and ineffective. Anyassignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party’sobligations be enlarged, in whole or in part, by reason thereof. Where required, consent toassignment will not be unreasonably withheld, conditioned or delayed.

**ARTICLE 14. SEVERABILITY**

If any provision in this Agreement is finally determined to be invalid, void orunenforceable by any court or other Governmental Authority having jurisdiction, suchdetermination shall not invalidate, void or make unenforceable any other provision, agreement orcovenant of this Agreement.

**ARTICLE 15. COMPARABILITY**

The Parties will comply with all applicable comparability and code of conduct laws, rulesand regulations, as amended from time to time.

**ARTICLE 16. CONFIDENTIALITY**

**Confidentiality.**

Certain information exchanged by the Parties during the term of this Agreement shallconstitute confidential information (“Confidential Information”) and shall be subject to this[Article 16.](#br28)

If requested by a Party receiving information, the Party supplying the information shallprovide in writing, the basis for asserting that the information referred to in this Article warrantsconfidential treatment, and the requesting Party may disclose such writing to the appropriateGovernmental Authority. Each Party shall be responsible for the costs associated with affordingconfidential treatment to its information.

**Term.**

During the term of this Agreement, and for a period of three (3) years after the expirationor termination of this Agreement, except as otherwise provided in th[is Article 16, e](#br28)ach Partyshall hold in confidence and shall not disclose to any person Confidential Information.

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**Confidential Information.**

The following shall constitute Confidential Information: (1) any non-public informationthat is treated as confidential by the disclosing Party and which the disclosing Party identifies asConfidential 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 inAttachment F to the ISO OATT.

**Scope.**

Confidential Information shall not include information that the receiving Party candemonstrate: (1) is generally available to the public other than as a result of a disclosure by thereceiving Party; (2) was in the lawful possession of the receiving Party on a non-confidentialbasis before receiving it from the disclosing Party; (3) was supplied to the receiving Partywithout restriction by a third party, who, to the knowledge of the receiving Party after dueinquiry, was under no obligation to the disclosing Party to keep such information confidential;(4) was independently developed by the receiving Party without reference to ConfidentialInformation of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful actor omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordancewith Art[icle 16.9](#br30) of this Agreement, Order of Disclosure, to be disclosed by any GovernmentalAuthority or is otherwise required to be disclosed by law or subpoena, or is necessary in anylegal proceeding establishing rights and obligations under this Agreement. Informationdesignated as Confidential Information will no longer be deemed confidential if the Party thatdesignated the information as confidential notifies the other Party that it no longer isconfidential.

**Release of Confidential Information.**

No Party shall release or disclose Confidential Information to any other person, except toits Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees,consultants, or to parties who may be considering providing financing to or equity participationwith Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis inconnection with this Agreement, unless such person has first been advised of the confidentialityprovisions of t[his Article 16](#br28) and has agreed to comply with such provisions. Notwithstandingthe foregoing, a Party providing Confidential Information to any person shall remain primarilyresponsible for any release of Confidential Information in contravention of t[his Article 16.](#br28)

**Rights.**

Each Party retains all rights, title, and interest in the Confidential Information that eachParty discloses to the other Party. The disclosure by each Party to the other Parties ofConfidential Information shall not be deemed a waiver by any Party or any other person or entityof the right to protect the Confidential Information from public disclosure.

**No Warranties.**

By providing Confidential Information, no Party makes any warranties or representationsas to its accuracy or completeness. In addition, by supplying Confidential Information, no Party

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obligates itself to provide any particular information or Confidential Information to the otherParties nor to enter into any further agreements or proceed with any other relationship or jointventure.

**Standard of Care.**

Each Party shall use at least the same standard of care to protect Confidential Informationit 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 itsobligations to the other Parties under this Agreement or its regulatory requirements, including theISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information itreceives 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 apparentauthority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories,requests for production of documents, administrative order, or otherwise, to disclose ConfidentialInformation, that Party shall provide the other Parties with prompt notice of such request(s) orrequirement(s) so that the other Parties may seek an appropriate protective order or waivecompliance with the terms of this Agreement. Notwithstanding the absence of a protective orderor waiver, the Party may disclose such Confidential Information which, in the opinion of itscounsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts toobtain reliable assurance that confidential treatment will be accorded any ConfidentialInformation 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 todestroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to theother Parties) or return to the other Parties, without retaining copies thereof, any and all writtenor electronic Confidential Information received from the other Parties pursuant to thisAgreement.

**Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party foranother Party’s Breach of its obligations under th[is Article 16. Each Part](#br28)y accordingly agreesthat the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if thefirst Party Breaches or threatens to Breach its obligations under t[his Article 16, which equi](#br28)tablerelief shall be granted without bond or proof of damages, and the receiving Party shall not pleadin defense that there would be an adequate remedy at law. Such remedy shall not be deemed anexclusive remedy for the Breach of th[is Article 16, but s](#br28)hall be in addition to all other remediesavailable at law or in equity. The Parties further acknowledge and agree that the covenantscontained herein are necessary for the protection of legitimate business interests and arereasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential

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or punitive damages of any nature or kind resulting from or arising in connection with this[Article 16.](#br28)

**Disclosure to FERC, its Staff, or a State.**

Notwithstanding anything in t[his Article 16](#br28) 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, requestsinformation from one of the Parties that is otherwise required to be maintained in confidencepursuant to this Agreement or the ISO OATT, the Party shall provide the requested informationto FERC or its staff, within the time provided for in the request for information. In providing theinformation 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 andthat the information be withheld from public disclosure. Parties are prohibited from notifyingthe other Parties to this Agreement prior to the release of the Confidential Information to theCommission or its staff. The Party shall notify the other Parties to the Agreement when it isnotified by FERC or its staff that a request to release Confidential Information has been receivedby 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 aconfidential investigation shall be treated in a similar manner if consistent with the applicablestate 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 stateregulatory body request under this paragraph.

**Required Notices Upon Requests or Demands for Confidential Information.**

Except as otherwise expressly provided herein, no Party shall disclose ConfidentialInformation to any person not employed or retained by the Party possessing the ConfidentialInformation, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by thedisclosing Party to be required to be disclosed in connection with a dispute between or amongthe Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of theother Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill itsobligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to anydisclosures of a Party’s Confidential Information under this subparagraph, or if any third party orGovernmental Authority makes any request or demand for any of the information described inthis subparagraph, the disclosing Party agrees to promptly notify the other Party in writing andagrees to assert confidentiality and cooperate with the other Party in seeking to protect theConfidential Information from public disclosure by confidentiality agreement, protective order orother reasonable measures.

**ARTICLE 17. AFFECTED SYSTEM OPERATOR NOTICES OF ENVIRONMENTAL**

**RELEASES**

Affected System Operator shall notify Developer, first orally and then in writing, of therelease of any Hazardous Substances, any asbestos or lead abatement activities, or any type ofremediation activities related to the Affected System Upgrade Facilities, each of which mayreasonably be expected to affect Developer. Affected System Operator shall: (i) provide thenotice as soon as practicable, provided Affected System Operator makes a good faith effort to

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provide the notice no later than twenty-four hours after Affected System Operator becomesaware of the occurrence; and (ii) promptly furnish to Developer copies of any publicly availablereports filed with any Governmental Authorities addressing such events.

**ARTICLE 18. INFORMATION REQUIREMENT**

**Information Acquisition.**

Affected System Operator and Developer shall each submit specific informationregarding the electrical characteristics of their respective facilities to the other Party and to theNYISO as described below and in accordance with Applicable Reliability Standards.

**Information Submission by Affected System Operator.**

On a monthly basis, Affected System Operator shall provide Developer and NYISO astatus 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 ofthe 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 a completed copy of the LargeGenerating Facility data requirements contained in Appendix 1 to the Standard Large FacilityInterconnection Procedures. It shall also include any additional information provided toAffected System Operator for the Interconnection Facilities Study. Information in thissubmission shall be the most current Large Generating Facility design or expected performancedata. Information submitted for stability models shall be compatible with NYISO standardmodels. If there is no compatible model, the Developer will work with a consultant mutuallyagreed 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 SystemOperator 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 anew Interconnection Request, then NYISO will conduct appropriate studies to determine theimpact on the New York State Transmission System based on the actual data submitted pursuantto this Arti[cle 18.3. Such](#br32) studies will provide an estimate of any additional modifications to theNew York State Transmission System or Affected System Upgrade Facilities based on the actualdata and a good faith estimate of the costs thereof. The Developer shall not begin TrialOperation until such studies are completed. The Developer shall be responsible for the cost ofany modifications required by the actual data, including the cost of any required studies.

**Information Supplementation.**

Developer shall supplement its information submissions described above in th[is Article18](#br32) with any and all “as built” information or “as tested” performance information that differsfrom the initial submissions or, alternatively, written confirmation that no such differences exist.

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**ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS**

**Information Access.**

Each Party (“Disclosing Party”) shall make available to another Party (“RequestingParty”) information that is in the possession of the Disclosing Party and is necessary in order forthe Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which theRequesting Party is responsible under this Agreement; and (ii) carry out its obligations andresponsibilities under this Agreement. The Parties shall not use such information for purposesother than those set forth in this Artic[le 19.1](#br33) of this Agreement and to enforce their rights underthis Agreement.

**Reporting of Non-Force Majeure Events.**

Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Partybecomes aware of its inability to comply with the provisions of this Agreement for a reason otherthan a Force Majeure event. The Parties agree to cooperate with each other and providenecessary information regarding such inability to comply, including the date, duration, reason forthe inability to comply, and corrective actions taken or planned to be taken with respect to suchinability to comply. Notwithstanding the foregoing, notification, cooperation or informationprovided under this Article shall not entitle the Party receiving such notification to allege a causefor anticipatory breach of this Agreement.

**Audit Rights.**

Subject to the requirements of confidentiality und[er Article 16](#br28) of this Agreement, eachParty shall have the right, during normal business hours, and upon prior reasonable notice toanother Party, to audit at its own expense the other Party’s accounts and records pertaining to theother Party’s performance or satisfaction of its obligations under this Agreement. Such auditrights shall include audits of the other Party’s costs, and calculation of invoiced amounts. Anyaudit authorized by this Article shall be performed at the offices where such accounts andrecords are maintained and shall be limited to those portions of such accounts and records thatrelate to the Party’s performance and satisfaction of obligations under this Agreement. EachParty shall keep such accounts and records for a period equivalent to the audit rights periodsdescribed in Art[icle 19.4](#br33) 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 ofthe Affected System Upgrade Facilities shall be subject to audit for a period of twenty-fourmonths following the issuance of a final invoice in accordanc[e with Article 7.1](#br21) of thisAgreement.

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**Audit Rights Period for All Other Accounts and Records.**

Accounts and records related to a Party’s performance or satisfaction of its obligationsunder this Agreement other than those described in Article [19.4.1](#br33) of this Agreement shall besubject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rightsperiod shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise tosuch cost obligations; and (ii) for an audit relating to all other obligations, the applicable auditrights 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, anotice of such overpayment or underpayment shall be given to the other Party together withthose 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 anysubcontractor 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 andconditions of this Agreement in providing such services and each Party shall remain primarilyliable to the other Parties for the performance of such subcontractor.

**Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of itsobligations under this Agreement. The hiring Party shall be fully responsible to the other Partiesfor the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had beenmade; provided, however, that in no event shall the NYISO or Affected System Operator beliable for the actions or inactions of Developer or its subcontractors with respect to obligations ofthe Developer under [Article 3](#br12) of this Agreement. Any applicable obligation imposed by thisAgreement upon the hiring Party shall be equally binding upon, and shall be construed as havingapplication to, any subcontractor of such Party.

**No Limitation by Insurance.**

The obligations under th[is Article 20](#br34) 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 connectionwith this Agreement or its performance (a “Dispute”), such Party shall provide the other Partieswith written notice of the Dispute (“Notice of Dispute”). Such Dispute shall be referred to a

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designated senior representative of each Party for resolution on an informal basis as promptly aspracticable after receipt of the Notice of Dispute by the other Parties. In the event the designatedrepresentatives are unable to resolve the Dispute through unassisted or assisted negotiationswithin thirty (30) Calendar Days of the other Parties’ receipt of the Notice of Dispute, suchDispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved inaccordance with the arbitration procedures set forth below. In the event the Parties do not agreeto submit such Dispute to arbitration, each Party may exercise whatever rights and remedies itmay 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 neutralarbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten(10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose onearbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shallbe knowledgeable in electric utility matters, including electric transmission and bulk powerissues, and shall not have any current or past substantial business or financial relationships withany party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of theParties an opportunity to be heard and, except as otherwise provided herein, shall conduct thearbitration in accordance with the Commercial Arbitration Rules of the American ArbitrationAssociation (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided,however, in the event of a conflict between the Arbitration Rules and the terms of this [Article 21,](#br34)the terms of thi[s Article 21](#br34) shall prevail.

**Arbitration Decisions.**

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

**Costs.**

Each Party shall be responsible for its own costs incurred during the arbitration processand for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to siton the three member panel; or (2) one-third the cost of the single arbitrator jointly chosen by theParties.

**Termination.**

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Notwithstanding the provisions of th[is Article 21, any Par](#br34)ty may terminate thisAgreement in accordance with its provisions or pursuant to an action at law or equity. The issueof 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 thestate in which it is organized, formed, or incorporated, as applicable; that it is qualified to dobusiness in the State of New York; and that it has the corporate power and authority to own itsproperties, to carry on its business as now being conducted and to enter into this Agreement andcarry out the transactions contemplated hereby and perform and carry out all covenants andobligations 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 aParty hereto and to perform its obligations hereunder. This Agreement is a legal, valid andbinding 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 equitableprinciples (regardless of whether enforceability is sought in a proceeding in equity or at law).

**No Conflict.**

The execution, delivery and performance of this Agreement does not violate or conflictwith the organizational or formation documents, or bylaws or operating agreement, of suchParty, or any judgment, license, permit, order, material agreement or instrument applicable to orbinding 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 orobtain, each consent, approval, authorization, order, or acceptance by any GovernmentalAuthority in connection with the execution, delivery and performance of this Agreement, and itwill provide to any Governmental Authority notice of any actions under this Agreement that arerequired by Applicable Laws and Regulations.

**ARTICLE 23. MISCELLANEOUS**

**Binding Effect.**

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This Agreement and the rights and obligations hereof, shall be binding upon and shallinure 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 thiscover agreement and the Appendices hereto, the terms and conditions of this cover agreementshall be given precedence over the Appendices, except as otherwise expressly agreed to inwriting by the Parties.

**Rules of Interpretation.**

This Agreement, unless a clear contrary intention appears, shall be construed andinterpreted 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 ina particular capacity excludes such person in any other capacity or individually; (3) reference toany agreement (including this Agreement), document, instrument or tariff means suchagreement, document, instrument, or tariff as amended or modified and in effect from time totime in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference toany Applicable Laws and Regulations means such Applicable Laws and Regulations asamended, 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 statedotherwise, reference to any Article, Section or Appendix means such Article of this Agreementor such Appendix to this Agreement, or such Section to the Standard Large Facility Interconnection Procedures or such Appendix to the Standard Large Facility InterconnectionProcedures, as the case may be; (6) “hereunder”, “hereof’, “herein”, “hereto” and words ofsimilar import shall be deemed references to this Agreement as a whole and not to any particularArticle or other provision hereof or thereof; (7) “including” (and with correlative meaning“include”) means including without limiting the generality of any description preceding suchterm; and (8) relative to the determination of any period of time, “from” means “from andincluding”, “to” means “to but excluding” and “through” means “through and including”.

**Compliance.**

Each Party shall perform its obligations under this Agreement in accordance withApplicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT and GoodUtility Practice. To the extent a Party is required or prevented or limited in taking any action bysuch regulations and standards, such Party shall not be deemed to be in Breach of this Agreementfor its compliance therewith. When any Party becomes aware of such a situation, it shall notifythe other Parties promptly so that the Parties can discuss the amendment to this Agreement that isappropriate under the circumstances.

**Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Developer and AffectedSystem Operator are several, and are neither joint nor joint and several.

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**Entire Agreement.**

This Agreement, including all Appendices and Schedules attached hereto, constitutes theentire agreement between the Parties with reference to the subject matter hereof, and supersedesall prior and contemporaneous understandings or agreements, oral or written, between the Partieswith 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, orany 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 anycharacter whatsoever in favor of any persons, corporations, associations, or entities other than theParties, and the obligations herein assumed are solely for the use and benefit of the Parties, theirsuccessors in interest and permitted their assigns.

**Waiver.**

The failure of a Party to this Agreement to insist, on any occasion, upon strictperformance of any provision of this Agreement will not be considered a waiver of anyobligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by eitherParty of its rights with respect to this Agreement shall not be deemed a continuing waiver or awaiver with respect to any other failure to comply with any other obligation, right, duty of thisAgreement. Any waiver of this Agreement shall, if requested, be provided in writing.

**Headings.**

The descriptive headings of the various Articles of this Agreement have been inserted forconvenience of reference only and are of no significance in the interpretation or construction ofthis Agreement.

**Multiple Counterparts.**

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

**Amendment.**

The Parties may by mutual agreement amend this Agreement, by a written instrumentduly executed by all of the Parties.

**Modification by the Parties.**

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

**Reservation of Rights.**

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NYISO and the Affected System Operator shall have the right to make unilateral filingswith 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 provisionof the Federal Power Act and FERC’s rules and regulations thereunder, and the Developer shallhave the right to make a unilateral filing with FERC to modify this Agreement pursuant tosection 206 or any other applicable provision of the Federal Power Act and FERC’s rules andregulations thereunder; provided that each Party shall have the right to protest any such filing byanother Party and to participate fully in any proceeding before FERC in which suchmodifications may be considered. Nothing in this Agreement shall limit the rights of the Partiesor of FERC under sections 205 or 206 of the Federal Power Act and FERC’s rules andregulations thereunder, except to the extent that the Parties otherwise mutually agree as providedherein.

**No Partnership.**

This Agreement shall not be interpreted or construed to create an association, jointventure, agency relationship, or partnership among the Parties or to impose any partnershipobligation or partnership liability upon any Party. No Party shall have any right, power orauthority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be anagent or representative of, or to otherwise bind, any other Party.

**Other Transmission Rights.**

Notwithstanding any other provision of this Agreement, nothing herein shall be construedas 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 orin the future under any other agreement or tariff as a result of or otherwise associated with, thetransmission capacity, if any, created by the Affected System Upgrade Facilities.

**Modifications Related to NYISO’s Compliance with Order No. 2023.**

If, as part of the NYISO’s compliance proceeding at the Commission in response toOrder No. 2023, the Commission directs that the NYISO modify the pro forma Standard LargeGenerator Interconnection Agreement located in Appendix 4 of Attachment X of the ISO OATT,the Parties shall amend and restate this Agreement to incorporate the modifications; provided,however, the Parties may agree to include in the amended and restated agreement non-conforming changes to any terms of the pro forma Standard Large Generator InterconnectionAgreement that have been modified to comply with the Commission’s order, which non-conforming modifications must be filed with the Commission for its acceptance.

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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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Hecate Energy Cider Solar LLC**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**APPENDICES**

**Appendix A**

EPC Services

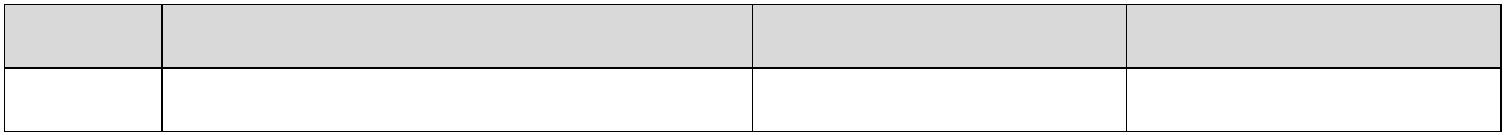
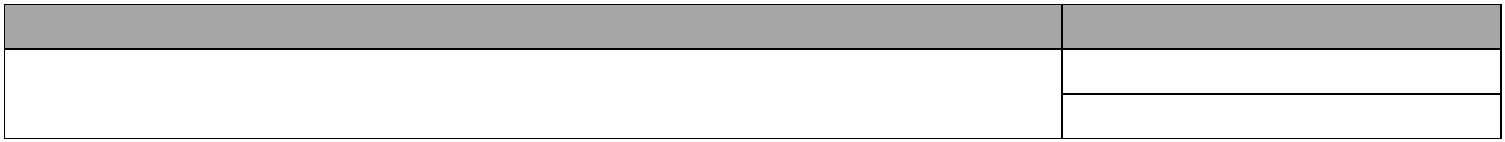
**Appendix B**

Addresses for Delivery of Notices and Billings

**Appendix C**

In-Service Date

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**APPENDIX A**

**EPC SERVICES**

**1. Affected System Upgrade Facilities**

The Class Year Interconnection Facilities Study for Class Year 2021 determined that thefollowing Affected System Upgrade Facilities at the Affected System Operator’s DysingerSubstation are required in connection with Developer’s Large Generating Facility:

• update all drawings and line/relay tagging;• review and test line protection relay settings for the Dysinger Substation to the POI Substation; and

• communication mode updates.

The proposed protection at Dysinger Substation for Line CD1 includes the following:

• Existing GE L90 - primary line differential protection, communicating over OPGW

fiber (on DH2 transmission line structure); and

• Existing SEL-411L – secondary line distance protection, communicating on National

Grid optical infrastructure.

Affected System Operator shall engineer, procure the required equipment, and constructthe Affected System Upgrade Facilities in accordance with the Affected System Operator’sspecifications, to the extent not inconsistent with the terms of this Agreement or the NYISOOATT. In addition, the Affected System Upgrade Facilities shall comply with NERC ReliabilityGuideline “Newly interconnecting inverter-based resources should eliminate the use ofmomentary cessation to the greatest possible extent.”

**2. ASO Estimated Total Costs**

Developer has accepted, and has provided Security in the form of cash to the AffectedSystem Operator to cover, the following ASO Estimated Total Costs identified in the Class YearInterconnection Facilities Study for Class Year 2021 pursuant to Section 25.8.2 of Attachment Sof the NYISO OATT.

**Description Costs**Affected System Upgrade Facilities at Dysinger Substation $328,918 Total $328,918

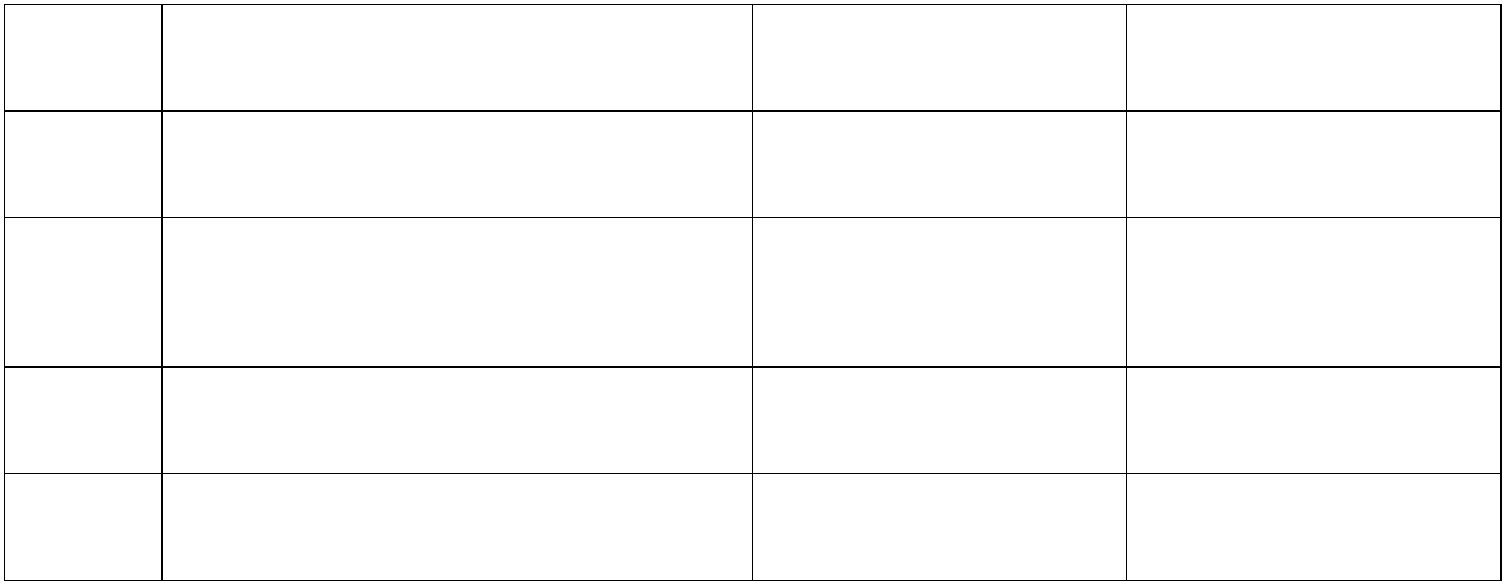
**3. Milestones**

**Item Milestone Date Responsible Party**

1. EPCA executed March-2025

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2. Engineering Start Feb-2025 Affected System Operator

3. Engineering End Oct-2025 Affected System Operator

|  |  |  |  |
| --- | --- | --- | --- |
|  | 4. Installation of protection work  element of Affected System  Upgrade Facilities |  | Apr-2026 Affected System  Operator |

5. In-Service Date May-2026 Affected System Operator

|  |  |  |  |
| --- | --- | --- | --- |
|  | 6. As Builts Drawings/Completion  Date |  | March-2026 Affected System  Operator |

For purposes of this Agreement, Affected System Operator will not require Developer to providesecurity in an amount equal to the cost consequences of any current tax liability under Artic[le 3.11](#br14)herein.

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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 Planning10 Krey Boulevard Rensselaer, NY 12144 Phone: (518) 356-6000

Email: interconnectionsupport@nyiso.com

Hecate Energy Cider Solar LLC

Hecate Energy Cider Solar LLCc/o Greenbacker Renewable Energy CorporationAttn: General Counsel

230 Park Ave

New York, NY 10169 Phone: (646) 556-6611

Emai[l: generalcounsel@greenbackercapital.com](mailto:generalcounsel@greenbackercapital.com)

With a copy to (prior to COD):

Hecate Energy

621 W Randolph St Chicago, IL 60654

Emai[l: cidersolarfarm@hecateenergy.com](mailto:cidersolarfarm@hecateenergy.com)Phone: 312 -722-5900

NextEra Energy Transmission New York Inc.:

Attn: Sean Shortell

13 Executive Park DriveClifton Park, NY 12065(518) 930-7879

sean.shortell@nexteraenergy.com

**Billings and Payments:**

Hecate Energy Cider Solar LLC:

Hecate Energy Cider Solar LLC

230 Park Ave, New York, NY 10169

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PO Box 15007 Portland, ME 04102

Emai[l: invoices@greenbackercapital.com](mailto:invoices@greenbackercapital.com)CC[: accountspayable@greenbackercapital.com](mailto:accountspayable@greenbackercapital.com)Phone: (646) 720-9463

With a copy to:

Hecate Energy

621 W Randolph St Chicago, IL 60654

Emai[l: cidersolarfarm@hecateenergy.com](mailto:cidersolarfarm@hecateenergy.com)Phone: 312 -722-5900

NextEra Energy Transmission New York Inc.:

Attn: Sean Shortell

13 Executive Park DriveClifton Park, NY 12065(518) 930-7879

sean.shortell@nexteraenergy.com

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**APPENDIX C**

**IN-SERVICE DATE**

[**Date**]

New York Independent System Operator, Inc.Attn: Vice President, Operations10 Krey Boulevard Rensselaer, NY 12144

Re: Cider Solar Affected System Upgrade Facilities

Dear :

On **[Date] [NextEra Transmission New York Inc.]** has completed the Affected SystemUpgrade Facilities. This letter confirms that [describe Affected System Upgrade Facilities] havecommenced service, effective as of [Date plus one day].

Thank you.

[**Signature**]

[**NEETNY’s Representative**]

**[Copy Developer]**

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