**SERVICE AGREEMENT NO. 2710**

**SERVICE AGREEMENT NO. 2710**

**AMENDED AND RESTATED**

**MERCHANT TRANSMISSION FACILITY**

**INTERCONNECTION AGREEMENT**

**AMONG THE**

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

**AND**

**NEW YORK POWER AUTHORITY**

**AND**

**CHPE LLC**

**Dated as of July 8, 2024**

**(Champlain Hudson Power Express)**

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Appendices

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**SERVICE AGREEMENT NO. 2710**

**AMENDED AND RESTATED MERCHANT TRANSMISSION FACILITY**

**INTERCONNECTION AGREEMENT**

**THIS AMENDED AND RESTATED MERCHANT TRANSMISSION FACILITY**

**INTERCONNECTION AGREEMENT** (“Agreement”) is made and entered into this 8th day

of July, 2024, by and among CHPE LLC, a limited liability company organized and existing

under the laws of the State of New York (“Developer”), the New York Independent System

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

New York (“NYISO”), and New York Power Authority a corporate municipal instrumentality

organized and existing under the laws of the State of New York (“Connecting Transmission

Owner”). Developer, the NYISO, or Connecting Transmission Owner each may be referred to

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

**RECITALS**

**WHEREAS**, NYISO operates the New York State Transmission System and Connecting

Transmission Owner owns certain facilities included in the New York State Transmission

System;

**WHEREAS,** Developer’s proposed 1000 MW HVDC transmission facility (NYISO Queue No.

631) and its proposed 250 MW expansion of the transmission facility (NYISO Queue No. 887)

are participating in the Class Year Interconnection Facilities Study for Class Year 2021, and both

projects are collectively the Merchant Transmission Facility subject to this Agreement as

detailed in Appendix C to this Agreement;

**WHEREAS,** Developer intends to own, lease and/or control and operate the Merchant

Transmission Facility; and

**WHEREAS**, Developer, NYISO, and Connecting Transmission Owner have agreed to enter into

this Agreement for the purpose of interconnecting the Merchant Transmission Facility with the

New York State Transmission System;

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

it is agreed:

**ARTICLE 1. DEFINITIONS**

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

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

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

Section 30.1 of Attachment X of the ISO OATT, Section 25.1.2 of Attachment S of the ISO

OATT, the body of the LFIP or the body of this Agreement.

**Affected System** shall mean an electric system other than the transmission system owned,

controlled or operated by the Connecting Transmission Owner that may be affected by the

proposed interconnection.

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**Affected System Operator** shall mean the entity that operates an Affected System.

**Affected Transmission Owner** shall mean the New York public utility or authority (or its

designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for

the transmission of Energy in interstate commerce and provides Transmission Service under the

Tariff, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State

Transmission System where System Deliverability Upgrades, System Upgrade Facilities, or

Network Upgrade Facilities are or will be installed pursuant to Attachment P, Attachment X,

Attachment Z, or Attachment S to the ISO OATT.

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

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

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

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

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

more shall create a rebuttable presumption of control.

**Ancillary Services** shall mean those services that are necessary to support the transmission of

Capacity and Energy from resources to Loads while maintaining reliable operation of the New

York State Transmission System in accordance with Good Utility Practice.

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

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

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

including but not limited to Environmental Law.

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

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

Reliability Councils, and the Transmission District to which the Developer’s Merchant

Transmission Facility is directly interconnected, as those requirements and guidelines are

amended and modified and in effect from time to time; provided that no Party shall waive its

right to challenge the applicability or validity of any requirement or guideline as applied to it in

the context of this Agreement.

**Attachment Facilities** shall mean the Connecting Transmission Owner’s Attachment Facilities

and the Developer’s Attachment Facilities. Collectively, Attachment Facilities include all

facilities and equipment between the Merchant Transmission Facility and the Point of

Interconnection, including any modification, additions or upgrades that are necessary to

physically and electrically interconnect the Merchant Transmission Facility to the New York

State Transmission System. Attachment Facilities are sole use facilities and shall not include

Stand Alone System Upgrade Facilities, Distribution Upgrades, System Upgrade Facilities or

System Deliverability Upgrades.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for

the Interconnection Studies by NYISO, Connecting Transmission Owner or Developer;

described in Section 30.2.3 of the Standard Large Facility Interconnection Procedures.

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

this Agreement.

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

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

**Byway** shall mean all transmission facilities comprising the New York State Transmission

System that are neither Highways nor Other Interfaces. All transmission facilities in Zone J and

Zone K are Byways.

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

**Capacity Region** shall mean one of four subsets of the Installed Capacity statewide markets

comprised of (1) Rest of State (*i.e.,* Load Zones A through F); (2) Lower Hudson Valley (*i.e.,*

Load Zones G, H and I); (3) New York City (*i.e.,* Load Zone J); and (4) Long Island (*i.e.,* Load

Zone K) , except for Class Year Interconnection Facility Studies conducted prior to Class Year

2012, for which “Capacity Region” shall be defined as set forth in Section 25.7.3 of Attachment

S to the ISO OATT.

**Capacity Resource Interconnection Service (“CRIS”)** shall mean the service provided by

NYISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are

otherwise eligible to receive CRIS in accordance with Attachment S to the ISO OATT; such

service being one of the eligibility requirements for participation as a NYISO Installed Capacity

Supplier.

**Class Year Deliverability Study** shall mean an assessment, conducted by the NYISO staff in

cooperation with Market Participants, to determine whether System Deliverability Upgrades are

required for Class Year CRIS Projects under the NYISO Deliverability Interconnection Standard.

**Commercial Operation** shall mean the status of a Merchant Transmission Facility that has

commenced transmitting electricity for sale, excluding electricity transmitted during Trial

Operation.

**Commercial Operation Date** of a unit shall mean the date on which the Merchant Transmission

Facility commences Commercial Operation as agreed to by the Parties, notice of which must be

provided to the NYISO in the form of Appendix E-2 to this Agreement.

**Confidential Information** shall mean any information that is defined as confidential by

Article [22](#br57) of this Agreement.

**Connecting Transmission Owner** shall mean the New York public utility or authority (or its

designated agent) that (i) owns facilities used for the transmission of Energy in interstate

commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise

possesses an interest in the portion of the New York State Transmission System or Distribution

System at the Point of Interconnection, and (iii) is a Party to this Agreement.

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**Connecting Transmission Owner’s Attachment Facilities** shall mean all facilities and

equipment owned, controlled or operated by the Connecting Transmission Owner from the Point

of Change of Ownership to the Point of Interconnection as identified in Appendix A to this

Agreement, including any modifications, additions or upgrades to such facilities and equipment.

Connecting Transmission Owner’s Attachment Facilities are sole use facilities and shall not

include Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System

Deliverability Upgrades.

**Contingent Facilities** shall mean those Attachment Facilities and System Upgrade Facilities

and/or System Deliverability Upgrades associated with Class Year Projects upon which the

Merchant Transmission Facility’s Class Year Project Cost Allocations are dependent, and if

delayed or not built, could impact the actual costs and timing of the Merchant Transmission

Facility’s Project Cost Allocation for System Upgrade Facilities or System Deliverability

Upgrades.

**Control Area** shall mean an electric power system or combination of electric power systems to

which a common automatic generation control scheme is applied in order to: (1) match, at all

times, the power output of the Generators within the electric power system(s) and capacity and

energy purchased from entities outside the electric power system(s), with the Load within the

electric power system(s); (2) maintain scheduled interchange with other Control Areas, within

the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s)

within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient

generating capacity to maintain Operating Reserves in accordance with Good Utility Practice. A

Control Area must be certified by the NPCC.

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

accordance with Article [17](#br52) of this Agreement.

**Developer** shall mean an Eligible Customer developing a Merchant Transmission Facility,

proposing to connect to the New York State Transmission System, in compliance with the

NYISO Minimum Interconnection Standard.

**Developer’s Attachment Facilities** shall mean all facilities and equipment, as identified in

Appendix A of this Agreement, that are located between the Merchant Transmission Facility and

the Point of Change of Ownership, including any modification, addition, or upgrades to such

facilities and equipment necessary to physically and electrically interconnect the Merchant

Transmission Facility to the New York State Transmission System. Developer’s Attachment

Facilities are sole use facilities.

**Distribution System** shall mean the Connecting Transmission Owner’s facilities and equipment

used to distribute electricity that are subject to FERC jurisdiction, and are subject to the

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

Generator Interconnection Procedures in Attachment Z to the ISO OATT under FERC Order

Nos. 2003 and/or 2006. The term Distribution System shall not include LIPA’s distribution

facilities.

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**Distribution Upgrades** shall mean the additions, modifications, and upgrades to the Connecting

Transmission Owner’s Distribution System at or beyond the Point of Interconnection to facilitate

interconnection of a Merchant Transmission Facility and render the transmission service

necessary to affect the Developer’s wholesale sale of electricity in interstate commerce.

Distribution Upgrades do not include Attachment Facilities, System Upgrade Facilities, or

System Deliverability Upgrades. Distribution Upgrades are sole use facilities and shall not

include Stand Alone System Upgrade Facilities, System Upgrade Facilities, or System

Deliverability Upgrades.

**Effective Date** shall mean the date on which this Agreement becomes effective upon execution

by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date

specified by the Commission.

**Emergency State** shall mean the condition or state that the New York State Power System is in

when an abnormal condition occurs that requires automatic or immediate manual action to

prevent or limit loss of the New York State Transmission System or Generators that could

adversely affect the reliability of the New York State Power System.

**Energy Resource Interconnection Service (“ERIS”)** shall mean the service provided by

NYISO to interconnect the Developer’s Merchant Transmission Facility to the New York State

Transmission System or to the Distribution System in accordance with the NYISO Minimum

Interconnection Standard, to enable the New York State Transmission System to receive Energy

and Ancillary Services from the Merchant Transmission Facility, pursuant to the terms of the

ISO OATT.

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

protection of the environment or natural resources.

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

(“FPA”).

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

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

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

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

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

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

Majeure.

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

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

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

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

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

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

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

generally accepted in the region.

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

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

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

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

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

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

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

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

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

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

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

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

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

any applicable Environmental Law.

**Highway** shall mean 115 kV and higher transmission facilities that comprise the following

NYCA interfaces: Dysinger East, West Central, Volney East, Moses South, Central East/Total

East, and UPNY-ConEd, and their immediately connected, in series, bulk power system facilities

in New York State. Each interface shall be evaluated to determine additional “in series”

facilities, defined as any transmission facility higher than 115 kV that (a) is located in an

upstream or downstream zone adjacent to the interface and (b) has a power transfer distribution

factor (DFAX) equal to or greater than five percent when the aggregate of generation in zones or

systems adjacent to the upstream zone or zones that define the interface is shifted to the

aggregate of generation in zones or systems adjacent to the downstream zone or zones that define

the interface. In determining “in series” facilities for Dysinger East and West Central interfaces,

the 115 kV and 230 kV tie lines between NYCA and PJM located in LBMP Zones A and B shall

not participate in the transfer. Highway transmission facilities are listed in ISO Procedures.

**Initial Synchronization Date** shall mean the date upon which the Merchant Transmission

Facility is initially synchronized and upon which Trial Operation begins, notice of which must be

provided to the NYISO in the form of Appendix E-1.

**In-Service Date** shall mean the date upon which the Developer reasonably expects it will be

ready to begin use of the Connecting Transmission Owner’s Attachment Facilities to obtain back

feed power.

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

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

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

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

the cost of those facilities, and the time required to interconnect the Merchant Transmission

Facility with the New York State Transmission System or with the Distribution System. The

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

Procedures.

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

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

Procedures for conducting the Interconnection Facilities Study.

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

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

interconnect a new Merchant Transmission Facility to the New York State Transmission System

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

modification to the operating characteristics of, an existing Merchant Transmission Facility that

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

**Interconnection Study** shall mean any of the following studies: the Optional Interconnection

Feasibility Study, the Interconnection System Reliability Impact Study, and the Interconnection

Facilities Study described in the Standard Large Facility Interconnection Procedures.

**Interconnection System Reliability Impact Study (“SRIS”)** shall mean an engineering study,

conducted in accordance with Section 30.7 of the Standard Large Facility Interconnection

Procedures, that evaluates the impact of the proposed Merchant Transmission Facility on the

safety and reliability of the New York State Transmission System and, if applicable, an Affected

System, to determine what Attachment Facilities, Distribution Upgrades and System Upgrade

Facilities are needed for the proposed Merchant Transmission Facility of the Developer to

connect reliably to the New York State Transmission System or to the Distribution System in a

manner that meets the NYISO Minimum Interconnection Standard in Attachment X to the ISO

OATT.

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

**Material Modification** shall mean those modifications that have a material impact on the cost or

timing of any Interconnection Request with a later queue priority date.

**Merchant Transmission Facility** shall mean generally a merchant facility for the transmission

of electricity, and specifically the Developer’s facility for the transmission of electricity as

described in this Agreement and the Appendices hereto.

**Merchant Transmission Facility Interconnection Agreement** shall mean this Agreement.

**Metering Equipment** shall mean all metering equipment installed or to be installed at the Point

of Interconnection, including but not limited to instrument transformers, MWh-meters, data

acquisition equipment, transducers, remote terminal unit, communications equipment, phone

lines, and fiber optics.

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

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

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

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

transmission facilities within the New York Control Area.

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**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 Deliverability Interconnection Standard –** The standard that must be met, unless

otherwise provided for by Attachment S to the ISO OATT, by (i) any generation facility larger

than 2MW in order for that facility to obtain CRIS; (ii) any Class Year Transmission Project; (iii)

any entity requesting External CRIS Rights, and (iv) any entity requesting a CRIS transfer

pursuant to Section 25.9.5 of Attachment S to the ISO OATT. To meet the NYISO

Deliverability Interconnection Standard, the Developer must, in accordance with the rules in

Attachment S to the ISO OATT, fund or commit to fund any System Deliverability Upgrades

identified for its project in the Class Year Deliverability Study.

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

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

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

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

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

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

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

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

the proposed interconnection.

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

**Other Interfaces** shall mean the following interfaces into Capacity Regions: Lower Hudson

Valley [*i.e.,* Rest of State (Load Zones A-F) to Lower Hudson Valley (Load Zones G, H and I)];

New York City [*i.e.,* Lower Hudson Valley (Load Zones G, H and I) to New York City (Load

Zone J)]; and Long Island [*i.e.,* Lower Hudson Valley (Load Zones G, H and I) to Long Island

(Load Zone K)], and the following Interfaces between the NYCA and adjacent Control Areas:

PJM to NYISO, ISO-NE to NYISO, Hydro-Quebec to NYISO, and Norwalk Harbor

(Connecticut) to Northport (Long Island) Cable.

**Party or Parties** shall mean NYISO, Connecting Transmission Owner, or Developer or any

combination of the above.

**Point of Change of Ownership** shall mean the point, as set forth in Appendix A to this

Agreement, where the Developer’s Attachment Facilities connect to the Connecting

Transmission Owner’s Attachment Facilities.

**Point of Interconnection** shall mean the point, as set forth in Appendix A to this Agreement,

where the Attachment Facilities connect to the New York State Transmission System or to the

Distribution System.

**Provisional Interconnection Service** shall mean interconnection service provided by the ISO

associated with interconnecting the Developer’s Merchant Transmission Facility to the New

York State Transmission System (or Distribution System as applicable) and enabling the

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transmission system to receive electric energy from the Merchant Transmission Facility at the

Point of Interconnection, pursuant to the terms of the Provisional Large Facility Interconnection

Agreement and, if applicable, the ISO OATT.

**Provisional Merchant Transmission Facility Interconnection Agreement** shall mean the

interconnection agreement for Provisional Interconnection Service established between the ISO,

Connecting Transmission Owner(s) and the Developer. This agreement shall take the form of

the Merchant Transmission Facility Interconnection Agreement, modified for provisional

purposes and type of facility.

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

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

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

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

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

thereto.

**Stand Alone System Upgrade Facilities** shall mean System Upgrade Facilities that are not part

of an Affected System that a Developer may construct without affecting day-to-day operations of

the New York State Transmission System during their construction. NYISO, the Connecting

Transmission Owner and the Developer must agree as to what constitutes Stand Alone System

Upgrade Facilities and identify them in Appendix A to this Agreement. If NYISO, the

Connecting Transmission Owner and the Developer disagree about whether a particular System

Upgrade Facility is a Stand Alone System Upgrade Facility, NYISO and the Connecting

Transmission Owner must provide the Developer a written technical explanation outlining why

NYISO and the Connecting Transmission Owner does not consider the System Upgrade Facility

to be a Stand Alone System Upgrade Facility within fifteen (15) days of its determination.

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

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

Interconnection Request pertaining to a Merchant Transmission Facility that are included in

Attachment X of the ISO OATT.

**System Deliverability Upgrades** shall mean the least costly configuration of commercially

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

Practice and Applicable Reliability Requirements, to make the modifications or additions to

Byways and Highways and Other Interfaces on the existing New York State Transmission

System and Distribution System that are required for the proposed project to connect reliably to

the system in a manner that meets the NYISO Deliverability Interconnection Standard at the

requested level of Capacity Resource Interconnection Service.

**System Protection Facilities** shall mean the equipment, including necessary protection signal

communications equipment, required to (1) protect the New York State Transmission System

from faults or other electrical disturbances occurring at the Merchant Transmission Facility and

(2) protect the Merchant Transmission Facility from faults or other electrical system disturbances

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occurring on the New York State Transmission System or on other delivery systems or other

generating systems to which the New York State Transmission System is directly connected.

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

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

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

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

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

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

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

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

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

Standard.

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

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

**Trial Operation** shall mean the period during which Developer is engaged in on-site test

operations and commissioning of the Merchant Transmission Facility prior to Commercial

Operation.

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

**2.1**

**Effective Date.**

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

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

Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution

in accordance [with Article 3.](#br17)

**2.2**

**Term of Agreement.**

Subject to the provisions of Article [2.3, thi](#br15)s Agreement shall remain in effect for a period

of thirty (30) years from the Effective Date and shall be automatically renewed for each

successive one-year period thereafter.

**2.3**

**Termination.**

**2.3.1 Written Notice.**

This Agreement may be terminated by the Developer after giving the NYISO and

Connecting Transmission Owner ninety (90) Calendar Days advance written notice, or by the

NYISO and Connecting Transmission Owner notifying FERC after the Merchant Transmission

Facility permanently ceases Commercial Operation.

**2.3.2 Default.**

Any Party may terminate this Agreement in accordance with Article [17.](#br52)

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**2.3.3 Compliance.**

Notwithstanding Artic[les 2.3.1](#br15) a[nd 2.3.2, no ter](#br15)mination of this Agreement shall become

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

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

which notice has been accepted for filing by FERC.

**2.4**

**Termination Costs.**

If a Party elects to terminate this Agreement pursuant to Article [2.3.1](#br15) above, the

terminating Party shall pay all costs incurred (including any cancellation costs relating to orders

or contracts for Attachment Facilities and equipment) or charges assessed by the other Parties, as

of the date of the other Parties’ receipt of such notice of termination, that are the responsibility of

the terminating Party under this Agreement. In the event of termination by a Party, all Parties

shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as

a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or

approved by FERC:

**2.4.1** With respect to any portion of the Connecting Transmission Owner’s Attachment

Facilities that have not yet been constructed or installed, the Connecting Transmission Owner

shall to the extent possible and with Developer’s authorization cancel any pending orders of, or

return, any materials or equipment for, or contracts for construction of, such facilities; provided

that in the event Developer elects not to authorize such cancellation, Developer shall assume all

payment obligations with respect to such materials, equipment, and contracts, and the

Connecting Transmission Owner shall deliver such material and equipment, and, if necessary,

assign such contracts, to Developer as soon as practicable, at Developer’s expense. To the extent

that Developer has already paid Connecting Transmission Owner for any or all such costs of

materials or equipment not taken by Developer, Connecting Transmission Owner shall promptly

refund such amounts to Developer, less any costs, including penalties incurred by the Connecting

Transmission Owner to cancel any pending orders of or return such materials, equipment, or

contracts.

If Developer terminates this Agreement, it shall be responsible for all costs incurred in

association with Developer’s interconnection, including any cancellation costs relating to orders

or contracts for Attachment Facilities and equipment, and other expenses including any System

Upgrade Facilities and System Deliverability Upgrades for which the Connecting Transmission

Owner has incurred expenses and has not been reimbursed by the Developer.

**2.4.2** Connecting Transmission Owner may, at its option, retain any portion of such

materials, equipment, or facilities that Developer chooses not to accept delivery of, in which case

Connecting Transmission Owner shall be responsible for all costs associated with procuring such

materials, equipment, or facilities.

**2.4.3** With respect to any portion of the Attachment Facilities, and any other facilities

already installed or constructed pursuant to the terms of this Agreement, Developer shall be

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responsible for all costs associated with the removal, relocation or other disposition or retirement

of such materials, equipment, or facilities.

**2.5**

**Disconnection.**

Upon termination of this Agreement, Developer and Connecting Transmission Owner

will take all appropriate steps to disconnect the Developer’s Merchant Transmission Facility

from the New York State Transmission System. All costs required to effectuate such

disconnection shall be borne by the terminating Party, unless such termination resulted from the

non-terminating Party’s Default of this Agreement or such non-terminating Party otherwise is

responsible for these costs under this Agreement.

**2.6**

**Survival.**

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

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

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

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

was in effect; and to permit Developer and Connecting Transmission Owner each to have access

to the lands of the other pursuant to this Agreement or other applicable agreements, to

disconnect, remove or salvage its own facilities and equipment.

**ARTICLE 3. REGULATORY FILINGS**

NYISO and Connecting Transmission Owner shall file this Agreement (and any

amendment hereto) with the appropriate Governmental Authority, if required. Any information

related to studies for interconnection asserted by Developer to contain Confidential Information

shall be treated in accordance [with Article 22](#br57) of this Agreement and Attachment F to the ISO

OATT. If the Developer has executed this Agreement, or any amendment thereto, the Developer

shall reasonably cooperate with NYISO and Connecting Transmission Owner with respect to

such filing and to provide any information reasonably requested by NYISO and Connecting

Transmission Owner needed to comply with Applicable Laws and Regulations.

**ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE**

**4.1**

**Provision of Service.**

NYISO will provide Developer with interconnection service of the following type for the

term of this Agreement.

**4.1.1 Product.**

NYISO will provide Energy Resource Interconnection Service and Capacity Resource

Interconnection Service to Developer at the Point of Interconnection.

**4.1.2 Developer** is responsible for ensuring that its actual Merchant Transmission

Facility output matches the scheduled delivery from the Merchant Transmission Facility to the

New York State Transmission System, consistent with the scheduling requirements of the

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NYISO’s FERC-approved market structure, including ramping into and out of such scheduled

delivery, as measured at the Point of Interconnection, consistent with the scheduling

requirements of the ISO OATT and any applicable FERC-approved market structure.

**4.2**

**No Transmission Delivery Service.**

The execution of this Agreement does not constitute a request for, nor agreement to

provide, any Transmission Service under the ISO OATT, and does not convey any right to

deliver electricity to any specific customer or Point of Delivery. If Developer wishes to obtain

Transmission Service on the New York State Transmission System, then Developer must request

such Transmission Service in accordance with the provisions of the ISO OATT.

**4.3**

**No Other Services.**

The execution of this Agreement does not constitute a request for, nor agreement to

provide Energy, any Ancillary Services or Installed Capacity under the NYISO Market

Administration and Control Area Services Tariff (“Services Tariff”). If Developer wishes to

supply Energy, Installed Capacity or Ancillary Services, then Developer will make application to

do so in accordance with the NYISO Services Tariff.

**ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING,**

**PROCUREMENT, AND CONSTRUCTION**

**5.1**

**Options.**

Unless otherwise mutually agreed to by Developer and Connecting Transmission Owner,

Developer shall select the In-Service Date, Initial Synchronization Date, and Commercial

Operation Date; and either the Standard Option or Alternate Option set forth below, and such

dates and selected option shall be set forth in Appendix B hereto. At the same time, Developer

shall indicate whether it elects to exercise the Option to Build set forth in Artic[le 5.1.3](#br19) below. If

the dates designated by the Developer are not acceptable to the Connecting Transmission Owner,

the Connecting Transmission Owner shall so notify the Developer within thirty (30) Calendar

Days. Upon receipt of the notification that Developer’s designated dates are not acceptable to

the Connecting Transmission Owner, the Developer shall notify the Connecting Transmission

Owner within thirty (30) Calendar Days whether it elects to exercise the Option to Build if it has

not already elected to exercise the Option to Build.

**5.1.1 Standard Option.**

The Connecting Transmission Owner shall design, procure, and construct the Connecting

Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System

Deliverability Upgrades, using Reasonable Efforts to complete the Connecting Transmission

Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability

Upgrades by the dates set forth in Appendix B hereto. The Connecting Transmission Owner

shall not be required to undertake any action which is inconsistent with its standard safety

practices, its material and equipment specifications, its design criteria and construction

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

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Connecting Transmission Owner reasonably expects that it will not be able to complete the

Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and

System Deliverability Upgrades by the specified dates, the Connecting Transmission Owner

shall promptly provide written notice to the Developer and NYISO, and shall undertake

Reasonable Efforts to meet the earliest dates thereafter.

**5.1.2 Alternate Option.**

If the dates designated by Developer are acceptable to Connecting Transmission Owner,

the Connecting Transmission Owner shall so notify Developer and NYISO within thirty (30)

Calendar Days, and shall assume responsibility for the design, procurement and construction of

the Connecting Transmission Owner’s Attachment Facilities by the designated dates. If

Connecting Transmission Owner subsequently fails to complete Connecting Transmission

Owner’s Attachment Facilities by the In-Service Date, to the extent necessary to provide back

feed power; or fails to complete System Upgrade Facilities or System Deliverability Upgrades by

the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power

output, unless other arrangements are made by the Developer and Connecting Transmission

Owner for such Trial Operation; or fails to complete the System Upgrade Facilities and System

Deliverability Upgrades by the Commercial Operation Date, as such dates are reflected in

Appendix B hereto; Connecting Transmission Owner shall pay Developer liquidated damages in

accordance with Artic[le 5.3, Liqui](#br22)dated Damages, provided, however, the dates designated by

Developer shall be extended day for day for each day that NYISO refuses to grant clearances to

install equipment.

**5.1.3 Option to Build.**

Developer shall have the option to assume responsibility for the design, procurement and

construction of Connecting Transmission Owner’s Attachment Facilities and Stand Alone

System Upgrade Facilities on the dates specified in Artic[le 5.1.2; provided](#br19) that if an Attachment

Facility or Stand Alone System Upgrade Facility is needed for more than one Developer’s

project, Developer’s option to build such facility shall be contingent on the agreement of all

other affected Developers. NYISO, Connecting Transmission Owner and Developer must agree

as to what constitutes Stand Alone System Upgrade Facilities and identify such Stand Alone

System Upgrade Facilities in Appendix A hereto. Except for Stand Alone System Upgrade

Facilities, Developer shall have no right to construct System Upgrade Facilities under this

option.

**5.1.4 Negotiated Option.**

If the dates designated by Developer are not acceptable to the Connecting Transmission

Owner, the Developer and Connecting Transmission Owner shall in good faith attempt to

negotiate terms and conditions (including revision of the specified dates and liquidated damages,

the provision of incentives or the procurement and construction of all facilities other than the

Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade

Facilities if the Developer elects to exercise the Option to Build under Artic[le 5.1.3.](#br19) If the two

Parties are unable to reach agreement on such terms and conditions, then, pursuant to Article

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[5.1.1](#br18) (Standard Option), Connecting Transmission Owner shall assume responsibility for the

design, procurement and construction of all facilities other than the Connecting Transmission

Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities if the Developer

elects to exercise the Option to Build.

**5.2**

**General Conditions Applicable to Option to Build.**

If Developer assumes responsibility for the design, procurement and construction of the

Connecting Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade

Facilities, the following conditions apply:

**5.2.1** Developer shall engineer, procure equipment, and construct the Connecting

Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities (or

portions thereof) using Good Utility Practice and using standards and specifications provided in

advance by the Connecting Transmission Owner;

**5.2.2** Developer’s engineering, procurement and construction of the Connecting

Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities shall

comply with all requirements of law to which Connecting Transmission Owner would be subject

in the engineering, procurement or construction of the Connecting Transmission Owner’s

Attachment Facilities and Stand Alone System Upgrade Facilities;

**5.2.3** Developer agrees to comply with all applicable provisions of Section 220 of the

New York Labor Law (“Section 220”), as it may be amended from time to time. Pursuant to the

requirements of Section 220, Developer agrees that, for work performed on existing Connecting

Transmission Owner facilities (i.e., “public work”):

(i) Each laborer, workman or mechanic shall be paid no less than the prevailing

wages as defined in Section 220,

(ii) The filing of payrolls shall be made in a manner consistent with subdivision three-

a (3(a)) of Section 220; this is a condition precedent to payment of any sums due and

owing to any person for work done upon the project, and

(iii) No laborer, worker, or mechanic shall be permitted or required to work more than

eight hours in any one calendar day or more than five days in any one week except in

cases of extraordinary emergency including fire, flood, or danger to life or property.

Developer reserves its rights set forth in Section 220 to obtain dispensation permitting

laborers, workers and mechanics to work additional hours or days per week.

**5.2.4** Connecting Transmission Owner shall review and approve the engineering

design, equipment acceptance tests, and the construction of the Connecting Transmission

Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities;

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**5.2.5** Prior to commencement of construction, Developer shall provide to Connecting

Transmission Owner and NYISO a schedule for construction of the Connecting Transmission

Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities, and shall promptly

respond to requests for information from Connecting Transmission Owner or NYISO;

**5.2.6** At any time during construction, Connecting Transmission Owner shall have the

right to gain unrestricted access to the Connecting Transmission Owner’s Attachment Facilities

and Stand Alone System Upgrade Facilities and to conduct inspections of the same;

**5.2.7** At any time during construction, should any phase of the engineering, equipment

procurement, or construction of the Connecting Transmission Owner’s Attachment Facilities and

Stand Alone System Upgrade Facilities not meet the standards and specifications provided by

Connecting Transmission Owner, the Developer shall be obligated to remedy deficiencies in that

portion of the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System

Upgrade Facilities;

**5.2.8** Developer shall indemnify Connecting Transmission Owner and NYISO for

claims arising from the Developer’s construction of Connecting Transmission Owner’s

Attachment Facilities and Stand Alone System Upgrade Facilities under procedures applicable to

Article [18.1](#br52) Indemnity;

**5.2.9** Developer shall transfer control of Connecting Transmission Owner’s Attachment

Facilities and Stand Alone System Upgrade Facilities to the Connecting Transmission Owner;

**5.2.10** Unless the Developer and Connecting Transmission Owner otherwise agree,

Developer shall transfer ownership of Connecting Transmission Owner’s Attachment Facilities

and Stand Alone System Upgrade Facilities to Connecting Transmission Owner;

**5.2.11** Connecting Transmission Owner shall approve and accept for operation and

maintenance the Connecting Transmission Owner’s Attachment Facilities and Stand Alone

System Upgrade Facilities to the extent engineered, procured, and constructed in accordance

with this Article 5.2; and

**5.2.12** Developer shall deliver to NYISO and Connecting Transmission Owner “as built”

drawings, information, and any other documents that are reasonably required by NYISO or

Connecting Transmission Owner to assure that the Attachment Facilities and Stand Alone

System Upgrade Facilities are built to the standards and specifications required by Connecting

Transmission Owner.

**5.2.13** If Developer exercises the Option to Build pursuant to Artic[le 5.1.3, the](#br19)

Developer shall pay the Connecting Transmission Owner the agreed upon amount of

$10,785,000 for the Connecting Transmission Owner to execute the responsibilities enumerated

to Connecting Transmission Owner under Artic[le 5.2. The](#br20) Connecting Transmission Owner

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shall invoice Developer for this total amount to be divided on a monthly basis pursuant t[o Article](#br47)

[12.](#br47)

**5.3**

**Liquidated Damages.**

The actual damages to the Developer, in the event the Connecting Transmission Owner’s

Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades are not

completed by the dates designated by the Developer and accepted by the Connecting

Transmission Owner pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Developer’s

fixed operation and maintenance costs and lost opportunity costs. Such actual damages are

uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated

damages paid by the Connecting Transmission Owner to the Developer in the event that

Connecting Transmission Owner does not complete any portion of the Connecting Transmission

Owner’s Attachment Facilities, System Upgrade Facilities or System Deliverability Upgrades by

the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the

Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and

System Deliverability Upgrades, in the aggregate, for which Connecting Transmission Owner

has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual

cost of the Connecting Transmission Owner Attachment Facilities and System Upgrade Facilities

and System Deliverability Upgrades for which the Connecting Transmission Owner has assumed

responsibility to design, procure, and construct. The foregoing payments will be made by the

Connecting Transmission Owner to the Developer as just compensation for the damages caused

to the Developer, which actual damages are uncertain and impossible to determine at this time,

and as reasonable liquidated damages, but not as a penalty or a method to secure performance of

this Agreement. Liquidated damages, when the Developer and Connecting Transmission Owner

agree to them, are the exclusive remedy for the Connecting Transmission Owner’s failure to

meet its schedule.

Further, Connecting Transmission Owner shall not pay liquidated damages to Developer

if: (1) Developer is not ready to commence use of the Connecting Transmission Owner’s

Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades to take

the delivery of power for the Developer’s Merchant Transmission Facility’s Trial Operation or to

transmit power from the Developer’s Merchant Transmission Facility on the specified dates,

unless the Developer would have been able to commence use of the Connecting Transmission

Owner’s Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades

to take the delivery of power for Developer’s Merchant Transmission Facility’s Trial Operation

or to export power from the Developer’s Merchant Transmission Facility, but for Connecting

Transmission Owner’s delay; (2) the Connecting Transmission Owner’s failure to meet the

specified dates is the result of the action or inaction of the Developer or any other Developer

who has entered into a Merchant Transmission Facility Interconnection Agreement with the

Connecting Transmission Owner and NYISO, or action or inaction by any other Party, or any

other cause beyond Connecting Transmission Owner’s reasonable control or reasonable ability to

cure; (3) the Developer has assumed responsibility for the design, procurement and construction

of the Connecting Transmission Owner’s Attachment Facilities and Stand Alone System

Upgrade Facilities; or (4) the Connecting Transmission Owner and Developer have otherwise

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agreed. In no event shall NYISO have any liability whatever to Developer for liquidated

damages associated with the engineering, procurement or construction of Attachment Facilities

or System Upgrade Facilities or System Deliverability Upgrades.

**5.4**

**5.5**

**Reserved.**

**Equipment Procurement.**

If responsibility for construction of the Connecting Transmission Owner’s Attachment

Facilities or System Upgrade Facilities or System Deliverability Upgrades is to be borne by the

Connecting Transmission Owner, then the Connecting Transmission Owner shall commence

design of the Connecting Transmission Owner’s Attachment Facilities or System Upgrade

Facilities or System Deliverability Upgrades and procure necessary equipment as soon as

practicable after all of the following conditions are satisfied, unless the Developer and

Connecting Transmission Owner otherwise agree in writing:

**5.5.1** NYISO and Connecting Transmission Owner have completed the Interconnection

Facilities Study pursuant to the Interconnection Facilities Study Agreement;

**5.5.2** The NYISO has completed the required cost allocation analyses, and Developer

has accepted its share of the costs for necessary System Upgrade Facilities and System

Deliverability Upgrades in accordance with the provisions of Attachment S of the ISO OATT;

**5.5.3** The Connecting Transmission Owner has received written authorization to

proceed with design and procurement from the Developer by the date specified in Appendix B

hereto; and

**5.5.4** The Developer has provided security to the Connecting Transmission Owner in

accordance with Article 11.5 by the dates specified in Appendix B hereto.

**5.6**

**Construction Commencement.**

The Connecting Transmission Owner shall commence construction of the Connecting

Transmission Owner’s Attachment Facilities and System Upgrade Facilities and System

Deliverability Upgrades for which it is responsible as soon as practicable after the following

additional conditions are satisfied:

**5.6.1** Approval of the appropriate Governmental Authority has been obtained for any

facilities requiring regulatory approval;

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

required for the construction of a discrete aspect of the Connecting Transmission Owner’s

Attachment Facilities and System Upgrade Facilities and System Deliverability Upgrades;

**5.6.3** The Connecting Transmission Owner has received written authorization to

proceed with construction from the Developer by the date specified in Appendix B hereto; and

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**5.6.4** The Developer has provided security to the Connecting Transmission Owner in

accordance with Article 11.5 by the dates specified in Appendix B hereto.

**5.7**

**Work Progress.**

The Developer and Connecting Transmission Owner will keep each other, and NYISO,

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

efforts. Any Party may, at any time, request a progress report from the Developer or Connecting

Transmission Owner. If, at any time, the Developer determines that the completion of the

Connecting Transmission Owner’s Attachment Facilities will not be required until after the

specified In-Service Date, the Developer will provide written notice to the Connecting

Transmission Owner and NYISO of such later date upon which the completion of the

Connecting Transmission Owner’s Attachment Facilities will be required.

**5.8**

**Information Exchange.**

As soon as reasonably practicable after the Effective Date, the Developer and Connecting

Transmission Owner shall exchange information, and provide NYISO the same information,

regarding the design and compatibility of their respective Attachment Facilities and

compatibility of the Attachment Facilities with the New York State Transmission System, and

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

**5.9**

**Other Interconnection Options**

**5.9.1 Limited Operation.**

If any of the Connecting Transmission Owner’s Attachment Facilities or System Upgrade

Facilities or System Deliverability Upgrades are not reasonably expected to be completed prior

to the Commercial Operation Date of the Developer’s Merchant Transmission Facility, NYISO

shall, upon the request and at the expense of Developer, in conjunction with the Connecting

Transmission Owner, perform operating studies on a timely basis to determine the extent to

which the Developer’s Merchant Transmission Facility and the Developer’s Attachment

Facilities may operate prior to the completion of the Connecting Transmission Owner’s

Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades consistent

with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice,

and this Agreement. Connecting Transmission Owner and NYISO shall permit Developer to

operate the Developer’s Merchant Transmission Facility and the Developer’s Attachment

Facilities in accordance with the results of such studies.

**5.9.2**

**Provisional Interconnection Service.**

Prior to the completion of the Large Facility Interconnection Procedures and prior to

completion of requisite Attachment Facilities, Distribution Upgrades, System Upgrade Facilities,

System Distribution Upgrades, or System Protection Facilities, the Developer may request an

evaluation for Provisional Interconnection Service. NYISO, in conjunction with the Connecting

Transmission Owner, shall determine, through available studies or additional studies as

necessary, whether stability, short circuit, thermal, and/or voltage issues would arise if the

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Developer interconnects without modifications to the Merchant Transmission Facility or the

New York State Transmission System (or Distribution System as applicable). NYISO, in

conjunction with the Connecting Transmission Owner, shall determine whether any Attachment

Facilities, Distribution Upgrades, System Upgrade Facilities, System Deliverability Upgrades, or

System Protection Facilities, which are necessary to meet Applicable Laws and Regulations,

Applicable Reliability Standards, and Good Utility Practice, are in place prior to the

commencement of interconnection service from the Merchant Transmission Facility. Where

available studies indicate that the Attachment Facilities, Distribution Upgrades, System Upgrade

Facilities, System Deliverability Upgrades, or System Protection Facilities are required for the

interconnection of a new, modified and/or expanded Merchant Transmission Facility but such

facilities are not currently in place, NYISO, in conjunction with the Connecting Transmission

Owner, will perform a study, at the Developer’s expense, to confirm the facilities that are

required for Provisional Interconnection Service. The maximum permissible output of the

Merchant Transmission Facility in the Provisional Merchant Transmission Facility

Interconnection Agreement shall be studied, at the Developer’s expense, and updated annually.

The NYISO shall issue the study’s findings in writing to the Developer and Connecting

Transmission Owner(s). Following a determination by NYISO, in conjunction with the

Connecting Transmission Owner, that the Developer may reliably provide Provisional

Interconnection Service, NYISO shall tender to the Developer and Connecting Transmission

Owner, a Provisional Large Facility Interconnection Agreement. NYISO, Developer, and

Connecting Transmission Owner may execute the Provisional Merchant Transmission Facility

Interconnection Agreement, or the Developer may request the filing of an unexecuted

Provisional Merchant Transmission Facility Interconnection Agreement with the Commission.

The Developer shall assume all risk and liabilities with respect to changes between the

Provisional Merchant Transmission Facility Interconnection Agreement and the Merchant

Transmission Facility Interconnection Agreement, including changes in output limits and the

cost responsibilities for the Attachment Facilities, System Upgrade Facilities, System

Deliverability Upgrades, and/or System Protection Facilities.

**5.10**

**Developer’s Attachment Facilities (“DAF”).**

Developer shall, at its expense, design, procure, construct, own and install the DAF, as

set forth in Appendix A hereto.

**5.10.1 DAF Specifications.**

Developer shall submit initial specifications for the DAF, including System Protection

Facilities, to Connecting Transmission Owner and NYISO at least one hundred eighty (180)

Calendar Days prior to the Initial Synchronization Date; and final specifications for review and

comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date.

Connecting Transmission Owner and NYISO shall review such specifications to ensure that the

DAF are compatible with the technical specifications, operational control, and safety

requirements of the Connecting Transmission Owner and NYISO and comment on such

specifications within thirty (30) Calendar Days of Developer’s submission. All specifications

provided hereunder shall be deemed to be Confidential Information.

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**5.10.2 No Warranty.**

The review of Developer’s final specifications by Connecting Transmission Owner and

NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design,

fitness, safety, durability or reliability of the Merchant Transmission Facility, or the DAF.

Developer shall make such changes to the DAF as may reasonably be required by Connecting

Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the

DAF are compatible with the technical specifications, operational control, and safety

requirements of the Connecting Transmission Owner and NYISO.

**5.10.3 DAF Construction.**

The DAF shall be designed and constructed in accordance with Good Utility Practice.

Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless

the Developer and Connecting Transmission Owner agree on another mutually acceptable

deadline, the Developer shall deliver to the Connecting Transmission Owner and NYISO “as-

built” drawings, information and documents for the DAF, such as: a one-line diagram, a site plan

showing the Merchant Transmission Facility and the DAF, plan and elevation drawings showing

the layout of the DAF, a relay functional diagram, relaying AC and DC schematic wiring

diagrams and relay settings for all facilities associated with the Developer’s step-up

transformers, the facilities connecting the Merchant Transmission Facility to the step-up

transformers and the DAF, and the impedances (determined by factory tests) for the associated

step-up transformers and the Merchant Transmission Facility. The Developer shall provide to,

and coordinate with, Connecting Transmission Owner and NYISO with respect to proposed

specifications for the excitation system, automatic voltage regulator, Merchant Transmission

Facility control and protection settings, transformer tap settings, and communications, if

applicable.

**5.11**

**Connecting Transmission Owner’s Attachment Facilities Construction.**

The Connecting Transmission Owner’s Attachment Facilities shall be designed and

constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty

(120) Calendar Days after the Commercial Operation Date, unless the Connecting Transmission

Owner and Developer agree on another mutually acceptable deadline, the Connecting

Transmission Owner shall deliver to the Developer “as-built” drawings, relay diagrams,

information and documents for the Connecting Transmission Owner’s Attachment Facilities set

forth in Appendix A.

The Connecting Transmission Owner shall transfer operational control of the Connecting

Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities to the

NYISO upon completion of such facilities.

**5.12**

**Access Rights.**

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

required or necessary regulatory approvals, either the Connecting Transmission Owner or

Developer (“Granting Party”) shall furnish to the other of those two Parties (“Access Party”) at

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no cost any rights of use, licenses, rights of way and easements with respect to lands owned or

controlled by the Granting Party, its agents (if allowed under the applicable agency agreement),

or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress at the

Point of Interconnection to construct, operate, maintain, repair, test (or witness testing), inspect,

replace or remove facilities and equipment to: (i) interconnect the Merchant Transmission

Facility with the New York State Transmission System; (ii) operate and maintain the Merchant

Transmission Facility, the Attachment Facilities and the New York State Transmission System;

and (iii) disconnect or remove the Access Party’s facilities and equipment upon termination of

this Agreement. In exercising such licenses, rights of way and easements, the Access Party shall

not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and

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

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

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

from the exercise of the access rights provided for herein.

**5.13**

**Lands of Other Property Owners.**

If any part of the Connecting Transmission Owner’s Attachment Facilities and/or System

Upgrade Facilities and/or System Deliverability Upgrades is to be installed on property owned

by persons other than Developer or Connecting Transmission Owner, the Connecting

Transmission Owner agrees, to the extent consistent with applicable law, at Developer’s expense

to use efforts, similar in nature and extent to those that it typically undertakes for its own or

affiliated generation or transmission facilities, including use of its eminent domain authority, and

to the extent consistent with state law, to procure from such persons any rights of use, licenses,

rights of way and easements that are necessary to construct, operate, maintain, test, inspect,

replace or remove the Connecting Transmission Owner’s Attachment Facilities and/or System

Upgrade Facilities and/or System Deliverability Upgrades upon such property. Notwithstanding

the previous sentence, the Connecting Transmission Owner’s exercise of powers and rights to

acquire real property or any rights in real property, pursuant to this Section 5.13, is subject to the

provisions of the New York Public Authorities Law (or any amendments thereto), including

Section 1007.

**5.14**

**Permits.**

NYISO, Connecting Transmission Owner and the Developer shall cooperate with each

other in good faith in obtaining all permits, licenses and authorizations that are necessary to

accomplish the interconnection in compliance with Applicable Laws and Regulations. With

respect to this paragraph, Connecting Transmission Owner shall provide permitting assistance to

the Developer comparable to that provided to the Connecting Transmission Owner’s own, or an

Affiliate’s generation or transmission facilities, if any.

**5.15**

**Early Construction of Base Case Facilities.**

Developer may request Connecting Transmission Owner to construct, and Connecting

Transmission Owner shall construct, subject to a binding cost allocation agreement reached in

accordance with Attachment S to the ISO OATT, including Section 25.8.7 thereof, using

Reasonable Efforts to accommodate Developer’s In-Service Date, all or any portion of any

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System Upgrade Facilities or System Deliverability Upgrades required for Developer to be

interconnected to the New York State Transmission System which are included in the Base Case

of the Class Year Study for the Developer, and which also are required to be constructed for

another Developer, but where such construction is not scheduled to be completed in time to

achieve Developer’s In-Service Date.

**5.16**

**Suspension.**

Developer reserves the right, upon written notice to Connecting Transmission Owner and

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

construction and installation of Connecting Transmission Owner’s Attachment Facilities and/or

System Upgrade Facilities and/or System Deliverability Upgrades required for only that

Developer under this Agreement with the condition that the New York State Transmission

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

the safety and reliability criteria of Connecting Transmission Owner and NYISO. In such event,

Developer shall be responsible for all reasonable and necessary costs and/or obligations in

accordance with Attachment S to the ISO OATT including those which Connecting

Transmission Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii)

incurs in suspending such work, including any costs incurred to perform such work as may be

necessary to ensure the safety of persons and property and the integrity of the New York State

Transmission System during such suspension and, if applicable, any costs incurred in connection

with the cancellation or suspension of material, equipment and labor contracts which Connecting

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

suspending any such material, equipment or labor contract, Connecting Transmission Owner

shall obtain Developer’s authorization to do so.

Connecting Transmission Owner shall invoice Developer for such costs pursuant to

Article 12 and shall use due diligence to minimize its costs. In the event Developer suspends

work by Connecting Transmission Owner required under this Agreement pursuant to this Article

[5.16, a](#br28)nd has not requested Connecting Transmission Owner to recommence the work required

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

such suspension, this Agreement shall be deemed terminated. The three-year period shall begin

on the date the suspension is requested, or the date of the written notice to Connecting

Transmission Owner and NYISO, if no effective date is specified.

**5.17**

**Taxes.**

**5.17.1 Developer Payments Not Taxable.**

The Developer and Connecting Transmission Owner intend that all payments or property

transfers made by Developer to Connecting Transmission Owner for the installation of the

Connecting Transmission Owner’s Attachment Facilities and the System Upgrade Facilities and

the System Deliverability Upgrades shall be non-taxable, either as contributions to capital, or as

an advance, in accordance with the Internal Revenue Code and any applicable state income tax

laws and shall not be taxable as contributions in aid of construction or otherwise under the

Internal Revenue Code and any applicable state income tax laws.

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**5.17.2 Representations and Covenants.**

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, as applicable to the

Merchant Transmission Facility, Developer represents and covenants that (i) ownership of the

electricity transmitted on the Merchant Transmission Facility will pass to another party prior to

the transmission of the electricity on the New York State Transmission System from the Point of

Interconnection, (ii) for income tax purposes, the amount of any payments and the cost of any

property transferred to the Connecting Transmission Owner for the Connecting Transmission

Owner’s Attachment Facilities will be capitalized by Developer as an intangible asset and

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

portion of the Connecting Transmission Owner’s Attachment Facilities that is a “dual-use

intertie,” within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de

minimis amount of electricity in the direction of the Merchant Transmission Facility. For this

purpose, “de minimis amount” means no more than 5 percent of the total power flows in both

directions, calculated in accordance with the “5 percent test” set forth in IRS Notice 88-129.

This is not intended to be an exclusive list of the relevant conditions that must be met to conform

to IRS requirements for non-taxable treatment.

At Connecting Transmission Owner’s request, Developer shall provide Connecting

Transmission Owner with a report from an independent engineer confirming its representation in

clause (iii), above. Connecting Transmission Owner represents and covenants that the cost of the

Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities paid for

by Developer will have no net effect on the base upon which rates are determined.

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

**Upon the Connecting Transmission Owner.**

Notwithstanding Artic[le 5.17.1,](#br28) Developer shall protect, indemnify and hold harmless

Connecting Transmission Owner from the cost consequences of any current tax liability imposed

against Connecting Transmission Owner as the result of payments or property transfers made by

Developer to Connecting Transmission Owner under this Agreement, as well as any interest and

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

Transmission Owner.

Connecting Transmission Owner shall not include a gross-up for the cost consequences

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

Connecting Transmission Owner has determined, in good faith, that the payments or property

transfers made by Developer to Connecting Transmission Owner should be reported as income

subject to taxation or (ii) any Governmental Authority directs Connecting Transmission Owner

to report payments or property as income subject to taxation; provided, however, that Connecting

Transmission Owner may require Developer to provide security, in a form reasonably acceptable

to Connecting Transmission Owner (such as a parental guarantee or a letter of credit), in an

amount equal to the cost consequences of any current tax liability under this Artic[le 5.17.](#br28)

Developer shall reimburse Connecting Transmission Owner for such costs on a fully grossed-up

basis, in accordance with Artic[le 5.17.4, withi](#br30)n thirty (30) Calendar Days of receiving written

notification from Connecting Transmission Owner of the amount due, including detail about how

the amount was calculated.

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

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

Connecting Transmission Owner upon request of the IRS, to keep these years open for audit or

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

indemnification obligations as contemplated by this Artic[le 5.17.](#br28)

**5.17.4 Tax Gross-Up Amount.**

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

Artic[le 5.17](#br28) shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed

to by the parties, this means that Developer will pay Connecting Transmission Owner, in

addition to the amount paid for the Attachment Facilities and System Upgrade Facilities and

System Deliverability Upgrades, an amount equal to (1) the current taxes imposed on Connecting

Transmission Owner (“Current Taxes”) on the excess of (a) the gross income realized by

Connecting Transmission Owner as a result of payments or property transfers made by

Developer to Connecting Transmission Owner under this Agreement (without regard to any

payments under this Artic[le 5.17) (](#br28)the “Gross Income Amount”) over (b) the present value of

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

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

sufficient to permit the Connecting Transmission Owner to receive and retain, after the payment

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

For this purpose, (i) Current Taxes shall be computed based on Connecting Transmission

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

received and Connecting Transmission Owner will be treated as being subject to tax at the

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

Depreciation Amount shall be computed by discounting Connecting Transmission Owner’s

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

Connecting Transmission Owner’s current weighted average cost of capital. Thus, the formula

for calculating Developer’s liability to Connecting Transmission Owner pursuant to this Article

[5.17.4](#br30) can be expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value

Depreciation Amount))/(1 - Current Tax Rate). Developer’s estimated tax liability in the event

taxes are imposed shall be stated in Appendix A, Attachment Facilities and System Upgrade

Facilities and System Deliverability Upgrades.

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

At Developer’s request and expense, Connecting Transmission Owner shall file with the

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

be paid, by Developer to Connecting Transmission Owner under this Agreement are subject to

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

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

true and accurate to the best of Developer’s knowledge. Connecting Transmission Owner and

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

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Connecting Transmission Owner shall keep Developer fully informed of the status of

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

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

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

Transmission Owner shall allow Developer to attend all meetings with IRS officials about the

request and shall permit Developer to prepare the initial drafts of any follow-up letters in

connection with the request.

**5.17.6 Subsequent Taxable Events.**

If, within 10 years from the date on which the relevant Connecting Transmission Owner

Attachment Facilities are placed in service, (i) Developer Breaches the covenants contained in

Artic[le 5.17.2, (ii) a](#br29) “disqualification event” occurs within the meaning of IRS Notice 88-129, or

(iii) this Agreement terminates and Connecting Transmission Owner retains ownership of the

Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and

System Deliverability Upgrades, the Developer shall pay a tax gross-up for the cost

consequences of any current tax liability imposed on Connecting Transmission Owner,

calculated using the methodology described in Articles 5.17.3 and [5.17.4](#br30) and in accordance with

IRS Notice 90-60.

**5.17.7 Contests.**

In the event any Governmental Authority determines that Connecting Transmission

Owner’s receipt of payments or property constitutes income that is subject to taxation,

Connecting Transmission Owner shall notify Developer, in writing, within thirty (30) Calendar

Days of receiving notification of such determination by a Governmental Authority. Upon the

timely written request by Developer and at Developer’s sole expense, Connecting Transmission

Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon

Developer’s written request and sole expense, Connecting Transmission Owner may file a claim

for refund with respect to any taxes paid under this Artic[le 5.17, whe](#br28)ther or not it has received

such a determination. Connecting Transmission Owner reserves the right to make all decisions

with regard to the prosecution of such appeal, protest, abatement or other contest, including the

selection of counsel and compromise or settlement of the claim, but Connecting Transmission

Owner shall keep Developer informed, shall consider in good faith suggestions from Developer

about the conduct of the contest, and shall reasonably permit Developer or an Developer

representative to attend contest proceedings.

Developer shall pay to Connecting Transmission Owner on a periodic basis, as invoiced

by Connecting Transmission Owner, Connecting Transmission Owner’s documented reasonable

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

associated with obtaining the opinion of independent tax counsel described in this Article [5.17.7.](#br31)

The Connecting Transmission Owner may abandon any contest if the Developer fails to provide

payment to the Connecting Transmission Owner within thirty (30) Calendar Days of receiving

such invoice. At any time during the contest, Connecting Transmission Owner may agree to a

settlement either with Developer’s consent or after obtaining written advice from nationally-

recognized tax counsel, selected by Connecting Transmission Owner, but reasonably acceptable

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to Developer, that the proposed settlement represents a reasonable settlement given the hazards

of litigation. Developer’s obligation shall be based on the amount of the settlement agreed to by

Developer, or if a higher amount, so much of the settlement that is supported by the written

advice from nationally-recognized tax counsel selected under the terms of the preceding

sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any

related cost consequences of the current tax liability. The Connecting Transmission Owner may

also settle any tax controversy without receiving the Developer’s consent or any such written

advice; however, any such settlement will relieve the Developer from any obligation to

indemnify Connecting Transmission Owner for the tax at issue in the contest (unless the failure

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

appointment of independent tax counsel).

**5.17.8 Refund.**

In the event that (a) a private letter ruling is issued to Connecting Transmission Owner

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

Connecting Transmission Owner under the terms of this Agreement is not subject to federal

income taxation, (b) any legislative change or administrative announcement, notice, ruling or

other determination makes it reasonably clear to Connecting Transmission Owner in good faith

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

Transmission Owner under the terms of this Agreement is not taxable to Connecting

Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a

determination that any payments or transfers made by Developer to Connecting Transmission

Owner are not subject to federal income tax, or (d) if Connecting Transmission Owner receives a

refund from any taxing authority for any overpayment of tax attributable to any payment or

property transfer made by Developer to Connecting Transmission Owner pursuant to this

Agreement, Connecting Transmission Owner shall promptly refund to Developer the following:

(i)

Any payment made by Developer under this Artic[le 5.17](#br28) for taxes that is

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

(ii)

Interest on any amounts paid by Developer to Connecting Transmission Owner

for such taxes which Connecting Transmission Owner did not submit to the taxing authority,

calculated in accordance with the methodology set forth in FERC’s regulations at 18 C.F.R.

§35.19a(a)(2)(iii) from the date payment was made by Developer to the date Connecting

Transmission Owner refunds such payment to Developer, and

(iii) With respect to any such taxes paid by Connecting Transmission Owner, any

refund or credit Connecting Transmission Owner receives or to which it may be entitled from

any Governmental Authority, interest (or that portion thereof attributable to the payment

described in clause (i), above) owed to the Connecting Transmission Owner for such

overpayment of taxes (including any reduction in interest otherwise payable by Connecting

Transmission Owner to any Governmental Authority resulting from an offset or credit);

provided, however, that Connecting Transmission Owner will remit such amount promptly to

Developer only after and to the extent that Connecting Transmission Owner has received a tax

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refund, credit or offset from any Governmental Authority for any applicable overpayment of

income tax related to the Connecting Transmission Owner’s Attachment Facilities.

The intent of this provision is to leave both the Developer and Connecting Transmission

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

for Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and

System Deliverability Upgrades hereunder, in the same position they would have been in had no

such tax payments been made.

**5.17.9 Taxes Other Than Income Taxes.**

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

Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other

than federal or state income tax) asserted or assessed against Connecting Transmission Owner

for which Developer may be required to reimburse Connecting Transmission Owner under the

terms of this Agreement. Developer shall pay to Connecting Transmission Owner on a periodic

basis, as invoiced by Connecting Transmission Owner, Connecting Transmission Owner’s

documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest.

Developer and Connecting Transmission Owner shall cooperate in good faith with respect to any

such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or

cannot be deferred, no amount shall be payable by Developer to Connecting Transmission

Owner for such taxes until they are assessed by a final, non-appealable order by any court or

agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due

and payable after appeal, Developer will be responsible for all taxes, interest and penalties, other

than penalties attributable to any delay caused by Connecting Transmission Owner.

**5.18**

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

**5.18.1 Tax Status.**

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

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

the status of NYISO, or the status of any Connecting Transmission Owner with respect to the

issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any

other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New

York, Inc. shall not be required to comply with any provisions of this Agreement that would

result in the loss of tax-exempt status of any of its Tax-Exempt Bonds or impair their ability to

issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall

include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison

Company of New York, Inc., the interest on which is not included in gross income under the

Internal Revenue Code.

**5.18.2 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 general

ratemaking authority.

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**5.19**

**Modification.**

**5.19.1 General.**

Either the Developer or Connecting Transmission Owner may undertake modifications to

its facilities covered by this Agreement. If either the Developer or Connecting Transmission

Owner plans to undertake a modification that reasonably may be expected to affect the other

Party’s facilities, that Party shall provide to the other Party, and to NYISO, sufficient

information regarding such modification so that the other Party and NYISO may evaluate the

potential impact of such modification prior to commencement of the work. Such information

shall be deemed to be Confidential Information hereunder and shall include information

concerning the timing of such modifications and whether such modifications are expected to

interrupt the flow of electricity from the Merchant Transmission Facility. The Party desiring to

perform such work shall provide the relevant drawings, plans, and specifications to the other

Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of the

work or such shorter period upon which the Parties may agree, which agreement shall not

unreasonably be withheld, conditioned or delayed.

In the case of Merchant Transmission Facility modifications that do not require

Developer to submit an Interconnection Request, the NYISO shall provide, within sixty (60)

Calendar Days (or such other time as the Parties may agree), an estimate of any additional

modifications to the New York State Transmission System, Connecting Transmission Owner’s

Attachment Facilities or System Upgrade Facilities or System Deliverability Upgrades

necessitated by such Developer modification and a good faith estimate of the costs thereof. The

Developer shall be responsible for the cost of any such additional modifications, including the

cost of studying the impact of the Developer modification.

**5.19.2 Standards.**

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

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

Good Utility Practice.

**5.19.3 Modification Costs.**

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

that Connecting Transmission Owner makes to the Connecting Transmission Owner’s

Attachment Facilities or the New York State Transmission System to facilitate the

interconnection of a third party to the Connecting Transmission Owner’s Attachment Facilities

or the New York State Transmission System, or to provide Transmission Service to a third party

under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S

of the ISO OATT. Developer shall be responsible for the costs of any additions, modifications,

or replacements to the Developer’s Attachment Facilities that may be necessary to maintain or

upgrade such Developer’s Attachment Facilities consistent with Applicable Laws and

Regulations, Applicable Reliability Standards or Good Utility Practice.

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**ARTICLE 6. TESTING AND INSPECTION**

**6.1**

**Pre-Commercial Operation Date Testing and Modifications.**

Prior to the Commercial Operation Date, the Connecting Transmission Owner shall test

the Connecting Transmission Owner’s Attachment Facilities (including required control

technologies and protection systems) and System Upgrade Facilities and System Deliverability

Upgrades and Developer shall test the Merchant Transmission Facility and the Developer’s

Attachment Facilities to ensure their safe and reliable operation. Similar testing may be required

after initial operation. Developer and Connecting Transmission Owner shall each make any

modifications to its facilities that are found to be necessary as a result of such testing. Developer

shall bear the cost of all such testing and modifications. Developer shall transmit test energy

over the Merchant Transmission Facility only if it has arranged for the injection into the New

York Control Area of such test energy in accordance with NYISO procedures.

**6.2**

**Post-Commercial Operation Date Testing and Modifications.**

Developer and Connecting Transmission Owner shall each at its own expense perform

routine inspection and testing of its facilities and equipment in accordance with Good Utility

Practice and Applicable Reliability Standards as may be necessary to ensure the continued

interconnection of the Merchant Transmission Facility with the New York State Transmission

System in a safe and reliable manner. Developer and Connecting Transmission Owner shall

each have the right, upon advance written notice, to require reasonable additional testing of the

other Party’s facilities, at the requesting Party’s expense, as may be in accordance with Good

Utility Practice.

**6.3**

**Right to Observe Testing.**

Developer and Connecting Transmission Owner shall each notify the other Party, and the

NYISO, in advance of its performance of tests of its Attachment Facilities and the Merchant

Transmission Facility. The other Party, and the NYISO, shall each have the right, at its own

expense, to observe such testing.

**6.4**

**Right to Inspect.**

Developer and Connecting Transmission Owner shall each have the right, but shall have

no obligation to: (i) observe the other Party’s tests and/or inspection of any of its System

Protection Facilities and other protective equipment; (ii) review the settings of the other Party’s

System Protection Facilities and other protective equipment; and (iii) review the other Party’s

maintenance records relative to the Attachment Facilities, the System Protection Facilities and

other protective equipment. NYISO shall have these same rights of inspection as to the facilities

and equipment of Developer and Connecting Transmission Owner. A Party may exercise these

rights from time to time as it deems necessary upon reasonable notice to the other Party. The

exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement

or confirmation of any element or condition of the Attachment Facilities or the System

Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to

the fitness, safety, desirability, or reliability of same. Any information that a Party obtains

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through the exercise of any of its rights under this Artic[le 6.4](#br35) shall be treated in accordance with

Artic[le 22](#br57) of this Agreement and Attachment F to the ISO OATT.

**ARTICLE 7. METERING**

**7.1**

**General.**

Developer and Connecting Transmission Owner shall each comply with applicable

requirements of NYISO and the New York Public Service Commission when exercising its

rights and fulfilling its responsibilities under this Artic[le 7. Unle](#br36)ss otherwise agreed by the

Connecting Transmission Owner and NYISO approved meter service provider and Developer,

the Connecting Transmission Owner shall install Metering Equipment at the Point of

Interconnection prior to any operation of the Merchant Transmission Facility and shall own,

operate, test and maintain such Metering Equipment. Net power flows including MW and

MVAR, MWHR and loss profile data to and from the Merchant Transmission Facility shall be

measured at the Point of Interconnection. Connecting Transmission Owner shall provide

metering quantities, in analog and/or digital form, as required, to Developer or NYISO upon

request. Developer shall bear all reasonable documented costs associated with the purchase,

installation, operation, testing and maintenance of the Metering Equipment.

**7.2**

**Check Meters.**

Developer, at its option and expense, may install and operate, on its premises and on its

side of the Point of Interconnection, one or more check meters to check Connecting

Transmission Owner’s meters. Such check meters shall be for check purposes only and shall not

be used for the measurement of power flows for purposes of this Agreement, except as provided

in Artic[le 7.4](#br36) below. The check meters shall be subject at all reasonable times to inspection and

examination by Connecting Transmission Owner or its designee. The installation, operation and

maintenance thereof shall be performed entirely by Developer in accordance with Good Utility

Practice.

**7.3**

**Standards.**

Connecting Transmission Owner shall install, calibrate, and test revenue quality Metering

Equipment including potential transformers and current transformers in accordance with

applicable ANSI and PSC standards as detailed in the NYISO Control Center Communications

Manual and in the NYISO Revenue Metering Requirements Manual.

**7.4**

**Testing of Metering Equipment.**

Connecting Transmission Owner shall inspect and test all of its Metering Equipment

upon installation and at least once every two (2) years thereafter. If requested to do so by

NYISO or Developer, Connecting Transmission Owner shall, at Developer’s expense, inspect or

test Metering Equipment more frequently than every two (2) years. Connecting Transmission

Owner shall give reasonable notice of the time when any inspection or test shall take place, and

Developer and NYISO may have representatives present at the test or inspection. If at any time

Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or

replaced at Developer’s expense, in order to provide accurate metering, unless the inaccuracy or

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defect is due to Connecting Transmission Owner’s failure to maintain, then Connecting

Transmission Owner shall pay. If Metering Equipment fails to register, or if the measurement

made by Metering Equipment during a test varies by more than two percent from the

measurement made by the standard meter used in the test, Connecting Transmission Owner shall

adjust the measurements by correcting all measurements for the period during which Metering

Equipment was in error by using Developer’s check meters, if installed. If no such check meters

are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the

period immediately preceding the test of the Metering Equipment equal to one-half the time from

the date of the last previous test of the Metering Equipment. The NYISO shall reserve the right

to review all associated metering equipment installation on the Developer’s or Connecting

Transmission Owner’s property at any time.

**7.5**

**Metering Data.**

At Developer’s expense, the metered data shall be telemetered to one or more locations

designated by Connecting Transmission Owner, Developer and NYISO. Such telemetered data

shall be used, under normal operating conditions, as the official measurement of the amount of

energy delivered from the Merchant Transmission Facility to the Point of Interconnection.

**ARTICLE 8. COMMUNICATIONS**

**8.1**

**Developer Obligations.**

In accordance with applicable NYISO requirements, Developer shall maintain

satisfactory operating communications with Connecting Transmission Owner and NYISO.

Developer shall provide standard voice line, dedicated voice line and facsimile communications

at its Merchant Transmission Facility control room or central dispatch facility through use of

either the public telephone system, or a voice communications system that does not rely on the

public telephone system. Developer shall also provide the dedicated data circuit(s) necessary to

provide Developer data to Connecting Transmission Owner and NYISO as set forth in Appendix

D hereto. The data circuit(s) shall extend from the Merchant Transmission Facility to the

location(s) specified by Connecting Transmission Owner and NYISO. Any required

maintenance of such communications equipment shall be performed by Developer. Operational

communications shall be activated and maintained under, but not be limited to, the following

events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment

clearances, and hourly and daily load data.

**8.2**

**Remote Terminal Unit.**

Prior to the Initial Synchronization Date of the Merchant Transmission Facility, a Remote

Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties,

shall be installed by Developer, or by Connecting Transmission Owner at Developer’s expense,

to gather accumulated and instantaneous data to be telemetered to the location(s) designated by

Connecting Transmission Owner and NYISO through use of a dedicated point-to-point data

circuit(s) as indicated in Artic[le 8.1. The](#br37) communication protocol for the data circuit(s) shall be

specified by Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog

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real power and reactive power flow information must be telemetered directly to the location(s)

specified by Connecting Transmission Owner and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise

learns of any metering, telemetry or communications equipment errors or malfunctions that

require the attention and/or correction by that other Party. The Party owning such equipment

shall correct such error or malfunction as soon as reasonably feasible.

**8.3**

**No Annexation.**

Any and all equipment placed on the premises of a Party shall be and remain the property

of the Party providing such equipment regardless of the mode and manner of annexation or

attachment to real property, unless otherwise mutually agreed by the Party providing such

equipment and the Party receiving such equipment.

**ARTICLE 9. OPERATIONS**

**9.1**

**General.**

Each Party shall comply with Applicable Laws and Regulations and Applicable

Reliability Standards. Each Party shall provide to the other Parties all information that may

reasonably be required by the other Parties to comply with Applicable Laws and Regulations and

Applicable Reliability Standards.

**9.2**

**NYISO and Connecting Transmission Owner Obligations.**

Connecting Transmission Owner and NYISO shall cause the New York State

Transmission System and the Connecting Transmission Owner’s Attachment Facilities to be

operated, maintained and controlled in a safe and reliable manner in accordance with this

Agreement and the NYISO Tariffs. Connecting Transmission Owner and NYISO may provide

operating instructions to Developer consistent with this Agreement, NYISO procedures and

Connecting Transmission Owner’s operating protocols and procedures as they may change from

time to time. Connecting Transmission Owner and NYISO will consider changes to their

respective operating protocols and procedures proposed by Developer.

**9.3**

**Developer Obligations.**

Developer shall at its own expense operate, maintain and control the Merchant

Transmission Facility and the Developer’s Attachment Facilities in a safe and reliable manner

and in accordance with this Agreement. Developer shall operate the Merchant Transmission

Facility and the Developer’s Attachment Facilities in accordance with NYISO and Connecting

Transmission Owner requirements, as such requirements are set forth or referenced in Appendix

C hereto. Appendix C will be modified to reflect changes to the requirements as they may

change from time to time. Any Party may request that the appropriate other Party or Parties

provide copies of the requirements set forth or referenced in Appendix C hereto.

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**9.4**

**Start-Up and Synchronization.**

Consistent with the mutually acceptable procedures of the Developer and Connecting

Transmission Owner, the Developer is responsible for the proper synchronization of the

Merchant Transmission Facility to the New York State Transmission System in accordance with

NYISO and Connecting Transmission Owner procedures and requirements.

**9.5**

**Real and Reactive Power Control and Primary Frequency Response.**

**9.5.1 Power Factor Design Criteria**

Developer shall design the Merchant Transmission Facility to maintain an effective

power delivery at maximum rated power of 0.95 inductive to 0.95 capacitive at the Point of

Interconnection.

**9.5.2 Voltage Schedules.**

Once the Developer has synchronized the Merchant Transmission Facility with the New

York State Transmission System, NYISO shall require Developer to operate the Merchant

Transmission Facility to produce or absorb reactive power within the design capability of the

Merchant Transmission Facility set forth in Article [9.5.1](#br39) (Power Factor Design Criteria).

NYISO’s voltage schedules shall treat all sources of reactive power in the New York Control

Area in an equitable and not unduly discriminatory manner. NYISO shall exercise Reasonable

Efforts to provide Developer with such schedules in accordance with NYISO procedures, and

may make changes to such schedules as necessary to maintain the reliability of the New York

State Transmission System. Developer shall operate the Merchant Transmission Facility to

maintain the specified output voltage or power factor at the Point of Interconnection within the

design capability of the Merchant Transmission Facility set forth in Article [9.5.1](#br39) (Power Factor

Design Criteria) as directed by the Connecting Transmission Owner’s system operator or the

NYISO. If Developer is unable to maintain the specified voltage or power factor, it shall

promptly notify NYISO.

**9.5.3 Payment for Reactive Power.**

NYISO shall pay Developer for reactive power or voltage support service that Developer

provides from the Merchant Transmission Facility in accordance with the provisions of Rate

Schedule 2 of the NYISO Services Tariff.

**9.5.4 Voltage Regulators.**

Whenever the Merchant Transmission Facility is operated in parallel with the New York

State Transmission System, the automatic voltage regulators shall be in automatic operation at all

times. If the Merchant Transmission Facility’s automatic voltage regulators are not capable of such

automatic operation, the Developer shall immediately notify NYISO, or its designated representative,

and ensure that such Merchant Transmission Facility’s real and reactive power are within the design

capability of the Merchant Transmission Facility’s transmission facilities and steady state stability

limits and NYISO system operating (thermal, voltage and transient stability) limits. Developer shall

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not cause its Merchant Transmission Facility to disconnect automatically or instantaneously from the

New York State Transmission System or trip any transmission facilities comprising the Merchant

Transmission Facility for an under or over frequency condition unless the abnormal frequency

condition persists beyond the limits set forth in Table 1 below.

**9.6**

**Outages and Interruptions.**

**9.6.1**

**Outages.**

**9.6.1.1 Outage Authority and Coordination**.

Developer and Connecting Transmission Owner may each, in accordance with NYISO

procedures and Good Utility Practice and in coordination with the other Party, remove from

service any of its respective Attachment Facilities or System Upgrade Facilities and System

Deliverability Upgrades that may impact the other Party’s facilities as necessary to perform

maintenance or testing or to install or replace equipment. Absent an Emergency State, the Party

scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule

such removal on a date and time mutually acceptable to both the Developer and the Connecting

Transmission Owner. In all circumstances either Party planning to remove such facility(ies)

from service shall use Reasonable Efforts to minimize the effect on the other Party of such

removal.

**9.6.1.2 Outage Schedules**.

The Connecting Transmission Owner shall post scheduled outages of its transmission

facilities on the NYISO OASIS. Developer shall submit its planned maintenance schedules for

the Merchant Transmission Facility to Connecting Transmission Owner and NYISO for a

minimum of a rolling thirty-six month period. Developer shall update its planned maintenance

schedules as necessary. NYISO may direct, or the Connecting Transmission Owner may

request, Developer to reschedule its maintenance as necessary to maintain the reliability of the

New York State Transmission System. Compensation to Developer for any additional direct

costs that the Developer incurs as a result of rescheduling maintenance, including any additional

overtime, breaking of maintenance contracts or other costs above and beyond the cost the

Developer would have incurred absent the request to reschedule maintenance, shall be in

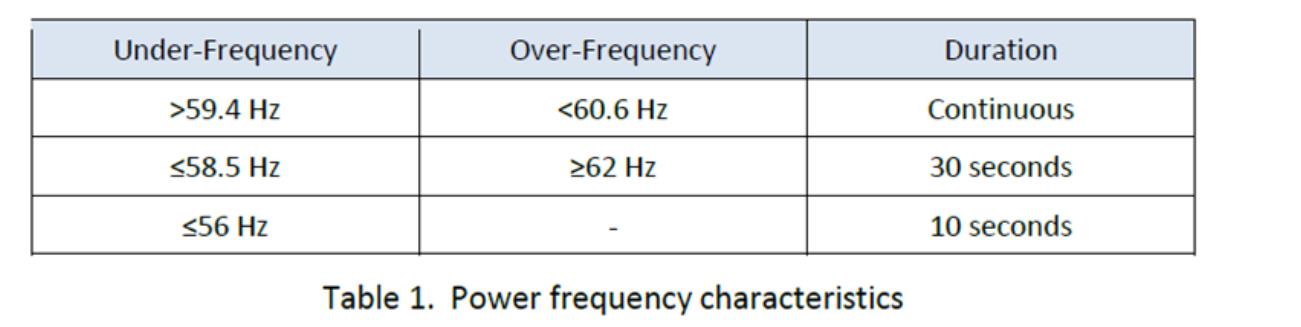
accordance with the ISO OATT. Developer will not be eligible to receive compensation, if

during the twelve (12) months prior to the date of the scheduled maintenance, the Developer had

modified its schedule of maintenance activities other than at the direction of the NYISO or

request of the Connecting Transmission Owner.

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**9.6.1.3 Outage Restoration**.

If an outage on the Attachment Facilities or System Upgrade Facilities or System

Deliverability Upgrades of the Connecting Transmission Owner or Developer adversely affects

the other Party’s operations or facilities, the Party that owns the facility that is out of service

shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating

condition consistent with the nature of the outage. The Party that owns the facility that is out of

service shall provide the other Party and NYISO, to the extent such information is known,

information on the nature of the Emergency State, an estimated time of restoration, and any

corrective actions required. Initial verbal notice shall be followed up as soon as practicable with

written notice explaining the nature of the outage.

**9.6.2 Interruption of Service**. If required by Good Utility Practice or Applicable

Reliability Standards to do so, the NYISO or Connecting Transmission Owner may require

Developer to interrupt or reduce transmission of electricity over the Merchant Transmission

Facility if such transmission could adversely affect the ability of NYISO and Connecting

Transmission Owner to perform such activities as are necessary to safely and reliably operate

and maintain the New York State Transmission System. The following provisions shall apply to

any interruption or reduction permitted under this Artic[le 9.6.2:](#br41)

**9.6.2.1** The interruption or reduction shall continue only for so long as reasonably

necessary under Good Utility Practice;

**9.6.2.2** Any such interruption or reduction shall be made on an equitable, non-

discriminatory basis with respect to all generating and merchant transmission facilities directly

connected to the New York State Transmission System;

**9.6.2.3** When the interruption or reduction must be made under circumstances

which do not allow for advance notice, NYISO or Connecting Transmission Owner shall notify

Developer by telephone as soon as practicable of the reasons for the curtailment, interruption, or

reduction, and, if known, its expected duration. Telephone notification shall be followed by

written notification as soon as practicable;

**9.6.2.4** Except during the existence of an Emergency State, when the interruption

or reduction can be scheduled without advance notice, NYISO or Connecting Transmission

Owner shall notify Developer in advance regarding the timing of such scheduling and further

notify Developer of the expected duration. NYISO or Connecting Transmission Owner shall

coordinate with each other and the Developer using Good Utility Practice to schedule the

interruption or reduction during periods of least impact to the Developer, the Connecting

Transmission Owner and the New York State Transmission System;

**9.6.2.5** The Parties shall cooperate and coordinate with each other to the extent

necessary in order to restore the Merchant Transmission Facility, Attachment Facilities, and the

New York State Transmission System to their normal operating state, consistent with system

conditions and Good Utility Practice.

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**9.6.3 Under-Frequency and Over Frequency Conditions.**

The New York State Transmission System is designed to automatically activate a load-

shed program as required by the NPCC in the event of an under-frequency system disturbance.

Developer shall implement under-frequency and over-frequency relay set points for the

Merchant Transmission Facility as required by the NPCC to ensure “ride through” capability of

the New York State Transmission System. Merchant Transmission Facility response to

frequency deviations of predetermined magnitudes, both under-frequency and over-frequency

deviations, shall be studied and coordinated with the NYISO and Connecting Transmission

Owner in accordance with Good Utility Practice. The term “ride through” as used herein shall

mean the ability of a Merchant Transmission Facility to stay connected to and synchronized with

the New York State Transmission System during system disturbances within a range of under-

frequency and over-frequency conditions, in accordance with Good Utility Practice and with

NPCC Regional Reliability Reference Directory # 12, or its successor.

**9.6.4 System Protection and Other Control Requirements.**

**9.6.4.1 System Protection Facilities**. Developer shall, at its expense, install,

operate and maintain System Protection Facilities as a part of the Merchant Transmission

Facility or Developer’s Attachment Facilities. Connecting Transmission Owner shall install at

Developer’s expense any System Protection Facilities that may be required on the Connecting

Transmission Owner’s Attachment Facilities or the New York State Transmission System as a

result of the interconnection of the Merchant Transmission Facility and Developer’s Attachment

Facilities.

**9.6.4.2** The protection facilities of both the Developer and Connecting

Transmission Owner shall be designed and coordinated with other systems in accordance with

Good Utility Practice and Applicable Reliability Standards.

**9.6.4.3** The Developer and Connecting Transmission Owner shall each be

responsible for protection of its respective facilities consistent with Good Utility Practice and

Applicable Reliability Standards.

**9.6.4.4** The protective relay design of the Developer and Connecting

Transmission Owner shall each incorporate the necessary test switches to perform the tests

required in Article [6](#br35) of this Agreement. The required test switches will be placed such that they

allow operation of lockout relays while preventing breaker failure schemes from operating and

causing unnecessary breaker operations and/or the tripping of the Developer’s Merchant

Transmission Facility or the Connecting Transmission Owner’s facilities.

**9.6.4.5** The Developer and Connecting Transmission Owner will each test,

operate and maintain System Protection Facilities in accordance with Good Utility Practice,

NERC and NPCC criteria.

**9.6.4.6** Prior to the In-Service Date, and again prior to the Commercial Operation

Date, the Developer and Connecting Transmission Owner shall each perform, or their agents

shall perform, a complete calibration test and functional trip test of the System Protection

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Facilities. At intervals suggested by Good Utility Practice and following any apparent

malfunction of the System Protection Facilities, the Developer and Connecting Transmission

Owner shall each perform both calibration and functional trip tests of its System Protection

Facilities. These tests do not require the tripping of any in-service generation unit. These tests

do, however, require that all protective relays and lockout contacts be activated.

**9.6.5 Requirements for Protection.**

In compliance with NPCC requirements and Good Utility Practice, Developer shall

provide, install, own, and maintain relays, circuit breakers and all other devices necessary to

remove any fault contribution of the Merchant Transmission Facility to any short circuit

occurring on the New York State Transmission System not otherwise isolated by Connecting

Transmission Owner’s equipment, such that the removal of the fault contribution shall be

coordinated with the protective requirements of the New York State Transmission System.

Developer shall be solely responsible to disconnect the Merchant Transmission Facility and

Developer’s other equipment if conditions on the New York State Transmission System could

adversely affect the Merchant Transmission Facility.

**9.6.6 Power Quality.**

Neither the facilities of Developer nor the facilities of Connecting Transmission Owner

shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage

or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard

519, or any applicable superseding electric industry standard. In the event of a conflict between

ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI

Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

**9.7**

**Switching and Tagging Rules.**

The Developer and Connecting Transmission Owner shall each provide the other Party a

copy of its switching and tagging rules that are applicable to the other Party’s activities. Such

switching and tagging rules shall be developed on a nondiscriminatory basis. The Parties shall

comply with applicable switching and tagging rules, as amended from time to time, in obtaining

clearances for work or for switching operations on equipment.

**9.8**

**Use of Attachment Facilities by Third Parties.**

**9.8.1 Purpose of Attachment Facilit**i**es.**

Except as may be required by Applicable Laws and Regulations, or as otherwise agreed

to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of

interconnecting the Merchant Transmission Facility to the New York State Transmission System

and shall be used for no other purpose.

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**9.8.2 Third Party Users.**

If required by Applicable Laws and Regulations or if the Parties mutually agree, such

agreement not to be unreasonably withheld, to allow one or more third parties to use the

Connecting Transmission Owner’s Attachment Facilities, or any part thereof, Developer will be

entitled to compensation for the capital expenses it incurred in connection with the Attachment

Facilities based upon the pro rata use of the Attachment Facilities by Connecting Transmission

Owner, all third party users, and Developer, in accordance with Applicable Laws and

Regulations or upon some other mutually-agreed upon methodology. In addition, cost

responsibility for ongoing costs, including operation and maintenance costs associated with the

Attachment Facilities, will be allocated between Developer and any third party users based upon

the pro rata use of the Attachment Facilities by Connecting Transmission Owner, all third party

users, and Developer, in accordance with Applicable Laws and Regulations or upon some other

mutually agreed upon methodology. If the issue of such compensation or allocation cannot be

resolved through such negotiations, it shall be submitted to FERC for resolution.

**9.9**

**Disturbance Analysis Data Exchange.**

The Parties will cooperate with one another and the NYISO in the analysis of

disturbances to either the Merchant Transmission Facility or the New York State Transmission

System by gathering and providing access to any information relating to any disturbance,

including information from disturbance recording equipment, protective relay targets, breaker

operations and sequence of events records, and any disturbance information required by Good

Utility Practice.

**9.10**

**Phasor Measurement Units**

A Developer or the Connecting Transmission Owner shall install, at Developer’s

expense, a phasor measurement unit (“PMU”) if the Developer meets the following criteria: (1)

completed a Class Year after Class Year 2017; and (2) proposes a new Large Facility that either

(a) has a maximum net output equal to or greater than 100 MW or (b) requires, as Attachment

Facilities or System Upgrade Facilities, a new substation of 230kV or above.

The PMU shall be installed on the high side of the Point of Interconnection. The PMU

must be capable of performing phasor measurements at a minimum of 60 samples per second

which are synchronized via a high-accuracy satellite clock. To the extent Developer or

Connecting Transmission Owner installs similar quality equipment, such as relays or digital fault

recorders, that can collect data at least at the same rate as PMUs and which data is synchronized

via a high-accuracy satellite clock, such equipment would satisfy this requirement.

Developer or Connecting Transmission Owner shall be required to install, at Developer’s

expense, PMU equipment, which includes the communication circuit capable of carrying the

PMU data to the Connecting Transmission Owner’s data concentrator. Connecting Transmission

Owner will store the PMU data locally for thirty days. The Developer’s and Connecting

Transmission Owner’s responsibilities concerning the PMU and PMU equipment shall be set

forth in Appendix A to this Agreement. Connecting Transmission Owner shall provide the

NYISO all necessary and requested information through its and the NYISO’s synchrophasor

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system, including the following: (a) gross MW and MVAR measured at the high side of the

Point of Interconnection; (b) terminal voltage and current magnitudes and angles at the high side

of the Point of Interconnection; (c) terminal frequency and frequency rate of change at the high

side of the Point of Interconnection; and (d) breaker status, if available. The Connecting

Transmission Owner will provide for the ongoing support and maintenance of the network

communications linking its data concentrator to the NYISO, consistent with ISO Procedures

detailing the obligations related to SCADA data.

**ARTICLE 10. MAINTENANCE**

**10.1**

**Connecting Transmission Owner Obligations.**

Connecting Transmission Owner shall maintain its transmission facilities and Attachment

Facilities in a safe and reliable manner and in accordance with this Agreement.

**10.2**

**Developer Obligations.**

Developer shall maintain its Merchant Transmission Facility and Attachment Facilities in

a safe and reliable manner and in accordance with this Agreement.

**10.3**

**Coordination.**

The Developer and Connecting Transmission Owner shall confer regularly to coordinate

the planning, scheduling and performance of preventive and corrective maintenance on the

Merchant Transmission Facility and the Attachment Facilities. The Developer and Connecting

Transmission Owner shall keep NYISO fully informed of the preventive and corrective

maintenance that is planned, and shall schedule all such maintenance in accordance with NYISO

procedures.

**10.4**

**Secondary Systems.**

The Developer and Connecting Transmission Owner shall each cooperate with the other

in the inspection, maintenance, and testing of control or power circuits that operate below 600

volts, AC or DC, including, but not limited to, any hardware, control or protective devices,

cables, conductors, electric raceways, secondary equipment panels, transducers, batteries,

chargers, and voltage and current transformers that directly affect the operation of Developer or

Connecting Transmission Owner’s facilities and equipment which may reasonably be expected

to impact the other Party. The Developer and Connecting Transmission Owner shall each

provide advance notice to the other Party, and to NYISO, before undertaking any work on such

circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current

transformers, or potential transformers.

**10.5**

**Operating and Maintenance Expenses.**

Subject to the provisions herein addressing the use of facilities by others, and except for

operations and maintenance expenses associated with modifications made for providing

interconnection or transmission service to a third party and such third party pays for such

expenses, Developer shall be responsible for all reasonable expenses including overheads,

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associated with: (1) owning, operating, maintaining, repairing, and replacing Developer’s

Attachment Facilities; and (2) operation, maintenance, repair and replacement of Connecting

Transmission Owner’s Attachment Facilities. The Connecting Transmission Owner shall be

entitled to the recovery of incremental operating and maintenance expenses that it incurs

associated with System Upgrade Facilities and System Deliverability Upgrades if and to the

extent provided for under Attachment S to the ISO OATT.

**ARTICLE 11. PERFORMANCE OBLIGATION**

**11.1**

**Developer’s Attachment Facilities.**

Developer shall design, procure, construct, install, own and/or control the Developer’s

Attachment Facilities described in Appendix A hereto, at its sole expense.

**11.2**

**Connecting Transmission Owner’s Attachment Facilities.**

Connecting Transmission Owner shall design, procure, construct, install, own and/or

control the Connecting Transmission Owner’s Attachment Facilities described in Appendix A

hereto, at the sole expense of the Developer.

**11.3**

**System Upgrade Facilities and System Deliverability Upgrades.**

Connecting Transmission Owner shall design, procure, construct, install, and own the

System Upgrade Facilities and System Deliverability Upgrades described in Appendix A hereto.

The responsibility of the Developer for costs related to System Upgrade Facilities and System

Deliverability Upgrades shall be determined in accordance with the provisions of Attachment S

to the ISO OATT.

**11.4**

**Special Provisions for Affected Sy**s**tems.**

For the re-payment of amounts advanced to Affected System Operator for System

Upgrade Facilities or System Deliverability Upgrades, the Developer and Affected System

Operator shall enter into an agreement that provides for such re-payment, but only if

responsibility for the cost of such System Upgrade Facilities or System Deliverability Upgrades

is not to be allocated in accordance with Attachment S to the ISO OATT. The agreement shall

specify the terms governing payments to be made by the Developer to the Affected System

Operator as well as the re-payment by the Affected System Operator.

**11.5**

**Provision of Security.**

At least thirty (30) Calendar Days prior to the commencement of the procurement,

installation, or construction of a discrete portion of a Connecting Transmission Owner’s

Attachment Facilities, Developer shall provide Connecting Transmission Owner, at Developer’s

option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably

acceptable to Connecting Transmission Owner and is consistent with the Uniform Commercial

Code of the jurisdiction identified in Artic[le 14.2.1](#br51) of this Agreement. Such security for

payment shall be in an amount sufficient to cover the cost for the Developer’s share of

constructing, procuring and installing the applicable portion of Connecting Transmission

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Owner’s Attachment Facilities, and shall be reduced on a dollar-for-dollar basis for payments

made to Connecting Transmission Owner for these purposes.

In addition:

**11.5.1** The guarantee must be made by an entity that meets the commercially

reasonable creditworthiness requirements of Connecting Transmission Owner, and contains

terms and conditions that guarantee payment of any amount that may be due from Developer, up

to an agreed-to maximum amount.

**11.5.2** The letter of credit must be issued by a financial institution reasonably

acceptable to Connecting Transmission Owner and must specify a reasonable expiration date.

**11.5.3** The surety bond must be issued by an insurer reasonably acceptable to

Connecting Transmission Owner and must specify a reasonable expiration date.

**11.5.4** Attachment S to the ISO OATT shall govern the Security that Developer

provides for System Upgrade Facilities and System Deliverability Upgrades.

**11.6**

**Developer Compensation for Emergency Services.**

If, during an Emergency State, the Developer provides services at the request or direction

of the NYISO or Connecting Transmission Owner, the Developer will be compensated for such

services in accordance with the NYISO Services Tariff.

**11.7**

**Line Outage Costs.**

Notwithstanding anything in the ISO OATT to the contrary, the Connecting Transmission

Owner may propose to recover line outage costs associated with the installation of Connecting

Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System

Deliverability Upgrades on a case-by-case basis.

**ARTICLE 12. INVOICE**

**12.1**

**General.**

The Developer and Connecting Transmission Owner shall each submit to the other Party,

on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state

the month to which the invoice applies and fully describe the services and equipment provided.

The Developer and Connecting Transmission Owner may discharge mutual debts and payment

obligations due and owing to each other on the same date through netting, in which case all

amounts one Party owes to the other Party under this Agreement, including interest payments or

credits, shall be netted so that only the net amount remaining due shall be paid by the owing

Party.

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**12.2**

**Final Invoice.**

Within six months after completion of the construction of the Connecting Transmission

Owner’s Attachment Facilities and the System Upgrade Facilities and System Deliverability

Upgrades, Connecting Transmission Owner shall provide an invoice of the final cost of the

construction of the Connecting Transmission Owner’s Attachment Facilities and the System

Upgrade Facilities and System Deliverability Upgrades, determined in accordance with

Attachment S to the ISO OATT, and shall set forth such costs in sufficient detail to enable

Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from

the cost estimates. Connecting Transmission Owner shall refund to Developer any amount by

which the actual payment by Developer for estimated costs exceeds the actual costs of

construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

**12.3**

**Payment.**

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

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

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

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

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

Agreement.

**12.4**

**Disputes.**

In the event of a billing dispute between Connecting Transmission Owner and Developer,

Connecting Transmission Owner shall continue to perform under this Agreement as long as

Developer: (i) continues to make all payments not in dispute; and (ii) pays to Connecting

Transmission Owner or into an independent escrow account the portion of the invoice in dispute,

pending resolution of such dispute. If Developer fails to meet these two requirements for

continuation of service, then Connecting Transmission Owner may provide notice to Developer

of a Default pursuant to Artic[le 17. W](#br52)ithin thirty (30) Calendar Days after the resolution of the

dispute, the Party that owes money to the other Party shall pay the amount due with interest

calculated in accord with the methodology set forth in FERC’s Regulations at 18 C.F.R. §

35.19a(a)(2)(iii).

**ARTICLE 13. EMERGENCIES**

**13.1**

**Obligations.**

Each Party shall comply with the Emergency State procedures of NYISO, the applicable

Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to

by the NYISO Operating Committee.

**13.2**

**Notice.**

NYISO or, as applicable, Connecting Transmission Owner shall notify Developer

promptly when it becomes aware of an Emergency State that affects the Connecting

Transmission Owner’s Attachment Facilities or the New York State Transmission System that

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may reasonably be expected to affect Developer’s operation of the Merchant Transmission

Facility or the Developer’s Attachment Facilities. Developer shall notify NYISO and

Connecting Transmission Owner promptly when it becomes aware of an Emergency State that

affects the Merchant Transmission Facility or the Developer’s Attachment Facilities that may

reasonably be expected to affect the New York State Transmission System or the Connecting

Transmission Owner’s Attachment Facilities. To the extent information is known, the

notification shall describe the Emergency State, the extent of the damage or deficiency, the

expected effect on the operation of Developer’s or Connecting Transmission Owner’s facilities

and operations, its anticipated duration and the corrective action taken and/or to be taken. The

initial notice shall be followed as soon as practicable with written notice.

**13.3**

**Immediate Action.**

Unless, in Developer’s reasonable judgment, immediate action is required, Developer

shall obtain the consent of Connecting Transmission Owner, such consent to not be unreasonably

withheld, prior to performing any manual switching operations at the Merchant Transmission

Facility or the Developer’s Attachment Facilities in response to an Emergency State either

declared by NYISO, Connecting Transmission Owner or otherwise regarding New York State

Transmission System.

**13.4**

**NYISO and Connecting Transmission Owner Authority.**

**13.4.1 General.**

NYISO or Connecting Transmission Owner may take whatever actions with regard to the

New York State Transmission System or the Connecting Transmission Owner’s Attachment

Facilities it deems necessary during an Emergency State in order to (i) preserve public health and

safety, (ii) preserve the reliability of the New York State Transmission System or the Connecting

Transmission Owner’s Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite

restoration of service.

NYISO and Connecting Transmission Owner shall use Reasonable Efforts to minimize

the effect of such actions or inactions on the Merchant Transmission Facility or the Developer’s

Attachment Facilities. NYISO or Connecting Transmission Owner may, on the basis of

technical considerations, require the Merchant Transmission Facility to mitigate an Emergency

State by taking actions necessary and limited in scope to remedy the Emergency State, including,

but not limited to, directing Developer to shut-down, start-up, increase or decrease the real or

reactive power output of the Merchant Transmission Facility; implementing a reduction or

disconnection pursuant to Artic[le 13.4.2; di](#br50)recting the Developer to assist with blackstart (if

available) or restoration efforts; or altering the outage schedules of the Merchant Transmission

Facility and the Developer’s Attachment Facilities. Developer shall comply with all of the

NYISO and Connecting Transmission Owner’s operating instructions concerning Merchant

Transmission Facility real power and reactive power output within the manufacturer’s design

limitations of the Merchant Transmission Facility’s equipment that is in service and physically

available for operation at the time, in compliance with Applicable Laws and Regulations.

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**13.4.2 Reduction and Disconnection.**

NYISO or Connecting Transmission Owner may reduce Energy Resource

Interconnection Service and Capacity Resource Interconnection Service or disconnect the

Merchant Transmission Facility or the Developer’s Attachment Facilities, when such reduction

or disconnection is necessary under Good Utility Practice due to an Emergency State. These

rights are separate and distinct from any right of Curtailment of NYISO pursuant to the ISO

OATT. When NYISO or Connecting Transmission Owner can schedule the reduction or

disconnection in advance, NYISO or Connecting Transmission Owner shall notify Developer of

the reasons, timing and expected duration of the reduction or disconnection. NYISO or

Connecting Transmission Owner shall coordinate with the Developer using Good Utility Practice

to schedule the reduction or disconnection during periods of least impact to the Developer and

the New York State Transmission System. Any reduction or disconnection shall continue only

for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate

with each other to restore the Merchant Transmission Facility, the Attachment Facilities, and the

New York State Transmission System to their normal operating state as soon as practicable

consistent with Good Utility Practice.

**13.5**

**Developer Authority.**

Consistent with Good Utility Practice and this Agreement, the Developer may take

whatever actions or inactions with regard to the Merchant Transmission Facility or the

Developer’s Attachment Facilities during an Emergency State in order to (i) preserve public

health and safety, (ii) preserve the reliability of the Merchant Transmission Facility or the

Developer’s Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of

service. Developer shall use Reasonable Efforts to minimize the effect of such actions or

inactions on the New York State Transmission System and the Connecting Transmission

Owner’s Attachment Facilities. NYISO and Connecting Transmission Owner shall use

Reasonable Efforts to assist Developer in such actions.

**13.6**

**Limited Liability.**

Except as otherwise provided in Artic[le 11.6](#br47) of this Agreement, no Party shall be liable

to another Party for any action it takes in responding to an Emergency State so long as such

action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

**ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW**

**14.1**

**Regulatory Requirements.**

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

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

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

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

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

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

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

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

Act of 1978, as amended.

**14.2**

**Governing Law.**

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

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

of law principles.

**14.2.2** This Agreement is subject to all Applicable Laws and Regulations.

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

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

**ARTICLE 15. NOTICES**

**15.1**

**General.**

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

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

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

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

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

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

address set out in Appendix F hereto.

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

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

**15.2**

**Billings and Payments.**

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

**Alternative Forms of Notice.**

**15.3**

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

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

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

**15.4**

**Operations and Maintenance Notice.**

Developer and Connecting Transmission Owner shall each notify the other Party, and

NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with

respect to the implementation of Artic[les 9](#br38) a[nd 0](#br44) of this Agreement.

**ARTICLE 16. FORCE MAJEURE**

**16.1** Economic hardship is not considered a Force Majeure event.

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**16.2** A Party shall not be responsible or liable, or deemed, in Default with respect to

any obligation hereunder, (including obligations under Artic[le 4](#br17) of this Agreement) , other than

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

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

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

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

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

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

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

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

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

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

strike or other labor disturbance.

**ARTICLE 17. DEFAULT**

**17.1**

**General.**

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

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

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

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

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

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

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

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

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

**17.2**

**Right to Terminate.**

If a Breach is not cured as provided in this Article [17, or if](#br52) a Breach is not capable of

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

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

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

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

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

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

**ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

**18.1**

**Indemnity.**

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

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

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

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

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

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

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

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

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

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

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

Hazardous Substance.

**18.1.1**

**Indemnified Party.**

If a Party is entitled to indemnification under this Artic[le 18](#br52) as a result of a claim by a

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

under Artic[le 18.1.3, to](#br53) assume the defense of such claim, such Indemnified Party may at the

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

respect to, or pay in full, such claim.

**18.1.2**

**Indemnifying Party.**

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

harmless under this Artic[le 18, the a](#br52)mount owing to the Indemnified Party shall be the amount of

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

**18.1.3**

**Indemnity Procedures.**

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

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

the indemnity provided for in Artic[le 18.1](#br52) may apply, the Indemnified Party shall notify the

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

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

Indemnifying Party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

delayed.

**18.2**

**No Consequential Damages.**

Other than the liquidated damages heretofore described and the indemnity obligations set

forth in Artic[le 18.1, in n](#br52)o event shall any Party be liable under any provision of this Agreement

for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or

punitive damages, including but not limited to loss of profit or revenue, loss of the use of

equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in

part in contract, in tort, including negligence, strict liability, or any other theory of liability;

provided, however, that damages for which a Party may be liable to another Party under separate

agreement will not be considered to be special, indirect, incidental, or consequential damages

hereunder.

**18.3**

**Insurance.**

Developer and Connecting Transmission Owner shall each, at its own expense, procure

and maintain in force throughout the period of this Agreement and until released by the other

Parties, the following minimum insurance coverages, with insurance companies licensed to

write insurance or approved eligible surplus lines carriers in the state of New York with a

minimum A.M. Best rating of A or better for financial strength, and an A.M. Best financial size

category of VIII or better:

**18.3.1**

Employers’ Liability and Workers’ Compensation Insurance providing

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

**18.3.2**

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

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

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

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

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

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

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

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

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

**18.3.3**

Comprehensive Automobile Liability Insurance for coverage of owned

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

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

bodily injury, including death, and property damage.

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**18.3.4**

If applicable, the Commercial General Liability and Comprehensive

Automobile Liability Insurance policies should include contractual liability for work in

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

Railroad Protective Liability Policy should be provided.

**18.3.5**

Excess Liability Insurance over and above the Employers’ Liability,

Commercial General Liability and Comprehensive Automobile Liability Insurance coverages,

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

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

same extensions listed under the Primary policies.

**18.3.6**

The Commercial General Liability Insurance, Comprehensive Automobile

Insurance and Excess Liability Insurance policies of Developer and Connecting Transmission

Owner shall name the other Party, its parent, associated and Affiliate companies and their

respective directors, officers, agents, servants and employees (“Other Party Group”) as additional

insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13

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

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

Agreement against the Other Party Group and provide thirty (30) Calendar days advance written

notice to the Other Party Group prior to anniversary date of cancellation or any material change

in coverage or condition.

**18.3.7**

The Commercial General Liability Insurance, Comprehensive Automobile

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

that the policies are primary and non-contributory. Developer and Connecting Transmission

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

**18.3.8**

The Commercial General Liability Insurance, Comprehensive Automobile

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

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

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

coverage if agreed by the Developer and Connecting Transmission Owner.

**18.3.9**

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

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

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

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

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

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

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

contain a waiver of subrogation.

**18.3.10**

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

insurance to be maintained by the Developer and Connecting Transmission Owner are not

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

by those Parties under this Agreement.

**18.3.11**

Within ninety (90) days following execution of this Agreement, and as

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

in any event within ninety (90) days thereafter, Developer and Connecting Transmission Owner

shall provide certificate of insurance for all insurance required in this Agreement, executed by

each insurer or by an authorized representative of each insurer.

**18.3.12**

Notwithstanding the foregoing, Developer and Connecting Transmission

Owner may each self-insure to meet the minimum insurance requirements of Artic[les 18.3.1](#br54)

[through 18.3.9](#br55) to the extent it maintains a self-insurance program; provided that, such Party’s

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

insurance program meets the minimum insurance requirements of Artic[les 18.3.1](#br54) [through 18.3.9.](#br55)

In the event that a Party is permitted to self-insure pursuant to this Artic[le 18.3.12, it](#br56) shall notify

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

meets the minimum insurance requirements in a manner consistent with that specified in Articles

[18.3.1](#br54) [through 18.3.9](#br55) and provide evidence of such coverages. For any period of time that a

Party’s senior debt is unrated by Standard & Poor’s or is rated at less than investment grade by

Standard & Poor’s, such Party shall comply with the insurance requirements applicable to it

under Artic[les 18.3.1](#br54) thr[ough 18.3.9.](#br55)

**18.3.13**

Developer and Connecting Transmission Owner agree to report to each

other in writing as soon as practical all accidents or occurrences resulting in injuries to any

person, including death, and any property damage arising out of this Agreement.

**18.3.14**

Subcontractors of each party must maintain the same insurance

requirements stated under Artic[les 18.3.1](#br54) [through 18.3.9](#br55) and comply with the Additional Insured

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

contributory and contain a waiver of subrogation.

**ARTICLE 19. ASSIGNMENT**

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

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

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

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

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

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

portion or all of its assets, including the Attachment Facilities it owns, so long as the assignee in

such a transaction directly assumes in writing all rights, duties and obligations arising under this

Agreement; and provided further that the Developer shall have the right to assign this

Agreement, without the consent of the NYISO or Connecting Transmission Owner, for collateral

security purposes to aid in providing financing for the Merchant Transmission Facility, provided

that the Developer will promptly notify the NYISO and Connecting Transmission Owner of any

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

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

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

mortgagee will notify the NYISO and Connecting Transmission Owner of the date and

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

Connecting Transmission Owner with proof that it meets the requirements of Articles 11.5 and

[18.3. Any a](#br54)ttempted assignment that violates this Article is void and ineffective. Any

assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party’s

obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to

assignment will not be unreasonably withheld, conditioned or delayed.

**ARTICLE 20. SEVERABILITY**

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

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

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

covenant of this Agreement; provided that if the Developer (or any third party, but only if such

third party is not acting at the direction of the Connecting Transmission Owner) seeks and

obtains such a final determination with respect to any provision of the Alternate Option (Article

[5.1.2), or](#br19) the Negotiated Option (Artic[le 5.1.4), th](#br19)en none of these provisions shall thereafter

have any force or effect and the rights and obligations of Developer and Connecting

Transmission Owner shall be governed solely by the Standard Option (Article 5.1.1).

**ARTICLE 21. COMPARABILITY**

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

and regulations, as amended from time to time.

**ARTICLE 22. CONFIDENTIALITY**

**22.1**

**Confidentiality.**

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

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

Artic[le 22.](#br57)

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

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

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

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

confidential treatment to its information.

**22.2**

**Term.**

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

or termination of this Agreement, except as otherwise provided in this Artic[le 22, e](#br57)ach Party

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

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**22.3**

**Confidential Information.**

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

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

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

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

Attachment F to the ISO OATT.

**22.4**

**Scope.**

Confidential Information shall not include information that the receiving Party can

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

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

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

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

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

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

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

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

with Artic[le 22.9](#br59) of this Agreement, Order of Disclosure, to be disclosed by any Governmental

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

legal proceeding establishing rights and obligations under this Agreement. Information

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

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

confidential.

**22.5**

**Release of Confidential Information.**

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

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

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

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

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

provisions of this Article [22](#br57) and has agreed to comply with such provisions. Notwithstanding

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

responsible for any release of Confidential Information in contravention of this Artic[le 22.](#br57)

**22.6**

**Rights.**

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

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

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

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

**22.7**

**No Warranties.**

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

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

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

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

venture.

**22.8**

**Standard of Care.**

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

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

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

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

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

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

**22.9**

**Order of Disclosure.**

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

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

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

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

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

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

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

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

obtain reliable assurance that confidential treatment will be accorded any Confidential

Information so furnished.

**22.10**

**Termination of Agreement.**

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

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

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

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

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

Agreement.

**22.11**

**Remedies.**

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

another Party’s Breach of its obligations under this Artic[le 22. Ea](#br57)ch Party accordingly agrees

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

first Party Breaches or threatens to Breach its obligations under this Article [22, whic](#br57)h equitable

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

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

exclusive remedy for the Breach of this Articl[e 22,](#br57) but shall be in addition to all other remedies

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

contained herein are necessary for the protection of legitimate business interests and are

reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential

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or punitive damages of any nature or kind resulting from or arising in connection with this

Artic[le 22.](#br57)

**22.12**

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

Notwithstanding anything in this Article [22](#br57) to the contrary, and pursuant to 18 C.F.R.

section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests

information from one of the Parties that is otherwise required to be maintained in confidence

pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information

to FERC or its staff, within the time provided for in the request for information. In providing the

information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112,

request that the information be treated as confidential and non-public by FERC and its staff and

that the information be withheld from public disclosure. Parties are prohibited from notifying

the other Parties to this Agreement prior to the release of the Confidential Information to the

Commission or its staff. The Party shall notify the other Parties to the Agreement when it is

notified by FERC or its staff that a request to release Confidential Information has been received

by FERC, at which time the Parties may respond before such information would be made public,

pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a

confidential investigation shall be treated in a similar manner if consistent with the applicable

state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise,

resulting from that Party divulging Confidential Information pursuant to a FERC or state

regulatory body request under this paragraph.

**22.13**

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

Except as otherwise expressly provided herein, no Party shall disclose Confidential

Information to any person not employed or retained by the Party possessing the Confidential

Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the

disclosing Party to be required to be disclosed in connection with a dispute between or among

the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the

other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its

obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any

disclosures of a Party’s Confidential Information under this subparagraph, or if any third party or

Governmental Authority makes any request or demand for any of the information described in

this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and

agrees to assert confidentiality and cooperate with the other Party in seeking to protect the

Confidential Information from public disclosure by confidentiality agreement, protective order or

other reasonable measures.

**ARTICLE 23. DEVELOPER AND CONNECTING TRANSMISSION OWNER**

**NOTICES OF ENVIRONMENTAL RELEASES**

Developer and Connecting Transmission Owner shall each notify the other Party, first

orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead

abatement activities, or any type of remediation activities related to the Merchant Transmission

Facility or the Attachment Facilities, each of which may reasonably be expected to affect the

other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided

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such Party makes a good faith effort to provide the notice no later than twenty-four hours after

such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies

of any publicly available reports filed with any Governmental Authorities addressing such

events.

**ARTICLE 24. INFORMATION REQUIREMENT**

**24.1**

**Information Acquisition.**

Connecting Transmission Owner and Developer shall each submit specific information

regarding the electrical characteristics of their respective facilities to the other, and to NYISO, as

described below and in accordance with Applicable Reliability Standards.

**24.2**

**Information Submission by Connecting Transmission Owner.**

The initial information submission by Connecting Transmission Owner shall occur no

later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include

New York State Transmission System information necessary to allow the Developer to select

equipment and meet any system protection and stability requirements, unless otherwise mutually

agreed to by the Developer and Connecting Transmission Owner. On a monthly basis

Connecting Transmission Owner shall provide Developer and NYISO a status report on the

construction and installation of Connecting Transmission Owner’s Attachment Facilities and

System Upgrade Facilities and System Deliverability Upgrades, including, but not limited to, the

following information: (1) progress to date; (2) a description of the activities since the last

report; (3) a description of the action items for the next period; and (4) the delivery status of

equipment ordered.

**24.3**

**Updated Information Submission by Developer.**

The updated information submission by the Developer, including manufacturer

information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial

Operation. Developer shall submit a completed copy of the Merchant Transmission Facility data

requirements contained in Appendix 1 to the Standard Large Facility Interconnection Procedures.

It shall also include any additional information provided to Connecting Transmission Owner for

the Interconnection Facilities Study. Information in this submission shall be the most current

Merchant Transmission Facility design or expected performance data. Information submitted for

stability models shall be compatible with NYISO standard models. If there is no compatible

model, the Developer will work with a consultant mutually agreed to by the Parties to develop

and supply a standard model and associated information.

If the Developer’s data is different from what was originally provided to Connecting

Transmission Owner and NYISO pursuant to an Interconnection Study Agreement among

Connecting Transmission Owner, NYISO and Developer and this difference may be reasonably

expected to affect the other Parties’ facilities or the New York State Transmission System, but

does not require the submission of a new Interconnection Request, then NYISO will conduct

appropriate studies to determine the impact on the New York State Transmission System based

on the actual data submitted pursuant to this Artic[le 24.3. S](#br61)uch studies will provide an estimate

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of any additional modifications to the New York State Transmission System, Connecting

Transmission Owner’s Attachment Facilities or System Upgrade Facilities or System

Deliverability Upgrades based on the actual data and a good faith estimate of the costs thereof.

The Developer shall not begin Trial Operation until such studies are completed. The Developer

shall be responsible for the cost of any modifications required by the actual data, including the

cost of any required studies.

**24.4**

**Information Supplementation.**

Prior to the Commercial Operation Date, the Developer and Connecting Transmission

Owner shall supplement their information submissions described above in this Article [24](#br61) with

any and all “as-built” Merchant Transmission Facility information or “as-tested” performance

information that differs from the initial submissions or, alternatively, written confirmation that

no such differences exist. The Developer shall conduct tests on the Merchant Transmission

Facility as required by Good Utility Practice. Developer shall provide the Connecting

Transmission Owner and NYISO validated test recordings showing the responses of the

Merchant Transmission Facility.

Subsequent to the Commercial Operation Date, the Developer shall provide Connecting

Transmission Owner and NYISO any information changes due to equipment replacement, repair,

or adjustment. Connecting Transmission Owner shall provide the Developer and NYISO any

information changes due to equipment replacement, repair or adjustment in the directly

connected substation or any adjacent Connecting Transmission Owner substation that may affect

the Merchant Transmission Facility or Developer Attachment Facilities equipment ratings,

protection or operating requirements. The Developer and Connecting Transmission Owner shall

provide such information no later than thirty (30) Calendar Days after the date of the equipment

replacement, repair or adjustment.

**ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS**

**25.1**

**Information Access.**

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting

Party”) information that is in the possession of the Disclosing Party and is necessary in order for

the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the

Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and

responsibilities under this Agreement. The Parties shall not use such information for purposes

other than those set forth in this Article [25.1](#br62) of this Agreement and to enforce their rights under

this Agreement.

**25.2**

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

Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Party

becomes aware of its inability to comply with the provisions of this Agreement for a reason other

than a Force Majeure event. The Parties agree to cooperate with each other and provide

necessary information regarding such inability to comply, including the date, duration, reason for

the inability to comply, and corrective actions taken or planned to be taken with respect to such

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inability to comply. Notwithstanding the foregoing, notification, cooperation or information

provided under this Article shall not entitle the Party receiving such notification to allege a cause

for anticipatory breach of this Agreement.

**25.3**

**Audit Rights.**

Subject to the requirements of confidentiality under Artic[le 22](#br57) of this Agreement, each

Party shall have the right, during normal business hours, and upon prior reasonable notice to

another Party, to audit at its own expense the other Party’s accounts and records pertaining to the

other Party’s performance or satisfaction of its obligations under this Agreement. Such audit

rights shall include audits of the other Party’s costs, calculation of invoiced amounts, and each

Party’s actions in an Emergency State. Any audit authorized by this Article shall be performed

at the offices where such accounts and records are maintained and shall be limited to those

portions of such accounts and records that relate to the Party’s performance and satisfaction of

obligations under this Agreement. Each Party shall keep such accounts and records for a period

equivalent to the audit rights periods described in Artic[le 25.4](#br63) of this Agreement.

**25.4**

**Audit Rights Periods.**

**25.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of

Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities and

System Deliverability Upgrades shall be subject to audit for a period of twenty-four months

following Connecting Transmission Owner’s issuance of a final invoice in accordance with

Artic[le 12.2](#br48) of this Agreement.

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

Accounts and records related to a Party’s performance or satisfaction of its obligations

under this Agreement other than those described in Artic[le 25.4.1 of](#br63) this Agreement shall be

subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights

period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to

such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit

rights period shall be twenty-four months after the event for which the audit is sought.

**25.5**

**Audit Results.**

If an audit by a Party determines that an overpayment or an underpayment has occurred, a

notice of such overpayment or underpayment shall be given to the other Party together with

those records from the audit which support such determination.

**ARTICLE 26. SUBCONTRACTORS**

**26.1**

**General.**

Nothing in this Agreement shall prevent a Party from utilizing the services of any

subcontractor as it deems appropriate to perform its obligations under this Agreement; provided,

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however, that each Party shall require its subcontractors to comply with all applicable terms and

conditions of this Agreement in providing such services and each Party shall remain primarily

liable to the other Parties for the performance of such subcontractor.

**26.2**

**Responsibility of Principal.**

The creation of any subcontract relationship shall not relieve the hiring Party of any of its

obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties

for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been

made; provided, however, that in no event shall the NYISO or Connecting Transmission Owner

be liable for the actions or inactions of the Developer or its subcontractors with respect to

obligations of the Developer under Artic[le 5](#br18) of this Agreement. Any applicable obligation

imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be

construed as having application to, any subcontractor of such Party.

**26.3**

**No Limitation by Insurance.**

The obligations under this Artic[le 26](#br63) will not be limited in any way by any limitation of

subcontractor’s insurance.

**ARTICLE 27. DISPUTES**

**27.1**

**Submission.**

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection

with this Agreement or its performance (a “Dispute”), such Party shall provide the other Parties

with written notice of the Dispute (“Notice of Dispute”). Such Dispute shall be referred to a

designated senior representative of each Party for resolution on an informal basis as promptly as

practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated

representatives are unable to resolve the Dispute through unassisted or assisted negotiations

within thirty (30) Calendar Days of the other Parties’ receipt of the Notice of Dispute, such

Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in

accordance with the arbitration procedures set forth below. In the event the Parties do not agree

to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it

may have in equity or at law consistent with the terms of this Agreement.

**27.2**

**External Arbitration Procedures.**

Any arbitration initiated under this Agreement shall be conducted before a single neutral

arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten

(10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one

arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall

be knowledgeable in electric utility matters, including electric transmission and bulk power

issues, and shall not have any current or past substantial business or financial relationships with

any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the

Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the

arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration

Association (“Arbitration Rules”) and any applicable FERC regulations or RTO rules; provided,

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however, in the event of a conflict between the Arbitration Rules and the terms of this Artic[le 27,](#br64)

the terms of this Artic[le 27](#br64) shall prevail.

**27.3**

**Arbitration Decisions.**

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within

ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision

and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the

provisions of this Agreement and shall have no power to modify or change any provision of this

Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the

Parties, and judgment on the award may be entered in any court having jurisdiction. The

decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the

arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act

or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be

filed with FERC if it affects jurisdictional rates, terms and conditions of service, Attachment

Facilities, System Upgrade Facilities, or System Deliverability Upgrades.

**27.4**

**Costs.**

Each Party shall be responsible for its own costs incurred during the arbitration process

and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit

on the three member panel; or (2) one-third the cost of the single arbitrator jointly chosen by the

Parties.

**27.5**

**Termination.**

Notwithstanding the provisions of this Article [27, a](#br64)ny Party may terminate this

Agreement in accordance with its provisions or pursuant to an action at law or equity. The issue

of whether such a termination is proper shall not be considered a Dispute hereunder.

**ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**28.1**

**General.**

Each Party makes the following representations, warranties and covenants:

**28.1.1**

**Good Standing.**

Such Party is duly organized, validly existing and in good standing under the laws of the

state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do

business in the state or states in which the Merchant Transmission Facility, Attachment Facilities

and System Upgrade Facilities and System Deliverability Upgrades owned by such Party, as

applicable, are located; and that it has the corporate power and authority to own its properties, to

carry on its business as now being conducted and to enter into this Agreement and carry out the

transactions contemplated hereby and perform and carry out all covenants and obligations on its

part to be performed under and pursuant to this Agreement.

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**28.1.2 Authority.**

Such Party has the right, power and authority to enter into this Agreement, to become a

Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and

binding obligation of such Party, enforceable against such Party in accordance with its terms,

except as the enforceability thereof may be limited by applicable bankruptcy, insolvency,

reorganization or other similar laws affecting creditors’ rights generally and by general equitable

principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

**28.1.3**

**No Conflict.**

The execution, delivery and performance of this Agreement does not violate or conflict

with the organizational or formation documents, or bylaws or operating agreement, of such

Party, or any judgment, license, permit, order, material agreement or instrument applicable to or

binding upon such Party or any of its assets.

**28.1.4**

**Consent and Approval.**

Such Party has sought or obtained, or, in accordance with this Agreement will seek or

obtain, each consent, approval, authorization, order, or acceptance by any Governmental

Authority in connection with the execution, delivery and performance of this Agreement, and it

will provide to any Governmental Authority notice of any actions under this Agreement that are

required by Applicable Laws and Regulations.

**ARTICLE 29. MISCELLANEOUS**

**29.1**

**Binding Effect.**

This Agreement and the rights and obligations hereof, shall be binding upon and shall

inure to the benefit of the successors and permitted assigns of the Parties hereto.

**29.2**

**Conflicts.**

If there is a discrepancy or conflict between or among the terms and conditions of this

cover agreement and the Appendices hereto, the terms and conditions of this cover agreement

shall be given precedence over the Appendices, except as otherwise expressly agreed to in

writing by the Parties.

**29.3**

**Rules of Interpretation.**

This Agreement, unless a clear contrary intention appears, shall be construed and

interpreted as follows: (1) the singular number includes the plural number and vice versa; (2)

reference to any person includes such person’s successors and assigns but, in the case of a Party,

only if such successors and assigns are permitted by this Agreement, and reference to a person in

a particular capacity excludes such person in any other capacity or individually; (3) reference to

any agreement (including this Agreement), document, instrument or tariff means such

agreement, document, instrument, or tariff as amended or modified and in effect from time to

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time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to

any Applicable Laws and Regulations means such Applicable Laws and Regulations as

amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,

including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated

otherwise, reference to any Article, Section or Appendix means such Article of this Agreement

or such Appendix to this Agreement, or such Section to the Standard Large Facility

Interconnection Procedures or such Appendix to the Standard Large Facility Interconnection

Procedures, as the case may be; (6) “hereunder”, “hereof’, “herein”, “hereto” and words of

similar import shall be deemed references to this Agreement as a whole and not to any particular

Article or other provision hereof or thereof; (7) “including” (and with correlative meaning

“include”) means including without limiting the generality of any description preceding such

term; and (8) relative to the determination of any period of time, “from” means “from and

including”, “to” means “to but excluding” and “through” means “through and including”.

**29.4**

**Compliance.**

Each Party shall perform its obligations under this Agreement in accordance with

Applicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT and Good

Utility Practice. To the extent a Party is required or prevented or limited in taking any action by

such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement

for its compliance therewith. When any Party becomes aware of such a situation, it shall notify

the other Parties promptly so that the Parties can discuss the amendment to this Agreement that is

appropriate under the circumstances.

**29.5**

**Joint and Several Obligations.**

Except as otherwise stated herein, the obligations of NYISO, Developer and Connecting

Transmission Owner are several, and are neither joint nor joint and several.

**29.6**

**Entire Agreement.**

This Agreement, including all Appendices and Schedules attached hereto, constitutes the

entire agreement between the Parties with reference to the subject matter hereof, and supersedes

all prior and contemporaneous understandings or agreements, oral or written, between the Parties

with respect to the subject matter of this Agreement. There are no other agreements,

representations, warranties, or covenants which constitute any part of the consideration for, or

any condition to, either Party’s compliance with its obligations under this Agreement.

**29.7**

**No Third Party Beneficiaries.**

This Agreement is not intended to and does not create rights, remedies, or benefits of any

character whatsoever in favor of any persons, corporations, associations, or entities other than the

Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their

successors in interest and permitted their assigns.

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**29.8**

**Waiver.**

The failure of a Party to this Agreement to insist, on any occasion, upon strict

performance of any provision of this Agreement will not be considered a waiver of any

obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either

Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a

waiver with respect to any other failure to comply with any other obligation, right, duty of this

Agreement. Termination or Default of this Agreement for any reason by the Developer shall not

constitute a waiver of the Developer’s legal rights to obtain Capacity Resource Interconnection

Service and Energy Resource Interconnection Service from the NYISO and Connecting

Transmission Owner in accordance with the provisions of the ISO OATT. Any waiver of this

Agreement shall, if requested, be provided in writing.

**29.9**

**Headings.**

The descriptive headings of the various Articles of this Agreement have been inserted for

convenience of reference only and are of no significance in the interpretation or construction of

this Agreement.

**29.10**

**Multiple Counterparts.**

This Agreement may be executed in two or more counterparts, each of which is deemed

an original but all constitute one and the same instrument.

**29.11**

**Amendment.**

The Parties may by mutual agreement amend this Agreement, by a written instrument

duly executed by all three of the Parties.

**29.12**

**Modification by the Parties.**

The Parties may by mutual agreement amend the Appendices to this Agreement, by a

written instrument duly executed by all three of the Parties. Such an amendment shall become

effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

**29.13**

**Reservation of Rights.**

NYISO and Connecting Transmission Owner shall have the right to make unilateral

filings with FERC to modify this Agreement with respect to any rates, terms and conditions,

charges, classifications of service, rule or regulation under section 205 or any other applicable

provision of the Federal Power Act and FERC’s rules and regulations thereunder, and Developer

shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to

section 206 or any other applicable provision of the Federal Power Act and FERC’s rules and

regulations thereunder; provided that each Party shall have the right to protest any such filing by

another Party and to participate fully in any proceeding before FERC in which such

modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties

or of FERC under sections 205 or 206 of the Federal Power Act and FERC’s rules and

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regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided

herein.

**29.14**

**No Partnership.**

This Agreement shall not be interpreted or construed to create an association, joint

venture, agency relationship, or partnership among the Parties or to impose any partnership

obligation or partnership liability upon any Party. No Party shall have any right, power or

authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an

agent or representative of, or to otherwise bind, any other Party.

**29.15**

**Other Transmission Rights.**

Notwithstanding any other provision of this Agreement, nothing herein shall be construed

as relinquishing or foreclosing any rights, including but not limited to firm transmission rights,

capacity rights, or transmission congestion rights that the Developer shall be entitled to, now or

in the future under any other agreement or tariff as a result of, or otherwise associated with, the

transmission capacity, if any, created by the System Upgrade Facilities and System

Deliverability Upgrades.

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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:

**New York Power Authority**

By:

Name:

Title:

Date:

**CHPE LLC**

By:

Name:

Title:

Date:

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**Appendix A**

**APPENDICES**

Attachment Facilities and System Upgrade Facilities

**Appendix B**

Milestones

**Appendix C**

Interconnection Details

**Appendix D**

Security Arrangements Details

**Appendix E-1**

Initial Synchronization Date

**Appendix E-2**

Commercial Operation Date

**Appendix F**

Addresses for Delivery of Notices and Billings

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**APPENDIX A**

**ATTACHMENT FACILITIES AND SYSTEM UPGRADE FACILITIES**

**Attachment Facilities**

**1.**

**(a)**

**Developer’s Attachment Facilities (“DAF”):**

The Developer’s Attachment Facilities include all of the facilities between the

Developer’s side of the Point of Change of Ownership (“PCO”) and the Merchant Transmission

Facility. As depicted in Figure A-3 to this Appendix A, the DAF will be comprised of the

following facilities:

• One (1) 345kV SF6 circuit breaker, 3000A, 63kA interrupting current, 1300kV BIL,

provided with 18 bushing current transformers (“CTs”) (6 CTs on each bus side bushing);

2 CT cores 3000/5A multi ratio (“MR”) accuracy C800, 2 CT cores 3150/1A, 2 CT cores

3150/1A 5PR20;

• One (1) 345kV motor operated disconnect switch (3phase) 3000A, 63kA withstand

current;

•

Two (2) 345kV motor operated grounding switches (3phase), 63kA withstand current;

• Three (3) 345kV/69-115V capacitor voltage transformers (“CVTs”) for relaying and

metering, 3 secondary windings, accuracy: 0.3ZZ, 1800/3000-1;

• Three (3) 345kV surge arresters, station class, maximum continuously operating voltage

(“MCOV”) 289kV;

• Bus work, 3000A continuous, 1300kV BIL;

• Steel structure for equipment and bus supports;

• Foundations/piles;

• Grounding materials, below ground and above ground;

• Control, metering, and protection systems;

• Conduit and control cables; and

• 345 kV lead line from the converter station to be located in Astoria, New York to the

PCO, including:

o Conductor, twin bundle conductor, 2x795 kcmil ACSR 26/7 “DRAKE”;

o 2 X optical ground wire (“OPGW”);

o Steel towers/poles and foundations; and

o 345kV XLPE cables, 345kV XLPE cable splices, duct banks, connectors, and

potheads.

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**(b)**

**Connecting Transmission Owner’s Attachment Facilities (“CTOAFs”):**

The Connecting Transmission Owner’s Attachment Facilities include the facilities

between the PCO and the Point of Interconnection (“POI”). The PCO and the POI are

designated in Figure A-1 to this Appendix A. As depicted in Figure A-1, the CTOAFs include

the following major electrical and physical equipment:

• One (1) set of three phase 362kV maximum (345kV nominal) GIS voltage transformers

(relaying and metering)

o Two secondary windings, accuracy: 0.3Z 1800/3000:1

o One secondary winding, accuracy 0.3Z, 0.6ZZ 1800/3000:1;

• One (1) set of three phase 362kV maximum (345kV nominal) GIS ring core current

transformers (revenue metering)

o 1500/5A single ratio (“SR”), revenue meter accuracy 0.15S‐B0.1‐1.8, TRF=2;

• Two (2) sets of three phase 362kV maximum (345kV nominal) GIS ring core current

transformers (relaying)

o 3000/5A multi ratio (“MR”), relay accuracy C800, TRF=1.5;

• One (1) set of three phase 362kV maximum (345kV nominal) GIS motor operated

disconnect and grounding switches

o 3000A continuous, 63kA Interrupting current;

• One (1) set of three phase 362kV maximum (345kV nominal) GIS fast acting grounding

switches;

• One (1) set of three phase GIS surge arresters

o Station class, 312kV duty cycle, 245kV maximum continuously operating voltage

(“MCOV”);

• 345kV GIS bus

o 3000A continuous, 1300kV BIL;

• Steel structures for 345kV GIS bus support per design and for GIS transition at PCO;

• Foundations/piles;

• Grounding materials, below grade and above grade;

• Control, metering, and protection systems;

• Conduit and control cables; and

• GIS miscellaneous equipment (e.g., gaskets, bolts, supports).

Pursuant to Article 5.1.3 of this Agreement, Developer has exercised its option to build the

CTOAFs as detailed in Section 3 of this Appendix A.

The new Point of Interconnection (“POI”) at the Astoria Annex 345 kV GIS Substation is

within Zone J North with Connecting Transmission Owner as the metering authority. Consistent

with Section 7.3 of this Agreement, metering equipment shall be in compliance with the NYISO

Revenue Metering Requirements, the New York State Department of Public Service Approved

Meter List dated 8/15/2022 or the most current revision at the time of detailed design (*i.e.*, at the

time Developer achieves the Long Lead Item Purchase Milestone in Appendix B), and NERC

FAC-001-3 (Facility Interconnection Requirements). Associated voltage transformers and current

transformers are required to meet NYISO Manual 25 on Revenue Metering Requirements.

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**2.**

**System Upgrade Facilities**

The Merchant Transmission Facility shall interconnect at the Connecting Transmission

Owner’s existing Astoria Annex 345 kV GIS Substation (“Astoria Annex Substation”) between

new breakers 4 and 6 (new Bus Section 6). The POI and PCO are described in Appendix C.

**(a) Stand Alone System Upgrade Facilities**

None.

**(b) Other System Upgrade Facilities**

The interconnection of the Merchant Transmission Facility requires the expansion of

Connecting Transmission Owner’s Astoria Annex Substation from a four (4) breaker ring bus

configuration to a six (6) breaker ring bus configuration.

Pursuant to Article 5.1.3, Developer may not exercise as a right the option to build the

System Upgrade Facilities other than Stand Alone System Upgrade Facilities. However,

Connecting Transmission Owner and Developer have agreed that Developer shall perform the

design, procurement, and construction of the Other SUFs described in this Appendix A and that

Developer perform this Other System Facilities work consistent with the requirements applicable

to Stand-Alone SUFs in Article 5.2 of this Agreement.

*i. Summary of Changes at the Astoria Annex Substation to Accommodate Merchant*

*Transmission Facility*

As illustrated in Figure A-1, the Astoria Annex Substation currently provides the

interface among:

• Connecting Transmission Owner’s existing 345 kV feeders FDR Q35L and FDR Q35M,

which connect to Consolidated Edison Company of New York, Inc.’s (“Con Edison’s”)

East 13th Street 345 kV Substation;

• Con Edison’s feeder FDR 34091, which connects to Con Edison’s 138 kV Astoria East

Substation (also referred to as 138 kV Astoria East PAR); and

• The existing 345/16.5 kV Developer’s Attachment Facilities owned by Astoria Energy

LLC for the Astoria Energy II generating facility.

In connection with modifications to the Astoria Annex Substation to accommodate the

Merchant Transmission Facility, the substation will also provide the interface with:

• The 345kV AC line to the converter substation for the Merchant Transmission Facility

located in Astoria, Queens, New York; and

• Connecting Transmission Owner’s 345 kV cable from the Astoria Annex Substation to

Con Edison’s Rainey Substation (FDR Y19).

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As illustrated in Figure A-1, as part of the expansion to a six breaker GIS ring bus at the

Astoria Annex Substation, the following changes will be made to the interfaces at the Astoria

Annex Substation:

• The existing Con Edison 345kV E13th St. Substation connection via Q35M transmission

line will transition from being between existing breakers 2 and 5 (Bus Section 5) to being

between existing breaker 5 and new breaker 6 (new Bus Section 5).

• The proposed connection at the Astoria Annex Substation for the 345 kV cable to Con

Edison’s Rainey Substation (FDR Y19) will be between existing breaker 2 and new

breaker 4 (new Bus Section 4).

• New Geotech testing for the design associated with this project is required.

• New soil testing, removal and disposal are required.

• As part of the Storm Hardening Initiatives and requirements for Flood-Resistant

Construction within the NYC Department of Buildings after Hurricane Sandy, a survey

shall be initiated by the Developer for the Astoria Annex Substation. The cost associated

with storm hardening was not covered in the Q631/Q887 Part 1 Facilities Study and

additional study is required per NYC Building Code Appendix G Flood -Resistant

Construction which references ASCE 24‐14. Any additional costs associated with storm

hardening will be allocated in accordance with the requirements in Section 25.8.6.4 of

Attachment S to the NYISO OATT to the extent applicable.

Responsible party to follow the more stringent design standards as prescribed by either

NYC Building Code or the NYS Building Code. Currently, The NYS Building Code

references ASCE 24-14 (Code Reference Book) requiring design of critical infrastructure

to the HIGHER of 3’ above the Base Flood Elevation or the 500-year flood as indicated

by the FEMA Firm maps, which governs over the current NYC Building Code.

• From a security standpoint, Con Edison monitors access and control to all of Connecting

Transmission Owner’s Astoria Annex Substation. If the NPCC re‐classifies the Astoria

Annex Substation due to the interconnection of the Merchant Transmission Facility,

additional upgrades may be required. Any additional costs associated with additional

upgrades due to the reclassification of the Astoria Annex Substation will be allocated in

accordance with requirements in Section 25.8.6.4 of Attachment S to the NYISO OATT

to the extent applicable.

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*ii. Equipment and Physical Equipment Required for Modifications to Astoria Annex*

*Substation to Accommodate Merchant Transmission Facility*

The expansion of the Astoria Annex Substation shall include, but is not limited to, the

following major electrical and physical equipment:

NOTE: Specific details of this installation will be handled in the detailed design and review

process.

As further described in Section 3 of this Appendix A, Developer Election of Option to

Build, Developer shall adhere to Connecting Transmission Owner’s applicable processes and

policies in execution of the Astoria Annex Substation expansion including, engineering, design,

procurement, construction, quality assurance, and documentation processes. The equipment

specifications and design standards shall be in accordance with Con Edison’s design

requirements and subject to review and approval by both Connecting Transmission Owner and

Con Edison. However, revisions to such specifications and standards that occur after 30%

design packages have been issued by Connecting Transmission Owner will not be imposed on

Developer to avoid the need for any redesigns.

• Two (2) SF6, GIS circuit breakers 362kV maximum (345kV nominal) nominal system

voltage

o 3000A continuous, 1300 kV BIL, 63kA interrupting;

• Twelve (12) sets of three phase 362kV maximum (345kV nominal) GIS ring core current

transformers (relaying)

o 3000/5A multi ratio (“MR”), relay accuracy C800, TRF=1.5;

• Two (2) sets of three phase 362kV maximum (345kV nominal) GIS ring core current

transformers (metering)

o 3000/5A multi ratio (“MR”), meter accuracy 0.3B2.0, TRF=1.5;

• Four (4) sets of three phase 362kV maximum (345kV nominal) GIS motor operated

disconnect/grounding switches

o 3000A continuous, 1300 kV BIL, 63kA Interrupting current; and

• Two (2) sets of three phase 362kV maximum (345kV nominal) GIS voltage transformers

(relaying and metering)

o Three secondary windings, accuracy: 0.3Z, 1800/3000:1.

NOTE: BIL ratings of Gas Insulated Switchgear assemblies to be finalized in Insulation

Coordination Study during detailed design.

In addition, the Other SUFs include the following additional equipment at the Astoria

Annex Substation:

• 345kV GIS structures (including GIS to underground cable termination structures);

• 345kV GIS bus work;

• Conduit and trench;

• Control cabling;

• Foundations/piles;

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• Grounding materials;

• One (1) new prefabricated control enclosure including:

o New 1st Line Relay & DC Panel Room #2:

▪ Four (4) 1st Line relaying, control, and communication panels; and

▪ One (1) 125 VDC distribution panel;

▪ One (1) new cable termination cabinet

▪ Auxiliary enclosure systems

o New 2nd Line Relay & DC Panel Room #2:

▪ Four (4) 2nd Line relaying, control, and communication panels; and

▪ One (1) 125 VDC distribution panel;

▪ One (1) new cable termination cabinet

▪ Auxiliary enclosure systems

• Existing Control/HMI Room:

o Existing Revenue Metering Cabinet

▪ One (1) primary revenue meter;

▪ One (1) backup revenue meter;

o One (1) AC switchboard; and

o One (1) 125 VDC switchboard;

• Existing Comm Room #1:

o 1st Line fiber patch panel and SCADA equipment;

• Existing Comm Room #2:

o 2nd Line fiber patch panel and SCADA equipment.

**Substation Physical Requirements include but are not limited to:**

Foundations: New foundations required for new control enclosure and for new equipment.

Tray/Conduit/Cable: New trough, tray, conduit, and cable required for all new equipment and to

reroute circuits to existing equipment.

Concrete duct bank/Cable Trench – Two new isolated and separated underground cable systems

protected by concrete to connect 1st Line Relay Room #1 to 1st Line Relay Room #2 and 2nd

Line Relay Room #1 to 2nd Line Relay Room #2.

Grounding: Grounding for new equipment in accordance with applicable codes, standards,

Connecting Transmission Owner’s requirements and Con Edison’s specifications.

Fence: The station fence will be modified to accommodate the new prefabricated control

enclosure.

Control Enclosure: New 1st Line Relay Panel & DC Panel Room #2 and new 2nd Line Relay

Panel & DC Panel Room #2 to be constructed to accommodate the new protective relaying

panels per SUF design. The minimum required auxiliary systems, such as fire

detection/notification, alarms, security, HVAC, heating, lighting, and receptacles shall be

installed for both new relay rooms in the control enclosure. No spare equipment considerations

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nor future expansion considerations shall be required in the design or construction of the new

control enclosure.

Battery/Charger: Existing, to be verified if supports the additional DC load per design and

upgrade if necessary.

AC Station Service: Existing, to be verified if supports the additional AC load per design and

upgrade if necessary.

Sequence of Events Recorder (“SER”)/Digital Fault Recorder (“DFR”)Equipment: Existing, to

be verified if supports the additional required inputs per design and upgrade if necessary.

RTU: Existing, to be verified if supports the additional required inputs per design and upgrade if

necessary.

Lightning Protection: N/A.

Bus Layout: Per Con Edison’s TRANSMISSION PLANNING CRITERIA (EP-7100-10

paragraph 1.7), “Interconnection plans will avoid overhead crossings of other feeders and

associated substation bus sections, provide adequate separation and when necessary independent

routing of underground feeders, and provide separation of control and relay protection wiring.”

Crossing gas insulated sections of 345kV Y19 (Astoria-Rainey Cable)/Q631 is acceptable per

Con Edison.

**Phasor Measurement Unit Requirements**

In accordance with Article 9.10 of this Agreement, the Developer will also be responsible for

installing at the Astoria Annex Substation one (1) phasor measurement unit (“PMU”) and optical

transport network equipment and its associated equipment for transmitting PMU data to NYPA

and NYISO. Connecting Transmission Owner will own, operate, and maintain this equipment.

**Protective Relaying Requirements:**

The conceptual Main One Line Diagram (Dwg. No. 3022107-001) is provided in Figure A-1 to

this Appendix A. Eight (8) new relay panels are required.

A proposed standalone control enclosure will contain two (2) rooms: 1st Line Relay & DC Panel

Room #2 and 2nd Line Relay and DC Panel Room #2. Each room will contain four (4) relay

control panels, one (1) 125 VDC distribution panel, and one (1) cable termination cabinet for

interfacing with the existing control building. The relays in these new rooms will protect the two

(2) new transmission lines being connected to the Astoria Annex Substation ring bus and

associated GIS equipment. Spare equipment and future expansion considerations shall not be

required as related to protective relaying.

**I. Control Room “1st Line Protection”**

• **Existing Bus Section 1** – Existing 345kV FDR.Q35L connection:

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o Existing Panel 1-1A – no equipment update

o Existing Panel 1-1B – no equipment update

o Existing Panel 1-1C – no equipment update

• **Existing Bus Section 2** – Existing 345kV FDR.G13 connection:

o Existing Panel 2-1A – no equipment update

o Existing Panel 2-1B – no equipment update

• **Existing Bus Section 3** – Existing 345kV Astoria PAR 138kV:

o Existing Panel 3-1A – no equipment update

o Existing Panel 3-1B – no equipment update

o Existing Panel FDR 34091 – no equipment update

• **Existing Bus Section 5** – Existing 345kV FDR Q35M:

o Existing Panel 5-1A – no equipment update

o Existing Panel 5-1B – no equipment update

o Existing Panel 5-1C – no equipment update

**II. Control Room “2nd Line Protection”**

• **Existing Bus Section 1** – Existing 345kV FDR.Q35L connection:

o Existing Panel 1-2A – no equipment update

o Existing Panel 1-2B – no equipment update

o Existing Panel 1-2C – no equipment update

• **Existing Bus Section 2** – Existing 345kV FDR.G13 connection:

o Existing Panel 2-2A – no equipment update

o Existing Panel 2-2B – no equipment update

• **Existing Bus Section 3** – Existing 345kV Astoria PAR 138kV:

o Existing Panel 3-2A – no equipment update

o Existing Panel 3-2B – no equipment update

o Existing Panel FDR 34091 – no equipment update

• **Existing Bus Section 5** – Existing 345kV FDR Q35M:

o Existing Panel 5-2A – no equipment update

o Existing Panel 5-2B – no equipment update

o Existing Panel 5-2C – no equipment update

**III. New Control Room “1st Line Protection” #2**

• **New Bus Section 4** – New 345kV Astoria-Rainey Cable connection (FDR Y19):

o **New Panel 4-1A**

▪ Line Differential and direct transfer trip (“DTT”): 85-1

▪ BKR 4 Failure (50/62-1/4)

▪ LOR relays for 85-1 and breaker failure, FT test switches

o **New Panel 4-1B**

▪ Bus Diff 87B/BS#4

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▪ Communication /fiber equipment

▪ FT test switches

• **New Bus Section 6** – New 345kV feeder – single circuit tie line approximately 0.3 miles

in length within the Astoria complex from the Merchant Transmission Facility

(Q631/Q887):

o **New Panel 6-1A**

▪ Line Differential and direct transfer trip (“DTT”): 85-1

▪ BKR 6 Failure (50/62-1/6)

▪ LOR relays for 85-1 and breaker failure, FT test switches

o **New Panel 6-1B**

▪ Bus Diff 87B/BS#6

▪ Communication /fiber equipment

▪ FT test switches

**IV. New Control Room “2nd Line Protection” #2**

• **New Bus Section 4** – New 345kV Astoria-Rainey Cable connection (FDR Y19):

o **New Panel 4-2A**

▪ Line Differential and direct transfer trip (“DTT”): 85-2

▪ BKR 4 Failure (50/62-2/4)

▪ LOR relays for 85-2 and breaker failure, FT test switches

o **New Panel 4-2B**

▪ Communication /fiber equipment

▪ FT test switches

• **New Bus Section 6** – New 345kV feeder – single circuit tie line approximately 0.3 miles

in length within the Astoria complex from the Merchant Transmission Facility

(Q631/Q887):

o **New Panel 6-2A**

▪ Line Differential and direct transfer trip (“DTT”): 85-2

▪ BKR 6 Failure (50/62-2/6)

▪ LOR relays for 85-2 and breaker failure, FT test switches

o **New Panel 6-2B**

▪ Communication /fiber equipment

▪ FT test switches

**V. Control Room at Developer’s Attachment Facilities**

• **New 345kV Feeder** – Astoria Annex Substation 345kV line:

o **New 1st Line Relay Panel**

▪ Line Differential and direct transfer trip (“DTT”): 85

▪ BKR Failure (50/62)

▪ LOR relays for 85 and breaker failure, FT test switches

o **New 2nd Line Relay Panel**

▪ Line Differential and direct transfer trip (“DTT”): 85

▪ BKR Failure (50/62)

▪ LOR relays for 85 and breaker failure, FT test switches

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o **New SCADA Panel**

▪ Communication /fiber equipment

**Revenue Meter:**

• Two (2) new revenue meters for the Merchant Transmission Facility will be installed in

the existing Connecting Transmission Owner’s metering cabinet, located in the Astoria

Annex control room.

*iii. Astoria-Rainey Cable (FDR Y19)*

Pursuant to Section 25.6.1.4.1 of Attachment S of the NYISO OATT, Developer elected

to construct the Astoria-Rainey Cable as a System Upgrade Facility that is more extensive than

the minimum facilities required to reliably interconnect the Merchant Transmission Facility

project and is reasonably related to the interconnection of the project (“Elective SUF”). The

demarcation points for the Astoria-Rainey Cable are the 345 kV cable potheads exiting the

Astoria Annex Substation and Con Edison’s Rainey Substation.

As further described in Section 3 of this Appendix A, Developer Election of Option to

Build, Developer shall adhere to Connecting Transmission Owner’s applicable processes and

policies in execution of the Astoria-Rainey Cable including, engineering, design, procurement,

construction, quality assurance, and documentation processes. The equipment specifications and

design standards shall be in accordance with Connecting Transmission Owner’s design

requirements and subject to review and approval by Connecting Transmission Owner.

The major equipment to accommodate the Astoria-Rainey Cable project at the Astoria

Annex Substation include the following:

• One (1) set of three phase 362kV maximum (345kV nominal) GIS voltage transformers

(relaying and metering)

o Three secondary windings, accuracy: 0.3Z, 1800/3000:1;

• Two (2) sets of three phase 362kV maximum (345kV nominal) GIS ring core current

transformers (relaying)

o 3000/5A multi ratio (“MR”), relay accuracy C800, TRF=2;

• One (1) set of three phase 362kV maximum (345kV nominal) GIS motor operated

disconnect and grounding switches

o 3000A continuous, 63kA interrupting current;

• One (1) set of three phase 362kV maximum (345kV nominal) GIS fast acting grounding

switches;

• One (1) set of three phase GIS surge arresters

o Station class, 312kV duty cycle, 245kV maximum continuously operating voltage

(“MCOV”);

• 345kV GIS bus

o 3000A continuous, 1300kV BIL;

• Steel structures for 345kV GIS bus support per design and for GIS transition at PCO;

• 345kV XLPE cables, 345kV XLPE cable splices, duct banks, connectors, and potheads

• Foundations/piles;

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• Grounding materials, below grade and above grade;

• Control, metering, and protection systems;

• Conduit and control cables; and

• GIS miscellaneous equipment.

Additional upgrades will be required at Con Edison’s Rainey Substation. In addition, the

existing single circuit connection from the Con Edison PAR to the Astoria East 138 kV

substation will be upgraded to provide a Long Term Emergency (“LTE”) rating of at least 333

MW. As described in Section 4 of this Appendix A below, these upgrades will be addressed

through a separate Transmission Facility Interconnection Agreement among the NYISO,

Connecting Transmission Owner, Con Edison, and Developer.

The Connecting Transmission Owner shall supply standard drawings and equipment

specifications for the Developer to finalize the design for the Connecting Transmission Owner’s

review and approval. The Developer will coordinate the work and necessary outages with

Connecting Transmission Owner.

*iv. Replacement of Overdutied Breakers at Valley Stream 138 kV Substation*

The Class Year Interconnection Facilities Study for Class Year 2021 (“Class Year

Study”) determined that seven 138 kV breakers at the Long Island Power Authority’s (“LIPA”)

Valley Stream 138 kV Substation must be replaced as they will be overdutied due to certain

Class Year 2021 projects, including the Merchant Transmission Facility (“Breaker Replacement

Upgrades”). However, as a result of the withdrawal of certain of the impacted Class Year 2021

projects following the conclusion of the Class Year Study, the NYISO subsequently determined

that this work is no longer required.

**3.**

**Developer Election of Option to Build**

Pursuant to Article 5.1.3 of this Agreement, the Developer has chosen the option to build

the CTOAFs and will construct the Other System Upgrade Facilities and Elective SUF as

described in this Appendix A, all of which facilities will be transferred to the Connecting

Transmission Owner. The Developer will be responsible for the engineering, design,

procurement, construction, installation, testing, commissioning, and transfer of such facilities in

accordance with Connecting Transmission Owner’s or Con Edison’s applicable standards and

procedures (including NYPA Division 1 Project Requirements Specifications, NYPA Design

Criteria Rev 10, Environmental, Health, and Safety Requirements for Construction at Authority

Facilities and Projects, NYPA EH&S Technical Specifications Checklist and applicable NERC

Reliability Standards and NPCC directives), to the extent such standards are not inconsistent

with the terms of this Agreement, the NYISO OATT, or applicable NYISO procedures.

Equipment procurement for the facilities that will be turned over to the Connecting Transmission

Owner shall comply with its procurement process including its Appendix P and other NERC CIP

program requirements.

In the event that a Party becomes aware that Applicable Laws and Regulations or the

requirements and guidelines of Applicable Reliability Councils have been modified that could

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affect the safe or reliable operations of the CTOAF, Other System Upgrade Facilities or Elective

SUF the Party shall notify the other Parties promptly, so that the Parties can mutually agree upon

an amendment, if needed, of this Agreement.

**4.**

**Affected Systems**

The interconnection of the Merchant Transmission Facility will require System Upgrade

Facilities at Con Edison’s Rainey Substation to accommodate the new underground 345 kV

cable from the Astoria Annex Substation, as well as the reconductoring of the overhead portions

of Con Edison’s Line #34091 from the Astoria Annex Substation to the Astoria East 138 kV

PAR. This work will be addressed through a separate Transmission Facility Interconnection

Agreement (NYISO OATT Service Agreement No. 2772) among the NYISO, Connecting

Transmission Owner, Con Edison, and Developer. As detailed in the executed Service

Agreement 2772, the Connecting Transmission Owner shall provide operational metering

information (MW, MVAr, etc) concerning the Merchant Transmission Facility to the Con Edison

control center from the Connecting Transmission Owner’s operational meter at the Astoria

Annex Substation via the Remote Terminal Unit.

**5.**

**System Deliverability Upgrades**

None.

**6.**

**Special Studies**

NYISO performed Subsynchronous Torsional Interaction (“SSTI”) screening analysis

using Unit Interaction Factor (“UIF”) threshold of 0.10 for CY21 projects and existing

generation units. The Merchant Transmission Facility project (NYISO Queue Position Nos.

Q631/Q887) was tested against the existing Astoria Energy II generator.

Pursuant to Section 6.1 of NYISO *Class Year 2021 System Upgrade Facilities (SUF) and*

*System Deliverability Upgrade (SDU) Report* (October 17, 2022), it is recommended for new

HVDC/inverter-based resource interconnections that the actual design prevent unwanted

potential SSTI with existing nearby generation units, and for new generation control actual

design prevent unwanted potential SSTI with existing nearby HVDC/inverter-based generation.

Based on this, Developer will perform a detailed SSTI analysis for the Merchant Transmission

Facility project during the detailed engineering phase of the project.

**7.**

**Cost Estimates\***

**Description**

**Estimated Cost**

*Connecting Transmission Owner’s Attachment Facilities*

$9,150,000

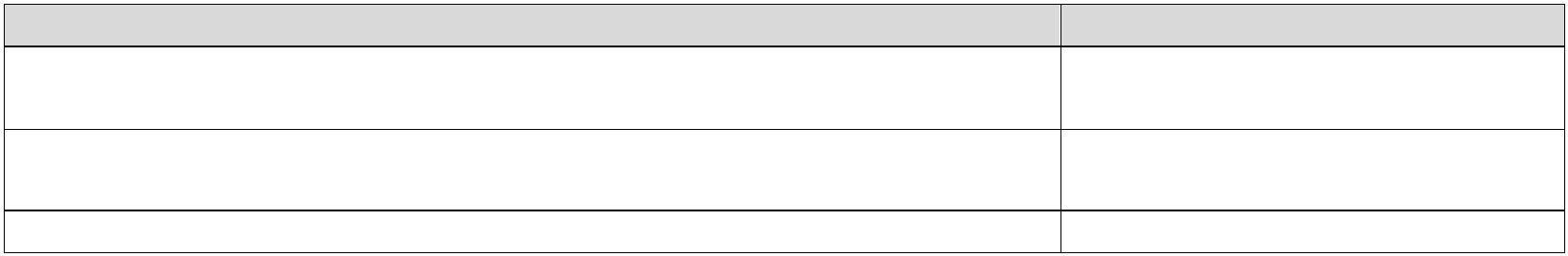
*System Upgrade Facilities*

$174,910,000

**Total**

**$184,0630,000**

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**SERVICE AGREEMENT NO. 2710**

\* These cost estimates do not include the costs for the work on Con Edison’s or LIPA’s system

associated with the interconnection of the Merchant Transmission Facility, which work is

addressed under separate agreements, or the costs of the SSTI analysis.

**8.**

**O&M for CTOAFS**

Pursuant to Section 10.5 of this Agreement, Developer shall pay the reasonable expenses

(including overheads) for the operation, maintenance, repair and replacement of CTOAFs. Such

expenses are calculated as follows:

a) Contractor expenses for labor, equipment and materials. These expenses shall be

invoiced as the actual amount of the Contractors’ invoices. Connecting Transmission

Owner shall also be entitled to a fee of 5 % of such amount(s).

b) Connecting Transmission Owner’s labor, craft and salaried personnel directly working on

the operation, maintenance or repair of the Connecting Transmission Owner’s

Attachment Facilities. These expenses shall be invoiced on the basis of Connecting

Transmission Owner’s standard labor rate times the number of hours worked (including

adjustment for overtime hours, if applicable). Such standard rate is subject to change in

accordance with Connecting Transmission Owner’s normal budgeting practices.

c) Equipment and materials purchased by the Connecting Transmission Owner (other than

those covered under subsection (a), above). These expenses shall be invoiced on the

basis of the actual cost of such material. Connecting Transmission Owner shall also be

entitled to a fee of 15% of such amount(s).

d) Use of vehicles and construction equipment. These expenses shall be invoiced at

Connecting Transmission Owner’s cost. Connecting Transmission Owner shall also be

entitled to a fee of 10% of such amount(s).

e) Miscellaneous expenses (e.g. local utility charges for power; local telephone/

communication fees; other fees such as FAA licenses). These expenses shall be invoiced

at Connecting Transmission Owner’s cost. Connecting Transmission Owner shall also be

entitled to a fee of 5% of such amount(s).

**9.**

**Transfer of Property**

Pursuant to Section 5.2.10 of this Agreement, upon completion of construction, testing, and

acceptance of the Astoria Annex Substation improvements and the Astoria-Rainey Cable by the

Connecting Transmission Owner, Developer will (a) convey to the Connecting Transmission

Owner property rights sufficient to allow the CTO to operate and maintain the SUF and CTOAF.

(including assignable consents issued by the City of New York) including any required right of

way as depicted in Site Plan (to be provided by the Developer), and (b) will transfer to Connecting

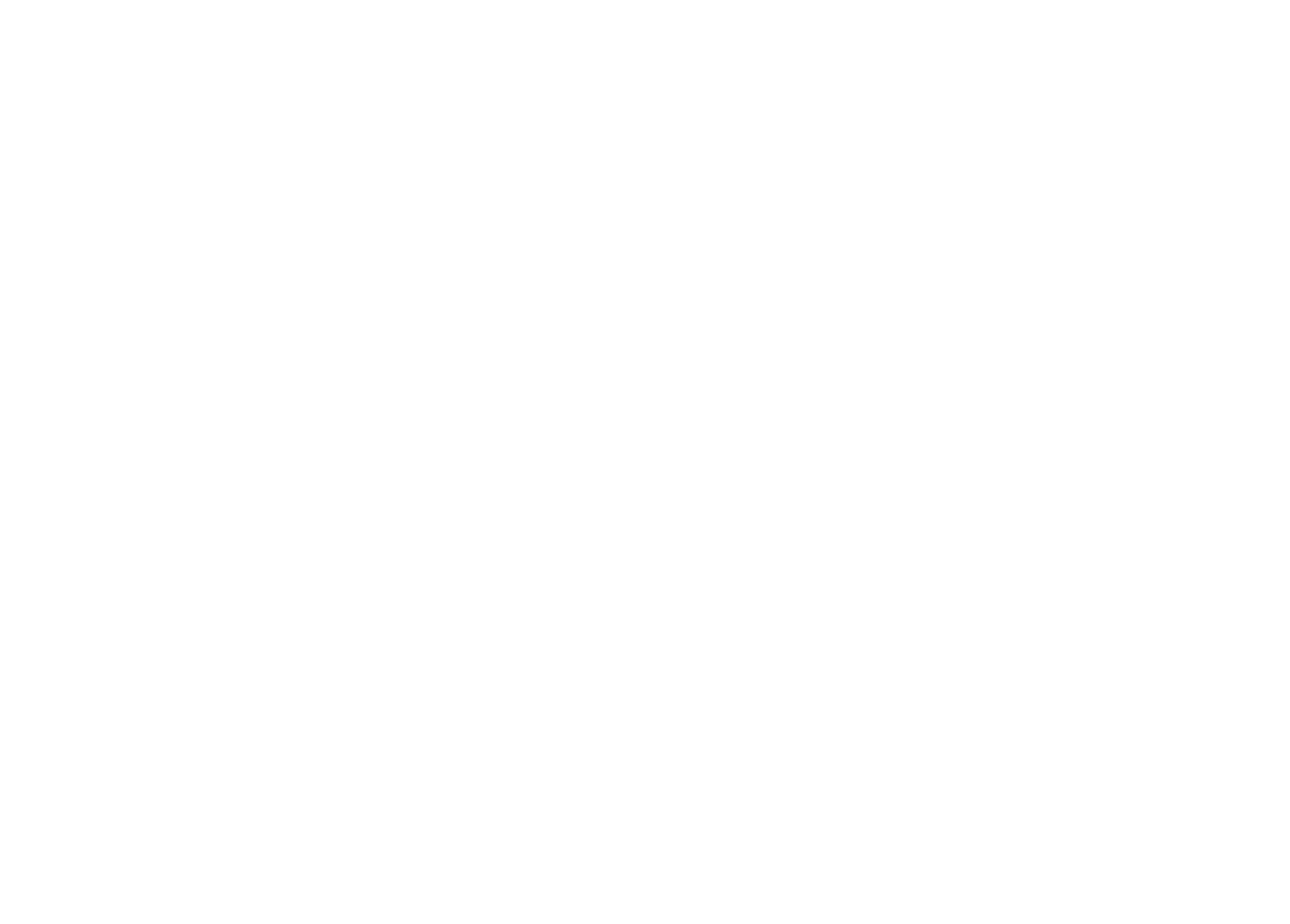
Transmission Owner title to the CTOAFs and SUFs constructed thereon or therein, all free and

clear of any liens and encumbrances. All conveyance documents consistent with Connecting

Transmission Owner requirements, including those in the Design Criteria for Developer

Connection to New York Power Authority’s Transmission System document, and will be subject

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**SERVICE AGREEMENT NO. 2710**

to prior review by, and in form acceptable to, Connecting Transmission Owner. Connecting

Transmission Owner will provide the Developer an easement, permit, or contractual access right

over such transferred property to allow Developer access to the SUFs and CTOAF. The

Connecting Transmission Owner shall, at its discretion and at its expense, maintain any required

right of way for its purposes only. Any additional access or maintenance of any required right of

way requested or required by Developer or others with whom Developer has obtained an

easement, permit or other property interest or contractual access rights for the site access road,

including, but not limited to, snow removal, shall be the responsibility of the Developer.

**10.**

**Engineering Services Provided by Connecting Transmission Owner**

The Connecting Transmission Owner will perform its review and approval of engineering

designs as required in Article 5.2.4 of this Agreement in the manner described in this Section 10.

The Connecting Transmission Owner and Developer’s contact information concerning the

performance of the engineering services described in this Section 10 are included in Appendix F

of this Agreement.

The Connecting Transmission Owner shall only provide engineering services for

equipment and structures to which it is contemplated that title will be transferred to the

Connecting Transmission Owner under this Agreement. The Connecting Transmission Owner is

not providing engineering services with respect to any other equipment or structures.

Developer’s engineering drawings for the interconnection of the Merchant Transmission

Facility shall be submitted to the Connecting Transmission Owner and be stamped by a

Professional Engineer. If Developer revises any of the drawings, the revised drawings shall be

resubmitted to the Connecting Transmission Owner and shall indicate all changes made from the

prior submission by highlighting or circling the change. Upon receipt of the Developer’s

drawings, the Connecting Transmission Owner shall timely commence its review and provide

comments to Developer within 30 calendar days from the date of receipt.

After completing its review, the Connecting Transmission Owner shall send written

notice to Developer either: (1) approving the drawings; or (2) detailing any deficiencies and non-

conformance with the Connecting Transmission Owner’s criteria and specifications and

applicable design requirements, including copies of any relevant design criteria documents and

supporting information. To the extent necessary, Developer shall correct any deficiencies and

non-conformance and submit revised design criteria information to the Connecting Transmission

Owner for further review and acceptance.

**11.**

**Connecting Transmission Owner’s and Developer’s Responsibilities Concerning**

**Attachment Facilities and System Upgrade Facilities**

**Responsibility Matrix for CTO and Developer Scope**

**Concerning Attachment Facilities and System Upgrade Facilities**

**Task**

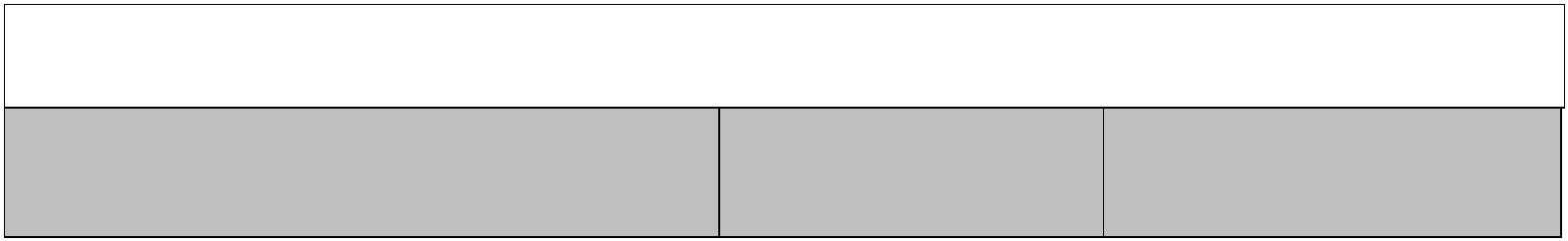
**Connecting**

**Transmission Owner**

**Scope**

**Developer Scope**

A-14



**SERVICE AGREEMENT NO. 2710**

Connecting Transmission Owner’s

Attachment Facilities

• Review & approve

the engineering,

design &

• Merchant Transmission

Facility interconnection at

Astoria Annex Substation

(from POI at Astoria Annex

Substation to Point of Change

of Ownership (PCO)

procurement

Engineer, design, procure,

construct/install, test,

commission

1

• Oversight for

construction/installa

tion, testing,

demarcation)

commissioning

**Other System Upgrade Facilities**

**Connecting**

**(SUF) at Astoria Annex 345kV GIS Transmission Owner**

**Developer Scope**

**Substation**

**Scope**

2.1

• Expansion of the existing

Astoria Annex Substation

from a (4) four breaker ring

bus to a (6) six breaker ring

bus configuration.

Engineer, design, procure,

construct/install, test,

commission

Review & approves

• FDR Q35M relocation on the

new Bus Section 5 of the six

(6) breaker ring bus

configuration

2.2

NYPA to review and

approves pothead

structures at Astoria

Annex (PCO)

345 kV HVAC Transmission Line

between Astoria Converter Station

and Astoria Annex

Engineer, design, procure,

construct/install, test,

commission

**Connecting**

**Transmission Owner**

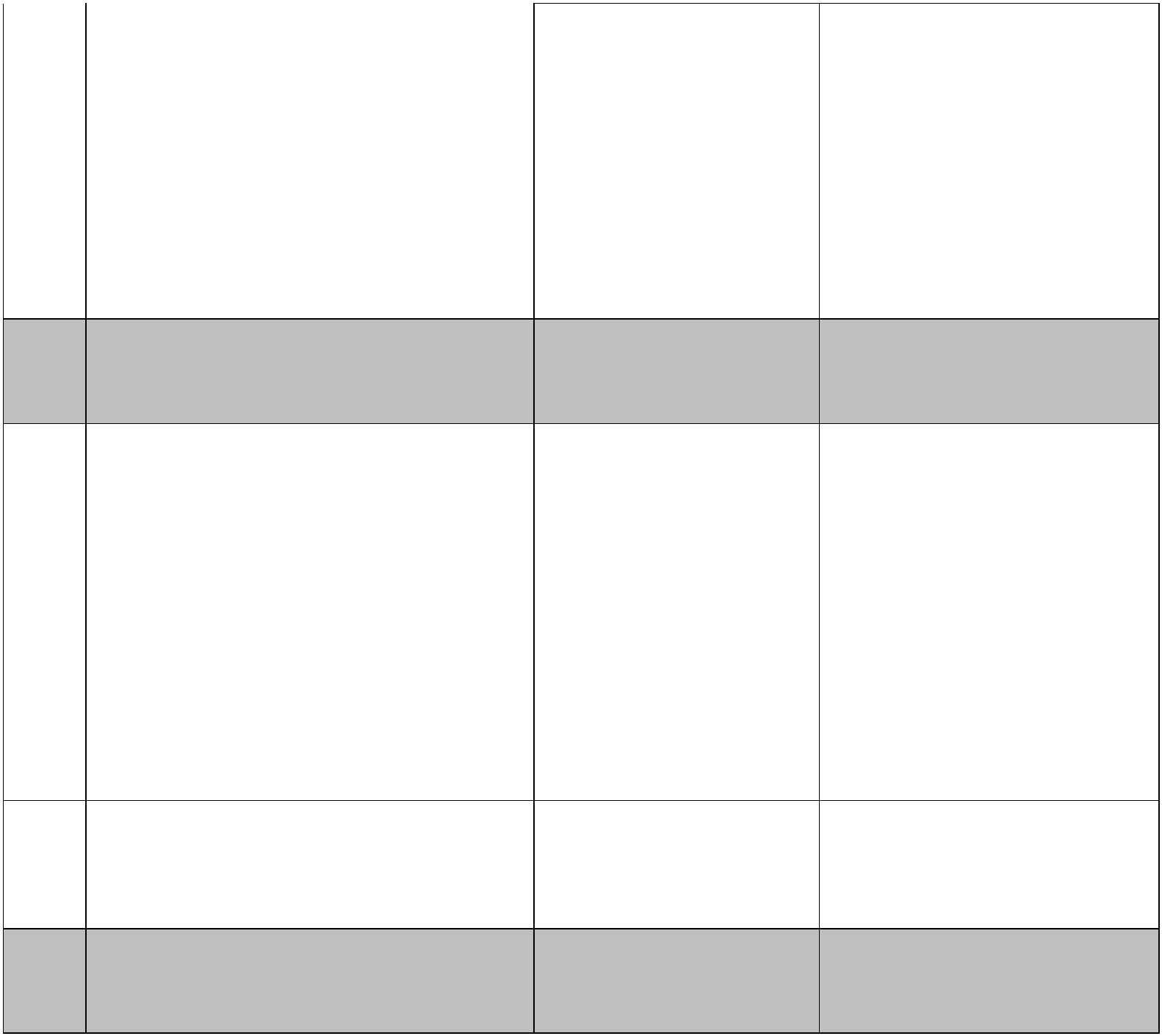
**Scope**

**Other System Upgrade Facilities**

**(“SUF”) for Astoria-Rainey Cable**

**Developer Scope**

A-15



**SERVICE AGREEMENT NO. 2710**

2.3

• Design of the duct bank

• XLPE cable design

• Pulling calculations and plans

• Cable Joint design

• Environmental review for the

route

Engineer, design, procure,

construct/install, test,

commission

• Route excavation design

• Rating calculations

• Manhole design

• Grounding design

• FATs

Review & approves

• Final tests

2.4

• Installation of the concrete duct

bank for XLPE cable

• Cable pulling

Engineer, design, procure,

construct/install, test,

commission

• Joint installation

Construction oversight

• Termination at Astoria Annex

and Rainey

• Manhole installation

**Specific Task with Protection and**

**Control Scope for the expanded**

**Astoria Annex Substation**

**Connecting**

**Transmission Owner**

**Scope**

**Developer Scope**

Protection application document with

high level sketches of protection and

communication schemes

3

4

Review & approves

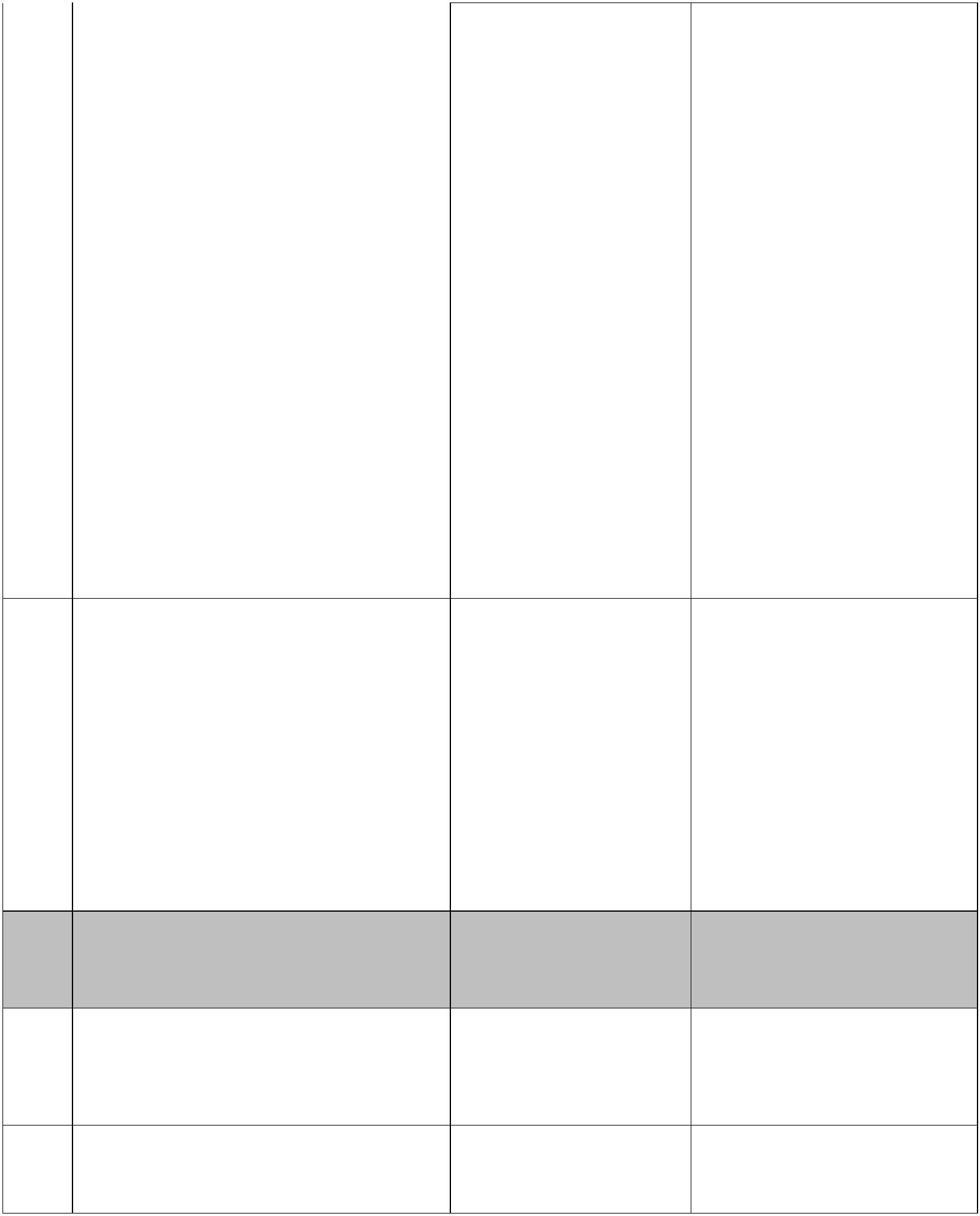
Review & approves

Develop & submit

Develop & submit

Drawing package

A-16



**SERVICE AGREEMENT NO. 2710**

Finalize drawing package

(Professional Engineer (“PE”) Sealed

Issued For Construction (“IFC”)

Drawings)

5

For record keeping

Develop & submit

6

7

8

Final drawing package approved

Review & approves

Review & approves

Review & approves

Develop & submit

Develop & submit

Develop bill of materials and bid

specification

Procurement of new control enclosure

including all protection and control

relaying.

Engineer, design, procure,

construct/install, test,

commission

Perform design and settings

development to ensure all BPS NERC

and NPCC requirements are met

including but not limited to PRC002,

PRC023, PRC027, PRC026,

9

Review & approves

Review & approves

Develop & submit

Develop & submit

Directory 11, Directory 4

Developer to ensure that the project’s

expanded Astoria Annex Substation is

accurately represented in the NYISO

Aspen model

10

Must provide calculations and final

values of new line parameters (facility

thermal ratings including impedance,

mutual coupling & susceptance)

11

12

Review & approves

Review & approves

Develop & submit

Develop & submit

All as-built drawings comments to be

updated electronically

Developer is required to perform

protection coordination studies for the

13 project’s expanded Astoria Annex

Substation utilizing the ASPEN

NYISO model.

Review & approves

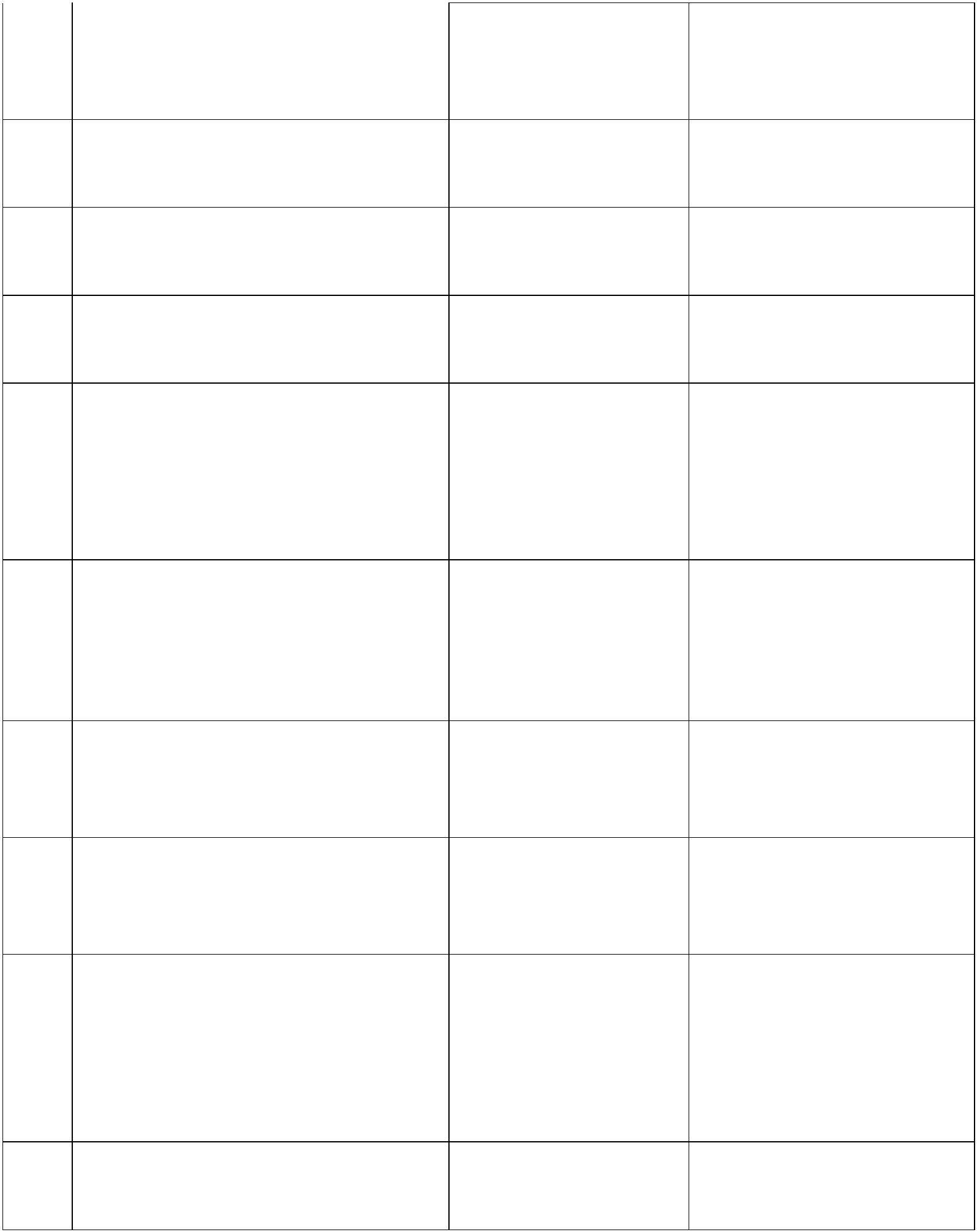
Develop & submit

Develop & submit

14 Develop relay settings & calculations

Review & approves

A-17



**SERVICE AGREEMENT NO. 2710**

NPCC Directory 4 presentation and

approval

15

Support

Develop & submit

Develop, Execute relay

settings & submit

16 Program relay settings

17 Perform test settings

Review & approves

Review & approves

Oversight

Develop, test & submit

18 Construction/installation

Construction & installation

Submit testing and

commissioning plan,

Perform testing and

commissioning

Testing and commissioning ensure all

PRC005 requirements are adhered to

19

Witness testing

**Connecting**

**Transmission Owner**

**Scope (Per Con**

**Edison’s**

**Requirements**

**Subject to NYPA’s**

**Review)**

**Task associated with SCADA/RTU**

**Scope for the expanded Astoria**

**Annex Substation**

**Developer Scope**

20

SCADA/RTU Points and Protocol

address development

Review and approve

Develop & submit

21

Provide specifications

Incorporate in final design

and

Modify/develop additional

specifications as needed

Procure, develop & submit

Develop & submit

review final design

specs

22

23

Procure equipment

Physical installation

Review & approves

Complete physical

installation; Developer to be

available to troubleshooting

physical wiring changes

during testing

Oversight

24

25

Testing

Testing with control

room is Connecting

Transmission Owner

responsibility

Developer responsible to

local testing, ensure

everything is up and

running

Commissioning

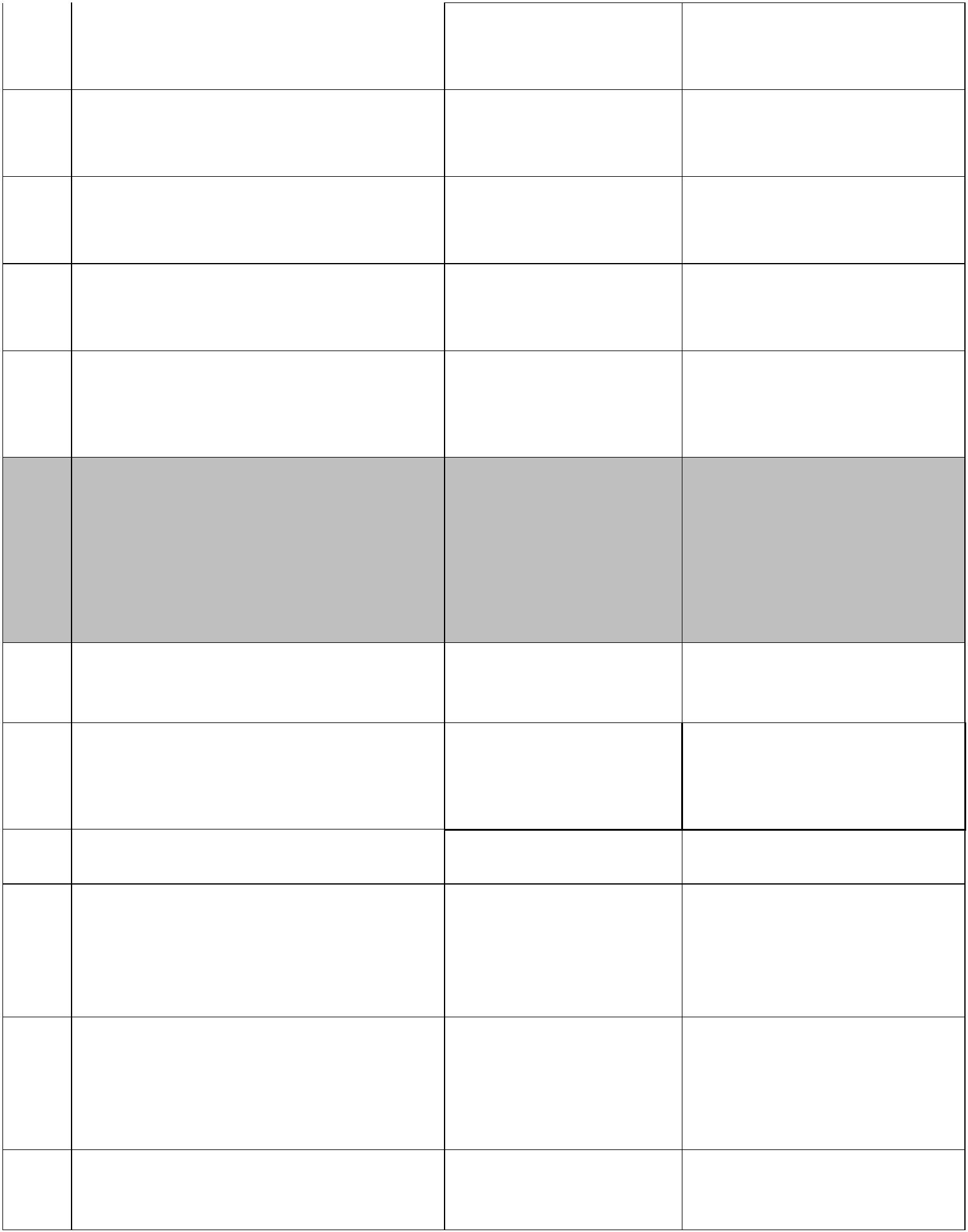
Coordinate with CHPE

Astoria converter station

side

Responsible

A-18



**SERVICE AGREEMENT NO. 2710**

NOTE: Remote End Connecting Transmission Owner location includes Energy Management System

and SCADA Model updates and other upgrades required associated with the Merchant Transmission

Facility to be implemented at Connecting Transmission Owner’s Energy Control Center and at Con

Edison Control Room monitoring, assessing, and controlling if applicable.

Refer to Figure A-4 - Communication Block Diagram for guidance on equipment and telemetry roles

and responsibilities.

**Task associated with**

**communication protocol scope for**

**the expanded Astoria Annex**

**Substation (NERC CIP Program**

**Requirements)**

**Connecting**

**Transmission Owner**

**Scope**

**Developer Scope**

For the expanded Astoria Annex

Substation

26

and CTOAF scope associated with

security system that meets

Connecting Transmission Owner’s

NERC CIP program requirements

(physical, electronic, and Cyber) and

secure to Medium Impact assets;

Review & approves

Develop & submit

Complete Connecting Transmission

Owner NERC CIP program

27

Review & approve

Review & approve

Develop & submit

Develop & submit

requirements for design, engineering,

procurement and construction

Project turn over and closeout

• IFC drawings, real estate

transfer, turn over packages

28

• Submit final as-built drawings

• OEM, supplier, contractor or

subcontractor warranties

**Environmental Requirements**

**Connecting**

**Transmission Owner**

**Scope**

**Developer Scope**

Drawings, calculations and

design for oil containment

required to meet Spill

Prevention Control and

Countermeasure (“SPCC”)

regulations, as applicable

Review

Develop & submit

29

30

Professional Engineer (“PE”)

sealed certified Spill

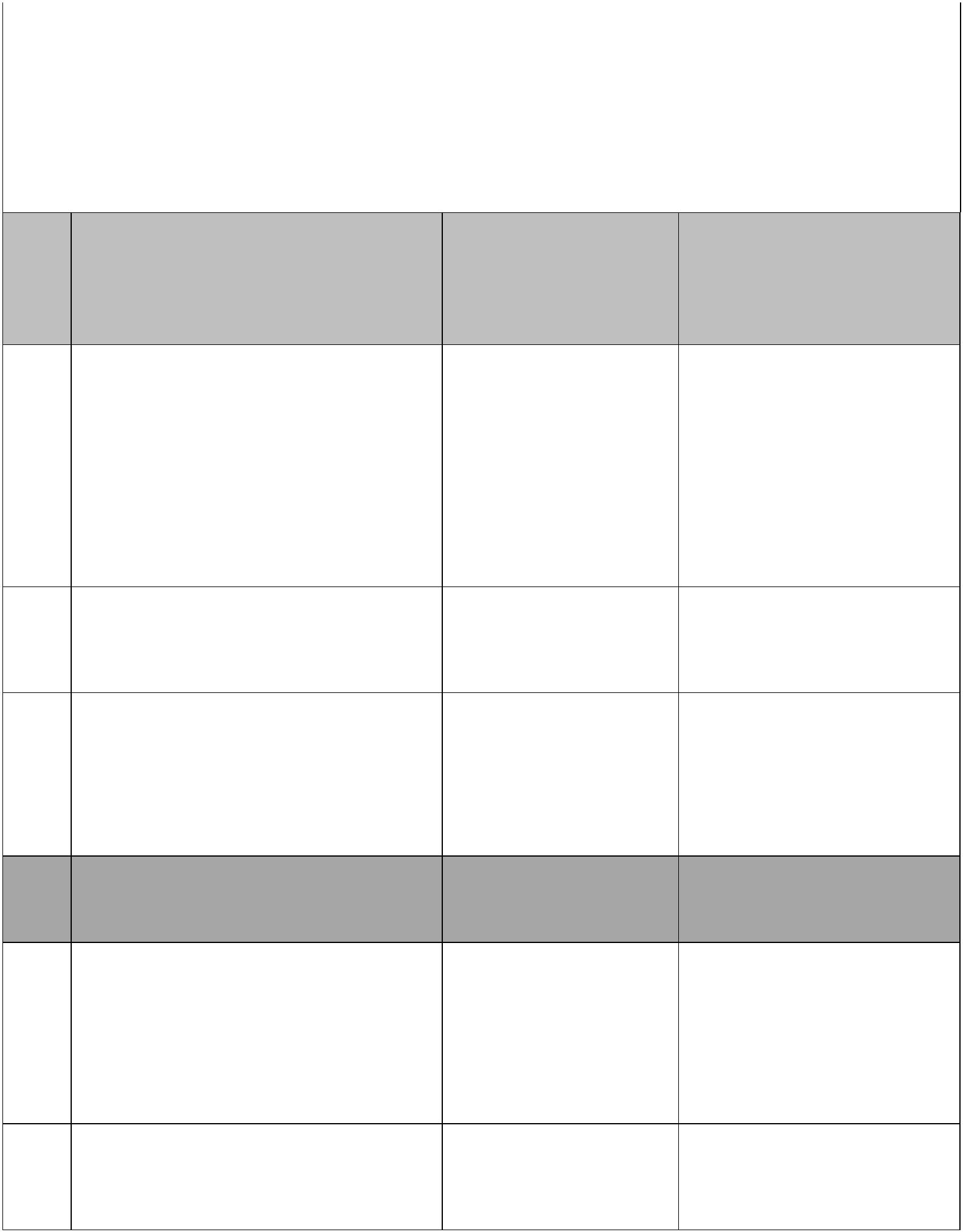
Prevention Control and

Countermeasure (“SPCC”)

Review

Develop & submit

A-19



**SERVICE AGREEMENT NO. 2710**

Plan and equipment

registrations before turnover

Complete an unredacted copy

of Environmental

For Information and

Record

Develop & submit

Management and Construction

Plan (“EM&CP”) including:

31

• Segment 22 (Astoria

Annex) and 23 (ARCable)

and any related studies and

recommendations

**Real Estate Requirements**

**Connecting**

**Transmission Owner**

**Scope**

**Developer Scope**

Real Estate Permit Application

package (Permit to do work on land

or under the jurisdiction of the New

York Power Authority)

NYPA Real Estate Standards

Requirements 10-24-2022

32

33

Review and approve

Develop & submit

Review and approve

Develop & submit

Real Estate Requirements and timely

Phase I and Phase II Environmental

Site Assessment (“ESA”) naming

33.1 NYPA as the user required within 180

days prior to transferring the

easement to NYPA for the following

scope:

Astoria-Rainey Cable termination at

Astoria Complex – secure Easement

with Con Edison, Phase I ESA

required

Review and approve

Acquire and transfer

Acquire and transfer

Astoria-Rainey Cable termination at

Rainey substation – secure Easement

with Con Edison, Phase I ESA

required

Review and approve

Review and approve

A-20

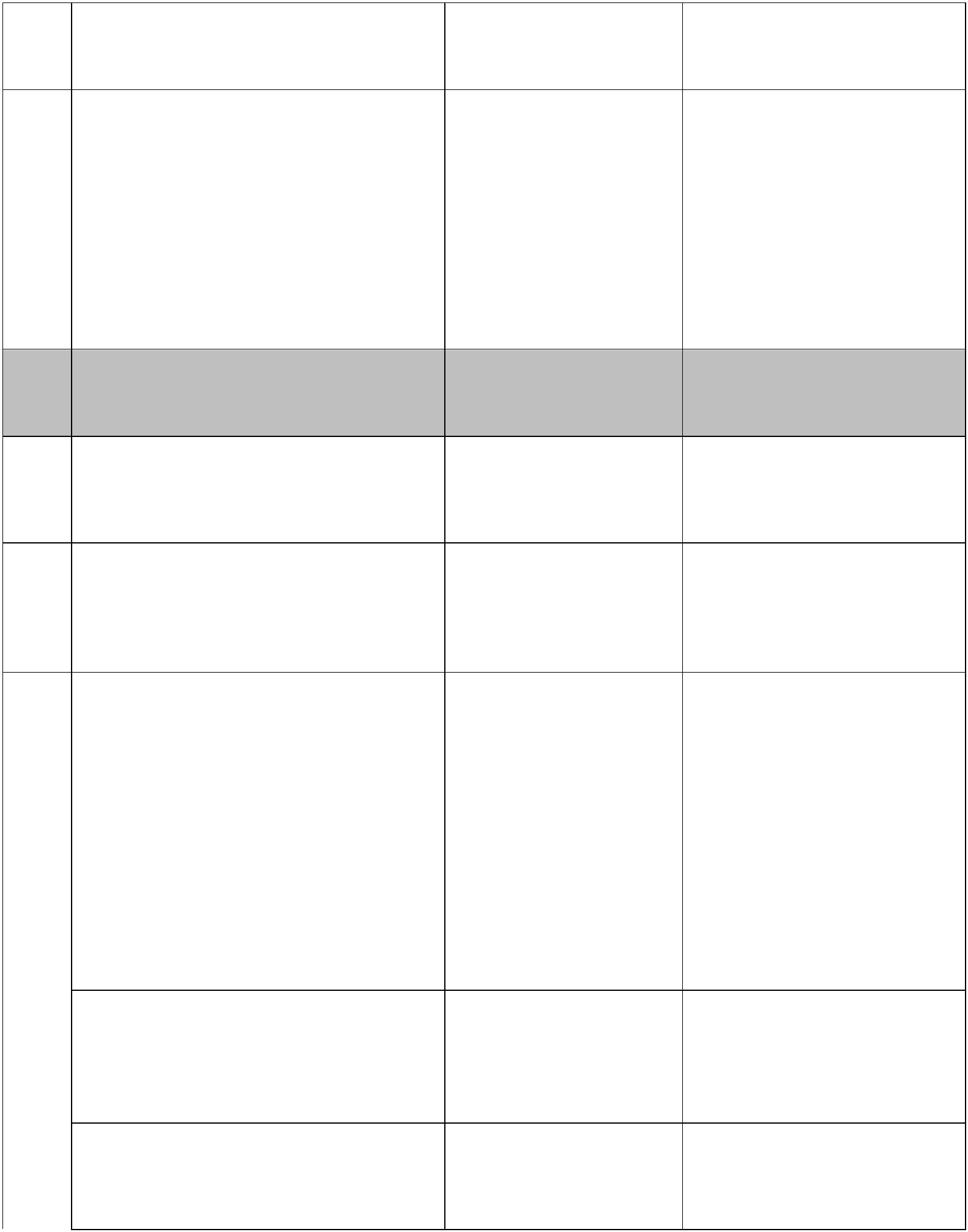
Astoria-Rainey Cable route in the

streets of NY City – Secure

necessary consent to build, own,

Acquire and transfer as

applicable



**SERVICE AGREEMENT NO. 2710**

maintain, and operate. Phase I ESA if

applicable.

Astoria Annex GIS expansion –

secure Easement as required by final

design. Phase I ESA as applicable.

Review and approve-

Acquire and transfer

**Other Permits**

CTO to Review as

applicable

**Developer Scope**

34

Construction/Building Permits

required by Authority Having

Jurisdiction (“AHJ”) for

• Developer to acquire

associated permits with

NY City, NYPA and

other permits as required

by the project

• Astoria Annex GIS

switchgear expansion

to a 6-breaker ring

within the existing

building

• This may not be an

exhaustive list subject to

Developer’s

confirmation.

• New control

building/enclosures for

Relay rooms

• NY City Department of

Building (“DOB”) to

issue building permit for

GIS switchgear

• Astoria-Rainey Cable

expansion to a 6- breaker

ring within the existing

building if it impacts

building occupancy

• NY City DOB to issue

building permit for new

control enclosures

• NY City DOB to issue

Construction permit for

Astoria-Rainey Cable

**Special Studies**

**NYISO/CTO Scope**

**Developer Scope**

Subsynchronous Torsional

Interaction (“SSTI”) Analysis

Developer will be

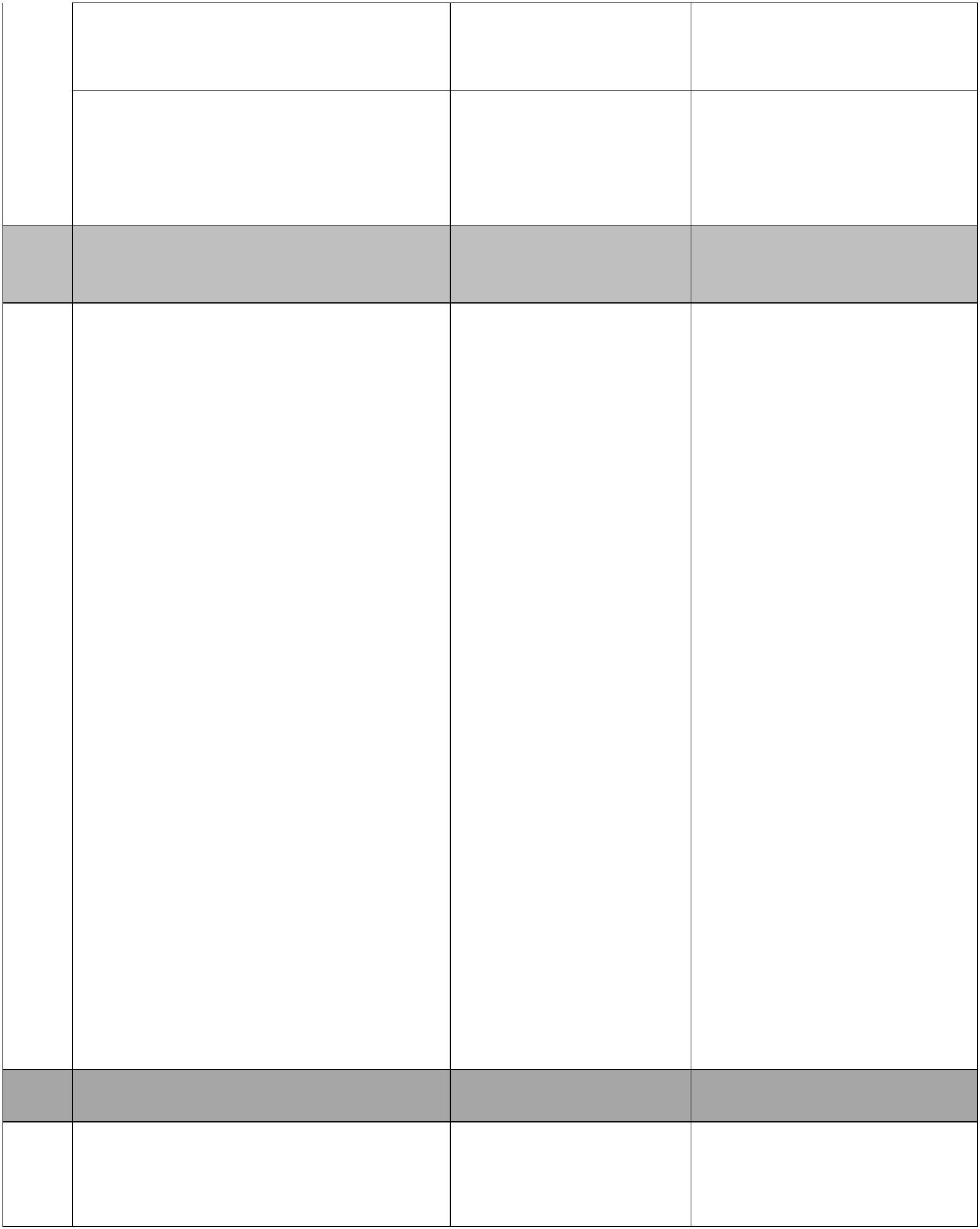
responsible for the SSTI

study costs and any upgrade

Review and Approve

35

A-21



**SERVICE AGREEMENT NO. 2710**

costs resulting from such

studies

Bus flow analysis of 6-breaker

ring bus configuration at Astoria

Annex substation

CTO to Review and

Approve

Developer will be

responsible for the Bus flow

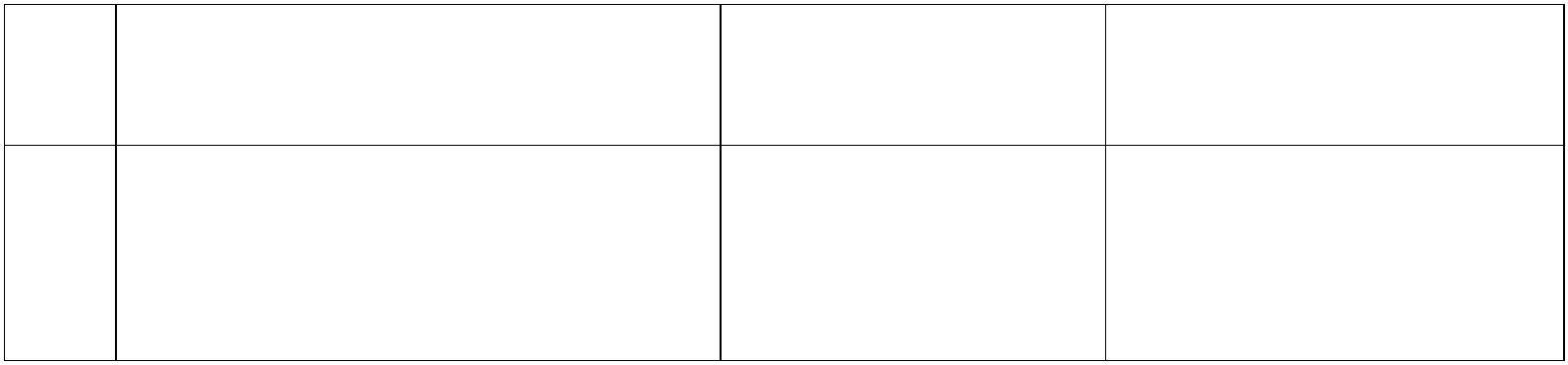
analysis study costs and any

upgrade costs resulting from

such studies

36

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**SERVICE AGREEMENT NO. 2710**

**FIGURE A-1 -Astoria Annex 345 kV Substation Expansion**

**[CONTAINS CEII – THIS PAGE REMOVED FROM PUBLIC VERSION]**

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**SERVICE AGREEMENT NO. 2710**

**Figure A-2 – Simplified Diagram**

**[CONTAINS CEII – THIS PAGE REMOVED FROM PUBLIC VERSION]**

A-24



**SERVICE AGREEMENT NO. 2710**

**FIGURE A- 3-DAF One Line Diagram**

**[CONTAINS CEII – THIS PAGE REMOVED FROM PUBLIC VERSION]**

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**SERVICE AGREEMENT NO. 2710**

**FIGURE A- 4 – COMMUNICATION BLOCK DIAGRAM**

**[CONTAINS CEII – THIS PAGE REMOVED FROM PUBLIC VERSION]**

A-26



**SERVICE AGREEMENT NO. 2710**

**APPENDIX B**

**MILESTONES**

**1. Selection Option Pursuant to Article 5.1**

Pursuant to Article 5.1.3, Developer has elected the Option to Build for the Connecting

Transmission Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities.

As permitted by Section 29.2, with respect to Connecting Transmission Owner’s

recovery of its costs incurred in executing its responsibilities in Article 5.2 of this Agreement,

the Parties expressly agree that the terms and conditions of the Appendices of this Agreement

shall take precedence over the provisions of this Agreement in case of a discrepancy or conflict

between or among the terms and conditions of same.

Pursuant to the requirements in Articles 5.2.13 and 12.1 of this Agreement, the

Connecting Transmission Owner shall invoice Developer on a monthly basis for the actual costs

that Connecting Transmission Owner incurred during the preceding month in executing its

responsibilities under Article 5.2 and further detailed in the Appendices of this Agreement.

Additionally, the Parties hereby agree that the agreed upon amount in Article 5.2.13 of this

Agreement is only an estimate, and that the Connecting Transmission Owner shall be owed, and

the Developer shall pay, all of the Connecting Transmission Owner’s costs reasonably incurred

in executing its responsibilities under Article 5.2 of this Agreement. Developer reserves its right

to challenge the reasonableness of Connecting Transmission Owner’s costs by making a

unilateral filing with FERC pursuant to section 206 of the FPA.

**2. Milestones**

**Task**

**Milestone**

**Date**

**Responsible Party**

1

Complete Phase I environmental site

assessments (and Phase II, as applicable),

permitting and environmental studies

Q2, 2024

Developer

2

Execute Interconnection Agreement

Q2, 2024

NYISO/ Connecting

Transmission

Owner/Developer

3

4

Commence Engineering

Completed

Developer

Developer

Engineering and

design for CTOAF

and SUFs (30%,

60%, 90% design

packages)

30% design

Q1, 2024

Q1, 2024

Q2, 2024

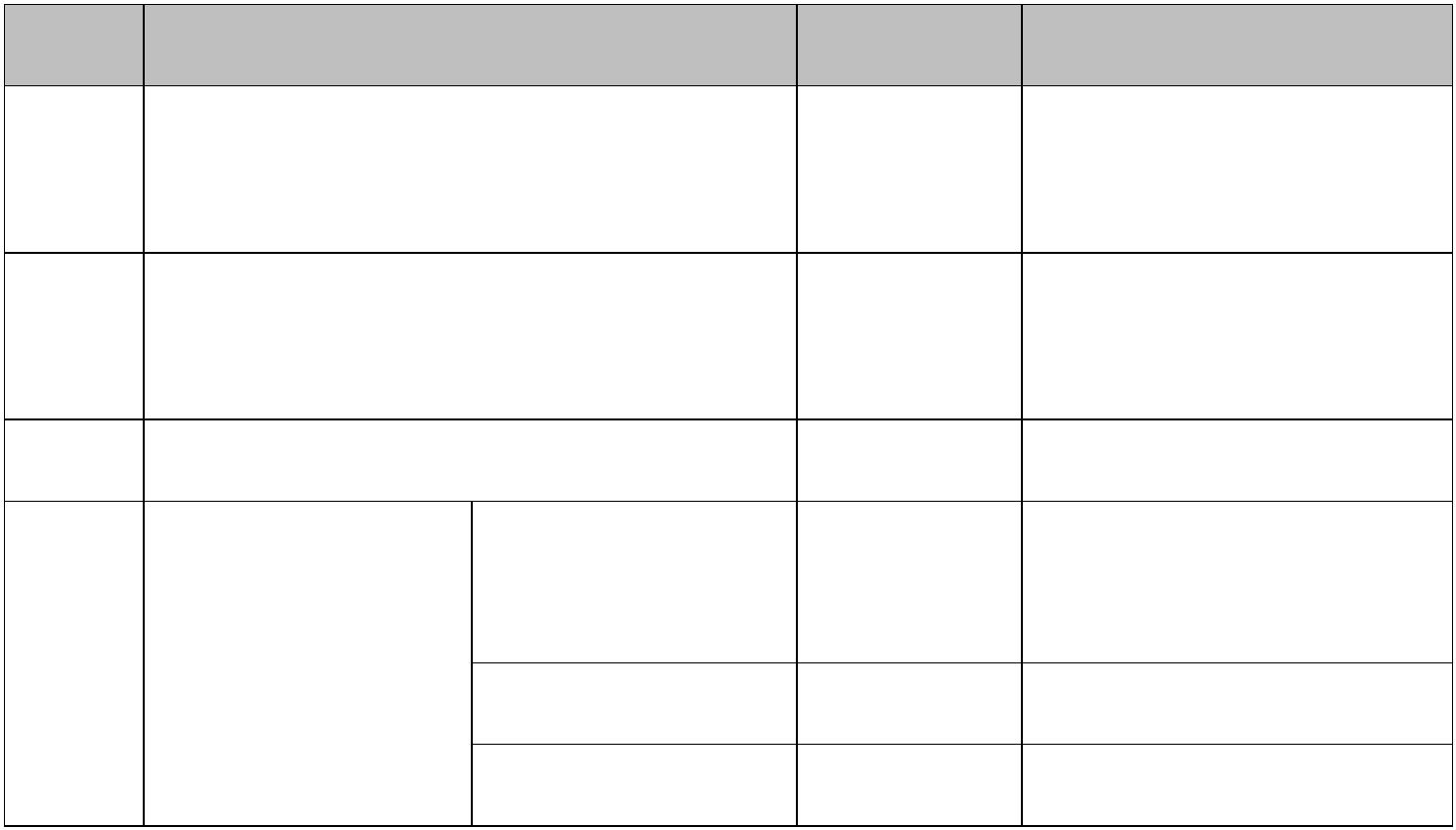
60% design

90% design

Developer

Developer

B-1



**SERVICE AGREEMENT NO. 2710**

**Task**

**Milestone**

**Date**

**Responsible Party**

Developer

5

6

Project Plan

Q1, 2024

Q1, 2024

Complete NYPA Division 1

Specification including any referenced

documents such as:

Developer

• EHS Requirements for Construction

Specification (EHS-001) for Astoria

Annex substation upgrades

• Environmental Health and Safety

Technical Specifications Checklist

for Astoria Annex substation

upgrades

• Construction Inspection Monitoring

Program (“CIMP”)

• CIMP Workbook

7

8

Long Lead Item Purchases

Q4, 2023

Q4, 2024

Developer

Developer

NPCC presentation on Directory 4

requirements

9

Commence Construction

Q2, 2024

Q4, 2025

Q1, 2026

Developer

Developer

Developer

10

11

Substation construction complete

Testing & Commissioning**,** Complete

Construction (Substation, ARCable and

Q631 tie-in to Astoria Annex)

12

13

Submit As-Built Drawings (yellow lines) Q1, 2026

Developer

Complete Real estate and pre-transfer

environmental due diligence (Phase I/II

ESAs)

180 days

Prior to

Transfer of

Easement

Developer/Connecting

Transmission Owner

14

15

Transfer care, custody, and control of

CTOAF/SUF to CTO

Q1, 2026

Developer

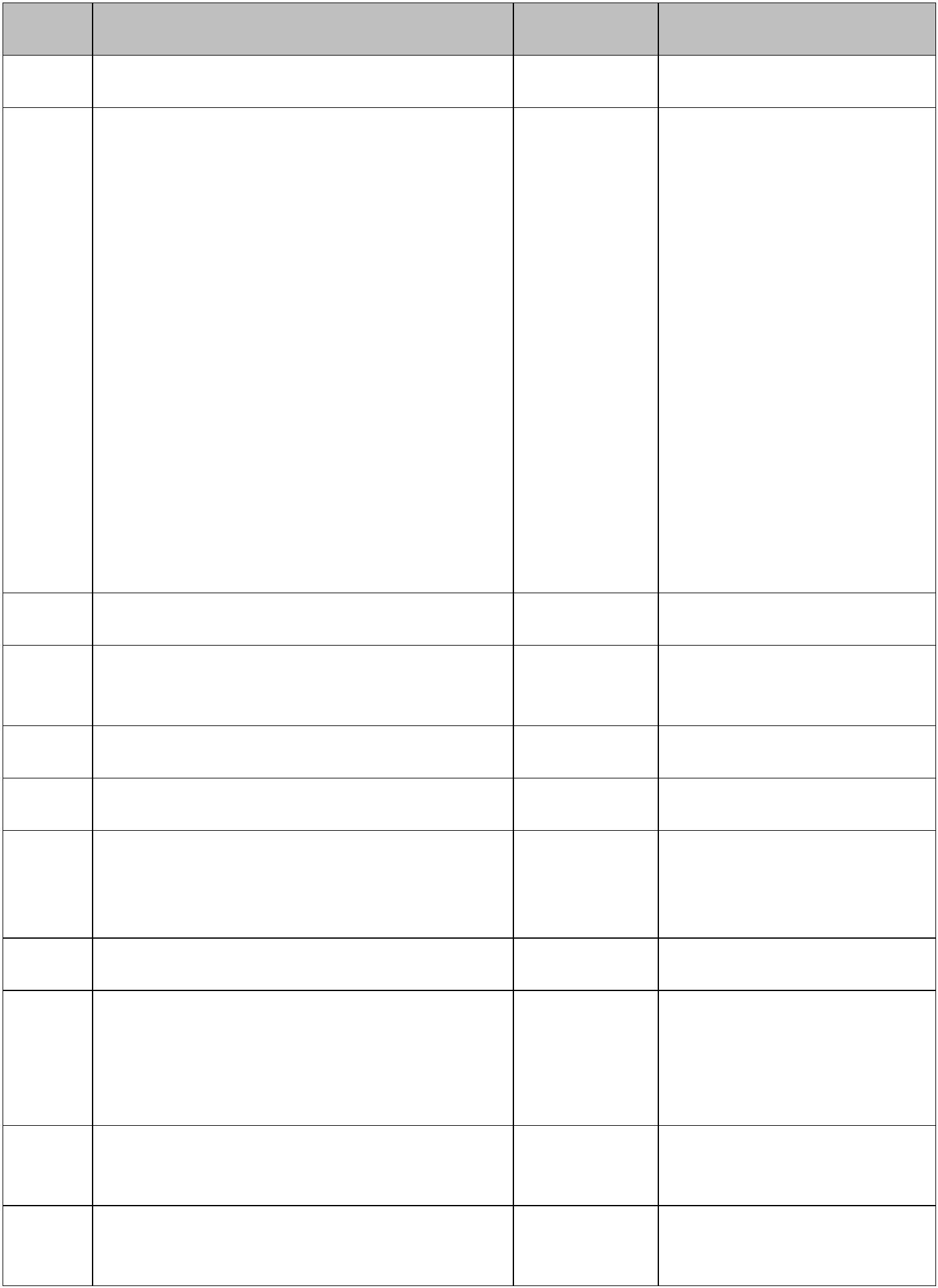
In Service Date

May 2026

Developer/ Connecting

Transmission Owner

B-2



**SERVICE AGREEMENT NO. 2710**

**Task**

**Milestone**

**Date**

**Responsible Party**

16

Initial Synchronization Date

May 2026

Developer/ Connecting

Transmission Owner

17

Commercial Operation Date

May 2026

Developer/ Connecting

Transmission Owner

**NOTE:** These are approximate dates that are subject to change once firm dates becomes

available during the detailed engineering phase of the Merchant Transmission Facility project,

subject to the requirements in the NYISO Tariffs and ISO Procedures for modifying the

Commercial Operation Date.

**The following notes apply to all work performed as required by this Agreement or by**

**Connecting Transmission Owner:**

A. Connecting Transmission Owner work durations do not include holiday work; if a

Connecting Transmission Owner holiday occurs during an event on these Milestones, then

effected dates shall be extended day-for-day.

B. All Connecting Transmission Owner outage durations necessary to interconnect

Developer’s project are dependent on favorable weather conditions where the work is being

performed. Unfavorable weather conditions may extend the length of such outage

durations.

C. Transmission System emergencies take precedence over all work and could significantly

impact the schedule and durations.

D. Connecting Transmission Owner schedules its resources months in advance, and its ability

to reschedule manpower is limited by resource allocation to other Connecting Transmission

Owner projects and tasks. If Developer misses a scheduled Milestone that directly affects

performance of a Connecting Transmission Owner’s Milestone, performance or completion

of Connecting Transmission Owner’s relevant Milestone may be delayed until the

Connecting Transmission Owner can reschedule its manpower to work on the assigned

task.

E. The Closeout/Turnover Package shall consist of the following: As-built drawings,

Punchlist, Record Drawings, all equipment, QA/QC installation, commissioning, Engineer

of Record Professional Engineer certification, color markup of design, drawings and

warranties, and all documentation necessary for demonstrating compliance with applicable

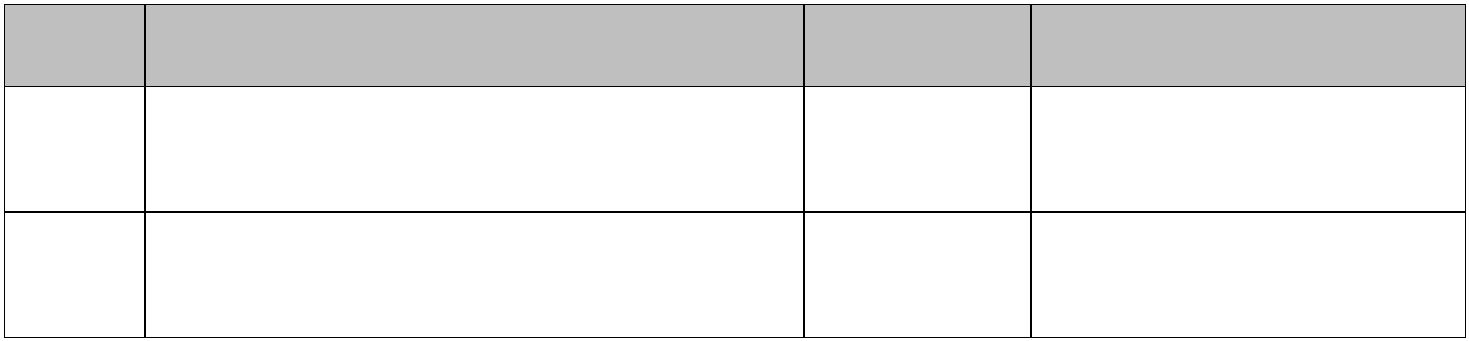
NERC Reliability Standards and NPCC directories.

**3. Security**

Developer accepted its Project Cost Allocation for System Upgrade Facilities identified

in connection with the Merchant Transmission Facility in the Class Year Study for Class Year

B-3



**SERVICE AGREEMENT NO. 2710**

2021 and posted Security to Connecting Transmission Owner in the amount of $174,910,000 for

the System Upgrade Facilities on Connecting Transmission Owner’s system.

Connecting Transmission Owner and Developer agree that Developer is not required to

provide security for CTOAFs.

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**SERVICE AGREEMENT NO. 2710**

**APPENDIX C**

**INTERCONNECTION DETAILS**

**1. Description of Facilities including Point of Interconnection**

The Merchant Transmission Facility is the U.S. portion of a 1,250 MW HVDC (AC input

– DC conversion – AC output) transmission project that will interconnect Hydro Quebec’s Hertel

735 kV Substation with the Connecting Transmission Owner’s Astoria Annex Substation. The

Merchant Transmission Facility will interconnect at the U.S.-Canada border with the

approximately 33-mile Quebec portion of the transmission project that will be developed by

Hydro-Québec TransÉnergie. The Merchant Transmission Facility will consist of (i) a +/- 400

kV DC cable system extending from the international border to Queens, New York and (ii) a

1250 MW HVDC converter station to be constructed in Astoria, Queens, New York. The

Merchant Transmission Facility will have a maximum north to south summer and winter transfer

limit of 1,250 MW. The Merchant Transmission Facility will have only unidirectional flow from

the control area operated by Hydro-Québec TransÉnergie to the New York Control Area.

The Merchant Transmission Facility includes a 339 mile (‐/+400 kV) symmetric

monopole HVDC underground cable will be constructed and installed from the converter

substation to a 400/345 kV converter station located in Astoria, Queens, New York. The facility

will use HVDC Voltage Source Converter (“VSC”) technology, and has a reactive capability of

0.95 inductive to 0.95 capacitive at maximum rated power. The converter station in Astoria,

New York will convert the 400 kV DC to 345 kV AC. This converter station will connect to

Connecting Transmission Owner’s Astoria Annex Substation via a 1600 ft overhead/200 ft

underground transmission line.

The Point of Interconnection (“POI”) is located at the Connecting Transmission Owner’s

existing Astoria Annex Substation between new Breakers 4 and 6 (new Bus Section 6). The

Point of Change of Ownership (“PCO”) is located at the Gas to Cable Bushing at the west side

building wall of the Connecting Transmission Owner’s substation structure where the

transmission line enters the building. The location of the POI and PCO is illustrated in Figure A-

1.

**2.**

**Developer Operating Requirements**

(a)

Developer shall comply with all provisions of NYISO tariffs and procedures, as amended

from time to time.

(b)

The NYISO and Developer will develop an operating agreement concerning the

operation of the Merchant Transmission Facility. The Merchant Transmission Facility shall not

enter into service prior to the effective date of the operating agreement. If the NYISO

determines that any conforming modifications to this Agreement are required in connection with

the operating agreement, the NYISO will coordinate with the Connecting Transmission Owner

and Developer concerning the review of the modifications and the amendment of this Agreement

pursuant to Articles 29.11 and 29.12 of this Agreement.

C-1

**SERVICE AGREEMENT NO. 2710**

**APPENDIX D**

**SECURITY ARRANGEMENTS DETAILS**

Infrastructure security of New York State Transmission System equipment and

operations and control hardware and software is essential to ensure day-to-day New York State

Transmission System reliability and operational security. The Commission will expect the

NYISO, all Transmission Owners, all Developers and all other Market Participants to comply

with the recommendations offered by the President’s Critical Infrastructure Protection Board

and, eventually, best practice recommendations from the electric reliability authority. All public

utilities will be expected to meet basic standards for system infrastructure and operational

security, including physical, operational, and cyber-security practices.

D-1

**SERVICE AGREEMENT NO. 2710**

**APPENDIX E-1**

**INITIAL SYCHRONIZATION DATE**

[**Date**]

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

New York Power Authority

Sr. Vice President Transmission

New York Power Authority

Zeltmann 500MW Power Project

31-03 20th Avenue

Astoria, NY 11105-2014

Phone: (718) 267-5603

Re:

Merchant Transmission Facility

Dear

:

On **[Date] [Developer]** initially synchronized the Merchant Transmission Facility. This letter

confirms [Developer]’s Initial Synchronization Date was [specify].

Thank you.

[**Signature**]

[**Developer Representative**]

E-2



**SERVICE AGREEMENT NO. 2710**

**APPENDIX E-2**

**COMMERCIAL OPERATION DATE**

**[Date]**

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

New York Power Authority

Sr. Vice President Transmission

Zeltmann 500MW Power Project

31-03 20th Avenue

Astoria, NY 11105-2014

Phone: (718) 267-5603

Re:

\_\_\_\_\_\_\_\_\_\_\_\_\_ Merchant Transmission Facility

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

On **[Date] [Developer]** has completed Trial Operation. This letter confirms that [Developer]

commenced Commercial Operation of the Merchant Transmission Facility, effective as of **[Date**

**plus one day]**.

Thank you.

**[Signature]**

**[Developer Representative]**

E-2

**SERVICE AGREEMENT NO. 2710**

**APPENDIX F**

**ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS**

**Notices:**

NYISO:

Before commercial operation of the Merchant Transmission Facility:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

Rensselaer, NY 12144

Phone: (518) 356-6000

Fax: (518) 356-6118

After commercial operation of the Merchant Transmission Facility:

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Phone: (518) 356-6000

Fax: (518) 356-6118

Connecting Transmission Owner:

New York Power Authority

Sr. Vice President Transmission

Zeltmann 500MW Power Project

31-03 20th Avenue

Astoria, NY 11105-2014

Phone: (718) 267-5603

Developer:

CHPE LLC

Attn: General Counsel

623 Fifth Avenue, 20th Floor

New York, NY 10022

Phone: (917) 886-6832

With electronic copy to:

jeremiah.sheehan@transmissiondevelopers.com

bob.harrison@transmissiondevelopers.com

**Billings and Payments:**

F-1



**SERVICE AGREEMENT NO. 2710**

Connecting Transmission Owner:

New York Power Authority

Sr. Vice President Transmission

New York Power Authority

Zeltmann 500MW Power Project

31-03 20th Avenue

Astoria, NY 11105-2014

Phone: (718) 267-5603

Or

Wire payments to:

New York Power Authority

Operating Fund c/o

J.P. Morgan Chase N.A.

ABA No. 021000021

Account No. 573-804206

Developer:

CHPE LLC

Attn: General Counsel

623 Fifth Avenue, 20th Floor

New York, NY 10022

Phone: (917) 886-6832

With electronic copy to:

jeremiah.sheehan@transmissiondevelopers.com

bob.harrison@transmissiondevelopers.com

**Alternative Forms of Delivery of Notices (telephone, facsimile or email):**

NYISO:

Before commercial operation of the Merchant Transmission Facility:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

Rensselaer, NY 12144

Phone: (518) 356-6000

Fax: (518) 356-6118

E-mail: interconnectionsupport@nyiso.com

After commercial operation of the Merchant Transmission Facility:

F-2



**SERVICE AGREEMENT NO. 2710**

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

Rensselaer, NY 12144

Phone: (518) 356-6000

Fax: (518) 356-6118

E-mail: interconnectionsupport@nyiso.com

Connecting Transmission Owner:

Saul Rojas

New York Power Authority

Sr. Vice President Transmission

New York Power Authority

Zeltmann 500MW Power Project

31-03 20th Avenue

Astoria, NY 11105-2014

Phone: (718) 267-5603

Email address: Saul.Rojas@nypa.gov

Developer:

CHPE LLC

Attn: General Counsel

623 Fifth Avenue, 20th Floor

New York, NY 10022

Phone: (917) 886-6832

With electronic copy to:

jeremiah.sheehan@transmissiondevelopers.com

bob.harrison@transmissiondevelopers.com

F-3

