FERC rendition of the electronically filed tariff records in Docket No. ER20- -000

Filing Data:

CID: C000038

Filing Title: LGIA NMPC and Black River Hydro SA 2485 Company Filing Identifier: 1532

Type of Filing Code: 10

Associated Filing Identifier: [if applicable]
Tariff Title: NYISO Agreements
Tariff ID: 58

Payment Confirmation: N
Suspension Motion:

Tariff Record Data:

Record Content Description: Agreement No. 2485

Tariff Record Title: LGIA (SA 2485) Niagara Mohawk and Black River Hydroelectric Record Version Number: 0.0.0

Option Code: A

Tariff Record ID: 254

Tariff Record Collation Value: 8085600

Tariff Record Parent Identifier: 2

Proposed Date: 2019-09-30

Priority Order: 500

Record Change Type: New
Record Content Type: 2

Associated Filing Identifier: [Source - if applicable]

Service Agreement No. 2485

LARGE GENERATOR INTERCONNECTION AGREEMENT

BETWEEN

NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID

AND

BLACK RIVER HYDROELECTRIC, LLC

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LARGE GENERATOR INTERCONNECTION AGREEMENT

THIS LARGE GENERATOR INTERCONNECTION AGREEMENT (“Agreement” or
“LGIA”) is made and entered into this 30th day of September 2019, by and between \_Black

River Hydroelectric, LLC, a Limited Liability Company organized and existing under the laws
of the State of Delaware (“Developer” with a Large Generating Facility), and Niagara Mohawk
Power Corporation d/b/a National Grid, a corporation organized and existing under the laws of
the State of New York (“Connecting Transmission Owner”). Developer or Connecting
Transmission Owner each may be referred to as a “Party” or together referred to as the “Parties.”

RECITALS

WHEREAS, 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”) operates the New York State Transmission System and Connecting Transmission Owner owns certain facilities included in the New York State Transmission System;

WHEREAS, Developer either owns, leases and/or controls and operates or, intends to own,

lease and/or control and operate, the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

WHEREAS, Connecting Transmission Owner and a predecessor in interest to the Developer’s
Generating Facility previously executed an interconnection agreement for the purpose of
interconnecting the Generating Facility with the New York State Transmission System that has
expired; and

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

Agreement for the purpose of continuing the interconnection of the Generating 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. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 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.

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 Large Generating
Facility is directly interconnected, as those requirements and guidelines are amended and
modified and in effect from time to time; provided that neither 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 Large Generating Facility and the Point of Interconnection,
including any modification, additions or upgrades that are necessary to physically and
electrically interconnect the Large Generating 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.

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 Large Generating Facility that has
commenced generating electricity for sale, excluding electricity generated during Trial

Operation.

Commercial Operation Date of a unit shall mean the date on which the Large Generating

Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to this Agreement.

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

22 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.

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.

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 of this Agreement.

Developer shall mean an eligible customer that has developed or is developing a Large

Generating 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 Large Generating 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 Large
Generating 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.

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 Large Facility or Small Generating 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 Large Generating 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 Large Generating 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.

Generating Facility shall mean Developer’s device for the production of electricity identified in the Interconnection Request, but shall not include the Developer’s Attachment Facilities or
Distribution Upgrades.

Generating Facility Capacity shall mean the net seasonal capacity of the Generating Facility and the aggregate net seasonal capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved
by a significant portion of the electric industry during the relevant time period, or any of the
practices, methods and acts which, in the exercise of reasonable judgment in light of the facts
known at the time the decision was made, could have been expected to accomplish the desired
result at a reasonable cost consistent with good business practices, reliability, safety and
expedition. Good Utility Practice is not intended to be limited to the optimum practice, method,
or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts
generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory
or administrative agency, court, commission, department, board, or other governmental
subdivision, legislature, rulemaking board, tribunal, or other governmental authority having
jurisdiction over either 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 Large Generating Facility is initially synchronized and upon which Trial Operation begins.

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 Large Generating Facility
with the New York State Transmission System or with the Distribution System. The scope of
the study is defined in Section 30.8 of the Standard Large Facility Interconnection Procedures.

Interconnection Facilities Study Agreement 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 the Developer’s request, in the form of Appendix 1 to the
Standard Large Facility Interconnection Procedures, in accordance with the Tariff, to
interconnect a new Large Generating Facility to the New York State Transmission System or to
the Distribution System, or to materially increase the capacity of, or make a material
modification to the operating characteristics of, an existing Large Generating Facility that is
interconnected with the New York State Transmission System or with the Distribution System.

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 Large Generating 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 Large Generating 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.

ISO shall mean the NYISO.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to

property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other
obligations by or to third parties, arising out of or resulting from the Indemnified Party’s
performance or non-performance of its obligations under this Agreement on behalf of the
Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the
Indemnified Party.

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.

Metering Equipment shall mean all metering equipment installed or to be installed at the Large Generating Facility pursuant to this Agreement at the metering points, 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.

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 shall mean the New York Independent System Operator, Inc. or its successor.

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 2 MW 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 Interconnection Customer 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.

OATT shall mean the Tariff.

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 Connecting Transmission Owner, Developer, or both.

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.

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.

Retired: A Generator that has permanently ceased operating on or after May 1, 2015 either: i) pursuant to applicable notice; or ii) as a result of the expiration of its Mothball Outage or its ICAP Ineligible Forced Outage.

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 the

Developer may construct without affecting day-to-day operations of the New York State

Transmission System during their construction. 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.

Standard Large Facility Interconnection Procedures (“Large Facility Interconnection
Procedures” or “LFIP”) shall mean the interconnection procedures applicable to an
Interconnection Request pertaining to a Large Generating Facility that are included in
Attachment X of the ISO OATT.System 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 Large Generating Facility and (2)
protect the Large Generating Facility from faults or other electrical system disturbances
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 Large Generating 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 Connecting Transmission Owner shall promptly file this Agreement with FERC upon execution in
accordance with Article 3.1.

2.2 Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period
of twenty (20) years from the Effective Date or such other longer period as the Developer may
request 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 Connecting

Transmission Owner ninety (90) Calendar Days advance written notice, or by the Connecting Transmission Owner notifying FERC after the Large Generating Facility is Retired.

2.3.2 Default.

Either Party may terminate this Agreement in accordance with Article 17.

2.3.3 Compliance.

Notwithstanding Articles 2.3.1 and 2.3.2, no termination 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 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 Party, as
of the date of the other Party’s 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, both 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 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 Large Generating 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

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 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 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.

The Parties understand that the NYISO will provide Developer with interconnection service of the following type for the term of this Agreement.

4.1.1 Product.

The Parties understand that the 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 Large Generating Facility

output matches the scheduled delivery from the Large Generating Facility to the New York State Transmission System, consistent with the scheduling requirements of the 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 Standard Option or Alternate Option set forth below for completion
of the Connecting Transmission Owner’s Attachment Facilities and System Upgrade Facilities

and System Deliverability Upgrades as set forth in Appendix A hereto, and such dates and selected option shall be set forth in Appendix B hereto.

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
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 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 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 Article 5.3, Liquidated 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.

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

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

Calendar Days, and unless the Developer and Connecting Transmission Owner agree otherwise,
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 Article 5.1.2; provided 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. 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 Developer elects not to exercise its option under Article 5.1.3, Option to Build,

Developer shall so notify Connecting Transmission Owner within thirty (30) Calendar Days, and
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 a portion of the Connecting Transmission
Owner’s Attachment Facilities and Stand Alone System Upgrade Facilities by Developer)
pursuant to which Connecting Transmission Owner is responsible for the design, procurement
and construction of the Connecting Transmission Owner’s Attachment Facilities and System
Upgrade Facilities and System Deliverability Upgrades. If the two Parties are unable to reach
agreement on such terms and conditions, Connecting Transmission Owner shall assume
responsibility for the design, procurement and construction of the Connecting Transmission
Owner’s Attachment Facilities and System Upgrade Facilities and System Deliverability
Upgrades pursuant to 5.1.1, Standard Option.

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 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;

5.2.4 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;

5.2.5 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;

5.2.6 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;

5.2.7 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 Indemnity;

5.2.8 Developer shall transfer control of Connecting Transmission Owner’s Attachment
Facilities and Stand Alone System Upgrade Facilities to the Connecting Transmission Owner;

5.2.9 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;

5.2.10 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

5.2.11 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.

5.3 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 Large Generating Facility’s Trial Operation or to
export power from the Developer’s Large Generating 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 Large Generating Facility’s Trial Operation or to export
power from the Developer’s Large Generating 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 Large Generator Interconnection Agreement with the Connecting Transmission Owner or has
entered into a Standard Large Generator Interconnection Agreement with the Connecting
Transmission Owner and NYISO, or action or inaction by the 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 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 Power System Stabilizers.

The Developer shall procure, install, maintain and operate Power System Stabilizers in
accordance with the requirements identified in the Interconnection Studies conducted for
Developer’s Large Generating Facility. Connecting Transmission Owner reserves the right to
reasonably establish minimum acceptable settings for any installed Power System Stabilizers,
subject to the design and operating limitations of the Large Generating Facility. If the Large
Generating Facility’s Power System Stabilizers are removed from service or not capable of
automatic operation, the Developer shall immediately notify the Connecting Transmission
Owner. The requirements of this paragraph shall not apply to wind generators.

5.5 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/or Connecting Transmission Owner, as applicable, 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 his 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

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. Either 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 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 Large Generating Facility, NYISO may,
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 Large Generating 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 shall permit Developer to operate the Developer’s
Large Generating Facility and the Developer’s Attachment Facilities in accordance with the
results of such studies.

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 shall review, and the NYISO may 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.

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 Large Generating 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 Large Generating 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 Large Generating Facility to the step-up transformers and the DAF, and the impedances (determined by factory tests) for the associated step-up transformers and the
Large Generating 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, Large Generating 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 will not 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
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 Large Generating Facility with
the New York State Transmission System; (ii) operate and maintain the Large Generating

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 shall at Developer’s expense use efforts, similar in nature and extent to
those that it typically undertakes for its own or affiliated generation, including use of its eminent
domain authority, and to the extent consistent with state law, to procure from such persons any
rights of use, licenses, rights of way and easements that are necessary to construct, operate,
maintain, test, inspect, replace or remove the Connecting Transmission Owner’s Attachment
Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades upon such
property.

5.14 Permits.

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, 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
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 Interconnection Facilities 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, 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, and 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, 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.

5.17.2 Representations and Covenants.

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Developer represents

and covenants that (i) ownership of the electricity generated at the Large Generating Facility will
pass to another party prior to the transmission of the electricity on the New York State
Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of
any property transferred to the 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 Large Generating Facility. For this
purpose, “de minimis amount” means no more than 5 percent of the total power flows in both
directions, calculated in accordance with the “5 percent test” set forth in IRS Notice 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 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 Article 5.17.1, 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 Article 5.17.
Developer shall reimburse Connecting Transmission Owner for such costs on a fully grossed-up
basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written
notification from Connecting Transmission Owner of the amount due, including detail about how
the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the
ten-year testing period and the applicable statute of limitation, as it may be extended by the
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 Article 5.17.

5.17.4 Tax Gross-Up Amount.

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

Article 5.17 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 Article 5.17) (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 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.

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
Article 5.17.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or
(iii) this Agreement terminates and Connecting Transmission Owner retains ownership of the
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 Article

5.17.4 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 Article 5.17, whether 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.
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
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 Article 5.17 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
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 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 Party’s tax status.
Nothing in this Agreement is intended to adversely affect the tax status of either Party 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 their 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.

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 Large Generating 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 Large Generating Facility modifications that do not require Developer to
submit an Interconnection Request, Connecting Transmission Owner 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.

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 and System Upgrade Facilities and
System Deliverability Upgrades and Developer shall test the Large Generating 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
generate test energy at the Large Generating Facility only if it has arranged for the injection 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 Large Generating 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. 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, including Power System Stabilizers; (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 through the exercise of any of its rights under this Article

6.4 shall be treated in accordance with Article 22 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 Article 7. Unless 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 Large Generating 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 Large Generating 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. Where the Point of Interconnection for the Large Generating Facility is other than the generator terminal, the Developer shall also provide gross MW and MVAR quantities at the generator terminal.
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 Article 7.4 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
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 Large Generating 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 Large Generating 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 Large Generating 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 Large Generating 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 Article 8.1. The communication protocol for the data circuit(s) shall be specified by Connecting Transmission Owner and NYISO. Instantaneous bi-directional analog 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 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 the 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 Party and the NYISO all

information that may reasonably be required by the other Party and the NYISO 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 Large Generating Facility and the Developer’s Attachment Facilities in a safe and reliable manner and in
accordance with this Agreement. Developer shall operate the Large Generating 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. Either Party may request that the other Party provide copies of the requirements set forth or referenced in Appendix C hereto.

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 Large Generating 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.

9.5.1.1 Synchronous Generation. Developer shall design the Large Generating

Facility to maintain effective composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging unless the NYISO or the Transmission Owner in whose Transmission District the Large Generating
Facility interconnects has established different requirements that apply to all generators in the New York Control Area or Transmission District (as applicable) on a comparable basis, in
accordance with Good Utility Practice.

The Developer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

9.5.1.2 Non-Synchronous Generation. Developer shall design the Large Generating Facility to maintain composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging,
unless the NYISO or the Transmission Owner in whose Transmission District the Large
Generating Facility interconnects has established a different power factor range that applies to all non-synchronous generators in the Control Area or Transmission District (as applicable) on a
comparable basis, in accordance with Good Utility Practice. This power factor range standard
shall be dynamic and can be met using, for example, power electronics designed to supply this
level of reactive capability (taking into account any limitations due to voltage level, real power
output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement
shall only apply to newly interconnection non-synchronous generators that have not yet executed a Facilities Study Agreement as of September 21, 2016.

The Developer shall design and maintain the plant auxiliary systems to operate safely throughout the entire real and reactive power design range.

9.5.2 Voltage Schedules.

Once the Developer has synchronized the Large Generating Facility with the New York
State Transmission System, Developer is required to operate the Large Generating Facility to
produce or absorb reactive power within the design capability of the Large Generating Facility
set forth in Article 9.5.1 (Power Factor Design Criteria). The Parties understand that the
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. The Parties understand that the
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 Large Generating Facility to maintain the specified output voltage or power factor at the
Point of Interconnection within the design capability of the Large Generating Facility set forth in
Article 9.5.1 (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.

The Parties understand that Developer shall be paid by the NYISO for reactive power or voltage support service that Developer provides from the Large Generating Facility in
accordance with the provisions of Rate Schedule 2 of the NYISO Services Tariff.

9.5.4 Voltage Regulators.

Whenever the Large Generating 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 Large Generating 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 Large Generating Facility’s real and reactive power are
within the design capability of the Large Generating Facility’s generating unit(s) and steady state
stability limits and NYISO system operating (thermal, voltage and transient stability) limits.
Developer shall not cause its Large Generating Facility to disconnect automatically or
instantaneously from the New York State Transmission System or trip any generating unit
comprising the Large Generating Facility for an under or over frequency condition unless the
abnormal frequency condition persists for a time period beyond the limits set forth in
ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the New
York Control Area on a comparable basis.

9.5.5 Primary Frequency Response.

Developer shall ensure the primary frequency response capability of its Large Generating
Facility by installing, maintaining, and operating a functioning governor or equivalent controls.
The term “functioning governor or equivalent controls” as used herein shall mean the required
hardware and/or software that provides frequency responsive real power control with the ability
to sense changes in system frequency and autonomously adjust the Large Generating Facility’s
real power output in accordance with the droop and deadband parameters and in the direction

needed to correct frequency deviations. Developer is required to install a governor or equivalent
controls with the capability of operating: (1) with a maximum 5 percent droop ± 0.036 Hz
deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained
response settings from an approved Applicable Reliability Standard providing for equivalent or
more stringent parameters. The droop characteristic shall be: (1) based on the nameplate
capacity of the Large Generating Facility, and shall be linear in the range of frequencies between

59 and 61 Hz that are outside of the deadband parameter; or (2) based on an approved Applicable
Reliability Standard providing for an equivalent or more stringent parameter. The deadband
parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the
governor or equivalent controls is not expected to adjust the Large Generating Facility’s real
power output in response to frequency deviations. The deadband shall be implemented: (1)
without a step to the droop curve, that is, once the frequency deviation exceeds the deadband
parameter, the expected change in the Large Generating Facility’s real power output in response
to frequency deviations shall start from zero and then increase (for under-frequency deviations)

or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the

frequency deviation; or (2) in accordance with an approved Applicable Reliability Standard

providing for an equivalent or more stringent parameter. Developer shall notify NYISO that the primary frequency response capability of the Large Generating Facility has been tested and
confirmed during commissioning. Once Developer has synchronized the Large Generating
Facility with the New York State Transmission System, Developer shall operate the Large
Generating Facility consistent with the provisions specified in Articles 9.5.5.1 and 9.5.5.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Large Generating Facilities.

9.5.5.1 Governor or Equivalent Controls.

Whenever the Large Generating Facility is operated in parallel with the New York State
Transmission System, Developer shall operate the Large Generating Facility with its governor or
equivalent controls in service and responsive to frequency. Developer shall: (1) in coordination
with NYISO, set the deadband parameter to: (1) a maximum of ±0.036 Hz and set the droop
parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings
from an approved Applicable Reliability Standard that provides for equivalent or more stringent
parameters. Developer shall be required to provide the status and settings of the governor and
equivalent controls to NYISO and/or the Connecting Transmission Owner upon request. If
Developer needs to operate the Large Generating Facility with its governor or equivalent
controls not in service, Developer shall immediately notify NYISO and the Connecting
Transmission Owner, and provide both with the following information: (1) the operating status
of the governor or equivalent controls (i.e., whether it is currently out of service or when it will
be taken out of service); (2) the reasons for removing the governor or equivalent controls from
service; and (3) a reasonable estimate of when the governor or equivalent controls will be
returned to service. Developer shall make Reasonable Efforts to return its governor or
equivalent controls into service as soon as practicable. Developer shall make Reasonable
Efforts to keep outages of the Large Generating Facility’s governor or equivalent controls to a
minimum whenever the Large Generating Facility is operated in parallel with the New York
State Transmission System.

9.5.5.2 Timely and Sustained Response.

Developer shall ensure that the Large Generating Facility’s real power response to

sustained frequency deviations outside of the deadband setting is automatically provided and
shall begin immediately after frequency deviates outside of the deadband, and to the extent the
Large Generating Facility has operating capability in the direction needed to correct the
frequency deviation. Developer shall not block or otherwise inhibit the ability of the governor
or equivalent controls to respond and shall ensure that the response is not inhibited, except under
certain operational constraints including, but not limited to, ambient temperature limitations,
physical energy limitations, outages of mechanical equipment, or regulatory requirements. The
Large Generating Facility shall sustain the real power response at least until system frequency
returns to a value within the deadband setting of the governor or equivalent controls. An
Applicable Reliability Standard with equivalent or more stringent requirements shall supersede

the above requirements.

9.5.5.3 Exemptions.

Large Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Articles 9.5.5, 9.5.5.1, and 9.5.5.2 of this Agreement. Large Generating Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the
operating requirements of its host facility) shall be required to install primary frequency response capability requirements in accordance with the droop and deadband capability requirements
specified in Article 9.5.5, but shall be otherwise exempt from the operating requirements in
Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.4 of this Agreement.

9.5.5.4 Electric Storage Resources.

Developer interconnecting an electric storage resource shall establish an operating range
in Appendix C of its LGIA that specifies a minimum state of charge and a maximum state of
charge between which the electric storage resource will be required to provide primary frequency
response consistent with the conditions set forth in Articles 9.5.5, 9.5.5.1, 9.5.5.2, and 9.5.5.3 of
this Agreement. Appendix C shall specify whether the operating range is static or dynamic, and
shall consider (1) the expected magnitude of frequency deviations in the interconnection; (2) the
expected duration that system frequency will remain outside of the deadband parameter in the
interconnection; (3) the expected incidence of frequency deviations outside of the deadband
parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5)
operational limitations of the electric storage resources due to manufacturer specification; and (6)
any other relevant factors agreed to by the NYISO, Connecting Transmission Owner, and
Developer. If the operating range is dynamic, then Appendix C must establish how frequently
the operating range will be reevaluated and the factors that may be considered during its
reevaluation.

Developer’s electric storage resource is required to provide timely and sustained primary
frequency response consistent with Article 9.5.5.2 of this Agreement when it is online and
dispatched to inject electricity to the New York State Transmission System and/or receive
electricity from the New York State Transmission System. This excludes circumstances when
the electric storage resource is not dispatched to inject electricity to the New York State
Transmission System and/or dispatched to receive electricity from the New York State
Transmission System. If Developer’s electric storage resource is charging at the time of a
frequency deviation outside of its deadband parameter, it is to increase (for over-frequency
deviations) or decrease (for under-frequency deviations) the rate at which it is charging in
accordance with its droop parameter. Developer’s electric storage resource is not required to
change from charging to discharging, or vice versa, unless the response necessitated by the droop
and deadband settings requires it to do so and it is technically capable of making such a
transition.

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 Large Generating 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.

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 production of electricity if such production of electricity 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 Article 9.6.2:

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 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 Large Generating Facility, Attachment Facilities, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

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 Large
Generating Facility as required by the NPCC to ensure “ride through” capability of the New
York State Transmission System. Large Generating 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 Generating
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 Large Generating

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 Large Generating 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 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 Large Generating
Facility.

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
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 Large Generating 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. Such protective

equipment shall include, without limitation, a disconnecting device or switch with load-

interrupting capability located between the Large Generating Facility and the New York State

Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld,
conditioned or delayed) of the Developer and Connecting Transmission Owner. Developer shall
be responsible for protection of the Large Generating Facility and Developer’s other equipment
from such conditions as negative sequence currents, over- or under-frequency, sudden load
rejection, over- or under-voltage, and generator loss-of-field. Developer shall be solely
responsible to disconnect the Large Generating Facility and Developer’s other equipment if
conditions on the New York State Transmission System could adversely affect the Large
Generating 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 Facilities.

Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to between the Parties, the Attachment Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the New York State Transmission System and shall be used for no other purpose.

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 Large Generating 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

Developer shall install and maintain, at its expense, phasor measurement units (“PMUs”) if it 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.

PMUs shall be installed on the Large Facility on the low side of the generator step-up

transformer, unless it is a non-synchronous generation facility, in which case the PMUs shall be installed on the Developer side of the Point of Interconnection. The PMUs 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 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 shall be required to install and maintain, at its expense, PMU equipment which
includes the communication circuit capable of carrying the PMU data to a local data
concentrator, and then transporting the information continuously to the Connecting Transmission
Owner and the NYISO; as well as store the PMU data locally for thirty days. Developer shall
provide to Connecting Transmission Owner and the NYISO all necessary and requested
information through the Connecting Transmission Owner’s and the NYISO’s synchrophasor
system, including the following: (a) gross MW and MVAR measured at the Developer side of
the generator step-up transformer (or, for a non-synchronous generation facility, to be measured
at the Developer side of the Point of Interconnection); (b) generator terminal voltage and current
magnitudes and angles; (c) generator terminal frequency and frequency rate of change; and

(d) generator field voltage and current, where available; and (e) breaker status, if available. The
Connecting Transmission Owner will provide for the ongoing support and maintenance of the
network communications linking the data concentrator to the Connecting Transmission Owner
and 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 Large Generating 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 Large
Generating 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,
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 Systems.

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 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 Article 14.2.1 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
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.

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 Article 17. Within 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.

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 may reasonably be expected to affect
Developer’s operation of the Large Generating 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 Large Generating 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 Large Generating 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.

Connecting Transmission Owner shall use Reasonable Efforts to minimize the effect of
such actions or inactions on the Large Generating Facility or the Developer’s Attachment
Facilities. The Parties understand that any actions that NYISO is authorized to take under this
Article 13.4.1 are conditioned upon NYISO’s use of Reasonable Efforts to minimize the effect of
such actions or inactions on the Large Generating Facility or the Developer Attachment
Facilities. NYISO or Connecting Transmission Owner may, on the basis of technical
considerations, require the Large Generating 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 Large Generating Facility; implementing a reduction or disconnection pursuant to
Article 13.4.2; directing the Developer to assist with blackstart (if available) or restoration
efforts; or altering the outage schedules of the Large Generating Facility and the Developer’s
Attachment Facilities. Developer shall comply with all of the NYISO and Connecting
Transmission Owner’s operating instructions concerning Large Generating Facility real power
and reactive power output within the manufacturer’s design limitations of the Large Generating
Facility’s equipment that is in service and physically available for operation at the time, in
compliance with Applicable Laws and Regulations.

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 Large
Generating 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 Connecting Transmission Owner can schedule the reduction or disconnection in advance,
Connecting Transmission Owner shall notify Developer of the reasons, timing and expected
duration of the reduction or disconnection. 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. The
Parties understand that any actions that NYISO is authorized to take under this Article 13.4.2 are
conditioned upon NYISO’s: (i) notification to the Developer of the reasons, timing and

expected duration of the reduction or disconnection when NYISO can schedule the reduction or
disconnection in advance, and (ii) coordination 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 Large Generating 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 Large Generating 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 Large Generating 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.
Connecting Transmission Owner shall use Reasonable Efforts to assist Developer in such
actions.

13.6 Limited Liability.

Except as otherwise provided in Article 11.6 of this Agreement, neither Party shall be
liable to the other 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 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 Party and any instrument required or permitted to be
tendered or delivered by a Party in writing to the other Party 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.

15.3 Alternative Forms of Notice.

Any notice or request required or permitted to be given by a Party to the other Party 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 Articles 9 and 10 of this Agreement.

ARTICLE 16. FORCE MAJEURE

16.1 Economic hardship is not considered a Force Majeure event.

16.2 A Party shall not be responsible or liable, or deemed, in Default with

respect to any obligation hereunder, (including obligations under Article 4 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 Party 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 Party. Upon a Breach, the non-Breaching Party 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 a Breach is not capable of

being cured within the period provided for herein, the non-Breaching Party 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 that Party terminates 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 Party (the “Indemnified Party”) from, any and all damages,

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

damage to property, the alleged violation of any Environmental Law, or the release or threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, 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 Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, to 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 the Indemnifying Party is obligated to indemnify and hold the Indemnified Party

harmless under this Article 18, the amount owing to the Indemnifying 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 the 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 Article 18.1 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 the Indemnified Party and the
Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal
defenses available to it 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 the Indemnified Party having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action,
suit or proceeding, the defense of which has been assumed by the Indemnifying Party.
Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and
control the defense of any such action, suit or proceedings if and to the extent that, in the opinion
of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential
imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of
interest between the Indemnified Party and the Indemnifying Party, in such event the
Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not
settle or consent to the entry of any judgment in any action, suit or proceeding without the
consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or
delayed.

18.2 No Consequential Damages.

Other than the liquidated damages heretofore described and the indemnity obligations set
forth in Article 18.1, in no event shall either 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 the other 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
Party, 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.

18.3.4 If applicable, the Commercial General Liability and Comprehensive

Automobile Liability Insurance policies should include contractual liability for work in

connection with constructions 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

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 30 days 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 Articles 18.3.1
through 18.3.9 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 Articles 18.3.1 through 18.3.9.
In the event that a Party is permitted to self-insure pursuant to this Article 18.3.10, it 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 through 18.3.9 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 Articles 18.3.21 through 18.3.9.

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 Articles 18.3.1 through 18.3.9 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

Party; provided that a Party may assign this Agreement without the consent of the other Party 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 Party 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 Large Generating 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 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 attempted
assignment that violates this Article is void and ineffective. Any assignment under this
Agreement shall not relieve a Party of its obligations, nor shall a Party’s obligations be enlarged,
in whole or in part, by reason thereof. Where required, consent to assignment will not be
unreasonably withheld, conditioned or delayed.

ARTICLE 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 the Negotiated Option (Article 5.1.4), then 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
Article 22.

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 Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

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 Article 22.1.8 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.

Neither 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 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
Article 22.

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 Party of
Confidential Information shall not be deemed a waiver by either 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, neither Party makes any warranties or

representations as to its accuracy or completeness. In addition, by supplying Confidential

Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party 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 Party under this Agreement or its regulatory requirements, including the
ISO OATT and NYISO Services Tariff. The Parties understand that 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 either 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 Party with prompt notice of such request(s) or
requirement(s) so that the other Party 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 Party, use Reasonable Efforts to
destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the
other Party) or return to the other Party, without retaining copies thereof, any and all written or
electronic Confidential Information received from the other Party pursuant to this Agreement.

22.11 Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for
the other Party’s Breach of its obligations under this Article 22. Each Party accordingly agrees
that the other Party 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, which 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 Article 22, 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. Neither Party, however, shall be liable for indirect, incidental, or
consequential or punitive damages of any nature or kind resulting from or arising in connection
with this Article 22.

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

Notwithstanding anything in this Article 22 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. Each Party is prohibited from notifying the other Party to this Agreement prior to the release of the Confidential Information to the
Commission or its staff. The Party shall notify the other Party 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, neither 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 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 Large Generating 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 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 Large Generating Facility data
requirements contained in Appendix 1 to the Standard Large Facility Interconnection Procedures. It shall also include any additional information provided to Connecting Transmission Owner for the Interconnection Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for
stability models shall be compatible with NYISO standard models. If there is no compatible
model, the Developer will work with a 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 Party’s facilities or the New York State Transmission System, but

does not require the submission of a new Interconnection Request, then NYISO may conduct
appropriate studies to determine the impact on the New York State Transmission System based
on the actual data submitted pursuant to this Article 24.3. Such studies will provide 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 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 with
any and all “as-built” Large Generating 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 Large Generating Facility as
required by Good Utility Practice such as an open circuit “step voltage” test on the Large
Generating Facility to verify proper operation of the Large Generating Facility’s automatic
voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility
at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a
five percent change in Large Generating Facility terminal voltage initiated by a change in the
voltage regulators reference voltage. Developer shall provide validated test recordings showing
the responses of Large Generating Facility terminal and field voltages. In the event that direct
recordings of these voltages is impractical, recordings of other voltages or currents that mirror
the response of the Large Generating Facility’s terminal or field voltage are acceptable if
information necessary to translate these alternate quantities to actual Large Generating Facility
terminal or field voltages is provided. Large Generating Facility testing shall be conducted and
results provided to the Connecting Transmission Owner and NYISO for each individual
generating unit in a station.

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 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 the other 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 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 Party when the Notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide
necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information
provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

25.3 Audit Rights.

Subject to the requirements of confidentiality under Article 22 of this Agreement, each
Party shall have the right, during normal business hours, and upon prior reasonable notice to the
other 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 Article 25.4 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
Article 12.2 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 Article 25.4.1 of this Agreement shall be
subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights
period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to

such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

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, 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 Party 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 Party 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 Article 5 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 Article 26 will not be limited in any way by any limitation of subcontractor’s insurance.

ARTICLE 27. DISPUTES

27.1 Submission.

In the event either 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 Party 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 Party. 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 Party’s 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, then the arbitration shall be
conducted by a three-member arbitration panel. For purposes of the three-member arbitration
panel, one arbitrator shall be selected by Connecting Transmission Owner and another arbitrator
shall be selected by Developer, in each case within twenty (20) Calendar Days of the submission
of the Dispute to arbitration. A third arbitrator shall be selected by the first two arbitrators
within ten (10) Calendar Days after the later of: (a) the date Connecting Transmission Owner

selected an arbitrator; and (b) the date Developer selected an arbitrator. If either Connecting Transmission Owner or Developer fails to select an arbitrator, then the arbitrator selected shall select the remaining two arbitrators. If arbitrators selected by Connecting Transmission Owner and Developer have not agreed on the selection of the third arbitrator within such ten (10)
Calendar Day period, the third arbitrator shall be expeditiously selected in accordance with the rules of the American Arbitration Association.

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, however, in the event of a conflict between
the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 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; (2) one-half of the cost of the third arbitrator jointly chosen by the
two selected arbitrators or chosen in accordance with the rules of the American Arbitration
Association; and/or (3) one-half of the cost of the two arbitrators chosen by the sole arbitrator
selected by one Party in the absence of the selection of an arbitrator by the other Party.

27.5 Termination.

Notwithstanding the provisions of this Article 27, either 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 Large Generating 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.

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
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 either Party becomes aware of such a situation, it shall
notify the other Party 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 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.

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 both 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 both 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.

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 the other
Party and to participate fully in any proceeding before FERC in which such modifications may
be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under
sections 205 or 206 of the Federal Power Act and FERC’s rules and regulations thereunder,
except to the extent that the Parties otherwise mutually agree as provided herein.

29.14 No Partnership.

This Agreement shall not be interpreted or construed to create an association, joint

venture, agency relationship, or partnership between the Parties or to impose any partnership

obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

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.

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.

Niagara Mohawk Power Corporation d/b/a National Grid

Black River Hydroelectric, LLC

APPENDICES

Appendix A

Attachment Facilities and System Upgrade Facilities

Appendix B

Milestones

Appendix C

Interconnection Details

Appendix D

Security Arrangements Details

Appendix E

Commercial Operation Date

Appendix F

Addresses for Delivery of Notices and Billings

Appendix G

Operation and Maintenance

Appendix H

List of Non-Applicable Pro-Forma LGIA Provisions

APPENDIX A - ATTACHMENT FACILITIES AND SYSTEM UPGRADE
 FACILITIES

The Generating Facility and all of the identified Attachment Facilities have been
constructed and funded. The Generating Facility has been interconnected with the
transmission system and operation since 1986, no new interconnection facilities or
system upgrades are required to interconnect the Generating Facility to the New York State Transmission System.

1. Attachment Facilities:

(a) Developer’s Attachment Facilities: The Generating Facility is supplied by a

single circuit 115kV line (Coffeen-Black River LN3) which terminates on the
Developer takeoff structure. 115kV switch 18 which is owned, operated and

maintained by the Developer, is the point of demarcation, between Connecting
Transmission Owner’s facilities, and the Developer’s facilities, with the
Connecting Transmission Owner owning up to (but not including) the jaw-side of
switch 18, and the Developer owning all facilities electrically downstream from
that point, with the exception of the Connecting Transmission Owner’s revenue
metering equipment. The Developer’s attachment facilities include one (1)
115kV disconnect switch and one (1) 115kV circuit breaker, and one (1) 115kV
transformer.

(b) Connecting Transmission Owner’s Attachment Facilities: The Connecting

Transmission Owner owns, operates and maintains the existing Coffeen-Black

River LN3 115kV line which originates at the Connecting Transmission Owner’s
Coffeen and Black River Substations and terminates at the Glen Park Hydro
Substation via a 1.22 mile tap from the mainline. The Connecting Transmission
Owner owns, operates and maintains a 115kV switch (X3-3) on the Glen Park
Hydro tap at the interconnection to the mainline. The 115kV line runs parallel
with the Black River and then turns north to then cross the Black River to the
Glen Park Hydro Substation. The Connecting Transmission Owner owns One (1)
Revenue Meter and RTU and Three (3) potential transformers and Two (2)
current transformers.

APPENDIX B - MILESTONES

Not Applicable

APPENDIX C - INTERCONNECTION DETAILS

APPENDIX C - INTERCONNECTION DETAILS

1. Description of Large Generating Facility including Point of Interconnection

The Generating Facility is a 32.65 MW (nameplate 43.65 MW) hydroelectric facility located in Jefferson County, New York. Developer is extending the operational term of the Generating
Facility beyond its initial 20 years. The Generating Facility has two powerhouses: the main
powerhouse and the minimum flow powerhouse. Units 1 and 2, located in the main
powerhouse, are rated at 20.0 MW each but can generate up to 20.4 MW each
with 64 feet of generating head and a flow of 4,150 cubic feet per second (cfs). Unit 3, located in the minimum flow powerhouse, is rated at 3.65 MW but can generate 3.9 MW with 400 cfs at
approximately 40 feet of generating head.

The power output is transmitted underground from the main powerhouse to the adjacent

switchyard where it is stepped up from 13.8 kV to 115 kV. The switchyard, which includes the physical point of interconnection, includes the main transformer, 145-kV circuit breaker,
disconnect switches, and metering equipment. A one-line diagram illustrating the facility is
provided in Appendix A.

(refer to one-line diagram that should be attached in Appendix A) II. Developer Operating Requirements:

Developer must comply with Connecting Transmission Owner’s operating instructions and

requirements as set out in the most current version of National Grid’s Electric System Bulletin 756 and all applicable NYISO tariffs and procedures, as amended from time to time.

In the event Developer installs additions, modifications or replacements to the Generating
Facility such that output of the facility exceeds the maximum capacity stated above, then
Developer agrees to comply with all applicable requirements of the NYISO interconnection
process related to such an increase in capacity and to operate said additions, modifications or
replacements to in conformance with Niagara Mohawk’s Electric System Bulletin No.756 in
effect at the time such additions, modifications or replacements is installed. Nothing in this
Section II shall limit the obligation of Developer to operate the Generating Facility and the
Developer’s Attachment Facilities in accordance with Applicable Reliability Standards and any
applicable NYISO requirements, and Developer shall take all appropriate steps to remain in
compliance with Applicable Reliability Standards and any applicable NYISO requirements.

III. Metering Requirements: Electricity transferred to the transmission system shall be

measured by electric watt-hour meters of a type approved by the Public Service

Commission of the State of New York. Costs for the repair or replacement of the meter shall be
borne by Developer. The meters shall be maintained with the rules set forth in 16 NYCRR Part

92.

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.

APPENDIX E - COMMERCIAL OPERATION DATE

Developer commenced Commercial Operation of the Generation Facility in 1986, the Commercial Operation Date.

APPENDIX F - ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS Notices:

NYISO:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

Rensselaer, NY 12144
Phone: (518) 356-6000
Fax: (518) 356-6118

Connecting Transmission Owner:

Director, Commercial Services National Grid

40 Sylvan Road

Waltham, MA 02451
Phone: (781) 907-2406
Fax: (781) 907-5707

E-mail: Kathryn.cox-arslan@nationalgrid.com

Developer:

Black River Hydroelectric, LLC c/o Cube Hydro, LLC

2 Bethesda Metro Center, Suite 1330 Bethesda MD 20814

Phone: (240) 482-2716
Fax: (240) 482-2727

E-mail: Generalcounsel@cubehydro.com

Billings and Payments:

Connecting Transmission Owner:

Director, Commercial Services National Grid

40 Sylvan Road

Waltham, MA 02451
Phone: (781) 907-2406

Fax: (781) 907-5707

E-mail: Kathryn.cox-arslan@nationalgrid.com

Developer:

Black River Hydroelectric, LLC
c/o Cube Hydro Carolinas
PO Box 575

Badin NC 28009

Phone: 704-422-5510

Fax: 704-422-5793

Email: accountspayable@cubecarolinas.com

Alternative Forms of Delivery of Notices (telephone, facsimile or email):

NYISO:

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

Connecting Transmission Owner:

Director, Commercial Services National Grid

40 Sylvan Road

Waltham, MA 02451
Phone: (781) 907-2406
Fax: (781) 907-5707

E-mail: Kathryn.cox-arslan@nationalgrid.com

Developer:

Black River Hydroelectric, LLC c/o Cube Hydro, LLC

2 Bethesda Metro Center, Suite 1330 Bethesda MD 20814

Phone: (240) 482-2716
Fax: (240) 482-2727

E-mail: Generalcounsel@cubehydro.com

APPENDIX G - OPERATION AND MAINTENANCE

In accordance with Article 10.5 of this Agreement, Developer shall be responsible for all

reasonable expenses (“O&M Expenses”) associated with the operation, maintenance, repair and replacement of Connecting Transmission Owner’s Attachment Facilities, as such facilities are detailed in Appendix A.

Developer shall have the option to pay such O&M Expenses either under the procedure described in Option 1 or in Option 2 below.

Option 1: Fixed On-Going Charge Payment

Connecting Transmission Owner will invoice and Developer shall pay an annual
payment to the Connecting Transmission Owner equal to the product of the Gross
Plant Investment associated with the Connecting Transmission Owner Attachment
Facility and the Annual Transmission Ongoing Charge Factor, for the term of this
Agreement.

All payments due to be made by Developer shall be made within thirty (30) days after receiving an invoice from Connecting Transmission Owner.

The Project’s Gross Connecting Transmission Owner’s Attachment Facilities

Plant Investment cost shall be established in writing by Connecting Transmission Owner no later than 90 days following the effective date of the agreement.

The Annual On-Going Charge Factor shall be calculated annually each July based
on the Connecting Transmission Owner’s most recently filed FERC Form 1 data
and will equal the sum of the Revenue Requirement Components as identified on
O&M Attachment 1 divided by the Total Gross Plant of the Connecting
Transmission Owner. Total Gross Plant shall equal the sum of Item Nos. A

(1)(a)(b) and (c) in O&M Attachment 1.

Option 2: Annual Actual O&M Expenses

Developer shall pay for all actual O&M Expenses incurred by Connecting

Transmission Owner, which expenses shall be billed by Connecting Transmission
Owner quarterly as accumulated during the calendar quarter for which they were
incurred.

All payments due to be made by Developer shall be made within thirty (30) days
after receiving an invoice from Connecting Transmission Owner, which invoice
shall be issued after the end of each calendar quarter for the most recent quarter.

Selection by Developer

Developer shall select which option for paying O&M Expenses by providing

written notice to the Connecting Transmission Owner within thirty (30) days after
receiving from the Connecting Transmission Owner the Gross Connecting
Transmission Owner’s Attachment Facilities Plant Investment cost and the most
recent Annual Transmission Ongoing Charge Factor. If Developer fails to
provide timely notice to Connecting Transmission Owner of the option selected,
Developer will be deemed to have selected Option 2: Annual Actual O&M
Expenses.

O&M ATTACHMENT 1

Capitalized terms used in this calculation will have the following definitions:

Allocation Factors

1. General Plant Allocation Factor shall equal Electric General Plant divided by the sum of

Electric General Plant plus gas general plant as reported in the Annual Report filed with the New York State Public Service Commission.

2. Gross Transmission Plant Allocation Factor shall equal the total investment in

Transmission Plant in Service divided by the sum of the total Transmission Plant in

Service plus the total Distribution Plant in Service, excluding Intangible Plant, General Plant and Common Plant.

3. Transmission Wages and Salaries Allocation Factor shall equal the ratio of Connecting

Transmission Owner’s Transmission-related direct electric wages and salaries including
any direct wages or salaries charged to Connecting Transmission Owner by a National
Grid Affiliate to Connecting Transmission Owner’s total electric direct wages and
salaries including any wages charged to Connecting Transmission Owner by a National
Grid Affiliate excluding any electric administrative and general wages and salaries.

Ratebase and Expense items

1. Administrative and General Expense shall equal electric expenses as recorded in FERC

Account Nos. 920-935.

2. Amortization of Investment Tax Credits shall equal electric credits as recorded in FERC

Account No. 411.4.

3. Distribution Plant in Service shall equal the gross plant balance as recorded in FERC

Account Nos. 360 - 374.

4. Electric Common Plant shall equal the balance of Common Plant recorded in FERC

Account Nos. 389-399 multiplied by the General Plant Allocation Factor.

5. General Plant shall equal electric gross general plant balance recorded in FERC Account

Nos. 389-399.

6. Materials and Supplies shall equal electric materials and supplies balance as recorded in

FERC Account No. 154.

7. Payroll Taxes shall equal those electric payroll tax expenses as recorded in FERC

Account No. 408.1

8. Prepayments shall equal electric prepayment balance as recorded in FERC Account No.

165.

9. Real Estate Tax Expenses shall equal electric transmission-related real estate tax expense

as recorded in FERC Account No. 408.1.

10. Transmission Operation and Maintenance Expense shall equal electric expenses as

recorded in FERC Account Nos. 560, 562-573.

11. Transmission Plant in Service shall equal the gross plant balance as recorded in FERC

Account Nos. 350-359.

12. Transmission Revenue Credits shall equal the revenue reported in Account 456.

13. Transmission Related Bad Debt Expense shall equal Bad Debt Expense as reported in

Account 904 related to transmission billing.

14. Wholesale Metering Cost shall equal any costs associated with any Revenue or Remote

Terminal Unit (RTU) meters and associated equipment located at an internal or external tie at voltages equal to or greater than 23V. The cost shall be determined by multiplying the number of wholesale meters in FERC Account No. 370.3 by the average cost of the meters plus the average costs of installation.

In the event that the above-referenced FERC accounts are renumbered, renamed, or otherwise modified, the above sections shall be deemed amended to incorporate such
renumbered, renamed, modified or additional accounts.

Revenue Requirement Components

The Revenue Requirement Component shall be the sum of Connecting Transmission
Owner’s (A) Return and Associated Income Taxes, (B) Transmission Related Real Estate Tax
Expense, (C) Transmission Related Amortization of Investment Tax Credits, (D) Transmission
Related Payroll Tax Expense, (E) Transmission Operation and Maintenance Expense, (F)
Transmission Related Administrative and General Expenses, less (G) Revenue Credits, plus (H)
Bad Debt Expense.

A. Return and Associated Income Taxes shall equal the product of the Transmission
 Investment Base as identified in A(1) below and the Cost of Capital Rate.

1. Transmission Investment Base shall be defined as:

Transmission Related General Plant plus Transmission Related Common Plant

plus Transmission Related Regulatory Assets plus Transmission Related

Prepayments plus Transmission Related Materials and Supplies plus Transmission Related Cash Working Capital.

(a) Transmission Plant in Service shall equal the balance of Total investment

in Transmission Plant plus Wholesale Metering Cost.

(b) Transmission Related General Plant shall equal the balance of investment

in General Plant multiplied by the Transmission Wages and Salaries Allocation Factor.

(c) Transmission Related Common Plant shall equal Electric Common Plant

multiplied by the Gross Transmission Plant Allocation Factor and

multiplied by the Transmission Wages and Salaries Allocation Factor.

(d) Transmission Related Regulatory Assets shall equal balances in FERC

Account Nos. 182.3 and 254 for state and federal regulatory assets and

liabilities related to FAS109, and excess AFUDC multiplied by the Gross Transmission Plant Allocation Factor.

(e) Transmission Related Prepayments shall equal the electric balance of

Prepayments multiplied by the Gross Transmission Plant Allocation

Factor.

(f) Transmission Related Materials and Supplies shall equal the balance of

Materials and Supplies assigned to Transmission added to the remainder
of Material and Supplies not directly assigned to either Transmission or
Distribution multiplied by the Gross Transmission Plant Allocation Factor.

(g) Transmission Related Cash Working Capital shall be a 12.5% allowance

(45 days/360 days) of the Transmission Operation and Maintenance

Expense (less FERC Account 565: Transmission of Electricity by

Others) and Transmission-Related Administrative and General Expense.

2. Cost of Capital Rate

The Cost of Capital Rate shall equal the proposed Weighted Costs of Capital plus Federal Income Taxes and State Income Taxes.

(a) The Weighted Costs of Capital will be calculated for the Transmission

Investment Base using Connecting Transmission Owner’s actual capital structure and will equal the sum of (i), (ii), and (iii) below:

(i) the long-term debt component, which equals the product of the

actual weighted average embedded cost to maturity of Connecting Transmission Owner’s long-term debt then outstanding and the actual long-term debt capitalization ratio;

(ii) the preferred stock component, which equals the product of the

actual weighted average embedded cost to maturity of Connecting Transmission Owner’s preferred stock then outstanding and the actual preferred stock capitalization ratio; and

(iii) the return on equity component, shall be the product of the allowed

ROE of 11.9% plus a 50 basis point adder (per FERC Order 697

and 697A) and Connecting Transmission Owner’s actual common equity capitalization ratio.

(b) Federal Income Tax shall equal

A x Federal Income Tax Rate
(1 - Federal Income Tax Rate)

where A is the sum of the preferred stock component and the return on equity component, each as determined in Sections 2.(a)(ii) and for the ROE set forth in 2.(a)(iii) above

(c) State Income Tax shall equal

(A + Federal Income Tax) x State Income Tax Rate
 (1 - State Income Tax Rate)

Where A is the sum of the preferred stock component and the return on equity component as determined in A.2.(a)(ii) and A.2.(a)(iii) above and Federal income Tax is determined in 2.(b) above.

B. Transmission Related Real Estate Tax Expense shall equal the Real Estate Tax Expenses

multiplied by the Gross Plant Allocation Factor.

C. Transmission Related Amortization of Investment Tax Credits shall equal the electric

Amortization of Investment Tax Credits multiplied by the Gross Transmission Plant Allocation Factor.

D. Transmission Related Payroll Tax Expense shall equal Payroll Taxes multiplied by the

Transmission Wages and Salaries Allocation Factor.

E. Transmission Operation and Maintenance Expense shall equal the Transmission

Operation and Maintenance Expense as previously defined.

F. Transmission Related Administrative and General Expenses shall equal the sum of the

electric Administrative and General Expenses multiplied by the Transmission Wages and Salaries Allocation Factor.

G. Revenue Credits shall equal all Transmission revenue recorded in FERC account 456.

H. Transmission Related Bad Debt Expense shall equal Transmission Related Bad Debt

Expense as previously defined.

APPENDIX H - LIST OF NON-APPLICABLE PRO-FORMA LGIA PROVISIONS

Transmission Owner and Developer are already interconnected, pursuant to a pre-existing

interconnection agreement. Therefore, certain terms of the pro-forma NYISO LGIA are not

applicable to this LGIA, because they relate solely to new interconnections. The Parties to this LGIA have nevertheless agreed to use the pro-forma NYISO LGIA with almost no
modifications, in accordance with FERC policy promoting the use of pro-forma interconnection agreements wherever possible. The Parties, however, believe that (i) all facilities required to
connect the Generating Facility to the transmission system were, to the extent required, installed at the time of construction of the Developer’s facility, (ii) at the time of this Agreement there are no additional requirements needed, and (iii) the following provisions of the pro-forma NYISO LGIA are not applicable to the current LGIA:

Section 5.1 (Options), including all subsections thereof

Section 5.2 (General Conditions Applicable to Option to Build), including all subsections thereof Section 5.3 (Liquidated Damages)

Section 5.5 (Equipment Procurement), including all subsections thereof

Section 5.6 (Construction Commencement), including all subsections thereof Section 5.7 (Work Progress)

Section 5.8 (Information Exchange)
Section 5.9 (Limited Operation)

Section 5.10 (Developer Attachment Facilities), including all subsections thereof

Section 5.11 (Connecting Transmission Owner’s Attachment Facilities Construction), including all subsections thereof

Section 5.14 (Permits)

Section 5.15 (Early Construction of Base Case Facilities)

Section 6.1 (Pre Commercial Operation Date Testing and Modification)

Section 11.4 (Special Provisions for Affected Systems)

Section 11.5 (Provision of Security), including all subsections thereof

Section 12.2 (Final Invoice)

Section 24.1 (Information Acquisition)

Section 24.2 (Information Submission by Transmission Owner)
Section 24.3 (Updated Information Submission by Developer)

Section 24.4 (Information Supplementation) except that the third paragraph thereof shall apply

Section 25.4.1 (Audit Rights Period for Construction Related Accounts) Appendix B (Milestones)