

SERVICE AGREEMENT NO. 2670

SERVICE AGREEMENT NO. 2670

ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,

AND

HOLCIM (US) INC.

AND

HECATE ENERGY ALBANY 1 LLC

AND

HECATE ENERGY ALBANY 2 LLC

Dated as of January 26, 2022

(Lafarge Substation Upgrades)

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ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

("Agreement") is made and entered into this 26th day of January 2022, by and among: (i) Hecate Energy Albany 1 LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Hecate Energy 1") and Hecate Energy Albany 2 LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Hecate Energy 2"), (each individually "Interconnection Customer" and collectively the "Interconnection Customers"); (ii) Holcim (US) Inc., a corporation organized and existing under the laws of Delaware ("Affected System Operator"); and (iii) 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"). Each individual Interconnection Customer, Affected System Operator or the NYISO each may be referred to individually as a "Party" or collectively referred to as the "Parties."

RECITALS

WHEREAS, Hecate Energy 1, owner of a project in the NYISO interconnection queue (Queue No. 570), is developing a Small Generating Facility that will interconnect to certain transmission facilities of Niagara Mohawk Power Corporation d/b/a National Grid ("Connecting Transmission Owner") that are part of the New York State Transmission System operated by the NYISO ("Albany County Solar 1");

WHEREAS, Hecate Energy 2, owner of a project in the NYISO interconnection queue (Queue No. 598), is developing a Small Generating Facility that will interconnect to certain transmission facilities of the Connecting Transmission Owner that are part of the New York State Transmission System operated by the NYISO ("Albany County Solar 2");

WHEREAS, each Interconnection Customer has entered into an interconnection agreement among the NYISO, Connecting Transmission Owner, and the Interconnection Customer concerning the interconnection of, as applicable, Albany County Solar I and Albany County Solar 2 (collectively, the "Albany County Solar Projects");

WHEREAS, the interconnection of Albany County Solar 1 and Albany County Solar 2 will individually and collectively have certain impacts on the Affected System owned by the Affected System Operator;

WHEREAS, the Facilities Studies for Albany County Solar 1 and Albany County Solar 2 each determined that certain System Upgrade Facilities are required to be constructed on the Affected System owned by the Affected System Operator to enable each individual Small Generating Facility to interconnect reliably to the New York State Transmission System in a manner that meets the NYISO Minimum Interconnection Standard ("Affected System Upgrade Facilities");

WHEREAS, Interconnection Customers and Affected System Operator desire to have

Interconnection Customers perform, and Interconnection Customers are willing to perform, the engineering, procurement, and construction services required to construct the Affected System

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Upgrade Facilities (“EPC Services”) in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, Interconnection Customers, Affected System Operator, and the NYISO have agreed to enter into this Agreement for the purpose of allocating the responsibilities for the performance and oversight of the EPC Services required to construct the Affected System Upgrade Facilities;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified in 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, Appendix 1 of Section 32.5 of Attachment Z of the ISO OATT, Section 30.1 of Attachment X of the ISO OATT, Section 25.1.2 of Attachment S of the ISO OATT, or the body of this Agreement.

Affected System shall mean the electric system of the Affected System Operator that is affected, individually and collectively, by the Albany County Solar Projects.

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

Affected System Upgrade Facilities shall have the meaning set forth in the recitals and shall consist of the System Upgrade Facilities described in Appendix A of this Agreement.

Affiliate shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

Albany County Solar Projects shall have the meaning set forth in the recitals.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority, including but not limited to Environmental Law.

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

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District in which the Affected System Upgrade

Facilities will be constructed, as those requirements and guidelines are amended and modified and in effect from time to time; provided that no Party shall waive its right to challenge the

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

ASO Estimated Total Costs shall be the costs for the engineering, procurement, and construction of the Affected System Upgrade Facilities, which costs were identified in the Facilities Study and are specified in Appendix A.

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

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

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

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

Completion Date shall mean the date on which the Interconnection Customers have completed the EPC Services, as set forth in Appendix A.

Confidential Information shall mean any information that is defined as confidential by Article 17 of this Agreement.

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

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 12 of this Agreement.

Effective Date shall mean the date determined under Article 2.1 of this Agreement.

Environmental Law shall mean Applicable Laws and Regulations relating to pollution or protection of the environment or natural resources.

EPC Services shall have the meaning set forth in the recitals and shall consist of the services described in Appendix A.

Facilities Study shall mean a study conducted by NYISO or a third party consultant for the Interconnection Customer to determine a list of facilities (including Affected System Upgrade Facilities), the cost of those facilities, and the time required to interconnect the Small Generating Facility with the New York State Transmission System or with the Distribution System. The scope of the study is defined in Section 32.3.5 of Attachment Z of the ISO OATT.

Facilities Study Agreement shall mean the form of agreement contained in Appendix 6 of Attachment Z of the ISO OATT for conducting the Facilities Study.

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.

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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 each Interconnection Customer's device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customers' 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 any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customers, NYISO, Affected System Operator, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

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

Invoice Share shall mean an individual Interconnection Customer's percentage share of Interconnection Customers' total cost responsibility for the EPC Services.

IRS shall mean the Internal Revenue Service.

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

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

New York State Transmission System shall mean the entire New York State electric transmission system, which includes (i) the Transmission Facilities under ISO Operational Control; (ii) the Transmission Facilities Requiring ISO Notification; and (iii) all remaining transmission facilities within the New York Control Area.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with this Agreement or its performance.

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

NYISO Minimum Interconnection Standard - The reliability standard that must be met by any generation facility or Class Year Transmission Project that is subject to NYISO's Large Facility Interconnection Procedures in Attachment X to the ISO OATT or the NYISO's Small Generator Interconnection Procedures in Attachment Z, that is proposing to connect to the New York State Transmission System or Distribution System, to obtain ERIS. The Minimum Interconnection Standard is designed to ensure reliable access by the proposed project to the New York State Transmission System or to the Distribution System. The Minimum Interconnection Standard does not impose any deliverability test or deliverability requirement on the proposed interconnection.

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

Party or Parties shall mean NYISO, Affected System Operator, each individual Interconnection Customer or any combination of the above.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Security shall mean a bond, irrevocable letter of credit, parent company guarantee or other form of security from an entity with an investment grade rating, executed for the benefit of the Affected System Operator, meeting the commercially reasonable requirements of the Affected System Operator with which it is required to be posted pursuant to Article 7.2, and consistent with the Uniform Commercial Code of the jurisdiction identified in Article 9.2 of this Agreement.

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.

Small Generating Facility - an Interconnection Customer's facility, no larger than 20 MW for the production and/or storage for later injection of electricity identified in the Interconnection

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Request if proposing to interconnect to the New York State Transmission System or Distribution System, but shall not include (i) facilities proposing to simply receive power from the New York State Transmission System or the Distribution System; (ii) facilities proposing to interconnect to the New York State Transmission System or the Distribution System made solely for the purpose of generation with no wholesale sale for resale nor to net metering; (iii) facilities proposing to the New York State Transmission System or the Distribution System made solely for the purpose of net metering; (iv) facilities proposing to interconnect to LIPA's distribution facilities; and (v) the Interconnection Customer's Interconnection Facilities. A facility will be treated as a single Small Generating Facility if all units within the facility are behind a single facility meter, even if such units are different technology types.

Small Generator Interconnection Agreement shall mean the interconnection agreement among the NYISO, Connecting Transmission Owner, and each Interconnection Customer concerning each Interconnection Customer's respective Small Generating Facility.

System Upgrade Facilities shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications to the existing transmission system that are required to maintain system reliability due to: (i) changes in the system, including such changes as load growth and changes in load pattern, to be addressed in the form of generic generation or transmission projects; and (ii) proposed interconnections. In the case of proposed interconnection projects, System Upgrade Facilities are the modifications or additions to the existing New York State Transmission System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Minimum Interconnection Standard.

Tariff shall mean the NYISO Open Access Transmission Tariff ("OATT"), as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

Effective Date.

This Agreement shall become effective upon the date of execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO shall promptly file this Agreement with FERC upon execution. Interconnection Customers and Affected System Operator shall reasonably cooperate with the NYISO with respect to the filing of this Agreement with FERC and provide any information reasonably requested by the NYISO needed for such filing.

Term of Agreement.

Subject to the provisions of Article 2.3, this Agreement shall remain in effect until the later of: (i) the Completion Date, and (ii) the date on which the final payment of all invoices

issued under this Agreement have been made pursuant to Sections 8.1 and 8.3 and any remaining Security has been released or refunded pursuant to Section 8.2.

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Termination.

Completion of Term of Agreement

■■■■
This Agreement shall terminate upon the completion of the term of the Agreement pursuant to Article 2.2.

Written Notice.

This Agreement may be terminated: (i) by all Parties agreeing in writing to terminate this Agreement, or (ii) by the NYISO and the Affected System Operator after giving the Interconnection Customer ten (10) Calendar Days advanced written notice after the Small Generator Interconnection Agreements for both Albany County Solar Projects have been terminated and such notice of termination has been accepted by FERC; *provided, however*, that this Agreement will remain effective if only the Small Generator Interconnection Agreements for one of the Albany County Solar Projects has been terminated.

Default.

■■■■
Any Party may terminate this Agreement to the extent permitted under Article 12 and Article 22.

Compliance.

■■■■
Notwithstanding Articles 2.3.1, 2.3.2, and 2.3.3, 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.

Termination Costs.

If this Agreement is terminated pursuant to Article 2.3.2 above, the Interconnection Customers shall be responsible for all costs that are the responsibility of the Interconnection Customers under this Agreement that are incurred by the Interconnection Customers or the other Parties through the date the Parties agree in writing to terminate this Agreement or through the date of the Interconnection Customers' receipt of a notice of termination. Such costs shall be allocated between the Interconnection Customers using the same methodology as set forth in Article 7 regarding each Interconnection Customer's responsibility for the costs of the EPC Services. Such costs include any cancellation costs relating to orders or contracts. In the event of termination by the Interconnection Customers, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement, unless otherwise ordered or approved by FERC:

With respect to any portion of the Affected System Upgrade Facilities that has not yet been constructed or installed, the Interconnection Customers shall to the extent possible and

with the Affected System Operator'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

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event the Affected System Operator elects not to authorize such cancellation, Affected System Operator shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Interconnection Customers shall deliver such material and equipment, and, if necessary, assign such contracts, to Affected System Operator as soon as practicable, at Affected System Operator's expense.

Interconnection Customers may, at their option, retain any portion of such material and equipment that Affected System Operator chooses not to accept delivery of, in which case Interconnection Customers shall be responsible for all costs associated with procuring such materials or equipment.

With respect to any portion of the EPC Services already performed pursuant to the terms of this Agreement, each Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such related materials, equipment, or facilities, subject to an Interconnection Customer's Invoice Share identified in Appendix A. Such costs shall be allocated between the Interconnection Customers using the same methodology as set forth in Article 6 regarding each Interconnection Customer's responsibility for the costs of the EPC Services.

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.

ARTICLE 3. EPC SERVICES

Performance of EPC Services.

Interconnection Customers shall perform the EPC Services, as set forth in Appendix A hereto, using Reasonable Efforts to complete the EPC Services by the Milestone dates set forth in Appendix A hereto. Interconnection Customers shall not undertake any action which is inconsistent with the Affected System Operator's 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 Interconnection Customers reasonably expect that they will not be able to complete the EPC Services by the specified dates, Interconnection Customers shall promptly provide written notice to the Affected System Operator and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. The NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC Services under this Agreement.

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General Conditions Applicable to Interconnection Customers' Performance of the EPC Services.
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Interconnection Customers' performance of the EPC Services are subject to the following conditions:

■ Interconnection Customers shall engineer, procure equipment, and construct the Affected System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Affected System Operator;

Interconnection Customers' engineering, procurement and construction of the Affected System Upgrade Facilities shall comply with all requirements of law to which Affected System Operator would be subject in the engineering, procurement or construction of the Affected System Upgrade Facilities;

■ Affected System Operator shall review and approve the engineering design, equipment acceptance tests, and the construction of the Affected System Upgrade Facilities;

Prior to commencement of construction, Interconnection Customers shall provide Affected System Operator and NYISO a schedule for construction of the Affected System Upgrade Facilities, and shall promptly respond to requests for information from Affected System Operator or NYISO;

■ At any time during construction, Affected System Operator shall have the right to gain unrestricted access to the Affected System Upgrade Facilities and to conduct inspections of the same;

At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Affected System Upgrade Facilities not meet the standards

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██████████ and specifications provided by Affected System Operator, Interconnection Customers shall be obligated to remedy deficiencies in that portion of the Affected System Upgrade Facilities;

██████████ Interconnection Customers shall indemnify Affected System Operator and NYISO for claims arising from the Interconnection Customers' construction of Affected System Upgrade Facilities under procedures applicable to Article 13.1 Indemnity;

██████████ Interconnection Customers shall transfer control of Affected System Upgrade Facilities to Affected System Operator;

██████████ Unless the Interconnection Customers and Affected System Operator otherwise agree, Interconnection Customers shall transfer ownership of Affected System Upgrade Facilities to Affected System Operator;

██████████ Affected System Operator shall approve and accept for operation and maintenance the Affected System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 3.2; and

██████████ Interconnection Customers shall deliver to NYISO and Affected System Operator "as built" drawings, information, and any other documents that are reasonably required by NYISO or Affected System Operator to assure that the Affected System Upgrade Facilities are built to the standards and specifications required by Affected System Operator.

██████████ Interconnection Customers shall pay the Affected System Operator the agreed upon amount of \$60,000 for the Affected System Operator to execute the responsibilities enumerated to Affected System Operator under Article 3.2. Affected System Operator shall invoice Interconnection Customers for this total amount to be divided on a monthly basis pursuant to Article 8.

Equipment Procurement

██████████ The Interconnection Customers shall commence design of the Affected System Upgrade Facilities and procure necessary equipment in accordance with the Milestones set forth in Appendix A.

Construction Commencement

The Interconnection Customers shall commence construction of the Affected System Upgrade Facilities in accordance with the Milestones set forth in Appendix A, which shall provide for the commencement of construction as soon as practicable after the following additional conditions are satisfied:

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■■■■■ Approval of the appropriate Governmental Authority has been obtained, to the extent required, for the construction of a discrete aspect of the Affected System Upgrade Facilities.

Work Progress.

■■■■■ The Interconnection Customers will keep the Affected System Operator and NYISO advised periodically as to the progress of its respective design, procurement and construction efforts. Affected System Operator or NYISO may, at any time, request a progress report from the Interconnection Customers.

Information Exchange.

As soon as reasonably practicable after the Effective Date, the Interconnection Customers and Affected System Operator shall exchange information, and provide NYISO the same information, regarding the design of the Affected System Upgrade Facilities and compatibility of the Affected System Upgrade Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes. The Interconnection Customers shall inform the Affected System Operator and NYISO of any termination of one or both of the Small Generator Interconnection Agreements within ten (10) days of the termination of the Small Generator Interconnection Agreement.

■■■■■ **Ownership of Affected System Upgrade Facilities.**

Affected System Operator shall own the Affected System Upgrade Facilities as described in Appendix A.

Access Rights.

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the Affected System Operator or the Interconnection Customers (“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 needed for the performance of the EPC Services, including ingress or egress to construct, repair, test (or witness testing), inspect, replace or remove the Affected System Upgrade Facilities. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

Lands of Other Property Owners.

If any part of the Affected System Upgrade Facilities will be installed on property owned by persons other than the Affected System Operator, the Affected System Operator shall at

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Interconnection Customers' 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 perform the EPC Services upon such property, including to construct, repair, test (or witness testing), inspect, replace or remove the Affected System Upgrade Facilities.

Permits.

NYISO, Interconnection Customers, and Affected System Operator shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the EPC Services in compliance with Applicable Laws and Regulations.

Taxes.

Interconnection Customer Payments Not Taxable.

The Affected System Operator intends that all payments or property transfers made by Interconnection Customers for the installation of the Affected System Upgrade Facilities shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

Representations and Covenants.

In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Interconnection Customers represent and covenant that (i) ownership of the electricity generated at the Affected System Upgrade Facilities will pass to another party prior to the transmission of the electricity on the New York State Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Affected System Operator for the Affected System Upgrade Facilities be capitalized by Interconnection Customers as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Affected System Upgrade Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Small Generating Facilities. 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 Affected System Operator's request, Interconnection Customers shall provide Affected System Operator with a report from an independent engineer confirming its

representation in clause (iii), above. Interconnection Customers represent and covenant that the cost of the Affected System Upgrade Facilities paid for by Interconnection Customers will have no net effect on the base upon which rates are determined.

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Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Affected System Operator.

Notwithstanding Article 3.11.1, Interconnection Customers shall protect, indemnify and hold harmless Affected System Operator from the cost consequences of any current tax liability imposed against Affected System Operator as the result of payments or property transfers made by Interconnection Customers to Affected System Operator under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Affected System Operator.

Affected System Operator shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customers under this Agreement unless (i) Affected System Operator has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Affected System Operator should be reported as income subject to taxation or (ii) any Governmental Authority directs Affected System Operator to report payments or property as income subject to taxation; provided, however, that Affected System Operator may require Interconnection Customer to provide security, in a form reasonably acceptable to Affected System Operator (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 3.11. Interconnection Customer shall reimburse Affected System Operator for such costs on a fully grossed-up basis, in accordance with Article 3.11.4, within thirty (30) Calendar Days of receiving written notification from Affected System Operator of the amount due, including detail about how the amount was calculated.

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

Tax Gross-Up Amount.

Interconnection Customers' liability for the cost consequences of any current tax liability under this Article 3.11 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customers will pay Affected System Operator, in addition to the amount paid for the Affected System Upgrade Facilities, an amount equal to (1) the current taxes imposed on Affected System Operator ("Current Taxes") on the excess of (a) the gross income realized by Affected System Operator as a result of payments or property transfers made by Interconnection Customers to Affected System Operator under this Agreement (without regard to any payments under this Article 3.11) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Affected System Operator to

receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

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For this purpose, (i) Current Taxes shall be computed based on Affected System Operator's composite federal and state tax rates at the time the payments or property transfers are received and Affected System Operator will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Affected System Operator's anticipated tax depreciation deductions as a result of such payments or property transfers by Affected System Operator's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customers' liability to Affected System Operator pursuant to this Article 3.11.4 can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value Depreciation Amount})) / (1 - \text{Current Tax Rate})$.

Private Letter Ruling or Change or Clarification of Law.

At Interconnection Customers' request and expense, Affected System Operator shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customers to Affected System Operator under this Agreement are subject to federal income taxation. Interconnection Customers 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 Interconnection Customers' knowledge. Affected System Operator and Interconnection Customers shall cooperate in good faith with respect to the submission of such request.

Affected System Operator shall keep Interconnection Customers 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 Interconnection Customers to participate in all discussions with the IRS regarding such request for a private letter ruling. Affected System Operator shall allow Interconnection Customers to attend all meetings with IRS officials about the request and shall permit Interconnection Customers to prepare the initial drafts of any follow-up letters in connection with the request.

Subsequent Taxable Events.

If, within 10 years from the date on which the relevant Affected System Upgrade Facilities are placed in service, (i) Interconnection Customers Breach the covenants contained in Article 3.11.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Affected System Operator retains ownership of Affected System Upgrade Facilities, the Interconnection Customers shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Affected System Operator, calculated using the methodology described in Article 3.11.4 and in accordance with IRS Notice 90-60.

Contests.

In the event any Governmental Authority determines that Affected System Operator's receipt of payments or property constitutes income that is subject to taxation, Affected System

Operator shall notify Interconnection Customers, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely

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written request by Interconnection Customers and at Interconnection Customers' sole expense, Affected System Operator may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customers' written request and sole expense, Affected System Operator may file a claim for refund with respect to any taxes paid under this Article 3.11, whether or not it has received such a determination. Affected System Operator reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Affected System Operator shall keep Interconnection Customers informed, shall consider in good faith suggestions from Interconnection Customers about the conduct of the contest, and shall reasonably permit Interconnection Customers or an Interconnection Customers' representative to attend contest proceedings.

Interconnection Customers shall pay to Affected System Operator on a periodic basis, as invoiced by Affected System Operator, Affected System Operator's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest, including any costs associated with obtaining the opinion of independent tax counsel described in this Article 3.11.7. The Affected System Operator may abandon any contest if the Interconnection Customers fail to provide payment to the Affected System Operator within thirty (30) Calendar Days of receiving such invoice. At any time during the contest, Affected System Operator may agree to a settlement either with Interconnection Customers' consent or after obtaining written advice from nationally-recognized tax counsel, selected by Affected System Operator, but reasonably acceptable to Interconnection Customers, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customers' obligation shall be based on the amount of the settlement agreed to by Interconnection Customers, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. The Affected System Operator may also settle any tax controversy without receiving the Interconnection Customers' consent or any such written advice; however, any such settlement will relieve the Interconnection Customers from any obligation to indemnify Affected System Operator for the tax at issue in the contest (unless the failure to obtain written advice is attributable to the Interconnection Customers' unreasonable refusal to the appointment of independent tax counsel).

Refund.

In the event that (a) a private letter ruling is issued to Affected System Operator which holds that any amount paid or the value of any property transferred by Interconnection Customers to Affected System Operator under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Affected System Operator in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Affected System Operator under the terms of this Agreement is not taxable to Affected System Operator, (c) any abatement, appeal, protest, or other contest results in a determination

that any payments or transfers made by Interconnection Customers to Affected System Operator are not subject to federal income tax, or (d) if Affected System Operator receives a refund from

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any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customers to Affected System Operator pursuant to this Agreement, Affected System Operator shall promptly refund to Interconnection Customer the following:

- (i) Any payment made by Interconnection Customers under this Article 3.11 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,
- (ii) Interest on any amounts paid by Interconnection Customers to Affected System Operator for such taxes which Affected System Operator did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date payment was made by Interconnection Customers to the date Affected System Operator refunds such payment to Interconnection Customers, and
- (iii) With respect to any such taxes paid by Affected System Operator any refund or credit Affected System Operator receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Affected System Operator for such overpayment of taxes (including any reduction in interest otherwise payable by Affected System Operator to any Governmental Authority resulting from an offset or credit); provided, however, that Affected System Operator will remit such amount promptly to Interconnection Customers only after and to the extent that Affected System Operator has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Affected System Operator's Attachment Facilities.

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

Taxes Other Than Income Taxes.

Upon the timely request by Interconnection Customers, and at Interconnection Customers' sole expense, Affected System Operator shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Affected System Operator for which Interconnection Customers may be required to reimburse Affected System Operator under the terms of this Agreement. Interconnection Customers shall pay to Affected System Operator on a periodic basis, as invoiced by Affected System Operator, Affected System Operator's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customers and Affected System Operator shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by

Interconnection Customers to Affected System Operator for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection

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Customers will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Affected System Operator.

Tax Status; Non-Jurisdictional Entities.

Tax Status.

Each Party shall cooperate with the other Parties to maintain the other Parties' tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of the Interconnection Customers with respect to the issuance of bonds.

Modification.

General

If, prior to the In-Service Date, the Affected System Operator proposes to modify the Affected System Upgrade Facilities, the Affected System Operator must provide to the NYISO at least ninety (90) Calendar Days in advance of the commencement of the work, or such shorter period upon which the Parties may agree, sufficient information for the NYISO to evaluate the impact of the proposed modification on the reliable interconnection of Interconnection Customers' Small Generating Facilities to the New York State Transmission System. The NYISO's agreement to the proposed modification shall not be unreasonably withheld, conditioned, or delayed if the proposed modification is reasonably related to the interconnection of the Small Generating Facilities and will enable Interconnection Customers' Small Generating Facilities to reliably interconnect to the New York State Transmission System and will not impose additional costs to the Interconnection Customer greater than the estimated cost for the Affected System Upgrade Facilities identified in the Facility Study.

Standards.

Additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

Modification Costs.

Interconnection Customers shall not be assigned the costs of any additions, modifications, or replacements that Affected System Operator make to the Affected System Upgrade Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Affected System Upgrade Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the ISO OATT, except in accordance with the cost allocation procedures in Attachment S of the ISO OATT.

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ARTICLE 4. TESTING AND INSPECTION

Initial Testing and Modifications.

In accordance with the Milestones set forth in Appendix A, Interconnection Customers shall test the Affected System Upgrade Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Interconnection Customers shall make any modifications to the facilities that are found to be necessary as a result of such testing. Interconnection Customers shall bear the cost of all such testing and modifications

Notice of Testing.

The Interconnection Customers shall notify the Affected System Operator in advance of its performance of tests of the Affected System Upgrade Facilities.

ARTICLE 5. COMMUNICATIONS

No Annexation.

Any and all equipment placed on the premises of a Party during the term of this Agreement shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

ARTICLE 6. PERFORMANCE OBLIGATIONS

EPC Services.

Interconnection Customers shall perform the EPC Services described in Appendix A.

ARTICLE 7. COST OBLIGATIONS

Cost Responsibilities

Interconnection Customers will be responsible for all costs associated with the EPC Services. Each Interconnection Customer shall be responsible for its respective Invoice Share of any monthly costs incurred by Affected System Operator associated with the EPC Services in accordance with this Agreement; *provided, however*, that if the Small Generator Interconnection Agreement of one of the Small Generating Facilities is terminated, then the Interconnection Customer of the other Small Generating Facility shall be fully responsible for such costs.

Provision and Application of Security

Each Interconnection Customer shall provide Affected System Operator with Security in the amount of one half of the amount stated in Article 3.2.12 for the Affected System Operator to

execute the responsibilities enumerated to Affected System Operator under Section 3.2. If an Interconnection Customer: (i) does not pay an invoice issued by Affected System Operator

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pursuant to Article 8.1 within the timeframe set forth in Article 8.3 or (ii) does not pay any disputed amount into an independent escrow account pursuant to Article 8.4, Affected System Operator may draw upon Interconnection Customers' Security to recover such payment. The Interconnection Customers' Security shall be reduced on a dollar-for-dollar basis for each Interconnection Customer's payments made to the Affected System Operator associated with the performance of the EPC Services.

ARTICLE 8. INVOICE

General.

To the extent that any amounts are due to the Interconnection Customers or Affected System Operator under this Agreement, the owed Party, as applicable, shall submit to the other Part(ies), on a monthly basis, an invoice of amounts due for the preceding month. For the purposes of this Article 8.1, Interconnection Customers agree to accept a single monthly invoice stating the Invoice Share owed by each respective Interconnection Customer. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Interconnection Customers and Affected System Operator may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts one Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party. Within six months after the Completion Date, Interconnection Customers or Affected System Operator, as applicable, shall provide a final invoice to the other Part(ies) of any remaining amounts due associated with the EPC Services.

Refund of Remaining Security/Case and Overpayment Amount

The Affected System Operator shall release or refund to each Interconnection Customer any remaining portions of its Security or cash payment provided by each Interconnection Customer pursuant to Article 7.1.1 and any amount each Interconnection Customer has overpaid as described in Section 7.4 within thirty (30) days of the later of: (i) the Interconnection Customers' payment of any final invoice to the Affected System Operator, and (ii) Interconnection Customers' completion of the EPC Services.

Payment.

Invoices shall be rendered to the paying Party at the address specified in Appendix B hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices will not constitute a waiver of any rights or claims the paying Party may have under this Agreement.

Disputes.

In the event of a billing dispute between Parties, the Party owed money shall continue to perform under this Agreement as long as the other Party: (i) continues to make all payments not in dispute; and (ii) pays to the Party owed money or into an independent escrow account the

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portion of the invoice in dispute, pending resolution of such dispute. If the Party that owes money fails to meet these two requirements for continuation of service, then the Party owed money may provide notice to the other Party of a Default pursuant to Article 12. 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 9. REGULATORY REQUIREMENTS AND GOVERNING LAW

Regulatory Requirements

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require a Party to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

Governing Law.

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

This Agreement is subject to all Applicable Laws and Regulations.

Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

ARTICLE 10. NOTICES

General.

Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to the other Parties and any instrument required or permitted to be tendered or delivered by a Party in writing to the other Parties shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix B hereto.

A Party may change the notice information in this Agreement by giving five (5) Business Days written notice prior to the effective date of the change.

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■■■■■ **Billings and Payments.**

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

Alternative Forms of Notice.

Any notice or request required or permitted to be given by a Party to the other Parties and not required by this Agreement to be given in writing may be so given by facsimile or email to the email addresses set out in Appendix B hereto.

ARTICLE 11. FORCE MAJEURE

General

Economic hardship is not considered a Force Majeure event. A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing 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 12. DEFAULT

General.

No Breach shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Parties. Upon a Breach, the non-Breaching Parties acting together 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. For purposes of this provision, if one or both of the Interconnection Customers is the Breaching Party, the non-Breaching parties are solely the NYISO and the Affected System Operator.

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Right to Terminate.

If a Breach is not cured as provided in this Article 12, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

ARTICLE 13. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

Indemnity.

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save harmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, the alleged violation of any Environmental Law, or the release or threatened release of any Hazardous Substance, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties (any and all of these a “Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of its obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any Hazardous Substance.

Indemnified Party.

If a Party is entitled to indemnification under this Article 13 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article ■■■■, 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.

Indemnifying Party.

■■■■ Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 13, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

Indemnity Procedures.

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

commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 13.1 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

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Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

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

No Consequential Damages.

Other than the indemnity obligations set forth in Article 13.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including ~~negligence~~, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

Insurance.

The Interconnection Customers shall, at their own expense, maintain in force general liability insurance without any exclusion for liabilities related to the EPC Services undertaken pursuant to this Agreement. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the Affected System Upgrade Facilities. Such insurance shall be Commercial General Liability Insurance including, but not limited to, bodily injury, property damage, products/completed operations, contractual

and personal injury liability with a combined single limit of Five Million Dollars (\$5 million) per occurrence, Two Million Dollars (\$2 million) annual aggregate. The Interconnection Customers

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shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Such insurance shall be obtained from an insurance provider authorized to do business in New York State where the Affected System Upgrade Facilities are to be located. Certification that such insurance is in effect shall be provided upon request of the Affected System Operator. Interconnection Customers of sufficient creditworthiness may propose to selfinsure for such liabilities, and such a proposal shall not be unreasonably rejected.

The NYISO and Affected System Operator agree to maintain general liability insurance or self-insurance consistent with the existing commercial practice. Such insurance or selfinsurance shall not exclude the liabilities undertaken pursuant to this Agreement.

The Parties further agree to notify one another whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

ARTICLE 14. ASSIGNMENT

Assignment.

This Agreement may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Parties in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement. Any financing arrangement entered into by the Interconnection Customer 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 Affected System Operator of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Affected System Operator with proof that it meets the requirements of Articles 7.2 and 13.3. 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 15. SEVERABILITY

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

ARTICLE 16. COMPARABILITY

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

ARTICLE 17. CONFIDENTIALITY

Confidentiality.

Certain information exchanged by the Parties during the term of this Agreement shall constitute confidential information ("Confidential Information") and shall be subject to this Article 17.

If requested by a Party receiving information, the Party supplying the information shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

Term.

During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 17, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

Confidential Information.

The following shall constitute Confidential Information: (1) any non-public information that is treated as confidential by the disclosing Party and which the disclosing Party identifies as Confidential Information in writing at the time, or promptly after the time, of disclosure; or (2) information designated as Confidential Information by the NYISO Code of Conduct contained in Attachment F to the ISO OATT.

Scope.

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 17.9 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.

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Release of Confidential Information.

No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be considering providing financing to or equity participation with Interconnection Customers, 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 17 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 17.

Rights.

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

No Warranties.

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.

Standard of Care.

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this Agreement or its regulatory requirements, including the ISO OATT and NYISO Services Tariff. The NYISO shall, in all cases, treat the information it receives in accordance with the requirements of Attachment F to the ISO OATT.

Order of Disclosure.

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its

counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

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Termination of Agreement.

Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Parties, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties pursuant to this Agreement.

Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 17. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 17, 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 17, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 17.

Disclosure to FERC, its Staff, or a State.

Notwithstanding anything in this Article 17 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement or the ISO OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

Required Notices Upon Requests or Demands for Confidential Information

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

ARTICLE 18. INTERCONNECTION CUSTOMER NOTICES OF ENVIRONMENTAL RELEASES

Each Interconnection Customer shall notify the other Parties, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Affected System Upgrade Facilities, each of which may reasonably be expected to affect the other Parties. 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 (24) hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Parties copies of any publicly available reports filed with any Governmental Authorities addressing such events.

ARTICLE 19. INFORMATION REQUIREMENT

Information Acquisition

Interconnection Customers shall submit specific information regarding the electrical characteristics of their facilities to the other Parties as described below any in accordance with Applicable Reliability Standards.

Information Submission by Interconnection Customer

The initial information submission by Interconnection Customers shall occur no later than the date(s) specified in the Milestones set forth in Appendix A to this Agreement. On a monthly basis Interconnection Customers shall provide the Affected System Operator and NYISO a status report on the construction and installation of the Affected System Upgrade Facilities, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

Information Supplementation

Interconnection Customers shall supplement their information submissions described above in this Article 19 with any and all “as built” information or “as tested” performance

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information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist.

ARTICLE 20. INFORMATION ACCESS AND AUDIT RIGHTS

Information Access.

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting Party”) information that is in the possession of the Disclosing Party and is necessary in order for the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 20.1 and to enforce their rights under this Agreement.

Reporting of Non-Force Majeure Events.

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

Audit Rights.

Subject to the requirements of confidentiality under Article 17 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit at its own expense the other Party’s accounts and records pertaining to the other Party’s performance or satisfaction of its obligations under this Agreement. Such audit rights shall include audits of the other Party’s costs, and calculation of invoiced amounts. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to the Party’s performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 20.4 of this Agreement.

Audit Rights Periods.

Audit Rights Period for Construction-Related Accounts and Records.

Accounts and records related to the design, engineering, procurement, and construction of the Affected System Upgrade Facilities shall be subject to audit for a period of twenty-four (24)

months following the issuance of a final invoice in accordance with Article 8.1 of this Agreement.

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Audit Rights Period for All Other Accounts and Records.

Accounts and records related to a Party's performance or satisfaction of its obligations under this Agreement other than those described in Article 20.4.1 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 (24) 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 (24) months after the event for which the audit is sought.

Audit Results.

If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

ARTICLE 21. SUBCONTRACTORS

General.

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

Responsibility of Principal.

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Affected System Operator be liable for the actions or inactions of an Interconnection Customer or its subcontractors with respect to obligations of such Interconnection Customer under Article 3 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

No Limitation by Insurance.

The obligations under this Article 21 will not be limited in any way by any limitation of subcontractor's insurance.

ARTICLE 22. DISPUTES

Submission.

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance (a “Dispute”), such Party shall provide the other Parties with written notice of the Dispute (“Notice of Dispute”). Such Dispute shall be referred to a

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designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated representatives are unable to resolve the Dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Parties' receipt of the Notice of Dispute, such Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

External Arbitration Procedures.

Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, the Parties shall invoke the assistance of the FERC's Dispute Resolution Service to select an arbitrator. In each case, the arbitrator shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 22, the terms of this Article 22 shall prevail.

Arbitration Decisions.

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

Costs.

Each Party shall be responsible for its own costs incurred during the arbitration process and for its per capita share of the costs of the single arbitrator.

Termination.

Notwithstanding the provisions of this Article 22, any 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.

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ARTICLE 23. REPRESENTATIONS, WARRANTIES AND COVENANTS

General.

Each Party makes the following representations, warranties and covenants:

Good Standing.

Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the State of New York; and that it has the corporate power and authority to own its property, carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

Authority.

Such Party has the right, power and authority to enter into this Agreement, to become a Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except 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).

No Conflict.

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

Consent and Approval.

Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 24. MISCELLANEOUS

Binding Effect.

This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

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Conflicts.

If there is a discrepancy or conflict between or among the terms and conditions of this cover agreement and the Appendices hereto, the terms and conditions of this cover agreement shall be given precedence over the Appendices, except as otherwise expressly agreed to in writing by the Parties.

Rules of Interpretation.

This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa, except for the terms Interconnection Customer and Interconnection Customers, which are defined in the introductory paragraph; (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, 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 ■■■■■ing the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

Compliance.

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

Joint and Several Obligations.

Each Interconnection Customer shall be jointly and severally liable with the other Interconnection Customer for all obligations of the Interconnection Customer or Interconnection Customers under this Agreement. Except as otherwise stated herein, the obligations of NYISO,

each Interconnection Customer, and Affected System Operator are several, and are neither joint nor joint and several.

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Entire Agreement.

This Agreement, including all Appendices and Schedules attached hereto, constitutes 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 ■■■■ respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

No Third Party Beneficiaries.

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and permitted their assigns.

Waiver.

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

Headings.

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

Multiple Counterparts.

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

Amendment.

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

Modification by the Parties.

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

Reservation of Rights.

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NYISO and the Affected System Operator shall have the right to make unilateral filings with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and each of the Interconnection Customers shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

No Partnership.

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

Other Transmission Rights.

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, or transmission congestion rights that the Interconnection Customer 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 Affected System Upgrade Facilities.

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IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

New York Independent System Operator, Inc.

By: _____

Name: _____

Title:

Date:

Holcim (US) Inc.

By:

Name: _____

Title:

Date:

Hecate Energy Albany 1 LLC

By:

Name: _____

Title:

Date:

Hecate Energy Albany 2 LLC

By:

Name: _____

Title:

Date:

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APPENDICES

Appendix A

EPC Services

Appendix B

Addresses for Delivery of Notices and Billings

Appendix C

In-Service Date

Appendix D

Affected System Upgrade Facilities Preliminary Drawings

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APPENDIX A

EPC SERVICES

1. Affected System Upgrade Facilities

The Affected System Upgrade Facilities consist of upgrades to electrical equipment and facilities at the Lafarge Substation, which will include:

- one (1) protection cabinet within the existing control house;
- power, protection and control, and communications cable;
- circuit and equipment wiring;
- relays, cabinet, and equipment; and
- communications panel and equipment.

Preliminary schematic and physical drawings of the Affected System Upgrade Facilities are included in Appendix D.

2. Interconnection Customers' Scope of Work and Responsibilities

The Interconnection Customers will design and construct the Affected System Upgrade Facilities in accordance with the following requirements, to the extent not inconsistent with the terms of this Agreement, the ISO OATT or applicable NYISO Procedures: NYISO requirements, industry standards and specifications regulatory requirements, the Affected System Operator's applicable specifications (RVN-812-U-006 *Substation Construction Specification*), the Small Generator Facilities Study for Q#570 - Albany County Solar, the Small Generator Facilities Study for Q#598 - Albany County II Solar, the Connecting Transmission Owner's applicable Electric System Bulletins ("ESBs"), provided at the following website: <https://www.nationalgridus.com/ProNet/Technical-Resources/Electric-Specifications>, the System Protection and Interconnection Customer Attachment Facilities Electric Installation Specification for Albany 1 Solar Project (Queue #570) and the System Protection and Interconnection Customer Attachment Facilities Electric Installation Specification for Albany 2 Solar Project (Queue #598) each provided as Appendix C to the Facilities Studies for the Albany County Solar Projects ("Project Specific Specifications"), and Good Utility Practice.

The design of the Affected System Upgrade Facilities shall be under the direction of a licensed and currently registered Professional Engineer in the State of New York. The Interconnection Customers will submit resumes of the candidates that will prepare the relay settings.

To the extent not inconsistent with the terms of this Agreement, the ISO OATT or

applicable NYISO Procedures, Interconnection Customer's scope of work and responsibilities include the following:

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A. Permits

The Interconnection Customers will be responsible for all permits and approvals for the Affected System Upgrade Facilities at the Affected System Operator Substation, including the local electrical building permit.

B. Quality Assurance

The Interconnection Customers shall have a Quality Assurance Program. Persons established by the program to be responsible for quality functions shall have well-defined responsibilities, adequate resources and sufficient authority to enforce requirements, to identify, initiate and provide solutions to problems and to verify the effectiveness of the solutions.

The Quality Assurance Program shall be submitted upon request for Affected System Operator and Connecting Transmission Owner review.

The Interconnection Customers shall carefully review all manufacturers' installation instructions and shall not deviate from the instructions unless specifically instructed in writing by Affected System Operator or Connecting Transmission Owner.

All nonconforming materials, equipment, component parts must be identified, isolated, or removed from the project immediately after the nonconforming part is identified.

The Interconnection Customers shall initiate and supervise all safety precautions in connection with the erection and installation of the Affected System Upgrade Facilities. The construction contractor and subcontractor personnel shall comply with all regulatory safety codes, and all safety regulations and procedures set forth by the Affected System Operator.

The Interconnection Customers shall develop a Quality Plan for the Design, Procurement, Material Receipt, Construction and Commissioning of the Facilities, as applicable, that outlines the sequence of activities and the quality control and inspection activities that will be performed to demonstrate compliance with the Quality program.

At a minimum, the Quality Plan shall address these activities performed by the design, construction firms and subcontractors:

- design;
- procurement;
- material deliveries and inspections;
- foundation installation;
- steel erection; and
- commissioning.

C. Project Management

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The Interconnection Customers shall assign a Project Manager. The Project Manager shall be the main interface for all design, procurement, construction, commissioning and schedule issues related to the Affected System Upgrade Facilities.

The Interconnection Customers shall establish a Project Team of qualified personnel to perform the required services. Members of the Project Team shall be dedicated to assure continuity. The Interconnection Customers shall notify Affected System Operator and Connecting Transmission Owner of any changes to the Project Team. Affected System Operator will assign a Project Manager to interface with the Project Manager for The Interconnection Customers.

D. Design, Calculations, and Studies

1) Calculations and Studies

The Interconnection Customers shall be responsible for all calculations and studies as outlined in this section. Calculations shall be provided for the following design areas and shall be consistent with industry standards and practices:

- fault currents (ISC);
- DC battery and charger sizing;
- power and control cable ampacity requirements per NEC;
- control and power cable voltage drops per NEC; and
- control cable sizing and conduit fill calculations per NEC.

Studies shall be provided for the following areas and shall be consistent with Industry Standards and Practices:

- relay protection coordination with relay settings.

2) Drawing Review Packages

The drawing packages submitted for review must contain all of the requested information required for each package. Partial packages will not be accepted without prior approval of Affected System Operator or Connecting Transmission Owner. Issued for Permit, Issued for Construction, and Record Drawings shall be signed and sealed by a licensed and currently registered Professional Engineer in the State of New York.

All drawing packages, calculations, studies, reports, and other materials shall be submitted in electronic formats to a single point of contact at the Affected System Operator, NYISO, and Connecting Transmission Owner. Hardcopies are not required. All comments, queries, and changes to the packages will be addressed in subsequent packages.

The following packages are required:

30% submittal:

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- basis of design;
- single line diagram;
- control house layout;
- relay panel layout;
- relay panel bill of materials and specification;
- resumes of relay settings engineer; and
- DC battery and charger sizing.

60% submittal:

- 30% submittal documents;
- DC schematics;
- AC schematics;
- AC & DC panelboard drawings;
- AC elementary diagrams;
- communications schematics; and
- communications equipment layout and bill of materials.

90% submittal (issued for permit):

- 60% submittal documents;
- cable schedule;
- power and control cable ampacity requirements per NEC;
- control and power cable voltage drops per NEC;
- control cable sizing and conduit fill calculations per NEC;
- wiring diagrams; and
- relay settings basis documents.

100% submittal (issued for construction):

- 90% submittal documents;
- revised aspen model;
- relay settings basis documents;
- relay logic diagrams;
- relay settings files;
- SEL AcSELeRator files and GE Entervista files.

Record drawings:

- refer to the section on close-out documentation.

3) *Design and Construction Schedule*

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The Interconnection Customers shall, within twenty (20) calendar days after the date of this Agreement, prepare and submit to Affected System Operator and Connecting Transmission Owner for acceptance, a complete project schedule (Microsoft Project) showing in detail the design, procurement, construction and commissioning activities for the Project. This project schedule will become the baseline schedule for the Study.

The Interconnection Customers shall provide a schedule update on a monthly basis showing progress as a percentage (%) complete against each baseline schedule activity.

The Interconnection Customers shall provide a written report each month, with the updated schedule, outlining progress for all activities, explaining any activities delayed, and planned corrective action, if required, to restore delayed activities to meet the Study Baseline schedule.

This baseline schedule will provide the basis for visibility of work progress and valid schedule information necessary to make timely management decisions about resources and action plans for recovery on the schedule.

E. Procurement

At their own cost, the Interconnection Customers shall supply, install, and commission all material, equipment and services that are required to complete the Affected System Upgrade Facilities.

The Interconnection Customers shall prepare purchase specifications, procure, deliver to site, off-load, and secure all equipment and materials necessary for the construction and commissioning of the complete Affected System Upgrade Facilities.

All specifications shall be submitted to Affected System Operator and Connecting Transmission Owner for review prior to the placement of any purchase orders. For items typically not requiring a procurement specification, The Interconnection Customers shall provide Affected System Operator and Connecting Transmission Owner with a Bill of Materials (BoM) and cut sheets on the items for review.

F. Training

The Interconnection Customers shall be responsible for training Affected System Operator and Connecting Transmission Owner personnel in the safe operation of the Affected System Upgrade Facilities. Training will be required for any new equipment or relays that this project introduces to the Affected System Operator. Specific vendor training may be required as determined by Affected System Operator and Connecting Transmission Owner. Instruction will include but will not be limited to:

- description of the electrical system layout including details of the HV, LV and

- data cable routes;
location of plant and equipment including points of isolation and grounding;

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- identification and function of protection relays and associated equipment;
- description of interfaces with the utility grid;
- safe operation of and safe access to the Affected System Upgrade Facilities;
- special precautions and procedures for circumstances that may not be routine for experienced and qualified personnel; and
- simple assessments to demonstrate comprehension of the program.

At the conclusion of the training, operating personnel shall understand the one-line diagram, installed equipment and its operation, panel equipment layouts, alarms, relay operations, meters, interlocks, communication system(s), and major equipment O&M manuals.

Training will be conducted on-site and during normal work hours.

Training shall consist of a classroom portion and a field portion with a minimum of one (1) day dedicated to each type of training. The specific subjects covered shall be reasonably adjusted to suit the needs of the operational personnel.

G. Commissioning, Energization, and Turn-Over

1) General

The Interconnection Customers shall be responsible for performing all Affected System Upgrade Facilities commissioning in accordance with documented and accepted industry practices. All test equipment used for commissioning shall have current (within twelve (12) months) calibration certificates stating that calibration tests were performed with standards that are certified by, or are directly traceable to, the National Standards Institute of Technology. The Interconnection Customers shall provide Affected System Operator's Representative with a Commission Test Plan, for review, prior to the commencement of testing. The Test Plan shall include a list of all testing planned, test equipment to be used, the company performing the commissioning and the qualifications of the commissioning personnel.

2) Equipment and Component Testing

The Interconnection Customers shall be responsible for performing all Affected System Upgrade Facilities testing in accordance with NETA Acceptance Testing Specification for Electric Power Distribution Equipment and Systems. Equipment and component testing shall be in accordance with the Commissioning Test Plan. The Interconnection Customers will provide Affected System Operator with a complete commissioning package at the conclusion of commissioning. Package to include all test results, test equipment calibration certificates, and all equipment nameplate data. Omicron/Doble test sets are required for all power factor testing and for breaker travel/timing testing.

3) Relay Settings and Testing

The Interconnection Customers shall load all relay settings into relays and conduct preliminary testing as shown in Commissioning Test Plans. Affected System Operator shall

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verify that approved settings have been loaded prior to conducting the final relay testing. Affected System Operator shall create relay test plans and conduct final relay testing. The Interconnection Customers shall specify equipment proposed for field relay testing prior to the commencement of testing. This equipment is subject to Affected System Operator approval.

4) Complete Affected System Upgrade Facilities Functional Testing

The Interconnection Customers shall be required to perform functional checks of the electrical circuits in accordance with the Commissioning Test Plan. The Interconnection Customers shall provide a Test Plan, for Affected System Operator approval for the process planned to functionally test the Affected System Upgrade Facilities

5) Commissioning Drawings

The Interconnection Customers shall highlight each portion of a circuit with a yellow marker as the testing is completed. A circuit shall not be highlighted until it is completely tested (all combinations of contact positions, all logic paths, etc.). Use notes in pencil to keep track of progress while the circuit is being tested. A colored copy of the elementary diagram, working drawings are to be provided to Affected System Operator at the completion of the work as confirmation that all circuits have been completely tested. The Interconnection Customers shall use these same drawings for completing the As-Built drawings.

6) Energization and Turn-Over to Affected System Operator

The Interconnection Customers shall be responsible for developing a switching plan for energizing the Affected System Upgrade Facilities. This switching plan will incorporate The Interconnection Customers' final commissioning steps in checking relays, voltages and currents. The switching plan will be subject to review by Affected System Operator. The Interconnection Customers' switching plan shall incorporate steps for the energization of The Interconnection Customers' collector substation.

Affected System Operator will perform all switching at the Affected System Upgrade Facilities.

All switching, tagging, and grounding performed by The Interconnection Customers in conjunction with the energization of the Affected System Upgrade Facilities shall utilize Qualified Personnel as defined by OSHA and shall conform to all applicable OSHA requirements as well as the Transmission Owner's Switching and Tagging requirements.

Upon successful energization Final Acceptance by Affected System Operator, control shall be turned over to Affected System Operator.

H. Close-Out Documentation

Final Acceptance of the Project Facilities by Affected System Operator is contingent upon the completion of any remaining “punch list” and the following closeout items. The

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completion of the following “punch list” and closeout items to be within a reasonable time after the final energization/in-service date but in no event more than thirty (30) days:

- record drawings signed and sealed by a licensed and currently registered professional engineer in the State of New York;
- design and construction specifications;
- design calculations;
- design studies;
- commissioning testing and documentation;
- manufacturer instruction books;
- manufacturer certified test reports;
- manufacturer warranty information; and
- update and add new “as-left” relay settings in the Aspen relay data base. All contractors are required to have Aspen relay data base training before access is allowed.

The record drawing update process shall be completed within ninety (90) days of final energization.

3. Affected System Operator’s Scope of Work and Responsibilities

A. Project Management

The Affected System Operator shall assign a Project Manager. The Project Manager shall be the main interface for all design, procurement, construction, commissioning and schedule issues.

B. Documentation

Affected System Operator shall submit the following documentation to the Interconnection Customers no later than twenty (20) calendar days after the execution of this agreement:

- As-built drawings of the existing substation owned by the Affected System Operator
- As-built relay settings of the existing substation owned by the Affected System Operator
- Affected System Operator’s design specifications including but not limited to the latest version of RV812-U-006 *Substation Construction Specification*.

Affected System Operator shall submit the following documentation to the Interconnection Customers no later than two (2) weeks prior to relay testing to ensure coordination and cooperation between the parties:

- Relay Test Plan

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C. Submittal Reviews

Affected System Operator will complete all engineering reviews, field verifications, and witness tests in accordance with this Agreement and the Affected System Operator’s specifications. All reviews of Interconnection Customers’ design submittals and commissioning plans shall be completed and returned to the Interconnection Customers within ten (10) business days.

D. Access

Subject to Article 3.8 of the Agreement, Affected System Operator hereby grants to Interconnection Customers and their designees a license for temporary access to the Affected System for the purpose of installing the Affected System Upgrade Facilities and otherwise as reasonably necessary for Interconnection Customers to exercise their rights and perform their obligations under the Agreement.

4. Interconnection Customers’ Cost Responsibilities

Interconnection Customers will be jointly and severally responsible for all costs associated with the Affected System Upgrade Facilities. The ASO Estimated Total Costs for the design, construction, and commissioning of the Affected System Upgrade Facilities at LaFarge Substation is \$231,891.

Description	Quantity	Units	Unit Cost	Cost	Comments
Engineering					
Contractor Engineering Design	305	Hours	\$ 140	\$ 42,700	
Lafarge Engineering Labor	30	Hours	\$ 140	\$ 4,200	
Lafarge Engineering Labor	52	Hours	\$ 140	\$ 7,318	
Construction					
Contractor Construction Management	16	Hours	\$ 140	\$ 2,240	Includes travel, per diem, etc.
Testing & Commissioning	48	Hours	\$ 140	\$ 6,720	
Lafarge Construction Management	16	Hours	\$ 140	\$ 2,240	1 person, 1 week, 40hrs/week
Construction Labor	1	Lump Sum	\$ 13,793	\$ 13,793	All labor
In Ground Materials					
Conduit	1	Lot	\$ 5,865	\$ 5,865	Included in Construction Cost
Above Ground Materials					
Control Cable	1	Lot	\$ 552	\$ 552	Included in Construction Cost
Misc. Materials	1	Lot	\$ 6,738	\$ 6,738	Included in Construction Cost
Control House Materials & Equipment					
Relay Panels	1	Each	\$ 60,000	\$ 60,000	
Subtotal				\$ 152,310	
Profit				\$ 13,402	
Lafarge Adders (13%)				\$ 19,600	
Subtotal				\$ 185,512	
Contingency (25%)				\$ 46,378	
Total Estimated Cost				\$ 231,891	

5. Interconnection Customer's Invoice Share

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Interconnection Customer	Invoice Share (%)
Hecate Energy 1	50%
Hecate Energy 2	50%

6. Milestones

Item	Milestone	Date	Responsible Party
1.	Execute EPC Agreement	10/2021	NYISO, Affected System Operator, and Interconnection Customers
2.	Engineering start	Complete	Interconnection Customers
3.	Provide as-builts of Affected System Operator’s existing facilities	10/2021	Affected System Operator
4.	30% design submittal	10/2021	Interconnection Customers
5.	Article 10 Certificate issued for the Interconnection Customers	Complete	Interconnection Customers
6.	Procurement start	01/2022	Interconnection Customers
7.	100% design submittal	03/2022	Interconnection Customers
8.	Construction start	04/2022	Interconnection Customers
9.	Construction end	05/2022	Interconnection Customers
10.	Testing/commissioning	05/2022	Interconnection Customers and Affected System Operator
11.	In-Service Date	05/2022	Interconnection Customers and Affected System Operator
12.	Record drawing submittal	07/2022	Interconnection Customers

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APPENDIX B

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

New York Independent System Operator, Inc.
Attn: Vice President, System and Resource Planning
10 Krey Boulevard
Rensselaer, NY 12144
Phone: (518) 356-6000
Email:

Holcim (US) Inc.:

Attn: David MacLauchlin, Plant Manager
1916 US Route 9W, Ravena, NY 12143
Phone: (518) 795-0529
Email: david.maclauchlin@lafargeholcim.com

Holcim (US) Inc.

Attn: Shelbee L. Hundley
8700 W. Bryn Mawr Ave., Suite 300N, Chicago, IL 60631
Phone: (773) 294-6239
Email: shelbee.hundley@lafargeholcim.com

Hecate Energy Albany 1 LLC:

Attn: Nick Bullinger
Chief Operating Officer
621 West Randolph St.
Chicago, IL 60661
Phone: 312-722-5900
Email: notices@hecateenergy.com

Hecate Energy Albany 2 LLC:

Attn: Nick Bullinger
Chief Operating Officer
621 West Randolph St.
Chicago, IL 60661
Phone: 312-722-5900
Email: notices@hecateenergy.com

Billings and Payments:

Holcim (US) Inc.:

Attn: David MacLauchlin, Plant Manager

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1916 US Route 9W, Ravena, NY 12143
Phone: (518) 795-0529
Email: david.maclauchlin@lafargeholcim.com

Hecate Energy Albany 1 LLC:
Attn: Accounting Department
621 West Randolph St.
Chicago, IL 60661
Phone: 312-722-5900
Email: hefinance@hecateenergy.com

Hecate Energy Albany 2 LLC:
Attn: Accounting Department
621 West Randolph St.
Chicago, IL 60661
Phone: 312-722-5900
Email: hefinance@hecateenergy.com

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**APPENDIX C
IN-SERVICE DATE**

[Date]

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

Holcim (US) Inc.
Attn: Shelbee L. Hundley
8700 W. Bryn Mawr Ave., Suite 300N, Chicago, IL 60631
Phone: (773) 294-6239
Email: shelbee.hundley@lafargeholcim.com

Re: Albany County 1 & 2 Affected System Upgrade Facilities

Dear _____ :

On **[Date]** **[Interconnection Customers]** have completed the Affected System Upgrade Facilities. This letter confirms that **[describe Affected System Upgrade Facilities]** have commenced service, effective as of **[Date plus one day]**.

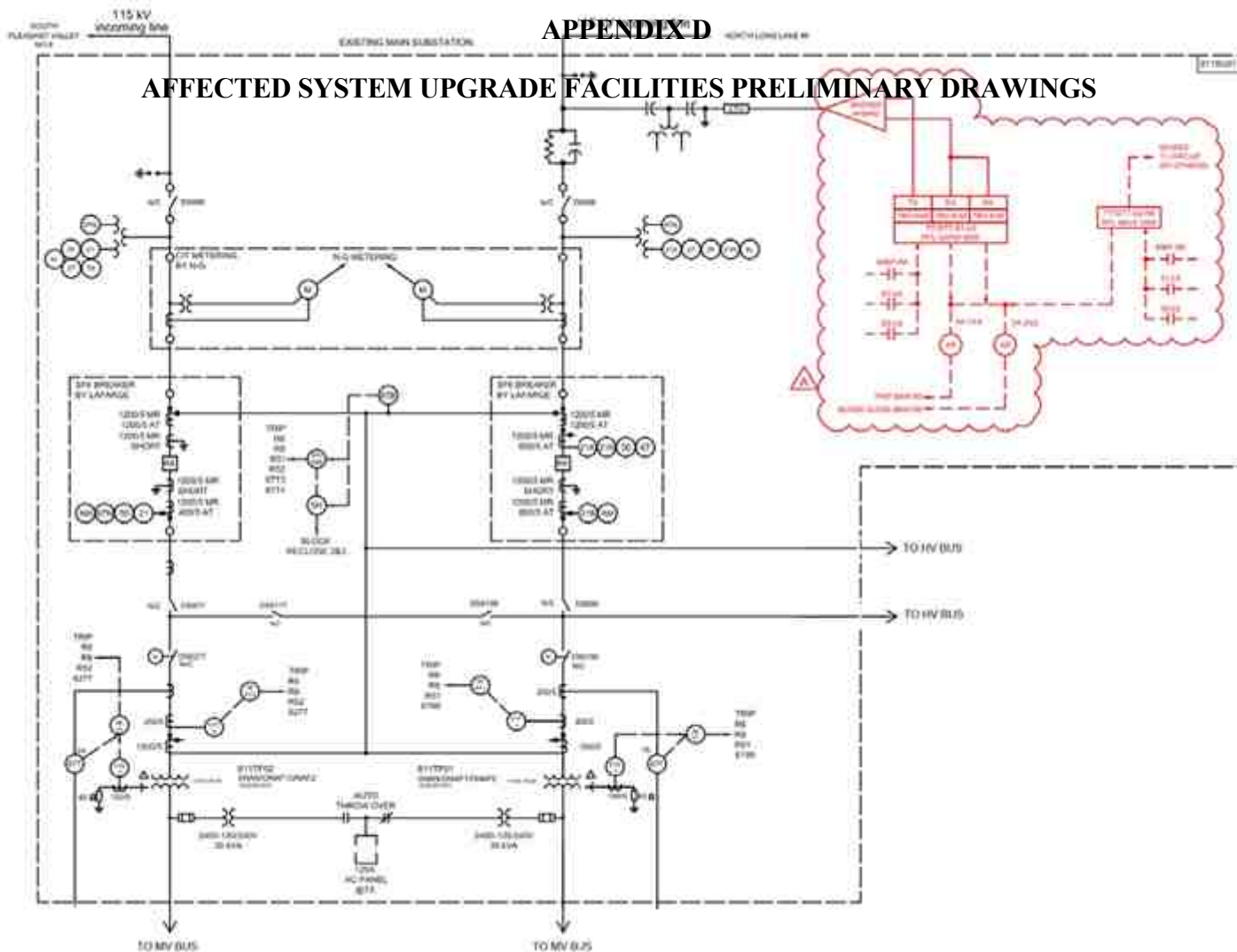
Thank you.

[Signature]

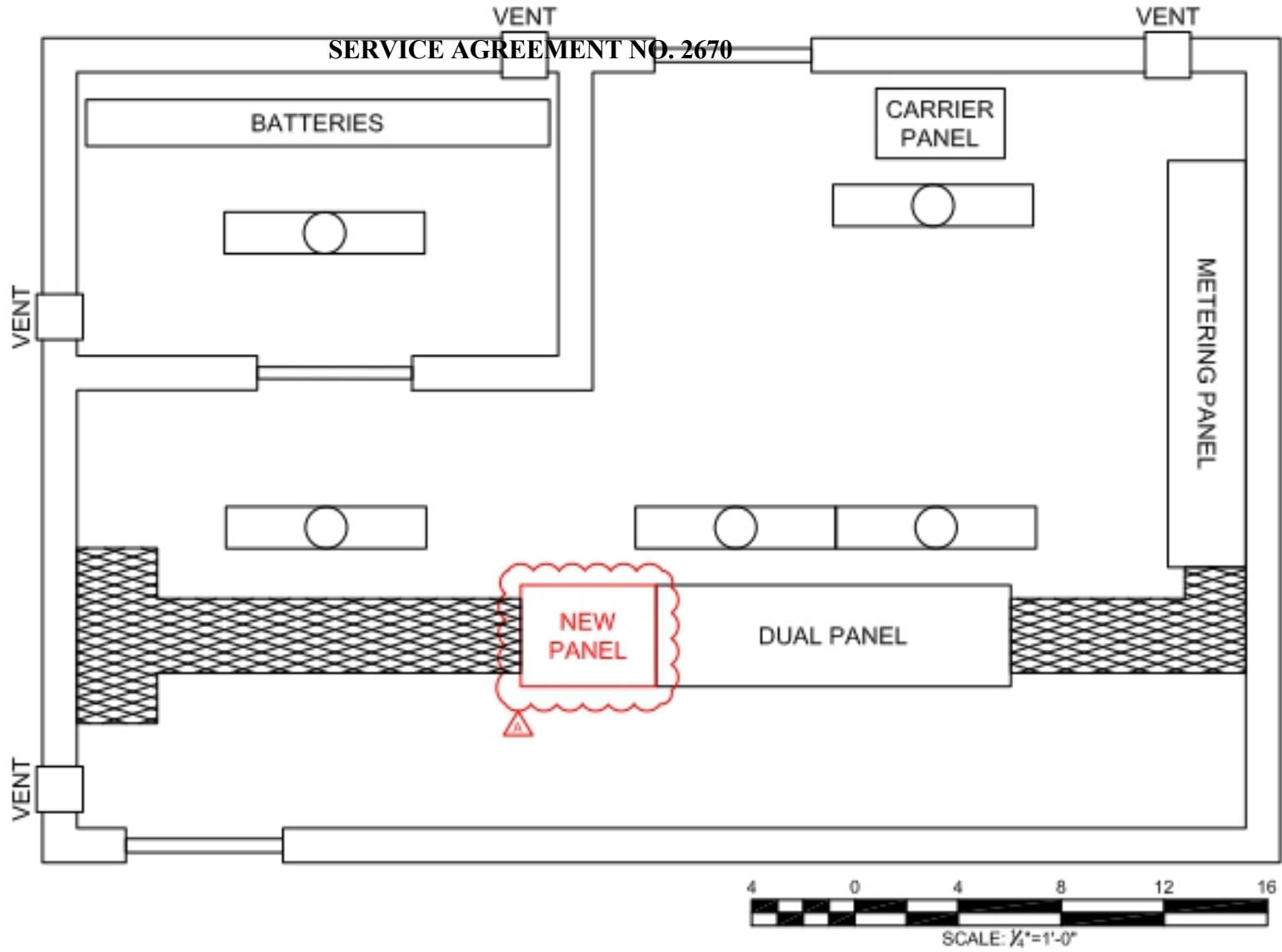
[Interconnection Customers' Representatives]

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