FERC rendition of the electronically filed tariff records in Docket No. ER19- -000

Filing Data:

CID: C000038

Filing Title: 205: NMPC NYPA CRA SA No. 2448 Company Filing Identifier: 1463

Type of Filing Code: 10

Associated Filing Identifier:

Tariff Title: NYISO Agreements Tariff ID: 58

Payment Confirmation: N
Suspension Motion:

Tariff Record Data:

Record Content Description: Agreement No. 2448 Tariff Record Title: CRA between NMPC and NYPA Record Version Number: 0.0.0

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Tariff Record ID: 238

Tariff Record Collation Value: 8083500

Tariff Record Parent Identifier: 2

Proposed Date: 2019-03-01

Priority Order: 500

Record Change Type: New
Record Content Type: 2

Associated Filing Identifier: [Source - if applicable]

Service Agreement No. 2448

COST REIMBURSEMENT AGREEMENT

This COST REIMBURSEMENT AGREEMENT (the “Agreement”), is made and

entered into as of March 1, 2019 (the “Effective Date”), by and between NEW YORK POWER
AUTHORITY ("Authority"), a corporate municipal instrumentality of the State of New York
(“Customer”) and NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid, a
corporation organized and existing under the laws of the State of New York, having an office and
place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the “Company”).
Customer and Company may be referred to hereunder, individually, as a “Party” or, collectively,
as the “Parties”.

WITNESSETH

WHEREAS, Customer is proposing to replace one of the shield wires on the 345 kV
Gilboa-New Scotland Line #1 (“GNS-1”), which connects the NYPA Gilboa Station with the
Company’s New Scotland Station, with Optical Ground Wire (the “Customer Project”); and

WHEREAS, the Company has undertaken a study of its adjoining transmission facilities and has identified equipment on the Company’s transmission system that will require
modifications in order for the Customer Project to be implemented; and

WHEREAS, Customer has requested that Company perform such modifications and other Company Work, as more specifically described below; and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) Customer’s performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below); and (iii) receipt of any and all “Required Approvals”, as set forth in Section 18.1, in a form acceptable to Company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

“Affiliate” means any person or entity controlling, controlled by, or under common control with, any other person or entity; “control” of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

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“Agreement” means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

“Applicable Requirements” shall mean all 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 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, NYISO, NYSRC and NPCC requirements, and any applicable
reliability standards.

“Balance Amount” shall have the meaning set forth in Section 8.1 of this Agreement.
“Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.
“CEII” shall have the meaning set forth in Section 25.4 of this Agreement.
“CIP” shall have the meaning set forth in Section 25.4 of this Agreement.
“Company” shall have the meaning set forth in the preamble to this Agreement.

“Company Reimbursable Costs” means the actual costs and expenses incurred by Company
and/or its Affiliates in connection with performance of the Company Work or otherwise
incurred by Company and/or its Affiliates in connection with the Project or this Agreement,
and including, without limitation, any such costs that may have been incurred by Company
and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall
include, without limitation, the actual expenses for labor (including, without limitation, internal
labor), services, materials, subcontracts, equipment or other expenses incurred in the execution
of the Company Work or otherwise in connection with the Project, all applicable overhead,
overtime costs, all federal, state and local taxes incurred (including, without limitation, all taxes
arising from amounts paid to Company that are deemed to be contributions in aid of
construction), all costs of outside experts, consultants, counsel and contractors, all other third-
party fees and costs, and all costs of obtaining any required permits, rights, consents, releases,
approvals, or authorizations acquired by or on behalf of Company, including, without
limitation, the Required Approvals.

“Company Work” means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

“Convenience Termination Notice” shall have the meaning set forth in Section 7.1 of this Agreement.

“Customer” shall have the meaning set forth in the preamble to this Agreement.

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“Customer Prompt Payment Policy” shall mean the Customer’s Prompt Payment Policy contained in Schedule A attached to this Agreement.

“Customer Required Actions” means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

“Customer Project” shall have the meaning set forth in the preamble to this Agreement. “Damages” shall have the meaning set forth in Section 12.1 of this Agreement.

“Day” means a calendar day, provided, that, if an obligation under this Agreement falls due on
a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

“Defect Notice” and “Defect Notice Period” shall have the meanings specified in Section 3.2 of this Agreement.

“Detailed Project Plan” shall have the meaning set forth in Exhibit A to this Agreement. “Disclosing Party” shall mean the Party disclosing Proprietary Information.
“Dollars” and “$” mean United States of America dollars.

“Effective Date” shall have the meaning specified in the preamble of this Agreement.

“Environment” shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

“Environmental Law” shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

“Existing Facilities” shall have the meaning set forth in Exhibit A to this Agreement.

“Existing Facilities Approvals” shall have the meaning set forth in Exhibit A to this Agreement.

“Facilities Approvals” shall mean the New Facilities Approvals and the Existing Facilities Approvals.

“Facilities Study Report” shall mean that certain Facilities Study Report for the NYPA GilboaNew Scotland Line #1 OPGW Installation, Version 1.1, dated 2/26/18 (NYPA GNS-1 OPGW Project, Queue #440), a copy of which is attached to this Agreement as Exhibit A-1.

“FERC” shall mean the Federal Energy Regulatory Commission.

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“FERC Approval Date” shall mean the date as of which FERC grants approval of this Agreement without condition or modification.

“Force Majeure Event” shall have the meaning set forth in Section 23.1 of this Agreement.

“Good Utility Practice” means any of the practices, methods, and acts engaged in or approved
by a significant portion of the electric utility 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 refer to acceptable practices,
methods, or acts generally accepted in the region in which the Project is located during the
relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC,
NYISO, and NYSRC criteria, rules, guidelines, and standards, where applicable, and as they
may be amended from time to time, including the rules, guidelines, and criteria of any
successor organization to the foregoing entities.

“Hazardous Substances” means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

“Indemnified Party” and “Indemnified Parties” shall have the meanings set forth in Section

12.1 of this Agreement.

“Initial Prepayment” shall have the meaning set forth in Section 7.2 of this Agreement. “IRS” shall mean the US Internal Revenue Service.

“Negotiation Period” shall have the meaning set forth in Section 22.1 of this Agreement.

“NERC” shall mean the North American Electric Reliability Corporation or any successor organization.

“New Facilities” means the personal property assets constituting the facilities to be constructed
and/or modified and placed in service by Company as contemplated in the Facilities Study
Report.

“New Facilities Approvals” shall have the meaning set forth in Exhibit A to this Agreement.
“Non-Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.
“Non-Disclosure Term” shall have the meaning set forth in Section 25.3.4 of this Agreement.

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“Notice to Proceed” shall have the meaning set forth in Section 7.1 of this Agreement.

“NPCC” shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

“NYISO” shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

“NYPSC” shall mean the New York Public Service Commission.

“NYSRC” shall mean the New York State Reliability Council or any successor organization
thereto.

“Party” and “Parties” shall have the meanings set forth in the preamble to this Agreement.

“Preliminary Milestone Schedule” shall have the meaning set forth in Section 5.2 of this Agreement.

“Project” means the Company Work to be performed under this Agreement.

“Project Manager” means the respective representatives of each of the Customer and Company appointed pursuant to Section 10.1 of this Agreement.

“Proprietary Information” means (i) all financial, technical and other non-public or proprietary
information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or
its Affiliates’ agents, servants, contractors, representatives, or employees) to the Receiving
Party or its Representative(s) in connection with this Agreement and that is described or
identified (at the time of disclosure) as being non-public, confidential or proprietary, or the
non-public or proprietary nature of which is apparent from the context of the disclosure or the
contents or nature of the information disclosed, (ii) any market sensitive information

(including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

“Receiving Party” shall mean the Party receiving Proprietary Information.

“Refund Amount” shall have the meaning set forth in Section 8.1 of this Agreement.

“Release” shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

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“Representatives” shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party’s and its Affiliates’ officers, directors, employees, contractors, counsel and representatives.

“Required Approvals” shall have the meaning set forth in Section 18.1 of this Agreement. “Resources” shall have the meaning set forth in Section 23.1 of this Agreement.

“Threat of Release” shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

“Threshold Notice” shall have the meaning set forth in Section 7.1 of this Agreement.

“Total Payments Made” shall have the meaning set forth in Section 8.1 of this Agreement.

“Work” shall mean the Customer Required Actions and/or the Company Work, as applicable.

2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in

full force and effect until performance has been completed hereunder, or until
terminated in accordance with the terms of this Agreement, whichever occurs first,
provided, however, that this Agreement shall not expire or terminate until all
amounts due and owing hereunder have been paid in full as contemplated by this
Agreement.

3.0 Scope of Work

3.1 The Company’s scope of work is set forth in Exhibit A of this Agreement, attached

hereto and incorporated herein by reference (the “Company Work”). This

Agreement does not provide for, and the Company Work shall not include,

provision of generation interconnection service or transmission service.

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3.2 The Company shall use commercially reasonable efforts to perform the Company

Work in accordance with Good Utility Practice. Prior to the expiration of one (1)
year following completion of the Company Work (“Defect Notice Period”),
Customer shall have the right to notify the Company in writing of the need for
correction of defective Company Work that does not meet the standard of this
Section 3.2 (each, a “Defect Notice”). If the Company Work is defective within the
meaning of the prior sentence, then, following its receipt, prior to expiration of the
Defect Notice Period, of a Defect Notice with respect thereto, the Company shall
promptly correct, repair or replace such defective Company Work, as appropriate,
provided, that, Company shall not have any obligation to correct, repair or replace
such defective Company Work unless the defect in the Company Work has (or is
reasonably likely to have) a material adverse impact on the Customer’s
implementation of the Customer Project. The remedy set forth in this Section is
the sole and exclusive remedy granted or available to Customer for any failure of
Company to meet the performance standards set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall use reasonable efforts to

perform the actions described in Exhibit C attached to this Agreement (the

“Customer Required Actions”). All of the Customer Required Actions shall be performed at Customer’s sole cost and expense.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with

such other Party’s contractors, subcontractors and representatives, as needed to

facilitate the Company Wor

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4.0 Changes in the Work

4.1 Subject to Section 4.2, below, (a) any requests for material additions, modifications,

or changes to the Work shall be communicated in writing by the Party making the
request, and (b) if the Parties mutually agree to such addition, modification, or
change to the applicable Work, such agreement shall be set forth in a written
document signed by both Parties specifying such addition, modification or change.
Any additional costs arising from such addition, modification or change to the
Work shall be paid by Customer as part of Company Reimbursable Costs.

4.2 The foregoing notwithstanding, and subject to compliance with the last sentence

of this Section, the Company, without the consent of the Customer, may make any
reasonable change to the Company Work if such change is made in order to comply
with any Applicable Requirement(s), Good Utility Practice, the Company’s
applicable standards, specifications, requirements and practices, or to enable
Company’s utility facilities to continue, commence or recommence commercial
operations in accordance with all applicable legal and regulatory requirements and
all applicable codes and standards (each, a “Company Change”) . The Preliminary
Milestone Schedule shall be adjusted accordingly and any additional costs arising
from such Company Change shall be paid by the Customer as part of Company
Reimbursable Costs when invoiced by the Company in accordance with Section 7.4
of this Agreement. If Company becomes aware of the need to make a Company
Change that is reasonably expected to have a significant impact on cost or schedule
of the Company Work, Company shall provide Customer with written notice of
such contemplated Company Change, each such notice to be provided in advance,
if possible, but, in any event, as soon as may be reasonably practicable under the
circumstances.

5.0 Performance and Preliminary Milestone Schedule; Conditions to Proceed

5.1 Company shall use commercially reasonable efforts to attempt to have Company

Work performed by its direct employees performed during normal working hours.
If Company Work is performed outside of normal working hours, Customer shall
be responsible for paying all actual costs incurred in connection therewith,
including, without limitation, applicable overtime costs, as part of Company
Reimbursable Costs. For the avoidance of doubt: in no event shall the Company
be obligated or required to perform Company Work outside of normal working
hours if the Company determines, in its sole discretion, that such performance
would be unreasonable, unsafe or otherwise not in compliance with Good Utility
Practice.

5.2 The preliminary project milestone schedule for the Company Work and the

Customer Required Actions is set forth in Exhibit B, attached hereto and
incorporated herein by reference (“Preliminary Milestone Schedule”). The

Preliminary Milestone Schedule is a projection only and is subject to change with
or without a written adjustment to such Schedule. Neither Party shall be liable for

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failure to meet the Preliminary Milestone Schedule, any milestone, or any other
projected or preliminary schedule in connection with this Agreement or the Project.

5.3 Commencement of Company Work. Company will proceed with the Company

Work promptly following the later of (i) the FERC Approval Date, or (ii)

Company’s receipt of the Initial Prepayment.

5.4 [Reserved]

5.5 [Reserved]

5.6 Construction Commencement. Anything in this Agreement to the contrary

notwithstanding, Company shall not be obligated to proceed with any construction in connection with the Company Work unless and until all of the following conditions have been satisfied:

(i) all Required Approvals for the Company Work have been received,

are in form and substance satisfactory to the Company, have become
final and non-appealable and commencement of such construction
is permitted under the terms and conditions of such Required
Approvals, and

(ii) all Company Reimbursable Costs invoiced to date have been paid in

full to Company.

6.0 [Reserved]

7.0 Customer Obligation to Pay Company Reimbursable Costs; Invoicing; Taxes

7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs

actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer’s obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Company will provide Customer with copies of such back-up documentation in Company’s possession supporting Company Reimbursable Costs as may be reasonably requested by Customer, from time to time.

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Company shall provide written notice to Customer (“Threshold Notice”) when the
total Company Reimbursable Costs are estimated to have reached $275,000. Upon
issuance of the Threshold Notice, Company shall suspend performance of the
Company Work pending Company’s receipt of a Notice to Proceed (as defined
below). Following Customer’s receipt of the Threshold Notice, Company and
Customer shall consult and Customer shall determine whether it wishes to (a)

deliver an unconditional written direction to Company to complete the Company
Work (“Notice to Proceed”) or (b) terminate this Agreement for convenience by
delivering a written notice thereof to Company (“Convenience Termination

Notice”). Following Company’s receipt of a Notice to Proceed signed by an
authorized representative of Customer, Company will recommence performance of
the Company Work in accordance with and subject to the terms and conditions of
this Agreement. In the event that Customer does not deliver either a Notice to
Proceed or a Convenience Termination Notice on or before one hundred twenty
(120) days following the date of the Threshold Notice, this Agreement, at
Company’s election, shall be deemed terminated for convenience by Customer.

7.2 Once the FERC Approval Date has occurred, Customer shall provide Company

with a prepayment of Three Hundred Sixty-Two Thousand and Eight Hundred
Dollars ($362,800) (“Initial Prepayment”), such amount representing Company’s
current estimate of the Company Reimbursable Costs to perform the Company
Work. The Company shall invoice Customer for the Initial Prepayment. Unless it
elects to do so in its sole discretion, Company shall not be obligated to commence
any Company Work under this Agreement prior to Company’s receipt of the Initial
Prepayment.

7.3 [Reserved]

7.4 Company may invoice Customer, from time to time, for unpaid Company

Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue
performance hereunder after the depletion of any prepayments and invoice
Customer at a later date. All invoices shall be due and payable by Customer thirty

(30) calendar days (excluding legal holidays) from the date of Customer’s receipt
of invoice, as provided in subparagraph 4 of paragraph D set forth in the Customer
Prompt Payment Policy. If any payment due to Company under this Agreement is
not made when due, Customer shall pay Company interest on the unpaid amount in
accordance with subparagraphs 5 through 8 of paragraph D set forth in the
Customer Prompt Payment Policy. In addition to any other rights and remedies
available to Company, if any payment due from Customer under this Agreement is
not received within five (5) business days after the applicable invoice due date,
Company may suspend any or all Company Work pending receipt of all amounts
due from Customer; any such suspension shall be without recourse or liability to
Company.

7.5 If Customer claims exemption from sales tax, Customer agrees to provide Company

with an appropriate, current and valid tax exemption certificate, in form and

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substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("Sales Tax Exemption Certificate"). During the term of this Agreement, Customer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

7.6 [Reserved]

7.7 Company’s invoices to Customer for all sums owed under this Agreement shall be

sent to the individual and address specified below, or to such other individual and
address as Customer may designate, from time to time, by written notice to the
Company:

New York Power Authority

Attn: Andrew Boulais, Project Manager 123 Main Street

White Plains, New York 10601 Phone: (914) 287-3050

Email: andrew.boulais@nypa.gov

7.8 All payments made by Customer under this Agreement shall be made in

immediately available funds by the method contemplated in the Customer Prompt

Payment Policy.

8.0 Final Payment

8.1 Within one hundred and eighty (180) Days following the earlier of (i) the

completion of the Company Work, and (ii) the effective early termination or
cancellation date of this Agreement in accordance with any of the provisions hereof,
the Company shall perform an overall reconciliation of the total of all Company
Reimbursable Costs to the invoiced costs previously paid to Company by Customer
under this Agreement (“Total Payments Made”). If the total of all Company
Reimbursable Costs actually incurred is greater than the Total Payments Made, the
Company shall provide a final invoice to Customer for the balance due to the
Company under this Agreement (the “Balance Amount”). If the Total Payments
Made is greater than the total of all Company Reimbursable Costs actually incurred,
Company shall reimburse the difference to Customer (“Refund Amount”). The
Refund Amount or Balance Amount, as applicable, shall be due and payable upon
final reconciliation but no later than sixty (60) Days after such reconciliation. Any
portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid
after that time shall be subject to interest as calculated pursuant to Section 9.1 of
this Agreement.

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9.0 [Reserved]

10.0 Project Managers; Meetings

10.1 Promptly following the Effective Date, each Party shall designate a Project

Manager responsible for coordinating the Party’s Work and shall provide the other
Party with a written notice containing the name and contact information of such
Project Manager (“Project Manager”). In no event shall any Project Manager be
authorized to amend or modify the provisions of this Agreement. Each Party may
change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party’s Project Manager shall attend Project meetings at times and places
 mutually agreed to by the Parties.

11.0 Disclaimer of Warranties, Representations and Guarantees

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE

BUSINESS OF PERFORMING DESIGN, ENGINEERING OR
CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY
FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR
ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS
AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER
FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE
PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS
AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO
WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION
WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW
FACILITIES, THE PROJECT, OR ANY COMPANY WORK, WHETHER
WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING,
WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF
MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL
OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive

the termination, cancellation, completion or expiration of this Agreement.

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12.0 Liability and Indemnification

12.1 To the fullest extent permitted by applicable law (including, without limitation, the
 applicable provisions of any governing federal or state tariff), Customer shall
 indemnify and hold harmless, and at Company’s option, defend Company, its
 parents and Affiliates and their respective officers, directors, members, managers,
 partners, employees, servants, agents, contractors and representatives (each,

individually, an “Indemnified Party” and, collectively, the “Indemnified Parties”),
from and against any and all liabilities, damages, losses, costs, expenses (including,
without limitation, any and all reasonable attorneys' fees and disbursements),
causes of action, suits, liens, claims, damages, penalties, obligations, demands or
judgments of any nature, including, without limitation, for death, personal injury
and property damage, for economic damage, and for claims brought by third parties
for personal injury, property damage or other damages, incurred by any
Indemnified Party, to the extent caused by the negligence, unlawful act or omission,
or intentional misconduct of the Customer, its parents or affiliates, third-party
contractors, or their respective officers, directors, servants, agents, representatives,
and employees, arising out of or in connection with this Agreement, the Project, or
any Work (collectively, “Damages”), except to the extent such Damages are caused
by the negligence, intentional misconduct or unlawful act of the Indemnified Party
as determined by a court of competent final jurisdiction.

12.2 Without limiting the foregoing, Customer shall defend, indemnify and save

harmless Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees servants, agents, contractors, and representatives, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from any charge or encumbrance in the nature of a laborer’s, mechanic’s or materialman’s lien asserted by any of Customer’s contractors, subcontractors or suppliers in connection with any Work, the Project or the Customer Project.

12.3 Without limiting the foregoing, Customer shall protect, indemnify and hold

harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

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12.4 To the fullest extent permitted by applicable law, the Company’s total cumulative

liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not exceed the aggregate amount of all payments actually paid to Company by Customer as Company Reimbursable Costs under this Agreement.

12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall
 be liable to the other Party for consequential, indirect, special, incidental, multiple,
 or punitive damages (including, without limitation, attorneys’ fees or litigation
 costs) in connection with or related to this Agreement, including, without
 limitation, damage claims based on causes of action for breach of contract, tort
 (including negligence), or any other theory of recovery, whether or not (i) such
 damages were reasonably foreseeable or (ii) the Parties were advised or aware that
 such damages might be incurred.

12.6 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party

shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

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12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be

responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under
this Agreement for any delay in performance or nonperformance to the extent such
delay in performance or nonperformance is caused by or as a result of (a) the
inability or failure of Customer or its contractors to cooperate or to perform any
tasks or responsibilities contemplated to be performed or undertaken by Customer
under this Agreement (including, without limitation, the Customer Required

Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

12.8 Anything in this Agreement to the contrary notwithstanding, if any Party’s liability

in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer’s insurance.

12.9 Notwithstanding any other provision of this Agreement, this Article shall survive

the termination, cancellation, completion or expiration of this Agreement.

13.0 Insurance; Employee and Contractor Claims

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13.1 Prior to the commencement of any Work and during the term of the Agreement,

each Party, at its own cost and expense, shall procure and maintain insurance in
form and amounts set forth in Exhibit D of this Agreement. Either Party may elect
to self-insure to the extent authorized or licensed to do so under the applicable laws
of the State of New York, provided, that, the electing Party provides written notice
of any such election to the other Party. Company hereby notifies Authority that it
is a qualified self-insurer under the applicable laws of the State of New York and
that it elects to self-insure to satisfy its obligations under this Article. The Authority
hereby notifies the Company that it is a qualified self-insurer under the applicable
laws of the State of New York and that it may elects to self-insure to satisfy its
obligations under this Article. Each Party shall be separately responsible for
insuring its own property and operations.

13.2 Anything in this Agreement to the contrary notwithstanding, each Party shall be

solely responsible for the claims of its respective employees and contractors against
such Party and shall release, defend, and indemnify the other Party, its Affiliates,
and their respective officers, directors, employees, and representatives, from and
against such claims. Notwithstanding any other provision of this Agreement, this
paragraph shall survive the termination, cancellation, completion or expiration of
this Agreement.

13.3 Unless the Customer elects to self-insure in accordance with Section 13.2 hereof,

the Customer shall have its insurer furnish to the Company certificates of insurance,
on forms approved by the Insurance Commissioner of the State of New York,
evidencing the insurance coverage required by this Article, such certificates to be
provided prior to the commencement of any Work under this Agreement.

14.0 Assignment and Subcontracting

14.1 The Company may assign this Agreement, or any part thereof, to any of its

Affiliates provided such assignee Affiliate agrees in writing to be bound by the
terms and conditions of this Agreement. Each Party has the right to subcontract
some or all of the work to be performed by such Party under the terms of this
Agreement. Each Party may also use the services of its Affiliates in connection
with its performance under this Agreement. Customer agrees that the costs and
expenses of such Affiliates or contractors charged to or incurred by Company shall
be paid by Customer as part of the Company Reimbursable Costs.

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15.0 Independent Contractor; No Partnership; No Agency; No Utility Services

15.1 Company and Customer shall be independent contractors. This Agreement shall

not be interpreted or construed to create an association, joint venture, agency
relationship, or partnership between the Parties or to impose any partnership
obligation or partnership liability upon 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, the other
Party. This Agreement is not an agreement to provide or take utility services of
any kind, including, without limitation, interconnection or other electric
transmission services.

16.0 [Reserved]

17.0 Safety

17.1 Each Party shall be solely responsible for the safety and supervision of its own

employees, representatives and contractors involved with its Work or any other
activities contemplated by this Agreement. In connection with the performance
contemplated by this Agreement, each Party shall, and shall require its
representatives, contractors, and employees to, comply with all applicable Federal,
state and local health and safety requirements, rules, regulations, laws and
ordinances, including without limitation, the safety regulations adopted under the
Occupational Safety and Health Act of 1970 (“OSHA”), as amended from time to
time. While performing the Company Work, Company shall at all times abide by
Company’s safety standards and policies and Company’s switching and tagging
rules. During the term of this Agreement, the Party owning or controlling the
applicable property or facilities shall have the authority to suspend the other Party’s
access, work or operations in and around such property or facilities in connection
with any performance under this Agreement if, in its sole judgment, at any time
hazardous conditions arise or any unsafe practices are being followed by the other
Party’s employees, agents, representatives or contractors in connection with any
such performance.

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18.0 Required Approvals

18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform

its respective Work under this Agreement are expressly contingent upon (i) each
Party receiving all licenses, permits, permissions, certificates, approvals,
authorizations, consents, franchises and releases (including, without limitation and
as applicable, the Existing Facilities Approvals and New Facilities Approvals) from
any local, state, or federal regulatory agency or other governmental agency or
authority (which shall include the FERC and may also include, without limitation
and as applicable, the NYPSC) and from any other third party that may be required
for such Party in connection with the performance of such Party’s obligations under
or in connection with this Agreement (the “Required Approvals”), (ii) each

Required Approval being granted without the imposition of any modification or
condition of the terms of this Agreement or the subject transactions, unless such
modification(s) or condition(s) are agreed to by both Parties in their respective sole
discretion, and (iii) all applicable appeal periods with respect to the Required
Approvals having expired without any appeal having been made or, if such an
appeal has been made, a full, final and non-appealable determination having been
made regarding same by a court or other administrative body of competent
jurisdiction, which determination disposes of or otherwise resolves such appeal (or
appeals) to the satisfaction of both Parties in their respective sole discretion.

18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in

connection with seeking any Required Approval and is denied, or is granted in a
form, or subject to conditions, that either Party rejects, in its sole discretion, as
unacceptable, this Agreement shall terminate as of the date that a Party notifies the
other Party of such denial or rejection, in which event the obligations of the Parties
under this Agreement shall cease as of such date and this Agreement shall
terminate, subject to Customer’s obligation to pay Company in accordance with the
terms of this Agreement (including, without limitation, Sections 21.3 and 21.4
hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of
the Company’s actual costs in connection with seeking any Required Approvals
shall also be included within the meaning of the term Company Reimbursable Costs
and shall be paid for by Customer.

19.0 Environmental Protection; Hazardous Substances or Conditions

19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors,
 their respective officers, directors, employees, agents, servants, or representatives,
 or any third party with respect to, or in connection with, the presence of any
 Hazardous Substances which may be present at or on any Customer or third party
 owned, occupied, used, or operated property or facility (including, without

limitation, easements, rights-of-way, or other third-party property) or which the
Company, its Affiliates or contractors, their respective officers, directors,
employees, agents, servants, or representatives may discover, release, or generate
at or on such properties or facilities through no negligent or unlawful act of the

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Company, and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its
Affiliates and contractors, and their respective directors, members, managers,
partners, officers, agents, servants, employees and representatives from and against
any and all claims and/or liability in connection with, relating to, or arising out of

(i) the presence, discovery, release, threat of release or generation of Hazardous
Substances at or on any Customer- or third party- owned, occupied, used, or
operated property or facility (including, without limitation, easements, rights-of-
way, or other third-party property), or (ii) the breach of any Federal, state, or local
laws, rules, regulations, codes, or ordinances relating to the environment
(including, without limitation, the Comprehensive Environmental Response,
Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the
Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.)
in connection with this Agreement, the Project and/or the Customer Project, except
to the extent such presence, discovery, release, threat of release, generation or
breach is or are directly and solely caused by the negligent or unlawful act of the
Company or of any person or entity for whom the Company is legally responsible.
The obligations under this Section shall not be limited in any way by any limitation
on Customer’s insurance or by any limitation of liability or disclaimer provisions
contained in this Agreement. The provisions of this Section shall survive the
expiration, completion, cancellation or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous

Substances, or unsafe, dangerous, or potentially dangerous, conditions or
structures, whether above-ground or underground, that are present on, under, over,
or in any Customer- owned, occupied, used, controlled, managed or operated
facilities or property (including, without limitation, easements, rights-of-way, or
other third-party property) to be used or accessed in connection with the Company
Work or this Agreement.

20.0 [Reserved]

21.0 Right to Terminate Agreement

21.1 If either Party (the “Breaching Party”) (a) fails to pay any amount when due under

the terms of this Agreement or fails to comply with or perform, in any material
respect, any of the other terms or conditions of this Agreement; (b) sells or transfers
all or substantially all of its assets; (c) enters into any voluntary or involuntary
bankruptcy proceeding or receivership; or (d) makes a general assignment for the
benefit of its creditors, then the other Party (the “Non-Breaching Party”) shall have
the right, without prejudice to any other right or remedy and after giving five (5)
business days’ written prior notice to the Breaching Party and a reasonable
opportunity for cure (not to exceed thirty (30) calendar days in the case of a failure

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to pay amounts when due), to terminate this Agreement, subject to Sections 21.3
and 21.4 of this Agreement, provided that, in the case of an unpaid amount disputed
by the Breaching Party, the Non-Breaching Party shall not be entitled to provide
such written prior notice of termination to the Breaching Party until expiration of
any Negotiation Period applicable to such unpaid amount dispute under Section

22.1 of this Agreement. Subject to compliance with Section 22.1 of this

Agreement, if applicable, the Non-Breaching Party shall also have the right to
pursue any and all rights it may have against the Breaching Party under applicable
law, subject to other applicable terms and conditions of this Agreement (including,
without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be

terminated upon prior written notice (i) by Company in the event that Company
Work under this Agreement is suspended or delayed for a period exceeding sixty

(60) consecutive days as the result of any continuing dispute between the Parties,
or (ii) under the circumstances contemplated by, and in accordance with, Section

7.1 or Section 18.2 of this Agreement.

21.3 In the event of any early termination or cancellation of the Company Work or this

Agreement as contemplated by any provision of this Agreement, each Party shall
discontinue its performance hereunder to the extent feasible and make every
reasonable effort to procure cancellation of existing commitments, orders and
contracts relating to its Work upon terms that are reasonably expected to minimize
all associated costs, provided, however, that nothing herein will restrict Company’s
ability to complete aspects of the Company Work that Company must reasonably
complete in order to return its facilities and its property to a configuration in
compliance with Good Utility Practice and all Applicable Requirements and to
enable such facilities to continue, commence or recommence commercial
operations.

21.4 In the event of any early termination or cancellation of the Company Work or this

Agreement as contemplated by any provision of this Agreement, Customer shall also pay Company for:

(i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;

(ii) all other Company Reimbursable Costs incurred by Company and/or its
Affiliates in connection with the Company Work prior to the effective date of
termination or cancellation, including, without limitation, for materials,
equipment, tools, construction equipment and machinery, engineering and
other items, materials, assets or services which cannot reasonably be avoided,
mitigated or cancelled;

(iii) all Company Reimbursable Costs incurred to unwind Company Work
that was performed prior to the effective date of termination or cancellation to

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the extent reasonably necessary to return Company’s facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;

(iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and

(v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

22.0 Dispute Resolution

22.1 Any dispute arising under this Agreement shall be the subject of good-faith
 negotiations between the Parties. Following the occurrence of a dispute, each Party
 shall designate one or more representatives with the authority to negotiate the
 particular matter in dispute for the purpose of participating in such negotiations.
 Unless a Party identifies exigent circumstances reasonably requiring expedited
 resolution of the dispute by a court or agency with jurisdiction over the dispute, any
 dispute that is not resolved through good-faith negotiations after a negotiation
 period of not less than thirty (30) Days (“Negotiation Period”) may be submitted
 by either Party for resolution to a court or to an agency with jurisdiction over the
 dispute. Notwithstanding the foregoing, any dispute arising under this Agreement
 may be submitted to non-binding arbitration or any other form of alternative dispute
 resolution upon the written agreement of both Parties to participate in such an
 alternative dispute resolution process.

23.0 Force Majeure

23.1 A “Force Majeure Event” shall include fire, flood, windstorm, adverse weather

conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God,
strikes or labor slow-downs, court injunction or order, federal and/or state law or
regulation, delays by governmental authorities in approving regulatory, license
and/or permit requests necessary in connection with the Company Work or the
Customer Required Actions, order by any federal or state regulatory agency, or
other causes, conditions or circumstances beyond the affected Party’s reasonable
control. Without limiting the foregoing, a “Force Majeure Event” shall also include
unavailability of personnel, equipment, supplies, or other resources (“Resources”)
due to diversion of such Resources for other utility-related duties in connection with
an emergency or other similar contingency, including, without limitation, storms or
other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both
Parties to perform its, or their, respective, obligations hereunder, then, to the extent
affected by such Force Majeure Event, the performance of this Agreement, with the
exception of payment obligations, shall be suspended for the duration of such Force

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Majeure Event. At the conclusion of a Force Majeure Event, the price and time for
performance under this Agreement shall be adjusted as reasonably necessary to
overcome the effect of the delay occasioned by such Force Majeure Event. The
foregoing notwithstanding and with the exception of payment obligations, if, as the
direct or indirect result of any Force Majeure Event, the Parties’ continued
performance hereunder becomes irreparably impaired or prevented, the Parties may
mutually agree to terminate this Agreement; provided, however, that,
notwithstanding any such termination, Customer shall pay the Company all of the
Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this
Agreement.

23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force

Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.3 For the avoidance of doubt: to the extent any Party has a payment obligation

pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 Compliance with Law

24.1 Each Party shall comply, at all times, with all Applicable Requirements in

connection with this Agreement and performance of its Work hereunder. Such
compliance shall include, among other things, compliance with all applicable wage
and hour laws and regulations and all other laws and regulations dealing with or
relating to the employment of persons, and the payment of contributions, premiums,
and taxes required by such laws and regulations. For the avoidance of doubt:
neither Party shall be required to undertake or complete any action or performance
under this Agreement that is inconsistent with such Party’s standard safety
practices, its material and equipment specifications, its design criteria and
construction procedures, its labor agreements, Good Utility Practice and/or any
Applicable Requirement(s).

25.0 Proprietary and Confidential Information

25.1 Each Party acknowledges that, in the course of the performance of this Agreement,

it may have access to Proprietary Information of the other Party.

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25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving

Party) and its Representative shall keep in strict confidence and not disclose to any
person (with the exception of the Representatives of the Receiving Party, to the
extent each such Representative has a need to know in connection herewith) any of
the Disclosing Party’s Proprietary Information except as otherwise provided by the
terms and conditions of this Agreement. The Receiving Party and its
Representatives shall not use such Proprietary Information except for the purposes
identified herein without the prior written approval of the Disclosing Party. The
Receiving Party shall be solely liable for any breach of this Article to the extent
caused by its Representatives. Customer agrees that any Proprietary Information
will be used solely for the Project or the Customer Project and will not be used,
either directly or indirectly, for the Customer's financial gain and/or commercial
advantage or in violation of any applicable laws, rules or regulations.

25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be

precluded from, nor liable for, disclosure or use of Proprietary Information that:

25.3.1 is in or enters the public domain, other than by a breach of this

Article; or

25.3.2 is known to the Receiving Party or its Representatives at the time

of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or

25.3.3 is developed by the Receiving Party or its Representatives

independently of any disclosure under this Agreement, as evidenced by written records; or

25.3.4 is disclosed more than three (3) years after first receipt of the

disclosed Proprietary Information, or three (3) years after the

termination or expiration of this Agreement, whichever occurs later (the “Non-Disclosure Term”); or

25.3.5 is disclosed following receipt of the Disclosing Party’s written

consent to the disclosure of such Proprietary Information; or

25.3.6 is necessary to be disclosed, in the reasonable belief of the

Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the
Receiving Party or its Representative(s) may disclose Proprietary Information of

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the other Party to the extent the Receiving Party or its Representative(s) is required
to do so by law, by a court, or by other governmental or regulatory authorities;
provided, however, that, if permitted to do so by applicable law, the Receiving Party
shall give the Disclosing Party written notice of any such required disclosure prior
to such disclosure being made so that the Disclosing Party may seek a protective
order with respect to such Proprietary Information. Receiving Party will reasonably
cooperate with the Disclosing Party’s efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this

Agreement may include “Critical Energy / Electrical Infrastructure Information”
under applicable FERC rules and policies (“CEII”) and critical infrastructure
protection information as defined under applicable NERC standards and procedures
(“CIP”). Receiving Party shall, and shall cause its Representatives to, strictly
comply with any and all laws, rules and regulations (including, without limitation,
FERC and NERC regulations, rules, orders, standards, procedures and policies)
applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing
Party or that relates to any of Disclosing Party’s or Disclosing Party’s Affiliates’
facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or
CIP to any person or entity, directly or indirectly, unless permitted to do so by law
and unless the Receiving Party has first obtained, in each case, the express specific
written consent of the Disclosing Party and any affected Affiliate of the Disclosing
Party. In any event, to the extent that the Receiving Party or any of its
Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state
regulatory agency, court or other governmental body, the Receiving Party shall, in
addition to obtaining the Disclosing Party’s and its Affiliate’s prior written consent
(as applicable), seek a protective order or other procedural protections to ensure
that such information is accorded CEII or CIP status, as applicable, and is otherwise
treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party’s
obligations and duties under this Article shall survive until (i) the expiration of the
Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no
longer required to be kept confidential under applicable law, or (iii) the date as of
which the Disclosing Party provides written notice to the Receiving Party that such
CEII or CIP, as applicable, is no longer required to be kept confidential, whichever
is later. With respect to CEII and CIP, in the event of any conflict or inconsistency
between this Section and any other term or provision of this Agreement, this
Section shall govern in connection with such CEII and CIP, as applicable.

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25.5 Notwithstanding any provision of this Agreement to the contrary, all assets,

equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any termination, expiration, completion or cancellation

of this Agreement.

26.0 Effect of Applicable Requirements; Governing Law

26.1 If and to the extent a Party is required to take, or is prevented or limited in taking,

any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).

26.2 This Agreement is made and shall be interpreted, construed, governed, and

enforced in accordance with the laws of the State of New York, without reference to such State’s conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 Miscellaneous

27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications

from either Party to the other hereunder shall be in writing and shall be deemed
received (i) upon actual receipt when personally delivered (provided, that, if the
date of receipt is not a Day, then the date of receipt shall deemed to be the
immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by
facsimile (provided, that, if the date of acknowledgement is not a Day, then the date
of receipt shall deemed to be the immediately succeeding Day), (iii) upon the
expiration of the third (3rd) Day after being deposited in the United States mails,
postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1)
Day after being deposited during the regular business hours for next-day delivery
and prepaid for overnight delivery with a national overnight courier, addressed to
the other Party at the following address:

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To Customer: New York Power Authority

Attn: Andrew Boulais, Project Manager 123 Main Street

White Plains, New York 10601 Phone: (914) 287-3050

Email: andrew.boulais@nypa.gov

To Company: Niagara Mohawk Power Corporation

Attn: Ms. Kathryn Cox-Arslan
Director, Commercial Services

40 Sylvan Road

Waltham, MA 02451 (781) 907-2406

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising

any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles,

sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and

exhibits referenced in and attached to this Agreement shall be deemed an integral
part hereof to the same extent as if written in whole herein. In the event that any
inconsistency or conflict exists between the provisions of this Agreement and any
schedules, attachments or exhibits attached hereto, the provisions of this Agreement
shall supersede the provisions of any such schedules, attachments or exhibits.

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27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules,

attachments and exhibits attached hereto constitute the entire agreement between
the Parties with respect to the subject matter hereof, and supersede all previous
understandings, commitments, or representations concerning such subject matter.
Each Party acknowledges that the other Party has not made any representations
other than those that are expressly contained herein, if any. This Agreement may
not be amended or modified in any way, and none of its provisions may be waived,
except by a writing signed by an authorized representative of the Party against
whom the amendment, modification, or waiver is sought to be enforced. The Project
Managers shall not be authorized representatives within the meaning of this
Section.

27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be

interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in

this Agreement shall include the corresponding masculine, feminine, or neuter
forms, and the singular forms of nouns and pronouns shall include the plural, and
vice versa.

27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer
 on any person, other than the Parties, any rights or remedies under or by reason of
 this Agreement.

27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement

constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each
 of which shall be considered an original. The exchange of copies of this Agreement
 and of signature pages by facsimile or other electronic transmission (including,
 without limitation, by e-mailed PDF) shall constitute effective execution and
 delivery of this Agreement as to the Parties and may be used in lieu of the original
 Agreement for all purposes. Signatures of the Parties transmitted by facsimile or
 other electronic means (including, without limitation, by e-mailed PDF) shall be
 deemed to be their original signatures for all purposes.

[Signatures are on following page.]

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IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

NEW YORK POWER AUTHORITY

NIAGARA MOHAWK POWER CORPORATION

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LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A Scope of Company Work

Exhibit A-1 Facilities Study Report

Exhibit B Preliminary Milestone Schedule

Exhibit C Customer Required Actions

Exhibit D Insurance Requirements

Schedule A Customer Prompt Payment Policy

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Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Perform engineering work and other tasks necessary to develop a detailed project plan (the

“Detailed Project Plan”) to implement the Company work contemplated by the Facilities Study
Report.

2. Design, engineer, procure, and, subject to Section 5.6 of this Agreement, construct, test and place

into service the new Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, as contemplated in the Facilities Study Report and/or the Detailed Project Plan, including, without limitation, the New Facilities. Perform engineering review and field verifications as required on the Customer’s facilities described in the Facilities Study Report and/or the Detailed Project Plan.

3. Prepare, file for, and use reasonable efforts to obtain all required permits, licenses, consents,

permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies (including, without limitation and as applicable, the NYPSC, and FERC), NYISO and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the “New Facilities Approvals”).

Prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state or federal governmental agencies (including, without limitation and as applicable, the NYPSC, and FERC), NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Facilities (the “Existing Facilities Approvals”).

4. Decommission, dismantle and remove the existing facilities of the Company as contemplated by

the Facilities Study Report and/or the Detailed Project Plan (the “Existing Facilities”).

5. Prepare, file for, and use reasonable efforts to obtain any other Required Approvals that must be

obtained by Company to enable it to perform the work contemplated by this Exhibit.

6. Inspect, review, witness, examine and test, from time to time, Company’s work contemplated

herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

7. Review, from time to time, permitting, licensing and other materials relating to the work

contemplated herein, including, without limitations, all documents and materials related to any Required Approvals.

8. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work

contemplated herein.

9. Perform any other reasonable tasks necessary or advisable in connection with the work

contemplated by this Exhibit (including, without limitation, any changes thereto).

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The Company Work may be performed in any order as determined by the Company. For the
avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any
real property rights in connection with the Company Work, the Project, the Customer Project or
this Agreement including, without limitation, licenses, consents, permissions, certificates,
approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement
nor the Company Work include granting, securing or arranging for Customer or any third party to
have access rights in, through, over or under any real property owned or controlled by the
Company; any such access rights would be the subject of separate written agreements.

NOTE: Company’s specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time.

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Exhibit A-1: Facilities Study Report

Critical Energy/Electric Infrasture Information Removed Pursuant to 18 C.F.R. § 388.113

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Exhibit B: Preliminary Milestone Schedule

PRELIMINARY MILESTONE SCHEDULE

Task Milestone Estimated Responsible Party

Timeframe

1. Execute Agreement 3/2019 Customer/Company

2. Initial Prepayment 3/2019 Customer

provided

3. Engineering & 8/2019 Company

Procurement

Completed

4. Construction start 8/2019 Company

5. Construction 9/2019 Company

Completed

6. As-Builts Completed 10/2019 Company

Project Close out & 2/2020 Company/Customer

7. Final invoicing

Completed

The dates above represent the Parties’ preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with any Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals are not included in such preliminary schedule.

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Exhibit C: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required
 Approvals necessary to perform its obligations under this Agreement.

2. If and to the extent applicable or under the control of the Customer, provide complete and
 accurate information regarding the Customer Project and all applicable data, drawings and
 specifications.

3. Other responsibilities and access deemed necessary by Company to facilitate performance of
 the Company Work.

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Exhibit D: Insurance Requirements

• Workers Compensation and Employers Liability Insurance as required by the State of

New York.

(A) Workers’ Compensation Insurance for statutory obligations imposed by

Workers’ Compensation/Occupational Disease Laws, including Employer’s
Liability Insurance with a minimum limit of $1,000,000. When applicable,
coverage shall include The United States Longshoreman's and Harbor Workers'
Compensation Act (44 U.S.Stat 1424) and the Jones Act (41 U.S. Stat 988). Under
Sections 57 & 220 Subd. 8 of the New York State Workers’ Compensation Law,
it is required that Contractors doing business with a Municipal or State entity
evidence proof of workers’ compensation coverage on approved forms, as listed
below:

1.

2. If the business entity has been approved by the Workers’ Compensation
 Board's Office of Self Insurance as a qualified self insurer, a completed SI-12
 form is required. The SI-12 form is provided by the Board's Office of Self
 Insurance.

• Commercial General Liability (Including Contractual Liability), covering all activities

and operations to be performed by it under this Agreement, with the following minimum

limits:

Combined Single Limit $1,000,000 per occurrence

• Automobile Liability - covering all owned, non-owned and hired vehicles used in
 connection with all operations, work or services to be performed by or on behalf of
 either Party under or in connection with this Agreement with minimum limits of:
 Combined Single Limit - $1,000,000 per occurrence.

• Umbrella or Excess Liability, coverage with a minimum limit of $4,000,000.

• Any combination of Commercial General Liability, Automobile Liability and Umbrella
 or Excess Liability can be used to satisfy the limit requirement for these coverages.

• Customer shall include the Company as an additional insured for all coverages except
 Workers’ Compensation and Employers Liability Insurance in order to provide the
 Company with protection from liability arising out of activities of Customer relating to the
 Project and associated Work.

• Company shall name the Customer as an additional insured for all coverages except
 Workers’ Compensation and Employers Liability Insurance in order to provide the
 Customer with protection from liability arising out of activities of Company relating to the
 Project and associated Work.

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• Contractors: In the event either party uses Contractor(s) in connection with this

Agreement, it is expressly agreed that said party shall have the sole responsibility to

make certain that all Contractor(s) are in compliance with these insurance requirements and that Contractor(s) remain in compliance throughout the course of this Agreement, and thereafter as required. Said party shall remain liable for the performance of the Contractor(s), and such sub-contract relationship shall not relieve either party of its
obligations under this Agreement.

1. Upon request, either Party shall promptly provide the requesting Party with either evidence of

insurance or certificates of insurance evidencing the insurance coverage per Section 13. Insurance: Employee and Contractor Claims. Customer shall provide such certificates or evidence of insurance to Company at the following address:

To: National Grid c/o Niagara Mohawk Power Corporation

Attention: Director, Commercial Services

FERC Jurisdiction

40 Sylvan Road, Waltham, MA 02451

Company shall provide such certificates or evidence of insurance to Customer at the following
address:

To: New York Power Authority

Attention: Insurance / 17B 123 Main Street

White Plains, NY 10601

2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will
 be delivered in accordance with the policy provisions.

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled
 before the completion of all services provided under this Agreement, and such party fails immediately
 to procure such insurance as specified herein, then the non-defaulting party has the right but not the
 obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party
 or deduct the cost thereof from any sum due the defaulting party under this Agreement.

4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent
 to the furnishing Party’s insurance carriers covering accidents or incidents occurring in connection with
 or as a result of the performance of the Work under this Agreement.

5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not
 stated herein.

6. By the date that such coverage is required, each Party represents to the other Party that it will have full
 policy limits available and shall notify the other Party in writing when coverages required herein have
 been reduced as a result of claim payments, expenses, or both.

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Schedule A: Customer Prompt Payment Policy

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