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SERVICE AGREEMENT NO. 2449

SERVICE AGREEMENT NO. 2449

ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT   
 AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.   
 AND

CENTRAL HUDSON GAS & ELECTRIC CORPORATION   
 AND

NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID   
 AND

STONY CREEK ENERGY LLC   
 AND

TBE MONTGOMERY, LLC   
 AND

CPV VALLEY, LLC

Dated as of June 28, 2019

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ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION AGREEMENT   
(“Agreement”) is made and entered into this 28th day of June 2019, by and among: (i) Stony   
Creek Energy LLC, a limited liability company organized and existing under the laws of the   
State of Delaware (“Stony Creek”), TBE Montgomery, LLC, a limited liability company   
organized and existing under the laws of the State of New York (“Taylor”), and CPV Valley,   
LLC, a limited liability company organized and existing under the laws of the State of Delaware   
(“CPV Valley”) (each individually a “Developer” and collectively the “Developers”); (ii) Central   
Hudson Gas & Electric Corporation, a corporation organized and existing under the laws of the   
State of New York (“Central Hudson”), and Niagara Mohawk Power Corporation d/b/a National   
Grid, a corporation organized and existing under the laws of the State of New York (“National   
Grid”) (each individually an “Affected Transmission Owner” and collectively the “Affected   
Transmission Owners”); 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”).   
The Developers, the Affected Transmission Owners, or the NYISO each may be referred to   
individually as a “Party” or collectively referred to as the “Parties.”

RECITALS

WHEREAS, Stony Creek, a project previously in the NYISO interconnection queue (Queue No.   
263) and CPV Valley, a project in the NYISO interconnection queue (Queue No. 251) have   
developed and constructed Large Generating Facilities that are interconnected to transmission   
facilities that are part of the New York State Transmission System operated by the NYISO;

WHEREAS, Taylor, a project in the NYISO interconnection queue (Queue No. 349) is

developing a Large Generating Facility that will interconnect to transmission facilities that are part of the New York State Transmission System operated by the NYISO;

WHEREAS, Ball Hill, a project previously in the NYISO interconnection queue (Queue No. 222) was developing a Large Generating Facility to interconnect to transmission facilities that are part of the New York State Transmission System operated by the NYISO, and subsequently terminated its project;

WHEREAS, each Developer requested that the NYISO provide it with Capacity Resource

Interconnection Service as part of the interconnection of its Large Generating Facility to the New York State Transmission System or Distribution System;

WHEREAS, the NYISO Class Year Deliverability Studies for 2010 and 2011 determined that certain System Deliverability Upgrades must be constructed on the Affected Systems owned by Affected Transmission Owners to enable the Developers to interconnect reliably their Large Generating Facilities to the New York State Transmission System in a manner that meets the NYISO Deliverability Interconnection Standard at the requested level of Capacity Resource Interconnection Service (“Common System Deliverability Upgrades”);

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WHEREAS, each Developer accepted, and provided Security in the form of cash, letters of   
credit, or parental guarantees to the Affected Transmission Owners pursuant to Sections

25.7.12.2 and 25.8 of Attachment S to the ISO OATT to cover, its portion of the estimated cost   
of the Common System Deliverability Upgrades designated in the NYISO Class Year   
Deliverability Studies for 2010 or 2011, as applicable (“Developer Common SDU Cost Cap”);

WHEREAS, the NYISO Class Year Deliverability Study for 2011 determined that a threshold of 60% or more of the estimated cost for the Common System Deliverability Upgrades had been paid or posted as Security by the Developers, which triggers the requirement that the Affected Transmission Owners construct the Common System Deliverability Upgrades pursuant to   
Section 25.7.12.3.1 of Attachment S of the ISO OATT;

WHEREAS, Central Hudson subsequently requested a non-materiality determination

concerning certain changes to the Common System Deliverability Upgrades, which changes

were presented to the NYISO’s stakeholder Transmission Planning Advisory Subcommittee on May 1, 2018, and were approved by the NYISO as a non-material change;

WHEREAS, Developers and Affected Transmission Owners desire to have the Affected

Transmission Owners perform, and Affected Transmission Owners are willing to perform, the engineering, procurement, and construction services required to construct the Common System Deliverability Upgrades (“EPC Services”) in accordance with the terms and conditions   
hereinafter set forth; and

WHEREAS, Developers, Affected Transmission Owners, 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 Common System Deliverability   
Upgrades.

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

ARTICLE 1. DEFINITIONS

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

meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in Section 1 of the ISO OATT, Section 30.1 of Attachment X of the ISO OATT, Section 25.1.2 of Attachment S of the ISO   
OATT, the body of the LFIP or the body of this Agreement.

Affected System shall mean the electric system of an Affected Transmission Owner, which is

part of the New York State Transmission System that is affected by the proposed interconnection of the Large Generating Facilities.

Affected Transmission Owner shall have the meaning set forth in the introductory paragraph.

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,

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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.

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

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.

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

NYISO to Developers that satisfy the NYISO Deliverability Interconnection Standard or that are   
otherwise eligible to receive CRIS in accordance with Attachment S to the ISO OATT; such   
service being one of the eligibility requirements for participation as a NYISO Installed Capacity   
Supplier.

Class Year Deliverability Study shall mean an assessment, conducted by the NYISO staff in   
cooperation with Market Participants, to determine whether System Deliverability Upgrades are   
required for Class Year CRIS Projects under the NYISO Deliverability Interconnection Standard.

Common System Deliverability Upgrades shall have the meaning set forth in the recitals and shall consist of the materials, equipment, and work described in Appendix A.

Commercial Operation shall mean the status of a Large Generating Facility that has   
commenced generating electricity for sale, excluding electricity generated during Trial   
Operation.

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

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Confidential Information shall mean any information that is defined as confidential by Article 16 of this Agreement.

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 11 of this Agreement.

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

Developer Common SDU Cost Cap shall mean a Developer’s portion of the estimated cost of the Common System Deliverability Upgrades as designated in the Class Year Deliverability Study for 2010 and 2011 and described in Appendix A.

Distribution System shall mean the facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the NYISO’s Large Facility Interconnection Procedures in Attachment X to the ISO OATT or Small Generator Interconnection Procedures in Attachment Z to the ISO OATT under FERC Order Nos. 2003 and/or 2006. The term   
Distribution System shall not include LIPA’s distribution facilities.

Effective Date shall mean the date determined under Article 2.1.

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

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

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq. (“FPA”).

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

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war,   
insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery 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.

Forfeited Security shall mean any Security posted to an Affected Transmission Owner in

connection with the Common System Deliverability Upgrades by a Developer that has accepted   
its Project Cost Allocation for the upgrades in a NYISO Class Year Deliverability Study and   
subsequently terminates or abandons development of its project. This includes the Security   
posted to the Affected Transmission Owners by Ball Hill Wind Park, LLC (NYISO Queue No.   
222) when it accepted its Project Cost Allocation for the Common System Deliverability   
Upgrades in Class Year 2009 and subsequently terminated its project, which Security amount is   
set forth in Appendix A.

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

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 Developers, NYISO, Affected Transmission Owners, 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 Transmission Owner reasonably expects it will be ready to energize the Common System Deliverability Upgrades.

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

Invoice Share shall mean an individual Developer’s percentage share of the Developers’ total   
cost responsibility (i.e., the Developers’ consolidated cost responsibility, excluding any cost   
responsibility of Load Serving Entities, Affected Transmission Owners, and Forfeited Security)   
for an Affected Transmission Owner’s performance of the EPC Services subject to the   
Developer Common SDU Cost Cap in the Class Year Deliverability Study, as set forth in   
Appendix A.

IRS shall mean the Internal Revenue Service.

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

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

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

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 Deliverability Interconnection Standard - The standard that must be met, unless

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

than 2MW in order for that facility to obtain CRIS; (ii) any Class Year Transmission Project; (iii) any entity requesting External CRIS Rights, and (iv) any entity requesting a CRIS transfer   
pursuant to Section 25.9.5 of Attachment S to the ISO OATT. To meet the NYISO   
Deliverability Interconnection Standard, the Interconnection Customer must, in accordance with the rules in Attachment S to the ISO OATT, fund or commit to fund any System Deliverability Upgrades identified for its project in the Class Year Deliverability Study.

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

Party or Parties shall mean NYISO, each individual Affected Transmission Owner, each individual Developer, Developer, 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.

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.

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

System Deliverability Upgrades shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with Good Utility Practice and Applicable Reliability Requirements, to make the modifications or additions to Byways and Highways and Other Interfaces on the existing New York State Transmission   
System and Distribution System that are required for the proposed project to connect reliably to the system in a manner that meets the NYISO Deliverability Interconnection Standard at the requested level of Capacity Resource Interconnection Service.

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

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

operations and commissioning of the Large Generating Facility prior to Commercial Operation.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date.

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

2.2 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 has been made and the security has been released or refunded.

2.3 Termination.

Written Notice.

This Agreement may be terminated either: (i) by all Parties agreeing in writing to

terminate this Agreement, or (ii) by any Party after giving the other Parties thirty (30) Calendar Days advance written notice following a NYISO determination that the threshold for triggering the construction of the Common System Deliverability Upgrades set forth in Section 25.7.12.3.1 of Attachment S of the ISO OATT is no longer met.

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Default.

A Party or Parties may terminate this Agreement as and to the extent permitted under Article 11 and Article 21.

Compliance.

Notwithstanding Articles 2.3.1 and 2.3.2, no termination of this Agreement shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

2.4 Termination Costs.

If this Agreement is terminated pursuant to Article 2.3.1 above, the Developers shall be   
responsible for all costs that are the responsibility of the Developers under this Agreement that   
are incurred by the Developers or other Parties through the date the Parties agree in writing to   
terminate this Agreement or the date of the other Parties’ receipt of a Party’s notice of   
termination, as applicable. Such costs shall be allocated among the Developers using the same   
methodology as set forth in Article 6 regarding each Developer’s responsibility for the costs of   
the EPC Services, subject to the Developer Common SDU Cost Cap. Such costs include any   
cancellation costs related to orders or contracts. In the event of termination, 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 EPC Services that have not yet been performed,   
an Affected Transmission Owner shall, to the extent possible and with each Developer’s   
authorization, cancel any pending orders of, or return, any materials or equipment for, or cancel   
any contracts associated with the performance of the EPC Services; provided, however, that in   
the event a Developer elects not to authorize such cancellation, that Developer shall assume all   
payment obligations with respect to such materials, equipment, and contracts, and the relevant   
Affected Transmission Owner shall deliver such material and equipment, and, if necessary,   
assign such contracts, to the Developer as soon as practicable, at the Developer’s expense.

The relevant Affected Transmission Owner may, at its option, retain any portion of such materials or equipment that the Developer chooses not to accept delivery of, in which case that Affected Transmission Owner 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, Developers 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 each Developer’s share identified in Appendix A. Such costs shall be   
allocated among the Developers using the same methodology as set forth in Article 6 regarding each Developer’s responsibility for the costs of the EPC Services.

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2.5 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; and 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

3.1 Provision of EPC Services.

Each Affected Transmission Owner shall perform its respective 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. Neither Affected Transmission Owner shall be   
required to undertake any action which is inconsistent with its standard safety practices, its   
material and equipment specifications, its design criteria and construction procedures, its labor   
agreements, and Applicable Laws and Regulations. In the event an Affected Transmission   
Owner reasonably expects that it will not be able to complete the EPC Services by the specified   
dates, that Affected Transmission Owner shall promptly provide written notice to the other   
Parties, 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 Service   
under this Agreement.

3.2 Equipment Procurement.

Each Affected Transmission Owner shall commence design of the Common System

Deliverability Upgrades and procure necessary equipment in accordance with the Milestones set forth in Appendix A.

3.3 Construction Commencement.

Each Affected Transmission Owner shall commence construction of the Common System Deliverability Upgrades for which it is responsible 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:

Approval of the appropriate Governmental Authority has been obtained, to the extent required, for the construction of a discrete aspect of the Common System Deliverability Upgrades; and

Necessary real property rights and rights-of-way have been obtained, to the extent   
required, for the construction of a discrete aspect of the Common System Deliverability   
Upgrades.

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3.5 Work Progress.

Each Affected Transmission Owner will keep the other Parties advised periodically as to the progress of its respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from an Affected Transmission Owner.

3.6 Information Exchange.

As soon as reasonably practicable after the Effective Date, each Affected Transmission Owner shall provide the NYISO with information regarding the design of the Common System Deliverability Upgrades and the compatibility of the System Deliverability Upgrades with the New York State Transmission System and shall work diligently and in good faith to make any necessary design changes.

3.7 Ownership of Common System Deliverability Upgrades.

Each Affected Transmission Owner shall own its respective Common System Deliverability Upgrades as described in Appendix A hereto

3.8 Lands of Other Property Owners.

If any part of the Common System Deliverability Upgrades is to be installed on property   
owned by persons other than the Developers or the Affected Transmission Owners, the relevant   
Affected Transmission Owner shall at Developers’ expense, subject to the Developer Common   
SDU Cost Cap, 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 Common System   
Deliverability Upgrades.

3.9 Permits.

NYISO, the Affected Transmission Owners and the Developers 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.

3.10 Taxes.

Developer Payments Not Taxable.

Each Affected Transmission Owner intend that all payments or property transfers made by a Developer to an Affected Transmission Owner for the installation of the Common System Deliverability Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

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Representations and Covenants.

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

represents and covenants that (i) ownership of the electricity generated at its Large Generating   
Facility will pass to another party prior to the transmission of the electricity on the New York   
State Transmission System, (ii) for income tax purposes, the amount of any payments and the   
cost of any property transferred to an Affected Transmission Owner for the Common System   
Deliverability Upgrades will be capitalized by the Developer as an intangible asset and recovered   
using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the   
Common System Deliverability Upgrades 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 Developer’s Large Generating Facility. For this purpose, “de minimis amount”   
means no more than 5 percent of the total power flows in both directions, calculated in   
accordance with the “5 percent test” set forth in IRS Notice 88-129. This is not intended to be an   
exclusive list of the relevant conditions that must be met to conform to IRS requirements for   
non-taxable treatment.

At an Affected Transmission Owner’s request, a Developer shall provide the requesting Affected Transmission Owner with a report from an independent engineer confirming its   
representation in clause (iii), above. Each Affected Transmission Owner represents and   
covenants that the cost of the Common System Deliverability Upgrades paid for by Developers will have no net effect on the base upon which its rates are determined.

Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Affected Transmission Owners.

Notwithstanding Article 3.9.1, each Developer shall protect, indemnify and hold harmless   
an Affected Transmission Owner from the cost consequences of any current tax liability imposed   
against the Affected Transmission Owner as the result of payments or property transfers made by   
the Developer to the Affected Transmission Owner under this Agreement, as well as any interest   
and penalties, other than interest and penalties attributable to any delay caused by the Affected   
Transmission Owner.

An Affected Transmission Owner shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges a Developer under this Agreement unless (i) the Affected Transmission Owner has determined, in good faith, that the payments or property   
transfers made by the Developer to the Affected Transmission Owner should be reported as   
income subject to taxation or (ii) any Governmental Authority directs the Affected Transmission Owner to report payments or property as income subject to taxation; provided, however, that the Affected Transmission Owner may require the Developer to provide security, in a form   
reasonably acceptable to the Affected Transmission Owner (such as a parental guarantee or a   
letter of credit), in an amount equal to the cost consequences of any current tax liability under   
this Article 3.9. The Developer shall reimburse the Affected Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 3.9.4, within thirty (30) Calendar Days of receiving written notification from the Affected Transmission Owner of the amount due,   
including detail about how the amount was calculated.

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This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Affected Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 3.9.

Tax Gross-Up Amount.

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

Article 3.9 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to   
by the parties, this means that a Developer will pay an Affected Transmission Owner, in addition   
to the amount paid for the Common System Deliverability Upgrades, an amount equal to (1) the   
current taxes imposed on the Affected Transmission Owner (“Current Taxes”) on the excess of

(a) the gross income realized by the Affected Transmission Owner as a result of payments or   
property transfers made by the Developer to the Affected Transmission Owner under this   
Agreement (without regard to any payments under this Article 3.9) (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 Transmission Owner   
to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount   
described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on the Affected

Transmission Owner’s composite federal and state tax rates at the time the payments or property   
transfers are received and the Affected Transmission Owner will be treated as being subject to   
tax at the highest marginal rates in effect at that time (the “Current Tax Rate”), and (ii) the   
Present Value Depreciation Amount shall be computed by discounting the Affected   
Transmission Owner’s anticipated tax depreciation deductions as a result of such payments or   
property transfers by the Affected Transmission Owner’s current weighted average cost of   
capital. Thus, the formula for calculating a Developer’s liability to an Affected Transmission   
Owner pursuant to this Article 3.9.4 can be expressed as follows: (Current Tax Rate x (Gross   
Income Amount - Present Value Depreciation Amount))/(1 - Current Tax Rate). A Developer’s   
estimated tax liability in the event taxes are imposed shall be stated in Appendix A, EPC   
Services.

Private Letter Ruling or Change or Clarification of Law.

At any Developer’s request and expense, an Affected Transmission Owner shall file with   
the IRS a request for a private letter ruling as to whether any property transferred or sums paid,   
or to be paid, by the Developer to the Affected Transmission Owner under this Agreement are   
subject to federal income taxation. The Developer will prepare the initial draft of the request for   
a private letter ruling, and will certify under penalties of perjury that all facts represented in such   
request are true and accurate to the best of the Developer’s knowledge. The Affected

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

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The Affected Transmission Owner shall keep the Developer fully informed of the status   
of such request for a private letter ruling and shall execute either a privacy act waiver or a limited   
power of attorney, in a form acceptable to the IRS, that authorizes the Developer to participate in   
all discussions with the IRS regarding such request for a private letter ruling. The Affected   
Transmission Owner shall allow the Developer to attend all meetings with IRS officials about the   
request and shall permit the Developer 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 Common System Deliverability   
Upgrades are placed in service, (i) a Developer Breaches the covenants contained in Article

3.9.2, (ii) a “disqualification event” occurs within the meaning of IRS Notice 88-129, or (iii) this   
Agreement terminates and an Affected Transmission Owner retains ownership of the Common   
System Deliverability Upgrades, the relevant Developer(s) shall pay a tax gross-up for the cost   
consequences of any current tax liability imposed on the Affected Transmission Owner,   
calculated using the methodology described in Article 3.9.4 and in accordance with IRS Notice   
90-60.

Contests.

In the event any Governmental Authority determines that an Affected Transmission   
Owner’s receipt of payments or property constitutes income that is subject to taxation, the   
Affected Transmission Owner shall notify the relevant Developer(s), in writing, within thirty

(30) Calendar Days of receiving notification of such determination by a Governmental

Authority. Upon the timely written request by a Developer and at Developer’s sole expense, the   
Affected Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such   
determination. Upon a Developer’s written request and sole expense, the Affected Transmission   
Owner may file a claim for refund with respect to any taxes paid under this Article 3.9, whether   
or not it has received such a determination. The Affected Transmission Owner reserves the right   
to make all decisions with regard to the prosecution of such appeal, protest, abatement or other   
contest, including the selection of counsel and compromise or settlement of the claim, but the

Affected Transmission Owner shall keep the relevant Developer informed, shall consider in good faith suggestions from Developer about the conduct of the contest, and shall reasonably permit Developer or a Developer representative to attend contest proceedings.

Developer shall pay to Affected Transmission Owner on a periodic basis, as invoiced by   
Affected Transmission Owner, Affected Transmission Owner’s documented reasonable costs of   
prosecuting such appeal, protest, abatement or other contest, including any costs associated with   
obtaining the opinion of independent tax counsel described in this Article 3.9.7. The Affected   
Transmission Owner may abandon any contest if the Developer fails to provide payment to the   
Affected Transmission Owner within thirty (30) Calendar Days of receiving such invoice. At   
any time during the contest, Affected Transmission Owner may agree to a settlement either with   
Developer’s consent or after obtaining written advice from nationally-recognized tax counsel,   
selected by Affected Transmission Owner, but reasonably acceptable to Developer, that the

proposed settlement represents a reasonable settlement given the hazards of litigation.

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Developer’s obligation shall be based on the amount of the settlement agreed to by Developer, or   
if a higher amount, so much of the settlement that is supported by the written advice from   
nationally-recognized tax counsel selected under the terms of the preceding sentence. The   
settlement amount shall be calculated on a fully grossed-up basis to cover any related cost   
consequences of the current tax liability. The Affected Transmission Owner may also settle any   
tax controversy without receiving the Developer’s consent or any such written advice; however,   
any such settlement will relieve the Developer from any obligation to indemnify Affected   
Transmission Owner for the tax at issue in the contest (unless the failure to obtain written advice   
is attributable to the Developer’s unreasonable refusal to the appointment of independent tax   
counsel).

Refund.

In the event that (a) a private letter ruling is issued to an Affected Transmission Owner   
which holds that any amount paid or the value of any property transferred by a Developer to the   
Affected Transmission Owner under the terms of this Agreement is not subject to federal income   
taxation, (b) any legislative change or administrative announcement, notice, ruling or other   
determination makes it reasonably clear to the Affected Transmission Owner in good faith that   
any amount paid or the value of any property transferred by a Developer to the Affected   
Transmission Owner under the terms of this Agreement is not taxable to the Affected   
Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a   
determination that any payments or transfers made by a Developer to the Affected Transmission   
Owner are not subject to federal income tax, or (d) if the Affected Transmission Owner receives   
a refund from any taxing authority for any overpayment of tax attributable to any payment or   
property transfer made by a Developer to the Affected Transmission Owner pursuant to this   
Agreement, the Affected Transmission Owner shall promptly refund to the Developer the   
following:

(i) Any payment made by the Developer under this Article 3.9 for taxes that is   
attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) Interest on any amounts paid by the Developer to the Affected Transmission Owner for such taxes which the Affected Transmission Owner did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC’s regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date payment was made by the Developer to the date the Affected Transmission Owner refunds such payment to the Developer, and

(iii) With respect to any such taxes paid by the Affected Transmission Owner, any   
refund or credit the Affected Transmission Owner receives or to which it may be entitled from   
any Governmental Authority, interest (or that portion thereof attributable to the payment   
described in clause (i), above) owed to the Affected Transmission Owner for such overpayment   
of taxes (including any reduction in interest otherwise payable by the Affected Transmission   
Owner to any Governmental Authority resulting from an offset or credit); provided, however,   
that the Affected Transmission Owner will remit such amount promptly to the Developer only   
after and to the extent that Affected Transmission Owner has received a tax refund, credit or

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offset from any Governmental Authority for any applicable overpayment of income tax related to the Common System Deliverability Upgrades.

The intent of this provision is to leave both the Developer and the Affected Transmission Owner, to the extent practicable, in the event that no taxes are due with respect to any payment for Common System Deliverability Upgrades 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 a Developer, and at the Developer’s sole expense, an

Affected Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any   
tax (other than federal or state income tax) asserted or assessed against the Affected   
Transmission Owner for which the Developer may be required to reimburse the Affected   
Transmission Owner under the terms of this Agreement. The Developer shall pay to the   
Affected Transmission Owner on a periodic basis, as invoiced by the Affected Transmission   
Owner, the Affected Transmission Owner’s documented reasonable costs of prosecuting such   
appeal, protest, abatement, or other contest. The Developer and the Affected Transmission   
Owner shall cooperate in good faith with respect to any such contest. Unless the payment of   
such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be   
payable by the Developer to the Affected Transmission Owner for such taxes until they are   
assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In   
the event that a tax payment is withheld and ultimately due and payable after appeal, the   
Developer will be responsible for all taxes, interest and penalties, other than penalties   
attributable to any delay caused by the Affected Transmission Owner.

3.11 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 any Affected Transmission Owners with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

3.12 Modification.

Standards.

Any additions, modifications, or replacements made to a Party’s facilities shall be

designed, constructed and operated in accordance with this Agreement, NYISO requirements and Good Utility Practice.

Modification Costs.

Developers shall not be assigned the costs of any additions, modifications, or

replacements that an Affected Transmission Owner makes to the Common System Deliverability

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Upgrades or the New York State Transmission System to facilitate the interconnection of a

facility not subject to this Agreement to the Common System Deliverability Upgrades 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.

ARTICLE 4. TESTING AND INSPECTION

4.1 Initial Testing and Modifications.

In accordance with the Milestones set forth in Appendix A, each Affected Transmission   
Owner shall test its respective Common System Deliverability Upgrades to ensure their safe and   
reliable operation. Similar testing may be required after initial operation. Each Affected   
Transmission Owner shall make any modifications to its respective facilities that are found to be   
necessary as a result of such testing. Developers shall bear the cost of all such testing and   
modifications

4.2 Notice of Testing.

An Affected Transmission Owner shall notify the NYISO in advance of its performance of tests of the Common System Deliverability Upgrades.

ARTICLE 5. COMMUNICATIONS

5.1 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. COST AND SECURITY OBLIGATIONS

6.1 Cost Responsibilities.

The Developers will be responsible for their respective Invoice Share of the

monthly costs incurred by each Affected Transmission Owner in performing the EPC Services; provided, however, that the Developers will not be responsible for any cost above the Developer Common SDU Cost Cap except as set forth in Article 6.1.3.

On a periodic basis as set forth in the Milestones in Appendix A, each Affected Transmission Owner shall provide to the other Parties in writing an updated estimate of its cost for performing the EPC Services. The updated cost estimate shall fully specify any additional services and equipment required for the Affected Transmission Owner to perform the EPC Services and explain why these additional services and equipment are required.

If an Affected Transmission Owner’s updated cost estimate as provided under   
Article 6.1.2 is greater than the estimated cost for such services as determined by the Class Year

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Deliverability Study, each Developer’s responsibility for any costs above its Developer Common SDU Cost Cap shall be determined in accordance with Section 25.8.6 of Attachment S of the ISO OATT. The Parties shall amend this Agreement if there are any changes to the Developer Common SDU Cost Cap required by Section 25.8.6.

If the final cost incurred by an Affected Transmission Owner in performing the EPC Services is less than the estimated cost for such services as determined by the Class Year Deliverability Study and set forth in Appendix A, then the Affected Transmission Owner shall make a true-up payment to each Developer pursuant to Article 7.2 to refund to the Developer any costs that the Developer has paid to the Affected Transmission Owner under Article 6.1.1 that are greater than its Invoice Share of the actual costs.

Each Affected Transmission Owner shall be solely responsible for its costs in performing the EPC Services that are not recoverable from Developers under this Article 6.1; provided, however, that the Affected Transmission Owner may recover these costs: (i) by   
drawing on any Forfeited Security held by the Affected Transmission Owner to the extent   
permitted under Section 25.8.5 of Attachment S of the ISO OATT, and (ii) from Load Serving Entities through the ISO OATT to the extent permitted under Sections 25.7.12.3.2 and 25.8.6 of Attachment S of the ISO OATT and Schedule 12 of the ISO OATT.

6.2 Provision and Application of Security

Section 6.2 applies to each Developer that has provided an Affected Transmission Owner   
with cash or Security in the amount of its Developer Common SDU Cost Cap for its share of the   
Common System Deliverability Upgrades as determined in accordance with Attachment S to the   
ISO OATT and set forth in Appendix A. If a Developer: (i) does not pay an invoice issued by an   
Affected Transmission Owner pursuant to Article 7.1 within the timeframe set forth in Article

7.3 or (ii) does not pay any disputed amount into an independent escrow account pursuant to

Article 7.4, the owed Affected Transmission Owner may draw upon the cash or Security posted by the Developer for that Affected Transmission Owner to recover such payment.

6.3 Line Outage Costs.

Notwithstanding anything in the ISO OATT to the contrary, the Affected Transmission Owners may propose to recover line outage costs associated with the installation of the Common System Deliverability Upgrades on a case-by-case basis, subject to the SDU Cost Cap.

ARTICLE 7. INVOICE

7.1 General.

To the extent that any amounts are due to a Developer or an Affected Transmission

Owner under this Agreement, the owed Party shall submit to the owing Party, on a periodic basis an invoice of the amounts due for the preceding period. Each invoice shall state the time period to which the invoice applies and fully describe the services and equipment provided.

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Within six months after completion of the EPC Services, a Party owed any remaining   
amounts associated with the EPC Services shall provide a final invoice to the owing Party or   
Parties.

7.2 Refund of Remaining Security/Cash and Overpayment Amount

An Affected Transmission Owner shall release or refund to a Developer any remaining portions of its Security or cash payments provided by the Developer to satisfy its Project Cost Allocation in accordance with Attachment S of the ISO OATT and any amount that the   
Developer has overpaid as described in Article 6.1.4 following the later of: (i) the Developer’s payment of any final invoice to the Affected Transmission Owner under Article 7.1, and (ii) the Affected Transmission Owners’ completion of the EPC Services. The Affected Transmission Owner shall provide Developer with the refunded amount within thirty (30) Calendar Days of the Parties’ satisfaction of the requirements in this Article 7.2.

7.3 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.

7.4 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 up to the Common SDU Cost Cap; and (ii) pays to the Party owed money or into an   
independent escrow account the 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 11. 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 8. REGULATORY REQUIREMENTS AND GOVERNING LAW

8.1 Regulatory Requirements.

Each Party’s obligations under this Agreement shall be subject to its receipt of any

required approval or certificate from one or more Governmental Authorities in the form and

substance satisfactory to the applying Party, or the Party making any required filings with, or

providing notice to, such Governmental Authorities, and the expiration of any time period

associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain   
such other approvals. Nothing in this Agreement shall require Developers to take any action that   
could result in its inability to obtain, or its loss of, status or exemption under the Federal Power

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Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

8.2 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 9. NOTICES

9.1 General.

Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to any of the other Parties and any instrument required or   
permitted to be tendered or delivered by a Party in writing to any of 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.

9.2 Billings and Payments.

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

9.3 Alternative Forms of Notice.

Any notice or request required or permitted to be given by a Party to any of the other

Parties and not required by this Agreement to be given in writing may be so given by telephone,   
facsimile or email to the telephone numbers and email addresses set out in Appendix B hereto.

ARTICLE 10. FORCE MAJEURE

10.1 Economic hardship is not considered a Force Majeure event.

10.2 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

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writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 11. DEFAULT

11.1 General.

No Breach shall exist where such failure to discharge an obligation (other than the

payment of money) is the result of Force Majeure as defined in this Agreement or the result of an   
act or omission of the other Parties. Upon a Breach, the non-Breaching Parties 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.

11.2 Right to Terminate.

If a Breach is not cured as provided in this Article 11, 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 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

12.1 Indemnity.

Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and save

harmless, as applicable, the other Parties (each an “Indemnified Party”) from, any and all

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

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Indemnified Party.

If a Party is entitled to indemnification under this Article 12 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 12.1.3, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

Indemnifying Party.

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party

harmless under this Article 12, 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 12.1 may apply, the Indemnified Party shall notify the   
Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a   
Party’s indemnification obligation unless such failure or delay is materially prejudicial to the   
Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense   
thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the   
Indemnified Party. If the defendants in any such action include 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.

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12.2 No Consequential Damages.

Other than the indemnity obligations set forth in Article 12.1, 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.

12.3 Insurance.

Each Affected Transmission Owner shall each, at its own expense, procure and maintain   
in force throughout the period of this Agreement and until released by the other Parties, the   
following minimum insurance coverages, with insurance companies licensed to write insurance   
or approved eligible surplus lines carriers in the state of New York with a minimum A.M. Best   
rating of A or better for financial strength, and an A.M. Best financial size category of VIII or   
better:

Employers’ Liability and Workers’ Compensation Insurance providing statutory benefits in accordance with the laws and regulations of New York State.

Commercial General Liability (“CGL”) Insurance including premises and

operations, personal injury, broad form property damage, broad form blanket contractual liability   
coverage products and completed operations coverage, coverage for explosion, collapse and   
underground hazards, independent contractors coverage, coverage for pollution to the extent   
normally available and punitive damages to the extent normally available using Insurance   
Services Office, Inc. Commercial General Liability Coverage (“ISO CG”) Form CG 00 01 04 13   
or a form equivalent to or better than CG 00 01 04 13, with minimum limits of Two Million   
Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate combined   
single limit for personal injury, bodily injury, including death and property damage.

Comprehensive Automobile Liability Insurance for coverage of owned and nonowned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

If applicable, the Commercial General Liability and Comprehensive Automobile Liability Insurance policies should include contractual liability for work in connection with constructions or demolition work on or within 50 feet of a railroad, or a separate Railroad   
Protective Liability Policy should be provided.

Excess Liability Insurance over and above the Employers’ Liability, Commercial   
General Liability and Comprehensive Automobile Liability Insurance coverages, with a   
minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence and

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Twenty Million Dollars ($20,000,000) aggregate. The Excess policies should contain the same extensions listed under the Primary policies.

The Commercial General Liability Insurance, Comprehensive Automobile

Insurance and Excess Liability Insurance policies of each Affected Transmission Owner shall   
name the other Parties, their parents, associated and Affiliate companies and their respective   
directors, officers, agents, servants and employees (“Other Party Group”) as additional insureds   
using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG

20 37 04 13 or equivalent to or better forms. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement   
against the Other Party Group and provide thirty (30) Calendar days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in   
coverage or condition.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and non-contributory. Each Affected Transmission Owner shall be responsible for its respective deductibles or retentions.

The Commercial General Liability Insurance, Comprehensive Automobile

Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for at least three (3) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by each Developer and Affected Transmission Owner.

If applicable, Pollution Liability Insurance in an amount no less than $7,500,000   
per occurrence and $7,500,000 in the aggregate. The policy will provide coverage for claims   
resulting from pollution or other environmental impairment arising out of or in connection with   
work performed on the premises by the other party, its contractors and and/or subcontractors.   
Such insurance is to include coverage for, but not be limited to, cleanup, third party bodily injury   
and property damage and remediation and will be written on an occurrence basis. The policy   
shall name the Other Party Group as additional insureds, be primary and contain a waiver of   
subrogation.

The requirements contained herein as to the types and limits of all insurance to be maintained by each Affected Transmission Owner are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this   
Agreement. Upon request, Affected Transmission Owner shall provide to the requesting Party certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

Notwithstanding the foregoing, each Affected Transmission Owner may self-  
insure to meet the minimum insurance requirements of Articles 12.3.1 through 12.3.9 to the   
extent it maintains a self-insurance program; provided that, such Party’s senior debt is rated at   
investment grade, or better, by Standard & Poor’s and that its self-insurance program meets the   
minimum insurance requirements of Articles 12.3.1 through 12.3.9. In the event that a Party is

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permitted to self-insure pursuant to this Article 12.3.11, it shall notify the other Parties that it   
meets the requirements to self-insure and that its self-insurance program meets the minimum   
insurance requirements in a manner consistent with that specified in Articles 12.3.1 through

12.3.9 and provide evidence of such coverages. For any period of time that a Party’s senior debt   
is unrated by Standard & Poor’s or is rated at less than investment grade by Standard & Poor’s,   
such Party shall comply with the insurance requirements applicable to it under Articles 12.3.1   
through 12.3.9.

Each Developer and Affected Transmission Owner agree to report to each of the other Developers and Affected Transmission Owners in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

Subcontractors of each party must maintain the same insurance requirements

stated under Articles 12.3.1 through 12.3.9 and comply with the Additional Insured requirements herein. In addition, their policies must state that they are primary and non-contributory and   
contain a waiver of subrogation.

ARTICLE 13. 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; and provided further that   
a Developer shall have the right to assign this Agreement, without the consent of the NYISO or   
Affected Transmission Owners, for collateral security purposes to aid in providing financing for   
its Large Generating Facility, provided that the Developer will promptly notify the NYISO and   
Affected Transmission Owners of any such assignment. Any financing arrangement entered into   
by a Developer pursuant to this Article will provide that prior to or upon the exercise of the   
secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the   
secured creditor, the trustee or mortgagee will notify the NYISO and Affected Transmission   
Owners of the date and particulars of any such exercise of assignment right(s) and will provide   
the NYISO and Affected Transmission Owners with proof that it meets the requirements of   
Articles 6.2 and 12.3. 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 14. 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

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determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

ARTICLE 15. COMPARABILITY

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

ARTICLE 16. CONFIDENTIALITY

16.1 Confidentiality.

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

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.

16.2 Term.

During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 16, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

16.3 Confidential Information.

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

16.4 Scope.

Confidential Information shall not include information that the receiving Party can

demonstrate: (1) is generally available to the public other than as a result of a disclosure by the   
receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential   
basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party   
without restriction by a third party, who, to the knowledge of the receiving Party after due   
inquiry, was under no obligation to the disclosing Party to keep such information confidential;

(4) was independently developed by the receiving Party without reference to Confidential

Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act   
or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance   
with Article 16.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental

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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.

16.5 Release of Confidential Information.

No Party shall release or disclose Confidential Information to any other person, except to   
its Affiliates (limited by FERC Standards of Conduct requirements), subcontractors, employees,   
consultants, or to parties who may be considering providing financing to or equity participation   
with Developers, 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 16 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 16.

16.6 Rights.

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

16.7 No Warranties.

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

16.8 Standard of Care.

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

16.9 Order of Disclosure.

If a court or a Government Authority or entity with the right, power, and apparent

authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories,

requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive

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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.

16.10 Termination of Agreement.

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

16.11 Remedies.

The Parties agree that monetary damages would be inadequate to compensate a Party for   
another Party’s Breach of its obligations under this Article 16. 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 16, 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 16, 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 16.

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

Notwithstanding anything in this Article 16 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,

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resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

16.13 Required Notices Upon Requests or Demands for Confidential Information

Except as otherwise expressly provided herein, no Party shall disclose Confidential

Information to any person not employed or retained by the Party possessing the Confidential

Information, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the   
disclosing Party to be required to be disclosed in connection with a dispute between or among   
the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the   
other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its   
obligations under this Agreement, the ISO OATT or the NYISO Services Tariff. Prior to any   
disclosures of a Party’s Confidential Information under this subparagraph, or if any third party or   
Governmental Authority makes any request or demand for any of the information described in   
this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and   
agrees to assert confidentiality and cooperate with the other Party in seeking to protect the   
Confidential Information from public disclosure by confidentiality agreement, protective order or   
other reasonable measures.

ARTICLE 17. AFFECTED TRANSMISSION OWNER NOTICES OF

ENVIRONMENTAL RELEASES

An Affected Transmission Owner 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 Common System Deliverability Upgrades, 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 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 18. INFORMATION REQUIREMENT

18.1 Information Acquisition.

Each Affected Transmission Owner shall submit specific information regarding the

electrical characteristics of its respective facilities to the other Parties as described below and in accordance with Applicable Reliability Standards.

18.2 Information Submission by Affected Transmission Owners.

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

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18.3 Information Supplementation.

Each Affected Transmission Owner shall supplement its information submissions described above in this Article 18 with any and all “as-built” information or “as-tested” performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist.

ARTICLE 19. INFORMATION ACCESS AND AUDIT RIGHTS

19.1 Information Access.

Each Party (“Disclosing Party”) shall make available to another Party (“Requesting

Party”) information that is in the possession of the Disclosing Party and is necessary in order for   
the Requesting Party to: (i) verify the costs incurred by the Disclosing Party for which the   
Requesting Party is responsible under this Agreement; and (ii) carry out its obligations and   
responsibilities under this Agreement. The Parties shall not use such information for purposes   
other than those set forth in this Article 19.1 of this Agreement and to enforce their rights under   
this Agreement.

19.2 Reporting of Non-Force Majeure Events.

Each Party (the “Notifying Party”) shall notify the other Parties when the Notifying Party becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide   
necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such 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.

19.3 Audit Rights.

Subject to the requirements of confidentiality under Article 16 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 19.4 of this Agreement.

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19.5 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 Common System Deliverability Upgrades shall be subject to audit for a period of twenty-four months following the issuance by a Developer or an Affected Transmission Owner, as   
applicable, of a final invoice in accordance with Article 7.1 of this Agreement.

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 19.4.1 of this Agreement shall be   
subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights   
period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to   
such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit   
rights period shall be twenty-four months after the event for which the audit is sought.

19.6 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 20. SUBCONTRACTORS

20.1 General.

Nothing in this Agreement shall prevent a Party from utilizing the services of any

subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

20.2 Responsibility of Principal.

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the NYISO or Affected Transmission Owners be liable for the actions or inactions of a Developer or its subcontractors with respect to obligations of the Developer 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.

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20.4 No Limitation by Insurance.

The obligations under this Article 20 will not be limited in any way by any limitation of subcontractor’s insurance.

ARTICLE 21. DISPUTES

21.1 Submission.

In the event any Party has a dispute, or asserts a claim, that arises out of or in connection   
with this Agreement or its performance (a “Dispute”), such Party shall provide the other Parties   
with written notice of the Dispute (“Notice of Dispute”). Such Dispute shall be referred to a   
designated senior representative of each Party for resolution on an informal basis as promptly as   
practicable after receipt of the Notice of Dispute by the other Parties. In the event the designated   
representatives are unable to resolve the Dispute through unassisted or assisted negotiations   
within thirty (30) Calendar Days of the other Parties’ receipt of the Notice of Dispute, such   
Dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in   
accordance with the arbitration procedures set forth below. In the event the Parties do not agree   
to submit such Dispute to arbitration, each Party may exercise whatever rights and remedies it   
may have in equity or at law consistent with the terms of this Agreement.

21.2 External Arbitration Procedures.

Any arbitration initiated under this Agreement shall be conducted before a single neutral   
arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten

(10) Calendar Days of the submission of the Dispute to arbitration, 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 21, the terms of this Article 21 shall prevail.

21.3 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

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with FERC if it affects jurisdictional rates, terms and conditions of service, or Common System Deliverability Upgrades.

21.4 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.

21.5 Termination.

Notwithstanding the provisions of this Article 21, 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.

ARTICLE 22. REPRESENTATIONS, WARRANTIES AND COVENANTS

22.1 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 properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

Authority.

Such Party has the right, power and authority to enter into this Agreement, to become a   
Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and   
binding obligation of such Party, enforceable against such Party in accordance with its terms,   
except as the enforceability thereof may be limited by applicable bankruptcy, insolvency,   
reorganization or other similar laws affecting creditors’ rights generally and by general equitable   
principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

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.

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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 23. MISCELLANEOUS

23.1 Binding Effect.

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

23.2 Conflicts.

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

23.3 Rules of Interpretation.

This Agreement, unless a clear contrary intention appears, shall be construed and

interpreted as follows: (1) the singular number includes the plural number and vice versa; (2)

reference to any person includes such person’s successors and assigns but, in the case of a Party,   
only if such successors and assigns are permitted by this Agreement, and reference to a person in   
a particular capacity excludes such person in any other capacity or individually; (3) reference to   
any agreement (including this Agreement), document, instrument or tariff means such   
agreement, document, instrument, or tariff as amended or modified and in effect from time to   
time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to   
any Applicable Laws and Regulations means such Applicable Laws and Regulations as   
amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time,   
including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated   
otherwise, reference to any Article, Section or Appendix means such Article of this Agreement   
or such Appendix to this Agreement, as the case may be; (6) “hereunder”, “hereof’, “herein”,   
“hereto” and words of similar import shall be deemed references to this Agreement as a whole   
and not to any particular Article or other provision hereof or thereof; (7) “including” (and with   
correlative meaning “include”) means including without limiting the generality of any   
description preceding such term; and (8) relative to the determination of any period of time,   
“from” means “from and including”, “to” means “to but excluding” and “through” means   
“through and including”.

23.4 Compliance.

Each Party shall perform its obligations under this Agreement in accordance with

Applicable Laws and Regulations, Applicable Reliability Standards, the ISO OATT and Good

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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.

23.5 Joint and Several Obligations.

Except as otherwise stated herein, the obligations of NYISO, each Developer and each Affected Transmission Owner are several, and are neither joint nor joint and several.

23.6 Entire Agreement.

This Agreement, including all Appendices and Schedules attached hereto, constitutes the   
entire agreement between the Parties with reference to the subject matter hereof, and supersedes   
all prior and contemporaneous understandings or agreements, oral or written, between the Parties   
with respect to the subject matter of this Agreement. There are no other agreements,   
representations, warranties, or covenants which constitute any part of the consideration for, or   
any condition to, either Party’s compliance with its obligations under this Agreement.

23.7 No Third Party Beneficiaries.

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

23.8 Waiver.

The failure of a Party to this Agreement to insist, on any occasion, upon strict

performance of any provision of this Agreement will not be considered a waiver of any

obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either   
Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a   
waiver with respect to any other failure to comply with any other obligation, right, duty of this   
Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

23.9 Headings.

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

23.10 Multiple Counterparts.

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

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23.11 Amendment.

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

23.12 Modification by the Parties.

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

23.13 Reservation of Rights.

NYISO and each of the Affected Transmission Owners 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 Developers 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.

23.14 No Partnership.

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

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

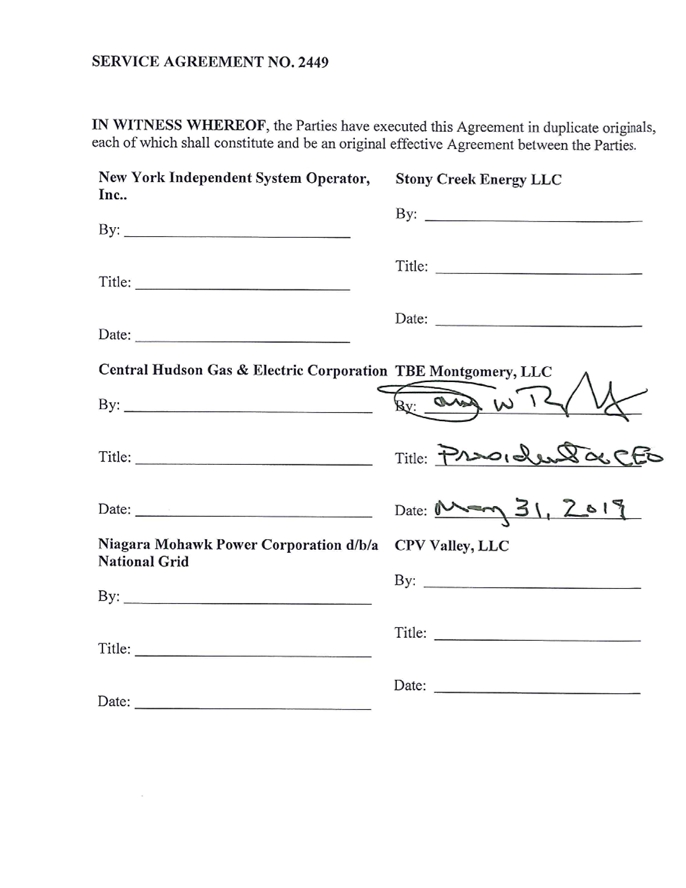
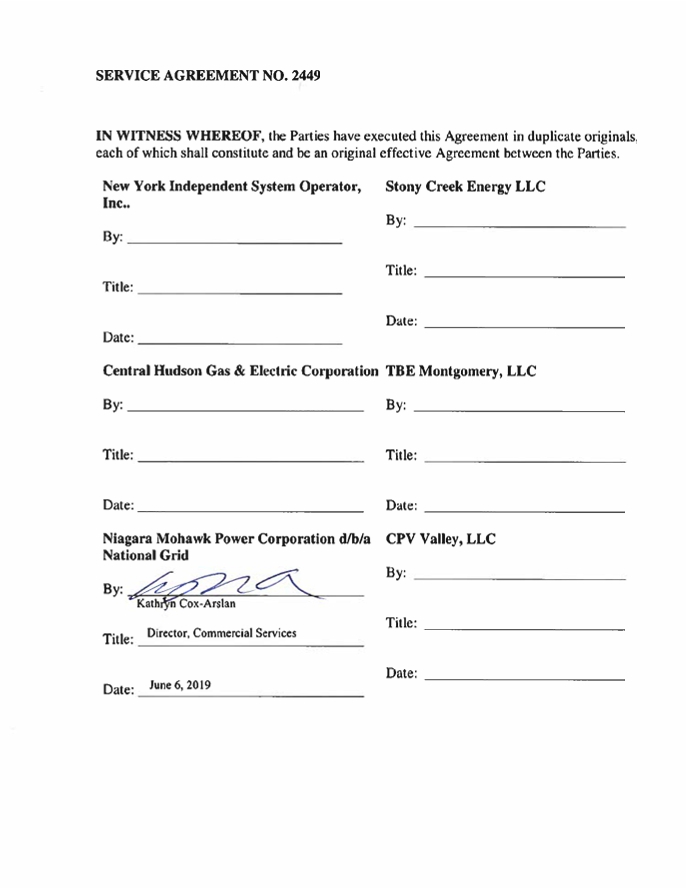
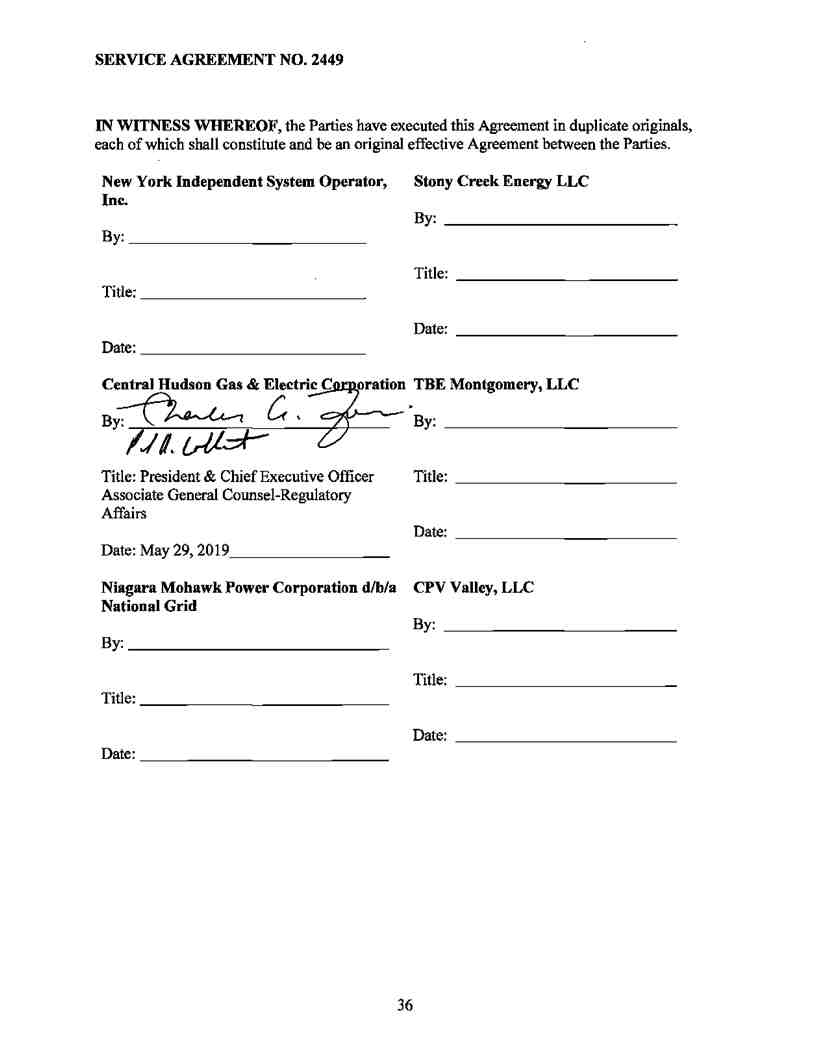
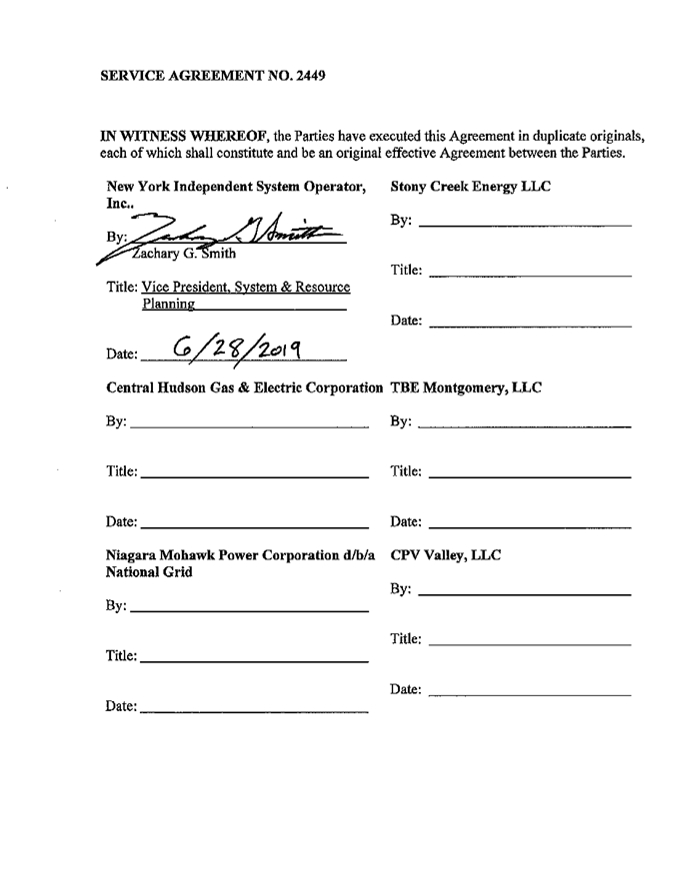
obligation or partnership liability upon any Party. No Party shall have any right, power or

authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

23.15 Other Transmission Rights.

Notwithstanding any other provision of this Agreement, nothing herein shall be construed   
as relinquishing or foreclosing any rights, including but not limited to firm transmission rights,   
capacity rights, or transmission congestion rights that the Developers shall be entitled to, now or   
in the future under any other agreement or tariff as a result of, or otherwise associated with, the   
incremental transmission capacity, if any, created by these Common System Deliverability   
Upgrades, in the configuration described in and as operated in accordance with Appendix A of   
this Agreement.

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SERVICE AGREEMENT NO. 2449

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:

Title:

Date:

Central Hudson Gas & Electric Corporation

By:

Title:

Date:

Niagara Mohawk Power Corporation d/b/a National Grid

By:

Stony Creek Energy LLC

By:

Title:

Date:

TBE Montgomery, LLC

By:

Title:

Date:

CPV Valley, LLC

By:

Donald G. Atwood   
Authorized Signatory

Title:

Title:

Date: Date:

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June 27, 2019

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APPENDICES

Appendix A

EPC Services

Appendix B

Addresses for Delivery of Notices and Billings

SERVICE AGREEMENT NO. 2449

APPENDIX A

EPC SERVICES

1. Common System Deliverability Upgrades

A. Central Hudson’s System

The Common System Deliverability Upgrades consist of the installation of Smart Wires SmartValve technology utilizing a bank design instead of a traditional series capacitor   
installation. The SmartValve installation will be located at the Hurley Avenue Substation. The SmartValve technology is a modular Static Synchronous Series Compensator (SSSC) which uses variable voltage injection to synthesize a capacitive or inductive reactance.

Operating Characteristics

• The SmartValve control initially will be utilized to provide 3.5 Ω capacitive

compensation.

• Voltage injection is enabled when 200 A (~120 MVA) is present in all 3 phases and

disabled if the current in any phase drops below 150 A (~90 MVA).

• For changing line current, the SmartValve bank can ramp voltage injection up or down

within 30 seconds (i.e., capable of going from 0 V to 12 kV injection per phase in 30

seconds) to initially get the devices from 0 to the 3.5 Ω operating level, and then the inner control loops take over to maintain the 3.5 Ω with faster response to react to line current variations during operation.

• Should fault currents exceed a pre-set value, the SmartValve on the faulted phases will

bypass in 1 ms. The unfaulted phases would ramp down their injection and bypass in 10 seconds, however, any fault should be cleared by that time.

• Each SmartValve can withstand 63 kA RMS for 0.5 seconds with a first-peak

asymmetrical value up to 164 kA.

• Each SmartValve has a continuous rating of 3400 A and can withstand overloads up to

3700 A for 4 hours and 4000 A for 15 minutes.

• The SmartValve bank has been specified to provide 12 kV quadrature injection per phase

at the 301 line’s summer STE rating. This value of injection will provide for 3.5 Ω capacitive compensation at summer STE rating to achieve the required 21%   
compensation.

• Central Hudson will turn over operational control to the NYISO

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The Common System Deliverability Upgrades on Central Hudson’s system include the following major electrical and physical equipment:

Equipment Labor

Planning & Engineering $1,775,000

Major Equipment

▪ Smart Wires $10,875,000 $375,000

▪ Package Sub. $925,000 $650,000

▪ Breaker $300,000 $125,000

▪ GIC Monitoring $75,000

▪ Other $100,000

Site Work $3,250,000

Transmission Line Work $1,750,000

Total $20,200,000

Central Hudson shall engineer, procure the required equipment, and construct the

Common System Deliverability Upgrades in accordance with Central Hudson’s Specifications

and Requirements for Electric Installations dated July 2007 to the extent not inconsistent with the terms of this Agreement or the NYISO OATT.

B. National Grid’s System

The Common System Deliverability Upgrades on National Grid’s system do not include   
electrical or physical equipment; but involve relay setting adjustments at National Grid’s Leeds   
substation.

Central Hudson shall engineer, procure the required equipment, and construct the   
Common System Deliverability Upgrades on behalf of National Grid in accordance with   
National Grid’s ESB 750 series bulletins to the extent not inconsistent with the terms of this   
Agreement or the NYISO OATT. Please note that effective April 27th, 2009 all references to P.S.C. No. 207 in any of National Grid’s ESB 750 series bulletins shall be construed as   
references to P.S.C. No. 220.

2. Developer Cost Responsibility

A. Developer Common SDU Cost Cap

Each Developer has accepted, and has provided Security to the Affected Transmission   
Owners in the form of cash, letters of credit, or parental guarantees to cover, pursuant to Section

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SERVICE AGREEMENT NO. 2449

25.7.12.2 of Attachment S of the ISO OATT, the cost amount identified in the NYISO Class

Year Deliverability Studies for 2010 and 2011 for the Common System Deliverability Upgrades. The non-cash security instruments have been updated for inflation, which updated amount is   
shown below. The security held in cash reflect the actual escrow amounts currently held with the interest included. The amounts in the below table constitute the Developer Common SDU Cost Cap for each Developer.

Developer Total SDU Cost SDU Cost Allocation SDU Cost

Allocation to Central Hudson Allocation to

National Grid

CPV Valley $15,573,056 $15,197,060 $375,996

Taylor $181,454 $177,073 $4,381

Stony Creek $1,144,490 $1,114,092 $30,398

Total $16,899,000 $16,488,225 $410,775

B. Developer’s Invoice Share

Developer Invoice Share (%)

CPV Valley 86.39%

Taylor 1.02%

Stony Creek 6.24%

C. Forfeited Security

Duke Energy Corporation provided Central Hudson and National Grid parental

guaranties for the Ball Hill project in the amount of $1,025,545 and $27,968, respectively. These non-cash guaranties are now valued at $1,133,525 and $27,968, respectively. Central Hudson and National Grid will recover these costs by calling for the Forfeited Security to be converted into cash and drawing down on the Forfeited Security to the extent necessary to cover actual   
costs in excess of Common SDU Cost Cap.

3. Milestones

Item Milestone Date Responsible Party

1 Provide initial status report on the July 1, 2019 CHGE

construction and installation of

Common System Deliverability

Upgrades in accordance with Article

18.2

2 Expand Hurley Station, Permitting December 2019 CHGE

and Site Prep Existing Station

3 Provide updated estimate of its cost December 2019 CHGE, GRID

for performing the EPC Services as required by Article 6.1.2

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4 Smart Wires Design Completed CHGE

5 Procure Smart Wires Equipment July 2019 CHGE

6 Complete Smart Wires Installation March 2020 CHGE

7 Complete Hurley Station Breaker December 2019 CHGE

Installation

8 Complete 115 kV Line Relocation December 2019 CHGE

9 Complete Hurley Line 301 Relay March 2020 CHGE

Upgrades

10 Complete Leeds Line 301 Relay March 2020 GRID

Upgrades

11 Completion Date March 2020 CHGE

12 In-Service Date March 2020 CHGE

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APPENDIX B

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

Before In-Service Date of the Common System Deliverability Upgrades:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

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

After In-Service Date of the Common System Deliverability Upgrades:

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

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

Central Hudson:

Central Hudson Gas and Electric Corporation

Attn: John Borchert, Sr. Director Energy Policy and Trans. Dev. 284 South Avenue

Poughkeepsie, NY 12601   
Phone: (845) 486-5327   
Email:

National Grid:

Niagara Mohawk Power Corporation d/b/a National Grid Attn: Director, Transmission Commercial Services

40 Sylvan Road

Waltham, MA 02541-1120   
Phone: (781) 907-2422

Fax: (315) 428-5114

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SERVICE AGREEMENT NO. 2449

CPV Valley:

Don Atwood

Competitive Power Ventures, Inc.

50 Braintree Hill Office Park Suite 300

Braintree, MA 02184   
Office: (781) 848-2202

Cell: (617) 271-7382

datwood@cpv.com

Taylor:

James W. Taylor Jr.   
President & CEO

Taylor-Montgomery, LLC 350 Neelytown Road

Montgomery, New York 12549 Telephone: 845.457.4021   
Fax: 845.457.4003

Email: jim.taylor@taylor-montgomery.com

Stony Creek:

Stony Creek Energy LLC   
Attn: Asset Manager

1 S Wacker Drive, Suite 1800 Chicago, IL 60606

Phone: (312) 582-1728

Email: OrangevilleAssetManagers@InvenergyLLC.com

Billings and Payments:

Central Hudson:

Central Hudson Gas and Electric Corporation

Attn: John Borchert, Sr. Director Energy Policy and Trans. Dev. 284 South Avenue

Poughkeepsie, NY 12601   
Phone: (845) 486-5327   
Email:

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SERVICE AGREEMENT NO. 2449

National Grid:

Niagara Mohawk Power Corporation d/b/a National Grid Attn: Director, Transmission Commercial Services

40 Sylvan Road

Waltham, MA 02541-1120   
Phone: (781) 907-2422

Fax: (315) 428-5114

CPV Valley:

Don Atwood

Competitive Power Ventures, Inc.

50 Braintree Hill Office Park Suite 300

Braintree, MA 02184   
Office: (781) 848-2202

Cell: (617) 271-7382

datwood@cpv.com

Taylor:

James W. Taylor Jr.   
President & CEO

Taylor-Montgomery, LLC 350 Neelytown Road

Montgomery, New York 12549 Telephone: 845.457.4021   
Fax: 845.457.4003

Email: jim.taylor@taylor-montgomery.com

Stony Creek:

Stony Creek Energy LLC   
Attn: Asset Manager

1 S Wacker Drive, Suite 1800 Chicago, IL 60606

Phone: (312) 582-1728

Email: OrangevilleAssetManagers@InvenergyLLC.com

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SERVICE AGREEMENT NO. 2449

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

NYISO:

Before In-Service Date of the Common System Deliverability Upgrades:

New York Independent System Operator, Inc.

Attn: Vice President, System and Resource Planning

10 Krey Boulevard

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

After In-Service Date of the Common System Deliverability Upgrades:

New York Independent System Operator, Inc.

Attn: Vice President, Operations

10 Krey Boulevard

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

Central Hudson:

Central Hudson Gas and Electric Corporation

Attn: John Borchert, Sr. Director Energy Policy and Trans. Dev. 284 South Avenue

Poughkeepsie, NY 12601   
Phone: (845) 486-5327   
Fax: (845)486-5697   
jborchert@cenhud.com

National Grid:

Niagara Mohawk Power Corporation d/b/a National Grid Attn: Director, Transmission Commercial Services

40 Sylvan Road

Waltham, MA 02541-1120   
Phone: (781) 907-2422

Fax: (315) 428-5114

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SERVICE AGREEMENT NO. 2449

CPV Valley:

Don Atwood

Competitive Power Ventures, Inc.

50 Braintree Hill Office Park Suite 300

Braintree, MA 02184   
Office: (781) 848-2202

Cell: (617) 271-7382

datwood@cpv.com

Taylor:

James W. Taylor Jr.   
President & CEO

Taylor-Montgomery, LLC 350 Neelytown Road

Montgomery, New York 12549 Telephone: 845.457.4021   
Fax: 845.457.4003

Email: jim.taylor@taylor-montgomery.com

Stony Creek:

Stony Creek Energy LLC   
Attn: Asset Manager

1 S Wacker Drive, Suite 1800 Chicago, IL 60606

Phone: (312) 582-1728

Email: OrangevilleAssetManagers@InvenergyLLC.com

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