

40.25.16 APPENDIX 16 TO ATTACHMENT HH

STANDARD UPGRADE CONSTRUCTION AGREEMENT

SERVICE AGREEMENT NO. [*]

SERVICE AGREEMENT NO. [●]

STANDARD UPGRADE CONSTRUCTION AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.,

AND

[INSERT SYSTEM OWNER]

AND

[INSERT INTERCONNECTION CUSTOMER]

Dated as of *[insert execution date]*

Project Name: *[insert project name]*

Queue Position No(s): *[insert queue number(s)]*

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STANDARD UPGRADE CONSTRUCTION AGREEMENT

THIS STANDARD UPGRADE CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into this __ day of __ 20__, by and among: _____, a [corporate description] organized and existing under the laws of State/Commonwealth of _____ (“Interconnection Customer”), _____, a [corporate description] organized and existing under the laws of State/Commonwealth of _____ (“System Owner”), and 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”). Interconnection Customer, the NYISO, or System Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

RECITALS

[To insert one of the following recitals based on Interconnection Customer’s project:

Application 1:

WHEREAS, *Interconnection Customer is developing a [insert generation/transmission project] identified as [insert project name] with NYISO Queue Position No. [*] [(“Facility”)] that will interconnect to certain transmission facilities of [insert Connecting Transmission Owner’s name] (“Connecting Transmission Owner”) that are part of the New York State Transmission System or Distribution System;*

WHEREAS, *Interconnection Customer [has entered/will enter] into a Standard Interconnection Agreement with the NYISO and the Connecting Transmission Owner concerning the interconnection of the Facility;*

Application 2:

WHEREAS, *Interconnection Customer is an Affected System Interconnection Customer developing a [insert generation/transmission] project (“Facility”) that will interconnect in [insert name of host transmission region], which interconnection was studied by the NYISO through an Affected System Study for impacts on the New York State Transmission System or Distribution System with NYISO Queue Position No. [*];*

WHEREAS, *Interconnection Customer [has entered/will enter] into any required interconnection agreement for its Facility with the [insert name of host transmission region];*

[To insert one of the following alternatives based on the application of this Agreement:

Application 1:

WHEREAS, *the [Cluster Study/Class Year Interconnection Facilities Study for Class Year [insert Class Year]] has determined that certain System Upgrade Facilities are required to be constructed on the Affected System owned by the System Owner as the Affected System Operator to enable the Facility to interconnect reliably to the New York State Transmission System or*

Distribution System in a manner that meets the NYISO Minimum Interconnection Standard (“Upgrades”);

Application 2:

WHEREAS, the NYISO’s [*Cluster Study Deliverability Study and/or Additional SDU Study (collectively, the “Custer Study Deliverability Study”)/Class Year Deliverability Study and/or Additional SDU Study for Class Year [insert Class Year] (collectively, the “Class Year Deliverability Study)*] determined that certain System Deliverability Upgrades are required to be constructed on the Affected System owned by the System Owner as the Affected System Operator to enable the Facility to interconnect reliably to the New York State Transmission System or Distribution System in a manner that meets the NYISO Deliverability Interconnection Standard at the Facility’s requested level of Capacity Resource Interconnection Service (“Upgrades”);]

Application 3:

WHEREAS, the NYISO’s Affected System Study determined that certain Affected System Network Upgrades are required to be constructed on the Affected System owned by they System Owner as the Affected System Operator in connection with the Facility’s interconnection in [*insert name of host transmission region*];

WHEREAS, the [*Cluster Study/ Cluster Study Deliverability Study/Class Year Interconnection Facilities Study/ Class Year Deliverability Study/Affected System Study*] has determined the cost estimate for the engineering, procurement, and construction of the Upgrades (“Upgrades Estimated Total Cost Amount”);

WHEREAS, Interconnection Customer and System Owner desire to [*perform/have Interconnection Customer perform/have System Owner perform*], and [*they are willing to perform/Interconnection Customer is willing to perform/System Owner is willing to perform*], the engineering, procurement, and construction services required to construct the Upgrades (“Construction Services”) in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, Interconnection Customer, System Owner, and the NYISO have agreed to enter into this Agreement for the purpose of allocating the responsibilities for the performance and oversight of the Construction Services required to construct the 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 OATT, Section 40.1 of Attachment HH to the OATT, Section 30.1 of Attachment X to the ISO OATT, Section 25.1.2 of Attachment S to the OATT, the body of the Standard Interconnection Procedures or Standard Facility Interconnection Procedures, or the body of this Agreement.

Affected System shall mean an electric system within the New York Control Area other than the transmission system owned, controlled or operated by the Connecting Transmission Owner that may be affected by the proposed interconnection.

Affected System Interconnection Customer shall mean any entity that submits an interconnection request for a Facility to a transmission system other than New York State Transmission System that may cause the need for Affected System Network Upgrades on the New York State Transmission System.

Affected System Network Upgrades shall mean the additions, modifications, and upgrades to the New York State Transmission System required to accommodate Affected System Interconnection Customer's proposed interconnection to a transmission system other than the New York State Transmission System.

Affected System Operator shall mean the entity that operates an Affected System. Affected System Operator includes the Affected Transmission Owners.

Affected System Study shall mean the NYISO's evaluation of the impacts on the New York State Transmission System of an Affected System Interconnection Customer's proposed interconnection to a transmission system other than the New York State Transmission System, as described in Section 40.8.3 of Attachment HH to the OATT.

Affected Transmission Owner shall mean the New York public utility or authority (or its designated agent) other than the Connecting Transmission Owner that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the ISO OATT, and (ii) owns, leases or otherwise possesses an interest in a portion of the New York State Transmission System where System Deliverability Upgrades, System Upgrade Facilities, Affected Network Upgrade Facilities, or Network Upgrade Facilities are or will be installed pursuant to Attachments P, S, X, Z, or HH to the ISO OATT.

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

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 Electric Reliability Organization, the NPCC and the NYSRC.

Applicable Reliability Requirements shall mean the NYSRC Reliability Rules, and other criteria, standards and procedures, as described in Section 40.12.1.2 of this Attachment HH, applied when conducting the Cluster Baseline Assessment and the Cluster Project Assessment;

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 the Standard Interconnection Procedures. The Applicable Reliability Requirements applied are those in effect when the particular assessment is commenced.

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Interconnection Customer's Facility is directly interconnected, as those requirements and guidelines are amended and modified and in effect from time to time; provided that no Party shall waive its right to challenge the applicability or validity of any requirement or guideline as applied to it in the context of this Agreement.

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.

Class Year Interconnection Facilities Study ("Class Year Study") shall mean a study conducted by the NYISO or a third party consultant for the Interconnection Customer to determine a list of facilities (including Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System Upgrade Facilities and System Deliverability Upgrades as identified in the Interconnection System Reliability Impact Study), the cost of those facilities, and the time required to interconnect the Large Generating Facility or Class Year Transmission Project with the New York State Transmission System or with the Distribution System. The scope of the study is defined in Section 30.8 of the Large Facility Interconnection Procedures in Attachment X to the ISO OATT.

Class Year Transmission Project shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Class Year Transmission Project without having to re-dispatch generation. Class Year Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

Cluster Study shall mean the study conducted, as applicable, by the ISO, Connecting Transmission Owner, Affected Transmission Owner, Affected System Operator or a third party consultant for the Interconnection Customer to determine a list of facilities (including Connecting Transmission Owner's Attachment Facilities, Distribution Upgrades, System

Upgrade Facilities and System Deliverability Upgrades), the cost of those facilities, and the time required to interconnect the Generating Facility or Cluster Study Transmission Project with the New York State Transmission System or with the Distribution System. The Cluster Study includes the Phase 1 Study and the Phase 2 Study.

Cluster Study Transmission Project shall mean an Interconnection Customer's proposed new transmission facility that will interconnect to the New York State Transmission System or a proposed upgrade—an improvement to, addition to, or replacement of a part of an existing transmission facility—to the New York State Transmission System, for which (1) the Interconnection Customer is eligible to request and does request Capacity Resource Interconnection Service, subject to the eligibility requirements set forth in the ISO Procedures; or (2) the Interconnection Customer requests only Energy Resource Interconnection Service and the transmission facility for which it requests Energy Resource Interconnection Service is a transmission facility over which power flow can be directly controlled by power flow control devices directly connected to the Cluster Study Transmission Project without having to re-dispatch generation. Cluster Study Transmission Projects shall not include Attachment Facilities, Network Upgrade Facilities, System Upgrade Facilities or System Deliverability Upgrades.

Completion Date shall mean the date on which, as applicable, the System Owner or Interconnection Customer has completed the Construction Services, as set forth in Appendix A.

Confidential Information shall mean any information that is defined as confidential by Article 15 of this Agreement.

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

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

Default shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with Article 10 of this Agreement.

Distribution System shall mean the Connecting Transmission Owner's facilities and equipment used to distribute electricity that are subject to FERC jurisdiction, and are subject to the NYISO's Standard Interconnection Procedures in Attachment HH 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 on which this Agreement becomes effective in accordance with Article 2.1 of this Agreement.

Electric Reliability Organization ("ERO") shall mean the North American Electric Reliability Corporation or its successor organization.

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

Facility shall mean, as applicable, the Generating Facility, Class Year Transmission Project, or Cluster Study Transmission Project interconnecting to the New York State Transmission System or Distribution System or, for an Affected System Interconnection Customer, the generation or transmission facility interconnecting to another region's transmission system. For purpose of this agreement, the Facility is the generation or transmission facility identified in the Recitals.

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

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

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Interconnection Customer's device(s) for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Attachment Facilities or Distribution Upgrades. A facility comprised of multiple Generators will be treated as a single Generating Facility if the facility proposed in the Interconnection Request is comprised of multiple Generators behind a single Point of Interconnection, even if such Generators are different technology types.

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

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over any of the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; *provided, however*, that such term does not include Interconnection Customer, the NYISO, Affected Transmission Owner, Affected System Operator, Connecting Transmission Owner, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or

words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

In-Service Date shall mean the date upon which the Upgrades are energized consistent with the provisions of this Agreement, notice of which must be provided to the other Parties by, as applicable, the Interconnection Customer or System Owner in the form of Appendix C.

Interconnection Agreement shall mean, as applicable, the Standard Interconnection Agreement or Standard Large Generator Interconnection Agreement, or, if a Facility is interconnecting to another region's transmission system, the interconnection agreement entered into in that region.

Interconnection Customer shall mean, as applicable, an Interconnection Customer as defined in Attachment HH to the ISO OATT, a Developer as defined in Attachments S and X of the ISO OATT, or an Affected System Interconnection Customer as defined in Attachment HH to the ISO OATT. For purposes of this Agreement, the Interconnection Customer shall have the meaning set forth in the introductory paragraph.

Interconnection Request shall mean Interconnection Customer's request, in the form of Appendix 1 to Attachment X to the ISO OATT or Appendix 1 to Attachment HH to the ISO OATT, to interconnect a new 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 Facility that is interconnected with the New York State Transmission System or with the Distribution System. For purposes of the Interconnection Request, a facility comprised of multiple Generators behind the same Point of Interconnection may be considered a single Generating Facility, provided the Interconnection Request identifies a single Interconnection Customer.

IRS shall mean the Internal Revenue Service.

ISO Services Tariff shall mean the NYISO's Market Administration and Control Area Services Tariff, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff thereto.

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

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

New York State Transmission System shall mean the entire New York State electric transmission system, which includes (i) the Transmission Facilities under NYISO 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 pursuant to Article 20 of this Agreement 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 Tariffs shall mean the ISO OATT and ISO Services Tariff.

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

Party or Parties shall have the meaning set forth in the introductory paragraph.

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.

Standard Upgrade Construction Agreement shall mean this Agreement.

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

System Owner shall mean, as applicable, the Affected System Operator, Affected Transmission Owner, or Connecting Transmission Owner. For purposes of this Agreement, the System Owner shall be defined in the introductory paragraph.

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

Upgrades shall mean, as applicable, System Upgrade Facilities, System Deliverability Upgrade Facilities, or Affected Network Upgrade Facilities. For purposes of this Agreement, the Upgrades shall have the meaning set forth in the recitals and shall be described in Appendix A.

Upgrades Estimated Total Cost Amount shall have the meaning set forth in the recitals, which costs are specified in Appendix A.

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 if applicable, the Affected Transmission Owner, shall promptly file this Agreement with FERC upon execution, if required, in accordance with the requirements in the OATT. Interconnection Customer and System Owner shall reasonably cooperate with the NYISO with respect to the filing of this Agreement with FERC and provide any information reasonably requested by the NYISO needed for such filing.

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 have been made pursuant to Articles 6.1 and 6.3 and any remaining Security has been released or refunded pursuant to Article 6.2.

2.3 Termination.

2.3.1 Completion of Term of Agreement

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

2.3.2 Written Notice.

This Agreement may be terminated:

(i) by the mutual agreement in writing of all of the Parties; or

(ii) by the NYISO and System Owner if the Standard Interconnection Agreement for the Facility is terminated in accordance with the requirements in the Standard Interconnection Agreement.

[If this agreement concerns the construction of Affected Network Upgrade Facilities, replace (ii) with the following:

(ii) by the NYISO and System Owner upon their receipt of notification by the Interconnection Customer that the interconnection agreement for its Facility has been terminated in accordance with the requirements in its host transmission region or, if an interconnection agreement is not required for its Facility, that its Facility has ceased development or operation in accordance with the requirements of its host transmission region];

[If this agreement concerns the construction of a Highway System Deliverability Upgrade, replace (ii) with the following:

(ii) by the NYISO after giving the other Parties thirty (30) Calendar Days advance written notice following its determination that the threshold for triggering the construction of the Upgrades set forth in, as applicable, Section 25.7.12.3.1 of Attachment S or Section 40.13.12.3.1 of Attachment HH to the OATT is no longer met.]

2.3.3 Default.

Any Party may terminate this Agreement to the extent permitted under Article 10 and Article 20.

2.3.4 Compliance.

Notwithstanding Articles 2.3.1, 2.3.2, and 2.3.3, no termination of this Agreement shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement, which notice has been accepted for filing by FERC.

2.4 Termination Costs.

If this Agreement is terminated pursuant to Articles 2.3.2 or 2.3.3 above, the Interconnection Customer shall be responsible for all costs that are the responsibility of the Interconnection customer under this Agreement that are incurred by the Interconnection Customer or other Parties through the date the Parties agree in writing to terminate the agreement or through the date of the Interconnection Customer's receipt of a notice of termination. Such costs include any cancellation costs relating to orders or contracts concerning the Construction Services or Upgrades. 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:

2.4.1 With respect to any portion of the Upgrades for which the System Owner or Interconnection Customer (the “Constructing Party”) are responsible for constructing or installing under this Agreement and that have not yet been constructed or installed, the Constructing Party shall, to the extent possible and with the other Party’s (*i.e.*, the System Owner or Interconnection Customer, as applicable) authorization, cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, the Upgrades; provided that in the event the other Party elects not to authorize such cancellation, the other Party shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Constructing Party shall deliver such material and equipment, and, if necessary, assign such contracts, to the other Party as soon as practicable, at the other Party’s expense. To the extent that the other Party has already paid the Constructing Party for any or all such costs of materials or equipment not taken by the other Party, the Constructing Party shall promptly refund such amounts to the other Party, less any costs, including penalties incurred by the Constructing Party to cancel any pending orders of or return such materials, equipment, or contracts.

2.4.2 The Constructing Party may, at its option, retain any portion of such materials or equipment that the other Party chooses not to accept delivery of, in which case the Constructing Party shall be responsible for all costs associated with procuring such materials or equipment.

2.4.3 With respect to any portion of the Construction Services already performed pursuant to the terms of this Agreement, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such related materials, equipment, or facilities and such other expense actually incurred by System Owner to return its system to safe and reliable operation.

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; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Interconnection Customer and System Owner each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

2.6 No Annexation.

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

ARTICLE 3. CONSTRUCTION SERVICES

3.1 Performance of Construction Services.

System Owner shall be responsible for performing the Construction Services. At System Owner's sole discretion, System Owner may agree with Interconnection Customer for Interconnection Customer to perform such services. System Owner's and Interconnection Customer's respective obligations concerning the Construction Services shall be set forth in Appendix A hereto. System Owner and Interconnection Customer shall each use Reasonable Efforts to complete the Construction Services for which it has responsibility by the Milestone dates set forth in Appendix A hereto. The System Owner shall not be required to undertake any action which is inconsistent with the System Owner's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. The NYISO has no responsibility, and shall have no liability, for the performance of any of the Construction Services under this Agreement.

3.2 General Conditions Applicable to Interconnection Customer's Performance of the Construction Services.

If System Owner and Interconnection Customer agree pursuant to Section 3.1 for Interconnection Customer to be responsible for the design, procurement, and/or construction of any Upgrades as set forth in Appendix A, the following conditions apply:

3.2.1 Interconnection Customer shall engineer, procure equipment, and construct the Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by System Owner;

3.2.2 Interconnection Customer's engineering, procurement and construction of the Upgrades shall comply with all requirements of law to which System Owner would be subject in the engineering, procurement or construction of the Upgrades;

3.2.3 System Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Upgrades;

3.2.4 Prior to the commencement of construction, Interconnection Customer shall provide System Owner and NYISO a schedule for construction of the Upgrades, and shall promptly respond to requests for information from System Owner or NYISO;

3.2.5 At any time during construction, System Owner shall have the right to gain unrestricted access to the Upgrades and to conduct inspections of the same;

3.2.6 At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Upgrades not meet the standards and specifications provided by System Owner, Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Upgrades;

3.2.7 Interconnection Customer shall indemnify System Owner and NYISO for claims arising from Interconnection Customer's construction of Upgrades under procedures applicable to Article 11.1 Indemnity;

3.2.8 Interconnection Customer shall transfer control of Upgrades to System Owner;

3.2.9 Unless Interconnection Customer and System Owner otherwise agree, Interconnection Customer shall transfer ownership of Upgrades to System Owner;

3.2.10 System Owner shall approve and accept for operation and maintenance the Upgrades to the extent engineered, procured, and constructed in accordance with this Article 3.2;

3.2.11 Interconnection Customer shall deliver to NYISO and System Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or System Owner to assure that the Upgrades are built to the standards and specifications required by System Owner; and

3.2.12 Interconnection Customer shall pay the System Owner the agreed upon amount of [\$ PLACEHOLDER] for the System Owner to execute the responsibilities enumerated to System Owner under Article 3.2. System Owner shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 6.

3.3 Design and Equipment Procurement

If responsibility for construction of the Upgrades is to be borne by the System Owner, then the System Owner shall commence the design and procurement of the Upgrades for which it is responsible as soon as practicable after all of the following conditions are satisfied, unless the Interconnection Customer and System Owner otherwise agree in writing:

3.3.1 NYISO has completed, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study;

3.3.2 The NYISO has completed the required cost allocation analyses, and Interconnection Customer has accepted its Project Cost Allocation for the Upgrades required for the Facility in accordance with the provisions of Attachment S or HH of the ISO OATT.

3.3.3 System Owner has received written authorization to proceed with design and procurement of the Upgrades from the Interconnection Customer by the date specified in Appendix A hereto; and

3.3.4 Interconnection Customer has provided Security to the System Owner for the design and procurement of the Upgrades in accordance with Article 5 by the date(s) specified in Appendix A hereto.

3.4 Construction Commencement

System Owner shall commence construction of the Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied.

3.4.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

3.4.2 Necessary real property rights and rights-of-way have been obtained, to the extent required, for the construction of a discrete aspect of the Upgrades;

3.4.3 System Owner has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix A hereto; and

3.4.4 Interconnection Customer has provided security to the System Owner for the construction of the applicable facilities in accordance with Article 5.2 by the date(s) specified in Appendix A hereto.

3.5 Work Progress.

The Interconnection Customer and System Operator will keep each other, and NYISO, 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 the Interconnection Customer or System Owner.

3.6 Information Exchange.

As soon as reasonably practicable after the Effective Date, Interconnection Customer and System Owner shall exchange information, and provide NYISO the same information, regarding the design of the Upgrades and compatibility of the Upgrades with the New York State Transmission System and shall work diligently and in good faith to make any necessary design changes. Interconnection Customer shall inform the System Owner and NYISO of any termination of the Interconnection Agreement for the Facility within ten (10) Calendar Days of the termination of the Interconnection Agreement.

3.7 Ownership and Control of Upgrades.

System Owner shall own the Upgrades as described in Appendix A. The System Owner's and, if applicable, NYISO's operational control of the Upgrades upon the completion of the facilities shall be described in Appendix A.

3.8 Access Rights.

Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the System Owner or Interconnection Customer ("Granting Party") shall furnish to the other of those two Parties ("Access Party") at no cost any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain the ingress and egress required for the performance of the Construction Services, including to construct, repair, test (or witness testing), inspect, replace or remove the Upgrades. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party. The Access Party shall indemnify the Granting Party against all claims of injury or damage from third parties resulting from the exercise of the access rights provided for herein.

3.9 Lands of Other Property Owners.

If any part of the Upgrades will be installed on property owned by persons other than the Interconnection Customer or System Owner, the System Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary for the performance of the Construction Services upon such property by the System Owner or Interconnection Customer, including to construct, repair, operate, maintain, test (or witness testing), inspect, replace or remove the Upgrades.

3.10 Permits.

NYISO, Interconnection Customer, and System Owner shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish

the Construction Services in compliance with Applicable Laws and Regulations. With respect to this paragraph, System Owner shall provide permitting assistance to the Interconnection Customer comparable to that provided to System Owner's own, or an Affiliate's generation facilities, if any.

3.11 Suspension

Interconnection Customer reserves the right, upon written notice to System Owner and NYISO, to suspend at any time all work by System Owner or Interconnection Customer, as applicable, associated with the construction and installation of the Upgrades required for only that Interconnection Customer's Facility, with the condition that the New York State Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the safety and reliability criteria of System Owner and NYISO. In such event, such Interconnection Customer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment S or HH to the ISO OATT including those which System Owner (i) has incurred pursuant to this Agreement prior to the suspension and (ii) incurs as a result of the suspension of such work, including any costs incurred by System Owner to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the New York State Transmission System during such suspension and, if applicable, any costs incurred by System Owner in connection with the cancellation or suspension of material, equipment and labor contracts which System Owner cannot reasonably avoid; *provided, however*, that prior to canceling or suspending any such material, equipment or labor contract, System Owner shall obtain such Interconnection Customer's authorization to do so.

System Owner shall invoice Interconnection Customer for such costs pursuant to Article 6 and shall use due diligence to minimize its costs. If Interconnection Customer suspends work required under this Agreement pursuant to this Article 3.11, and has, as applicable, either not recommenced work or requested System Owner to recommence its work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to System Owner and NYISO, if no effective date is specified.

3.12 Taxes.

3.12.1 Indemnification for Contributions in Aid of Construction.

With regard only to payments made by Interconnection Customer to System Owner for the installation of the Upgrades, System Owner shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer for the installation of the Upgrades unless (1) System Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to System Owner should be reported as income subject to taxation, or (2) any Governmental Authority directs System Owner to report payments or property as income subject to taxation. Interconnection Customer shall reimburse System Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from System Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten (10)-year testing period and the applicable statute of limitation, as it may be extended by System Owner upon request of the Internal Revenue Service, 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. Notwithstanding the foregoing provisions of this Article 3.12.1, and to the extent permitted by law, to the extent that the receipt of such payments by System Owner is determined by any Governmental Authority to constitute income by System Owner subject to taxation, Interconnection Customer shall protect, indemnify, and hold harmless System Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest, and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, System Owner shall provide Interconnection Customer with written notification within thirty (30) Calendar Days of such determination and notification. System Owner, upon the timely written request by Interconnection Customer and at Interconnection Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. System Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that System Owner shall cooperate and consult in good faith with Interconnection Customer regarding the conduct of such contest. Interconnection Customer shall not be required to pay System Owner for the tax, interest, and/or penalties prior to the seventh (7th) Calendar Day before the date on which System Owner (1) is required to pay the tax, interest, and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement, or other contest; (2) is required to pay the tax, interest, and/or penalties as the result of a final, non appealable order by a Governmental Authority; or (3) is required to pay the tax, interest, and/or penalties as a prerequisite to an appeal, protest, abatement, or other contest. In the event such appeal, protest, abatement, or other contest results in a determination that System Owner is not liable for any portion of any tax, interest, and/or penalties for which Interconnection Customer has already made payment to System Owner, System Owner shall promptly refund to Interconnection Customer any payment attributable to the amount determined to be non-taxable, plus any interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)) or other payments System Owner receives or which System Owner may be entitled with respect to such payment. Interconnection Customer shall provide System Owner with credit assurances sufficient to meet Interconnection Customer's estimated liability for reimbursement of System Owner for taxes, interest, and/or penalties under this Article 3.12.1. Such estimated liability shall be stated in Appendix A.

To the extent that System Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: System Owner represents, and the Parties acknowledge, that System Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Interconnection Customer to System Owner for Upgrades is to be treated as an upfront payment. It is anticipated by the Parties that any amounts paid by Interconnection Customer to System Owner for the Upgrades will be reimbursed to Interconnection Customer in accordance with the terms of this Agreement, provided Interconnection Customer fulfills its obligations under this Agreement.

3.12.2 Private Letter Ruling.

At Interconnection Customer's request and expense, System Owner shall file with the Internal Revenue Service a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to System Owner under this Agreement are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. System Owner and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

3.12.3 Other Taxes.

Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, System Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against System Owner for which Interconnection Customer may be required to reimburse System Owner under the terms of this Agreement. Interconnection Customer shall pay to System Owner on a periodic basis, as invoiced by System Owner, System Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and System 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 Interconnection Customer to System 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, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by System Owner. Each Party shall cooperate with the other Party to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds, as described in section 142(f) of the Internal Revenue Code.

3.13 Tax Status; Non-Jurisdictional Entities.

3.13.1 Tax Status.

Each Party shall cooperate with the other Parties to maintain the other Parties' tax status. Nothing in this Agreement is intended to adversely affect the tax status of any Party including the status of NYISO, or the status of System Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New York, Inc. shall not be required to comply with any provisions of this Agreement that would result in the loss of tax-exempt status of any of their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

3.13.2 Tax Status.

LIPA and NYPA do not waive their exemptions, pursuant to Section 201(f) of the FPA, from Commission jurisdiction with respect to the Commission's exercise of the FPA's general ratemaking authority.

3.14 Modification.

3.14.1 General

If, prior to the In-Service Date, the System Owner proposes to modify the Upgrades, the System Owner must provide to the NYISO at least ninety (90) Calendar Days in advance of the commencement of the work, or such shorter period upon which the Parties may agree, sufficient information for the NYISO to evaluate the impact of the proposed modification on, as applicable: (i) the reliable interconnection of Interconnection Customer's Facility to the New York State Transmission System or (ii) the reliability of the New York State Transmission System due to the Facility's interconnection to another region's transmission system. The NYISO's agreement to the proposed modification shall not be unreasonably withheld, conditioned, or delayed if the proposed modification is reasonably related to the interconnection of the Facility and will enable Interconnection Customer's Facility to reliably interconnect to the New York State Transmission System or ensure the reliability of the New York State Transmission System of the Facility's interconnection to another region's transmission system. If the cost of the modified Upgrades is greater than the estimated cost identified in the applicable Class Year Interconnection Facility Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Additional System Study, the additional cost will be allocated in accordance with, as applicable, Sections 25.6.14.1 and 25.8.6 of Attachment S or Sections 40.12.1.5.1 and 40.16.3 of Attachment HH of the ISO OATT.

3.14.2 Standards.

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

3.14.3 Modification Costs.

Interconnection Customer shall not be assigned the costs of any additions, modifications, or replacements that System Owner makes to the Upgrades or the New York State Transmission System to facilitate the interconnection of a third party to the 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 or HH of the ISO OATT.

ARTICLE 4. TESTING AND INSPECTION

4.1 Initial Testing and Modifications.

Prior to the In-Service Date of the Upgrades, the System Owner or Interconnection Customer, as specified in Appendix A, shall test the Upgrades to ensure their safe and reliable operation. The Party responsible for constructing the Upgrades shall make any modifications to the Upgrades that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications

4.2 Right to Observe Testing.

The Party performing the testing shall notify the other Parties in advance of its performance of tests of the Upgrades. Each of the other Parties shall have the right, at its own expense, to observe such testing.

ARTICLE 5. PERFORMANCE OBLIGATIONS

5.1 Cost Responsibilities

Interconnection Customer and/or System Owner, as specified in Appendix A, shall perform the Construction Services at Interconnection Customer's sole expense up to the Upgrades Estimated Total Cost Amount. Interconnection Customer's and System Owner's respective responsibilities for the cost of the Construction Services greater than the Upgrades Estimated Total Costs Amount shall be determined in accordance with, as applicable, Section 25.8.6 of Attachment S or Section 40.16.3 of Attachment HH to the OATT.

5.2 Provision and Application of Security

5.2.1 If Interconnection Customer accepted its Project Cost Allocation and posted to System Owner the Security for its Upgrades at the conclusion of, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study, then Interconnection Customer shall not be responsible for posting additional Security under this Agreement. Interconnection Customer's Security shall be subject to the requirements of Attachment S or HH to the ISO OATT.

5.2.2 If Interconnection Customer was not required to post Security to the System Owner at the conclusion of, as applicable, the Class Year Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability Study, or Affected System Study, then at least thirty (30) Calendar Days prior to the System Owner's commencement of the procurement, installation, or construction of a discrete portion of the Upgrades as such portion(s) are detailed in the Milestones in Appendix A, Interconnection Customer shall provide System Owner, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to System Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 7.2 of this Agreement. Such security for payment shall be in an amount sufficient to cover the costs for Interconnection Customer's share of constructing, procuring and installing the applicable portion of the Upgrades, and shall be reduced on a dollar-for-dollar basis for payments made to System Owner for these purposes.

In addition:

5.2.2.1 The guarantee must be made by an entity that meets the commercially reasonable creditworthiness requirements of System Owner, and contains terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

5.2.2.2 The letter of credit must be issued by a financial institution reasonably acceptable to System Owner and must specify a reasonable expiration date.

5.2.2.3 The surety bond must be issued by an insurer reasonably acceptable to System Owner and must specify a reasonable expiration date.

ARTICLE 6. INVOICE

6.1 General.

To the extent that any amounts are due to the Interconnection Customer or System Owner under this Agreement, the Interconnection Customer and System Owner, as applicable, shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Interconnection Customer and System Owner may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts one Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

6.2 Final Invoice and Refund of Remaining Security/Overpayment Amount

Within one hundred eighty (180) Calendar Days of the Completion Date, Interconnection Customer or System Owner, as applicable, shall provide a final invoice to the other Party of any remaining amounts due associated with the Construction Services. Within thirty (30) Calendar Days of the later of: (i) Interconnection Customer's payment of any final invoice to the System Owner, and (ii) the completion of the Construction Services, System Owner shall release or refund to the Interconnection Customer any remaining portions of its Security and any amount that Interconnection Customer has overpaid under this Article 6.

6.3 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.

6.4 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; 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 10. 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 7. REGULATORY REQUIRMENTS AND GOVERNING LAW

7.1 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 a Party to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 2005 or the Public Utility Regulatory Policies Act of 1978, as amended.

7.2 Governing Law.

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

7.2.2 This Agreement is subject to all Applicable Laws and Regulations.

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

ARTICLE 8. NOTICES

8.1 General.

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

8.2 Billings and Payments.

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

8.3 Alternative Forms of Notice.

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

ARTICLE 9. FORCE MAJEURE

Economic hardship is not considered a Force Majeure event. A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing 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 10. DEFAULT

10.1 General.

No Breach shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Parties. Upon a Breach, the non-Breaching Parties shall give written notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

10.2 Right to Terminate.

If a Breach is not cured as provided in this Article 10, 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 11. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

11.1 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 (any and all of these a “Loss”), arising out of or resulting from (i) the Indemnified Party’s performance of its obligations under this Agreement on behalf of the Indemnifying Party, except in cases where the Indemnifying Party can demonstrate that the Loss of the Indemnified Party was caused by the gross negligence or intentional wrongdoing of the Indemnified Party or (ii) the violation by the Indemnifying Party of any Environmental Law or the release by the Indemnifying Party of any Hazardous Substance.

11.1.1 Indemnified Party.

If a Party is entitled to indemnification under this Article 11 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 11.1.3, 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.

11.1.2 Indemnifying Party.

If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 11, 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.

11.1.3 Indemnity Procedures.

Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 11.1 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.

11.2 No Consequential Damages.

Other than the indemnity obligations set forth in Article 11.1, 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.

11.3 Insurance.

[If System Owner and Interconnection Customer agree pursuant to Article 3.1 of this Agreement for Interconnection Customer to be responsible for any of the Construction Services under this Agreement, the insurance requirements in this Article 11.3 shall be applicable to Interconnection Customer as well.]

The System Owner and, if applicable, Interconnection Customer shall, 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:

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

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

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

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

11.3.5 Excess Liability Insurance over and above the Employers' Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverages, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence and Twenty Million Dollars (\$20,000,000) aggregate. The Excess policies should contain the same extensions listed under the Primary policies.

11.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Liability Insurance policies of System Owner and, if applicable, Interconnection Customer shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insureds using ISO CG Endorsements: CG 20 33 04 13, and CG 20 37 04 13 or CG 20 10 04 13 and CG 20 37 04 13 or equivalent to or better forms. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) Calendar Days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

11.3.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies shall contain provisions that specify that the policies are primary and non-contributory. System Owner and, if applicable, Interconnection Customer shall each be responsible for its respective deductibles or retentions.

11.3.8 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for at least three (3) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Interconnection Customer and System Owner.

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

11.3.10 The requirements contained herein as to the types and limits of all insurance to be maintained by the System Owner and, if applicable, Interconnection Customer are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.

11.3.11 Within [insert term stipulated by the Parties] Calendar Days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) Calendar Days thereafter, Interconnection Customer and System Owner, as applicable, shall provide certificate of insurance for all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

11.3.12 Notwithstanding the foregoing, either of System Owner and, if applicable, Interconnection Customer may each self-insure to meet the minimum insurance requirements of Articles 11.3.1 through 11.3.9 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 11.3.1 through 11.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 11.3.12, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Articles 11.3.1 through 11.3.9 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 11.3.1 through 11.3.9.

11.3.13 Interconnection Customer and System Owner agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.

11.3.14 Subcontractors of each party must maintain the same insurance requirements stated under Articles 11.3.1 through 11.3.9 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 12. ASSIGNMENT

12.1 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 the Interconnection Customer shall have the right to assign this Agreement, without the consent of the NYISO or System Owner, for collateral security purposes to aid in providing financing for the Facility, provided that the Interconnection Customer will promptly notify the NYISO and System Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and System Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and System Owner with proof that it meets the requirements of Articles 5.2 and 11.3. 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 13. SEVERABILITY

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

ARTICLE 14. COMPARABILITY

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

ARTICLE 15. CONFIDENTIALITY

15.1 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 15.

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.

15.2 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 15, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

15.3 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 OATT.

15.4 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 15.9 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

15.5 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 Interconnection Customer, 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 15 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 15.

15.6 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.

15.7 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.

15.8 Standard of Care.

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

15.9 Order of Disclosure.

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

15.10 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.

15.11 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 15. 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 15, 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 15, 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 15.

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

Notwithstanding anything in this Article 15 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 OATT, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations. A Party shall not be liable for any losses, consequential or otherwise, resulting from that Party divulging Confidential Information pursuant to a FERC or state regulatory body request under this paragraph.

15.13 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 OATT or the 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 16. INTERCONNECTION CUSTOMER AND SYSTEM OWNER NOTICES OF ENVIRONMENTAL RELEASES

Interconnection Customer and System 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 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 17. INFORMATION REQUIREMENT

17.1 Information Acquisition

Interconnection Customer and System Owner shall each submit specific information regarding the electrical characteristics of its facilities to the other Parties as described below and in accordance with Applicable Reliability Requirements.

17.2 Information Submission Concerning the Upgrades

The initial information submission by System Owner shall occur as specified in the Milestones in Appendix A and shall include New York State Transmission System information necessary to allow the Interconnection Customer to select equipment for its Facility and meet any system protection and stability requirements, unless otherwise mutually agreed to by the Interconnection Customer and System Owner. On a monthly basis, System Owner and Interconnection Customer shall each provide the other Parties a status report on the construction and installation of the 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.

17.3 Information Submission Concerning the Facility

The updated information submission by the Interconnection Customer, including manufacturer information, shall occur as specified in the Milestones in Appendix A. Interconnection Customer shall submit a completed copy, if applicable, of the Facility data requirements contained in Appendix 1 to the Standard Large Facility Interconnection Procedures or Appendix 1 to the Standard Interconnection Procedures. It shall also include any additional information provided to System Owner, as applicable, for the Class Year Interconnection Facilities Study, Class Year Deliverability Study, Cluster Study, Cluster Study Deliverability

Study, or Affected System Study. Information in this submission shall be the most current Facility design or expected performance data. Information submitted for stability models shall be compatible with NYISO standard models. If there is no compatible model, the Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Interconnection Customer's data is different from what was originally provided to System Owner and NYISO in, as applicable, its Interconnection Request or with its Affected System Study Agreement and this difference may be reasonably expected to affect the other Parties' facilities or the New York State Transmission System, but does not require the submission of a new Interconnection Request, then Interconnection Customer will notify the NYISO and System Owner of such modifications.

17.4 Information Supplementation

The Interconnection Customer and System Owner shall supplement its information submissions described above in this Article 17 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 18. INFORMATION ACCESS AND AUDIT RIGHTS

18.1 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 18.1 and to enforce their rights under this Agreement.

18.2 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.

18.3 Audit Rights.

Subject to the requirements of confidentiality under Article 15 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 18.4 of this Agreement.

18.4 Audit Rights Periods.

18.4.1 Audit Rights Period for Construction-Related Accounts and Records.

Accounts and records related to the design, engineering, procurement, and construction of the Upgrades shall be subject to audit for a period of twenty-four months following the issuance of a final invoice in accordance with Article 6.1 of this Agreement.

18.4.2 Audit Rights Period for All Other Accounts and Records.

Accounts and records related to a Party's performance or satisfaction of its obligations under this Agreement other than those described in Article 18.4.1 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.

18.5 Audit Results.

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

ARTICLE 19. SUBCONTRACTORS

19.1 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.

19.2 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 System Owner be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under Article 3 of this Agreement. Any applicable obligation

imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

19.3 No Limitation by Insurance.

The obligations under this Article 19 will not be limited in any way by any limitation of subcontractor's insurance.

ARTICLE 20. DISPUTES

20.1 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.

20.2 External Arbitration Procedures.

Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the Dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. In each case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; *provided, however*, in the event of a conflict between the Arbitration Rules and the terms of this Article 20, the terms of this Article 20 shall prevail.

20.3 Arbitration Decisions.

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the

arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, or Upgrades.

20.4 Costs.

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel; or (2) one-third the cost of the single arbitrator jointly chosen by the Parties.

20.5 Termination.

Notwithstanding the provisions of this Article 20, 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 21. REPRESENTATIONS, WARRANTIES AND COVENANTS

21.1 General.

Each Party makes the following representations, warranties and covenants:

21.1.1 Good Standing.

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

21.1.2 Authority.

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

21.1.3 No Conflict.

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

21.1.4 Consent and Approval.

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

ARTICLE 22. MISCELLANEOUS

22.1 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.

22.2 Conflicts.

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

22.3 Rules of Interpretation.

This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this Agreement or such Appendix to this Agreement, or such Section to the Standard Interconnection Procedures or such Appendix to the Standard Interconnection Procedures as the case may be; (6) "hereunder," "hereof," "herein," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including."

22.4 Compliance.

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

22.5 Joint and Several Obligations.

Except as otherwise stated herein, the obligations of NYISO, Interconnection Customer, and System Owner are several, and are neither joint nor joint and several.

22.6 Entire Agreement.

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

22.7 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.

22.8 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 any Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or Default of this Agreement for any reason by an Interconnection Customer shall not constitute a waiver of such Interconnection Customer's legal rights to obtain Capacity Resource Interconnection Service and Energy Resource Interconnection Service from the NYISO and the relevant System Owner in accordance with the relevant Interconnection Agreement and the provisions of the OATT. Any waiver of this Agreement shall, if requested, be provided in writing.

22.9 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.

22.10 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.

22.11 Amendment.

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

22.12 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.

22.13 Reservation of Rights.

NYISO and the System Owner shall have the right to make unilateral filings with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer 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.

22.14 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.

22.15 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 Interconnection Customer shall be entitled to, now or in the future under any other agreement or tariff as a result of or otherwise associated with, the transmission capacity, if any, created by the Upgrades.

22.16 Modifications Related to NYISO's Compliance with Order No. 2023

If, as part of the NYISO's compliance proceeding at the Commission in response to Order No. 2023, the Commission directs that the NYISO modify the *pro forma* Standard Upgrade Construction Agreement located in Appendix 16 of Attachment HH to the ISO OATT, the Parties shall amend and restate this Agreement to incorporate the modifications; *provided, however,* the Parties may agree to include in the amended and restated agreement non-conforming changes to any terms of the *pro forma* Standard Upgrade Construction Agreement that have been modified to comply with the Commission's order, which non-conforming modifications must be filed with the Commission for its acceptance.

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

**New York Independent System Operator,
Inc.**

By: _____

Name: _____

Title: _____

Date: _____

[Insert Name of System Owner]

By: _____

Name: _____

Title: _____

Date: _____

[Insert Name of Interconnection Customer]

By: _____

Name: _____

Title: _____

Date: _____

APPENDICES

Appendix A

Construction Services

Appendix B

Addresses for Delivery of Notices and Billings

Appendix C

In-Service Date

APPENDIX A

CONSTRUCTION SERVICES

1. Upgrades

[Insert description of Upgrades and specify Interconnection Customer's and System Owner's responsibilities to design, procure, and construction Upgrades]

2. Upgrades Estimated Total Cost Amount

[Insert table indicating Upgrades Estimated Total Cost Amount and insert description of security provided by Interconnection Customer to System Owner for Upgrades]

3. Milestones

Item	Milestone	Date	Responsible Party
1.	[insert milestones]	[insert date]	
2.	In-Service Date	[insert date]	
3.	Completion Date	[insert date]	

4. Estimated Tax Liability

[If applicable]

APPENDIX B

ADDRESSES FOR DELIVERY OF NOTICES AND BILLINGS

Notices:

NYISO:

[To be supplied.]

System Owner:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

Billings and Payments:

System Owner:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

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

NYISO:

[To be supplied.]

System Owner:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

APPENDIX C
IN-SERVICE DATE

[Date]

[Insert NYISO address]

[Insert System Owner address]

[Insert Interconnection Customer address]

Re: [Insert project name] Upgrades

Dear _____:

On **[Date]** **[System Owner/Interconnection Customer]** has completed the Upgrades. This letter confirms that **[describe Upgrades]** have commenced service, effective as of **[Date plus one day]**.

Thank you.

[Signature]

[Interconnection Customer's/System Owner's Representative]