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October 29, 2009

By Hand Delivery

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: ***New York Independent System Operator, Inc., Niagara Mohawk Power Corp.*, Docket No. ER10-____-000, Filing of an Amended and Restated Engineering, Procurement, and Construction Agreement Among the New York Independent System Operator, Inc; Niagara Mohawk Power Corporation, d/b/a National Grid; the Village of Arcade, New York; and Noble Bliss Windpark, LLC, and Request for Waiver**

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act, Part 35 of the Commission's Regulations, and Section 11.3 of its Large Facility Interconnection Procedures ("LFIP"), the New York Independent System Operator, Inc. ("NYISO") hereby tenders for filing an amended and restated engineering, procurement, and construction agreement ("Amended EPC") among the NYISO, the Village of Arcade ("Arcade"), Noble Bliss Windpark, LLC ("Bliss"), and Niagara Mohawk Power Corporation, d/b/a National Grid ("National Grid"). The NYISO and National Grid (collectively the "Joint Filing Parties")[1] respectfully request waiver of the Commission's 60-day notice period to make the Amended EPC effective as of October 7, 2009. The NYISO is concurrently filing changes to the related interconnection agreement governing the interconnection of the Noble Bliss Facility.[2]

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[1] This filing is made by the NYISO pursuant to Section 11.3 of the LFIP. Inasmuch as the Village of Arcade is not a Transmission Owner under the NYISO OATT, it is not joining in this filing.

[2] The NYISO, Arcade, and Bliss filed an executed large generator interconnection agreement ("LGIA") in Docket No. ER08-826 as Services Agreement No. 1310 which was accepted by the Commission on May 15, 2008. *See New York Independent System Operator, Inc.*, Letter Order, Docket No. ER08-826 (May 15, 2008).

I. Communications and Correspondence

The following persons should be included in the official service list in this proceeding and all communications concerning this filing should be addressed to them:

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* - Designated to receive service.

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[3] The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2009) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, Virginia.

II. Discussion

A. Background

The Amended EPC supersedes an Engineering, Procurement, and Construction Agreement filed by the parties on November 16, 2007 in Docket No. ER08-230-000 as Service Agreement No. 1161 ("Original EPC"), that was accepted by the Commission on December 18, 2007.[4] The Original EPC governed the rates, terms, and conditions regarding the engineering, procurement, design, and construction of transmission upgrades on National Grid's transmission system that had been identified as necessary to achieve interconnection of the Noble Bliss wind generation facility ("Noble Bliss Facility"). The Original EPC was necessary because while the Noble Bliss Facility would interconnect to the municipal electric system of the Village of Arcade, the facility would also impact National Grid's transmission system.

B. Explanation of Changes

Since the filing of the Original EPC, the construction schedule for certain System Upgrade Facilities necessary for the interconnection of the Noble Bliss Facility has changed. The Noble Bliss Facility required the construction of System Upgrade Facilities which were scheduled to be completed in two phases: (1) Phase I -Arcade Tap Installation Above Ground and Underground Facilities with a February 13, 2008 completion date; and (2) Phase II - Installation of Above Ground Facilities, Arcade Three Breaker Ring Bus, with a February 4, 2009 completion date. The changes in the construction schedule concern the Three Breaker Ring Bus that was included as part of the Phase II construction work.

The parties have negotiated changes in the milestone dates for the completion of tasks related to the completion of the Phase II facilities. As a consequence of this change in schedule, two sections in the body of the Original EPC had to be modified. Additionally, the parties determined that several dates in the milestone table in Appendix A Section III were required.

First, section 3.16 of the Original EPC has been modified to change the terms regarding when completion of the Arcade Constructed Facilities must occur, to reflect the new schedule. This section provided National Grid with certain negotiated remedies if the Three Breaker Ring

[4] *See New York Independent System Operator, Inc., Niagara Mohawk Power Corp., Letter Order*, Docket No. ER08-230-000 (Dec. 18, 2007).

Bus was not constructed within one year, as well as cure rights that Bliss could exercise in these circumstances. Since the construction on the Three Breaker Ring Bus will not be completed in one year, the parties have negotiated new terms which link the remedies in section 3.16 to the modified milestone dates found in Appendix A Part III of the Amended EPC. Section 3.16 has, therefore, been revised to state that:

> If the Arcade Constructed Facilities have not achieved Bus Commercial Operation by ~~one (1) year after~~ the date required in Part III~~later~~ of Appendix A of ~~(a) Affected System Owner providing to Arcade and Developer~~ the Agreement~~functional specifications for the Arcade Constructed Facilities and (b) the Commercial Operation Date~~, such occurrence shall be considered a Breach and the Affected System Owner may do any combination of the following: (1) suspend any and all of the Affected System Owner's performance under the Agreement, (2) terminate this Agreement by written notice and be relieved of any further obligation under the Agreement, or (3) take action pursuant to Article 11; *provided however*, with respect to each of (1) through (3) above, if the Affected System Owner determines, on a commercially reasonable basis, that, upon a demonstration made by Developer and Arcade within the period of cure set forth in Article 11, Developer and Arcade are working diligently toward ~~diligent~~ completion of the Bus Commercial Operation within ninety (90) days of the date required in Part III of Appendix A of the Agreement~~later of (a) Affected System Owner providing to Arcade and Developer the functional specifications for the Arcade Constructed Facilities and (b) the Commercial Operation Date~~, the failure to achieve the Bus Commercial Operation~~s~~ shall not be deemed a Breach during that period of time which the Arcade Constructed Facilities may be reasonably completed.

Second, the definition of Bus Commercial Operation has been changed, as follows:

> **Bus Commercial Operation** shall mean the status of the Arcade Constructed Facilities consisting of the three breaker ring bus described in Appendix A being placed into operational service such that the Milestone in Part III of Appendix A entitled "Functional Testing Phase II only" has been completed.

Finally, several dates in Part III of Appendix A - Milestones were updated to reflect the new mutually-agreed revised schedule for the completion of the Phase II Three Breaker Ring Bus work.

Since the modifications will allow for completion of the required facilities pursuant to a revised construction schedule that all parties have agreed to, the Joint Filing Parties respectfully request that the Commission accept this Amended EPC.

III. Effective Date and Request for Waiver of the 60-Day Notice Period

The Joint Filing Parties request an October 7, 2009 effective date for the Amended EPC which is the date of execution. The Joint Filing Parties respectfully request that the Commission waive the normal 60-day notice period in order to permit the October 7, 2009 effective date.[5] The Commission previously allowed the Original EPC to become effective as of the date of execution.[6] Further, no party will be harmed, as all parties to the EPC have agreed to requested effective date.

IV. Documents Submitted

The Joint Filing Parties submit the following documents:

A. This filing letter;

B. Clean version of the Amended EPC ("Attachment I"); and

C. Blacklined sheets showing the changes from the Original EPC ("Attachment II").

V. Service

The NYISO will send a paper copy of this filing to Arcade and Bliss. The NYISO will also electronically send a link to the public version of this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, the complete public version of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will also make a paper copy available to any interested party that requests one. To the extent necessary, the NYISO requests waiver of the requirements of Section 35.2(e) of the Commission's Regulations[7] to permit it to provide service in this manner.

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[5] *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993).

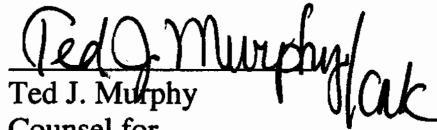
[6] *See, New York Independent System Operator, Inc., Niagara Mohawk Power Corp.*, Letter Order, Docket No. ER08-230-000 (Dec. 18, 2007).

[7] 18 C.F.R. § 35.2(e).

VI. Conclusion

Wherefore, the Joint Filing Parties respectfully request that the Commission accept the Amended EPC effective October 7, 2009.

Respectfully submitted,



Ted J. Murphy
Counsel for
New York Independent System Operator, Inc.

ATTACHMENT I

AMENDED AND RESTATED

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

AND

NIAGARA MOHAWK POWER CORPORATION DBA NATIONAL GRID

AND

THE VILLAGE OF ARCADE

AND

NOBLE BLISS WINDPARK, LLC

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AMENDED AND RESTATED
ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AMENDED AND RESTATED ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into this 7th day of October, 2009, by and among, Niagara Mohawk Power Corporation dba National Grid, a New York corporation ("Affected System Owner"), Noble Bliss Windpark, LLC, a Delaware limited liability company ("Developer"), the Village of Arcade, a New York municipality ("Arcade") and the New York Independent System Operator, Inc., a New York not-for-profit corporation ("NYISO"). Affected System Owner, Developer, Arcade and the NYISO each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Developer is developing a wind electric generating project, identified as the Noble Bliss Windpark (the "Large Generating Facility"), that will be interconnected to Arcade's Electric System, which is, in turn, interconnected to the Affected System;

WHEREAS, to enable Developer to inject electricity from the Large Generating Facility into the New York State Transmission System operated by the NYISO, Developer desires that Affected System Owner engineer, design, procure and/or construct certain facilities identified in Appendix A hereto (the "Affected System Upgrade Facilities") required to achieve such purpose;

WHEREAS, Developer, Arcade and Affected System Owner desire to have Arcade furnish, and Arcade is willing to furnish, the procurement and construction services (the "Arcade EPC Services") for a portion of the Affected System Upgrade Facilities (as identified in Appendix A, the "Arcade Constructed Facilities");

WHEREAS, the Developer, Arcade and Affected System Owner desire to have Developer furnish, and Developer is willing to furnish, the procurement and construction services (the "Developer EPC Services") for a portion of the Affected System Upgrade Facilities (as identified in Appendix A, the "Developer Constructed Facilities"); and

WHEREAS, Developer desires to have Affected System Owner furnish, and Affected System Owner is willing to furnish, certain of the engineering and design services for the Arcade Constructed Facilities and the engineering, design, procurement, and construction services (collectively, all engineering, design, procurement and/or construction services shall be the "ASO EPC Services") for certain of the Affected System Upgrade Facilities (as identified in Appendix A, the "ASO Constructed Facilities") upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, the Parties agree as follows:

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 1.0 or Attachment S of the NYISO OATT.

Affected System shall mean the electric system of Affected System Owner, which is part of the New York State Transmission System, and that is affected by the Large Generating Facility's proposed interconnection.

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

Affected System Upgrade Facilities shall have the meaning set forth in the recitals hereto, and shall consist of the facilities described in Appendix A hereto as ASO Constructed Facilities, Developer Constructed Facilities, and Arcade Constructed Facilities.

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

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

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Developer's Large Generating Facility is directly interconnected, as those requirements and guidelines are amended and modified and in effect from time to time; provided that 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.

Arcade shall have the meaning set forth in the introductory paragraph hereto.

Arcade Constructed Facilities shall have the meaning set forth in the recitals, and shall consist of the facilities described Appendix A hereto.

Arcade EPC Services shall have the meaning set forth in the recitals hereto and are described in Appendix A hereto.

ASO Constructed Facilities shall have the meaning set forth in the recitals, and shall consist of the facilities described Appendix A hereto.

ASO Estimated Total Cost shall have the meaning set forth in Appendix A.

ASO EPC Services shall have the meaning set forth in the recitals hereto and are described in Appendix A hereto.

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.

Breaker Ring Estimated Total Cost shall have the meaning set forth in Appendix A.

Bus Commercial Operation shall mean the status of the Arcade Constructed Facilities consisting of the three breaker ring bus described in Appendix A being placed into operational service such that the Milestone in Part III of Appendix A entitled "Functional Testing Phase II only" has been completed.

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

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

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

Commercial Operation Date shall mean the date that the final turbine of the Large Generating Facility achieves Commercial Operation.

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

Control Area shall mean an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the Generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the Load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain Operating Reserves in accordance with Good Utility Practice. A Control Area must be certified by the NPCC.

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

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

Developer Constructed Facilities shall have the meaning set forth in the recitals, and shall consist of the facilities described in Appendix A hereto.

Developer EPC Services shall have the meaning set forth in the recitals hereto and are described in Appendix A hereto.

Dispute Resolution shall mean the procedure described in Article 20 of this Agreement for resolution of a dispute between the Parties.

Effective Date shall mean the date on which this Agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

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

EPC Services shall mean ASO EPC Services, Developer EPC Services, and Arcade EPC Services.

Escrow Account shall have the meaning set forth in Article 6.2 hereof.

Escrow Agent shall have the meaning set forth in Article 6.2 hereof.

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.

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 Developer, NYISO, the Affected System Owner, Arcade, 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.

IRS shall mean the Internal Revenue Service.

Large Generating Facility shall have the meaning set forth in the recitals hereto.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Indemnified Party's performance or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

Minimum Interconnection Standard shall mean the reliability standard that must be met by any Large Generating Facility proposing to connect to the New York State Transmission System. The Standard is designed to ensure reliable access by the proposed Large Generating Facility to the New York State Transmission System. The Standard does not impose any deliverability test or deliverability requirement on the proposed interconnection.

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

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

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

Non-Breaker Ring Estimated Total Cost shall have the meaning set forth in Appendix A.

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

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

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

Party or Parties shall mean Affected System Owner, Developer, Arcade or NYISO or any combination of the above

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

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

Standard Large Facility Interconnection Procedures (**"LFIP"**) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to the Large Generating Facility that are included in Attachment X of the NYISO OATT.

Standard Large Generator Interconnection Agreement (**"LGIA"**) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to the Large Generating Facility, that is included in Attachment X of the NYISO OATT.

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

Trial Operation shall mean the period during which Developer is engaged in on-site test operations and commissioning of the Large Generating Facility prior to Commercial Operation.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date. This Agreement shall become effective upon execution by the Parties, subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC. The NYISO and Affected System Owner shall promptly file this Agreement upon its execution. Developer shall reasonably cooperate with NYISO and Affected System Owner with respect to the filing of this Agreement with FERC and providing any information reasonably requested by NYISO and Affected System Owner 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 the date on which (i) all of the EPC Services have been completed and (ii) final payment of all invoices has been made.

2.3 Termination.

2.3.1 Written Notice. This Agreement may be terminated by Developer after giving the NYISO, Arcade and Affected System Owner ten (10) Business Days advance written notice, or, subject to the provisions of Article 3.11 with respect to suspension, by the NYISO and the Affected System Owner notifying FERC: (a) before the Commercial Operation Date of the Large Generating Facility, if the Developer ceases making any efforts to complete the Large Generating Facility for more than twelve (12) months; or (b) after the Commercial Operation Date of the Large Generating Facility, if the Large Generating Facility permanently ceases commercial operations.

2.3.2 Default. Any Party may terminate this Agreement, as and to the extent permitted under Articles 11 and 20.

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

2.4 Termination Costs. If Developer elects to terminate this Agreement pursuant to Article 2.3.1 above, Developer shall pay all costs incurred (including any cancellation costs relating to orders or contracts for EPC Services or equipment) or charges assessed for EPC Services by Affected System Owner and Arcade, as of the date of Affected System Owner's and Arcade's receipt of such notice of termination, that are the responsibility of Developer under this Agreement (including with respect to Affected System Upgrade Facilities for which Affected System Owner and Arcade have incurred expenses and but have not been reimbursed by Developer). In the event of termination by a Party, 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 EPC Services that have not yet been performed, Affected System Owner and Arcade shall to the extent possible and with Developer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, the Affected System Upgrade Facilities; provided that in the event Developer elects not to authorize such cancellation, Developer shall assume all payment obligations with respect to such materials, equipment, and contracts, and Affected System Owner and Arcade shall deliver such material and equipment, and, if necessary, assign such contracts, to Developer as soon as practicable, at Developer's expense; *provided however*, Affected System Owner shall have the option (to be exercised by a reasonable date, on an item by item basis), at its sole discretion, to purchase any such materials, equipment or contracts, subject to reaching a price mutually agreed upon by Affected System Owner and Developer; *provided, further*, that Affected System Owner shall use good faith efforts to consult with Arcade prior to exercising such option; *provided, further*, to the extent that Affected System Owner does not exercise such option, Arcade shall have such option. To the extent that Developer has already paid Affected System Owner or Arcade, as applicable, for any or all such costs of materials or equipment not taken by Developer, Affected System Owner or Arcade, as applicable, shall promptly refund such amounts to Developer, less any costs, including penalties incurred by Affected System Owner or Arcade, as applicable, to cancel any pending orders of or return such materials, equipment, or contracts; *provided however*, Affected System Owner shall have the option (to be exercised by a reasonable date, on an item by item basis), at its sole discretion, to purchase any such materials or equipment, subject to reaching a price mutually agreed upon by Affected System Owner and Developer; *provided, further*, that Affected System Owner shall use good faith efforts to consult with Arcade prior to exercising such option; *provided, further*, to the extent that Affected System Owner does not exercise such option, Arcade shall have such option.

2.4.2 Affected System Owner may, at its option, retain any portion of such materials, equipment, or facilities that Developer chooses not to accept delivery of, in which case Affected System Owner shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the EPC Services already performed pursuant to the terms of this Agreement, Developer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such related materials, equipment, or facilities.

2.5 **Survival.** This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments of costs incurred hereunder and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

ARTICLE 3. EPC SERVICES

3.1 **Performance of EPC Services.** Affected System Owner, Developer, and Arcade shall perform the EPC Services, as set forth in Appendix A hereto, using Reasonable Efforts to complete the EPC Services by the dates set forth in Section III of Appendix A hereto. Affected System Owner, Developer, and Arcade shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Affected System Owner, Developer, and/or Arcade reasonably expects that it will not be able to complete its applicable EPC Services by the specified dates, the Affected System Owner, Developer, and/or Arcade, as applicable, shall promptly provide written notice to the other Parties, and shall undertake Reasonable Efforts to meet the earliest dates thereafter. As described herein, the EPC Services are to be performed by Developer, Arcade and Affected System Owner. NYISO has no responsibility, and shall have no liability, for the performance of any of the EPC Services under this Agreement.

3.2 **Option to Build.**

3.2.1 **General Conditions Applicable to Option to Build.**

3.2.1.1 The following conditions apply to Arcade's responsibility for the design, procurement and construction of the Arcade Constructed Facilities:

(1) Arcade shall engineer, procure equipment, and construct the Arcade Constructed Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Affected System Owner;

(2) Arcade's engineering, procurement and construction of the Arcade Constructed Facilities shall comply with all requirements of law to which Affected System Owner would be subject in the engineering, procurement or construction of the Arcade Constructed Facilities;

(3) Affected System Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Arcade Constructed Facilities;

(4) Arcade's engineering, procurement and construction shall be performed in accordance with the milestone schedule included in Appendix A to this Agreement. Arcade shall promptly respond to requests for information from Affected System Owner or NYISO;

(5) At any time during construction, Affected System Owner shall have the right to gain unrestricted access to the Arcade Constructed Facilities and conduct inspections of the same;

(6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Arcade Constructed Facilities not meet the standards and specifications provided by Affected System Owner, Arcade shall be obligated to remedy deficiencies in that portion of the Arcade Constructed Facilities;

(7) Arcade shall indemnify Affected System Owner and NYISO for claims arising from Arcade's construction of the Arcade Constructed Facilities under procedures applicable to Article 12.1 Indemnity;

(8) Arcade shall transfer control of the Arcade Constructed Facilities to the Affected System Owner;

(9) Affected System Owner shall approve and accept for operation and maintenance the Arcade Constructed Facilities to the extent engineered, procured, and constructed in accordance with this Article 3.2; and

(10) Arcade shall deliver to NYISO and Affected System Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Affected System Owner to assure that the Arcade Constructed Facilities are built to the standards and specifications required by Affected System Owner.

3.2.1.2 The following conditions apply to Developer's responsibility for the design, procurement and construction of the Developer Constructed Facilities:

(1) Developer shall engineer, procure equipment, and construct the Developer Constructed Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Affected System Owner, provided that Affected System Owner shall procure the relays to be installed at the Gardenville substation;

(2) Developer's engineering, procurement and construction of the Developer Constructed Facilities shall comply with all requirements of law to which Affected System Owner would be subject in the engineering, procurement or construction of the Developer Constructed Facilities;

(3) Affected System Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Developer Constructed Facilities;

(4) Developer's engineering, procurement and construction shall be performed in accordance with the milestone schedule included in Appendix A to this Agreement. Developer shall promptly respond to requests for information from Affected System Owner or NYISO;

(5) At any time during construction, Affected System Owner shall have the right to gain unrestricted access to the Developer Constructed Facilities and conduct inspections of the same;

(6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Developer Constructed Facilities not meet the standards and specifications provided by Affected System Owner, Developer shall be obligated to remedy deficiencies in that portion of the Developer Constructed Facilities;

(7) Developer shall indemnify Affected System Owner and NYISO for claims arising from Developer's construction of the Developer Constructed Facilities under procedures applicable to Article 12.1 Indemnity;

(8) Developer shall transfer control of the Developer Constructed Facilities to the Affected System Owner;

(9) Affected System Owner shall approve and accept for operation and maintenance the Developer Constructed Facilities to the extent engineered, procured, and constructed in accordance with this Article 3.2; and

(10) Developer shall deliver to NYISO and Affected System Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Affected System Owner to assure that the Developer Constructed Facilities are built to the standards and specifications required by Affected System Owner.

3.3 Equipment Procurement. Affected System Owner shall commence design of the Affected System Upgrade Facilities and procure necessary equipment for the ASO Constructed Facilities; Developer shall procure necessary equipment for the Developer Constructed Facilities; and Arcade shall procure necessary equipment for the Arcade Constructed Facilities, as soon as practicable after all of the following conditions are satisfied:

3.3.1 Affected System Owner and Arcade have each received written authorization to proceed with design and procurement from Developer; and

3.3.2 Developer has provided security to Affected System Owner in accordance with Article 6.2.

3.4 Construction Commencement. Affected System Owner shall commence construction of the ASO Constructed Facilities; Developer shall commence construction of the Developer Constructed Facilities; and Arcade shall commence construction of the Arcade Constructed Facilities, as soon as practicable after the following additional conditions are satisfied:

3.4.1 Approval of the appropriate Governmental Authority (to the extent required) 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 the ASO Constructed Facilities;

3.4.3 Affected System Owner and Arcade each have received written authorization to proceed with construction from Developer; and

3.4.4 Developer has provided security to Affected System Owner in accordance with Article 6.2.

3.5 Work Progress. Developer, Affected System Owner and Arcade will keep each other, and NYISO advised periodically as to the progress of their engineering, design, procurement and construction efforts. Any Party may, at any time, request a progress report from Developer, Arcade or Affected System Owner. The Parties understand that the completion of certain of the Affected System Upgrade Facilities (as such certain facilities are set forth in Attachment A) will not be required until after the Commercial Operation Date of the Large Generating Facility.

3.6 Information Exchange. As soon as reasonably practicable after the Effective Date, Affected System Owner shall provide Developer, Arcade and NYISO information regarding the design of the Affected System Upgrade Facilities and the compatibility of such facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes consistent with Good Utility Practice.

3.7 Affected System Upgrade Facilities Construction. The Affected System Upgrade Facilities shall be designed, procured and constructed in accordance with Good Utility Practice. Affected System Owner shall own the Affected System Upgrade Facilities.

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

3.9 Lands of Other Property Owners. If any part of the Affected System Upgrade Facilities is to be installed on property owned by persons other than Developer, Arcade or Affected System Owner, the Affected System Owner or Arcade, as applicable, shall at Developer's expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, repair, test (or witness testing), inspect, replace or remove the Affected System Upgrade Facilities.

3.10 Permits. NYISO, Affected System Owner, Developer and Arcade shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations to the extent necessary to accomplish the EPC Services in compliance with Applicable Laws and Regulations. With respect to this paragraph, Affected System Owner shall provide permitting assistance (which, for the avoidance of doubt, shall be paid for by Developer pursuant to Article 7 of this Agreement) to Developer comparable to that provided to Affected System Owner's or Arcade's own, or an Affiliate's generation, if any.

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

Affected System Owner and Arcade shall invoice Developer for such costs pursuant to Article 7 and shall use due diligence to minimize its costs. In the event Developer suspends work by Affected System Owner or Arcade required under this Agreement pursuant to this Article 3.11, and has not requested Affected System Owner or Arcade to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Affected System Owner, Arcade and NYISO, if no effective date is specified.

3.12 Reserved.

3.13 Taxes.

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

3.13.2 Representations and Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Developer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the New York State Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Affected System Owner for the Affected System Upgrade Facilities will be capitalized by Developer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Affected System Upgrade Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

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

3.13.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Affected System Owner. Notwithstanding Article 3.13.1, Developer shall protect, indemnify and hold harmless Affected System Owner from the cost consequences of any current tax liability imposed against Affected System Owner as the result of payments or property transfers made by Developer to Affected System Owner under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Affected System Owner.

Affected System Owner shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Developer under this Agreement unless (i) Affected System Owner has determined, in good faith, that the payments or property transfers made by Developer to Affected System Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Affected System Owner to report payments or property as income subject to taxation; provided, however, that Affected System Owner may require Developer to provide security, in a form reasonably acceptable to Affected System Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability

under this Article 3.13. Developer shall reimburse Affected System Owner for such costs on a fully grossed-up basis, in accordance with Article 3.13.4, within thirty (30) Calendar Days of receiving written notification from Affected System Owner of the amount due, including detail about how the amount was calculated.

This indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by the Affected System Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 3.13.

3.13.4 Tax Gross-Up Amount. Developer's liability for the cost consequences of any current tax liability under this Article 3.13 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Developer will pay Affected System Owner, in addition to the amount paid for the Affected System Upgrade Facilities, an amount equal to (1) the current taxes imposed on Affected System Owner ("Current Taxes") on the excess of (a) the gross income realized by Affected System Owner as a result of payments or property transfers made by Developer to Affected System Owner under this Agreement (without regard to any payments under this Article 3.13) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Affected System Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Affected System Owner's composite federal and state tax rates at the time the payments or property transfers are received and Affected System Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Affected System Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Affected System Owner's current weighted average cost of capital. Thus, the formula for calculating Developer's liability to Affected System Owner pursuant to this Article 3.13.5 can be expressed as follows: (Current Tax Rate x (Gross Income Amount - Present Value of Tax Depreciation))/(1 - Current Tax Rate).

Developer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Affected System Upgrade Facilities.

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

Affected System Owner shall keep Developer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Developer to participate in all discussions with the IRS regarding such request for a private letter ruling. Affected System Owner shall allow Developer to attend all meetings with IRS officials about the request and shall permit Developer to prepare the initial drafts of any follow-up letters in connection with the request.

3.13.6 Subsequent Taxable Events. If, within 10 years from the date on which the relevant Affected System Upgrade Facilities are placed in service, (i) Developer Breaches the covenants contained in Article 3.13.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Affected System Owner retains ownership of the Affected System Upgrade Facilities, the Developer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Affected System Owner, calculated using the methodology described in Article 3.13.5 and in accordance with IRS Notice 90-60.

3.13.7 Contests. In the event any Governmental Authority determines that Affected System Owner's receipt of payments or property constitutes income that is subject to taxation, Affected System Owner shall notify Developer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Developer and at Developer's sole expense, Affected System Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Developer's written request and sole expense, Affected System Owner may file a claim for refund with respect to any taxes paid under this Article 3.13, whether or not it

has received such a determination. Affected System Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Affected System Owner shall keep Developer informed, shall consider in good faith suggestions from Developer about the conduct of the contest, and shall reasonably permit Developer or an Developer representative to attend contest proceedings.

Developer shall pay to Affected System Owner on a periodic basis, as invoiced by Affected System Owner, Affected System Owner's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Affected System Owner may agree to a settlement either with Developer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Affected System Owner, but reasonably acceptable to Developer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Developer's obligation shall be based on the amount of the settlement agreed to by Developer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Developer's consent or such written advice will relieve Developer from any obligation to indemnify Affected System Owner for the tax at issue in the contest.

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

(i) Any payment made by Developer under this Article 3.13 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

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

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

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

3.13.9 Taxes Other Than Income Taxes. Upon the timely request by Developer, and at Developer's sole expense, Affected System Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Affected System Owner for which Developer may be required to reimburse Affected System Owner under the terms of this Agreement. Developer shall pay to Affected System Owner on a periodic basis, as invoiced by Affected System Owner, Affected System Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Developer and Affected 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 Developer to Affected 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, Developer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Affected System Owner.

3.14 Tax Status.

3.14.1 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 Affected System Owner.

3.14.2 Non-Jurisdictional Entities. Arcade does not waive its exemptions, pursuant to Section 201(f) of the FPA.

3.15 Modification.

3.15.1 General. Either the Developer or Affected System Owner may undertake modifications to its facilities covered by this Agreement. If either the Developer or Affected System Owner plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party, Arcade and NYISO, sufficient information regarding such modification so that the other Party, Arcade and NYISO may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be Confidential Information hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party and NYISO at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Developer to submit an Interconnection Request, Affected System Owner and Arcade shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the New York State Transmission System, Affected System Upgrade Facilities or Arcade System necessitated by such Developer modification and a good faith estimate of the costs thereof.

3.15.2 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.

3.15.3 Modification Costs. Developer shall not be assigned the costs of any additions, modifications, or replacements that Affected System Owner makes to the Affected System Upgrade Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Affected System Upgrade Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the NYISO OATT, except in accordance with the cost allocation procedures in Attachment S of the NYISO OATT. Developer shall be responsible for the costs of any additions, modifications, or replacements to the Affected System Upgrade Facilities that may be necessary to maintain or upgrade the Affected System Upgrade Facilities to the extent consistent with the cost allocation procedures in Attachment S of the NYISO OATT.

3.16 Completion of the Arcade Constructed Facilities.

If the Arcade Constructed Facilities have not achieved Bus Commercial Operation by the date required in Part III of Appendix A of the Agreement, such occurrence shall be considered a Breach and the Affected System Owner may do any combination of the following: (1) suspend any and all of Affected System Owner's performance under this Agreement, (2) terminate this Agreement by written notice and be relieved of any further obligation under the Agreement, or (3) take action pursuant to Article 11; *provided, however*, with respect to each of (1) through (3) above, if the Affected System Owner determines, on a commercially reasonable basis, that, upon a demonstration made by Developer and Arcade within the period for cure set forth in Article 11, Developer and Arcade are working diligently toward completion of the Bus Commercial Operation within ninety (90) days of the date required in Part III of Appendix A of the Agreement, the failure to achieve Bus Commercial Operation shall not be deemed a Breach during that period of time which the Arcade Constructed Facilities may be reasonably completed.

ARTICLE 4. TESTING AND INSPECTION

4.1 Pre-Electrification Testing and Modifications. Prior to the electrification of the Affected System Upgrade Facilities, the Affected System Owner shall test the Affected System Upgrade Facilities and Developer shall test the Large Generating Facility and the Affected System Upgrade Facilities to ensure the safe and reliable operation of the Affected System Upgrade Facilities. Similar testing may be required after initial operation. Developer and Affected System Owner shall each make any modifications to its facilities that are found to be necessary as a result of such testing. Developer shall bear the cost of all such testing and modifications. Developer shall generate test energy at the Large Generating Facility only if it has arranged for the injection of such test energy in accordance with NYISO procedures.

4.2 **Right to Observe Testing.** Developer and Affected System Owner shall each notify the other Parties in advance of its performance of tests of the Affected System Upgrade Facilities. The other Parties shall each have the right, at its own expense, to observe such testing.

4.3 **Right to Inspect.** Developer, Arcade and Affected System Owner shall each have the right, but shall have no obligation to: (i) observe other Parties' tests and/or inspection of any of its system protection facilities and other protective equipment, including power system stabilizers; (ii) review the settings of the other Parties' system protection facilities and other protective equipment; and (iii) review the other Parties' maintenance records relative to the Affected System Upgrade Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Developer and Affected System Owner. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Affected System Upgrade Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 4.3 shall be treated in accordance with Article 15 of this Agreement and Attachment F to the NYISO OATT.

ARTICLE 5. COMMUNICATIONS

5.1 **Developer Obligations.** In accordance with applicable NYISO requirements, Developer shall construct, install and commission satisfactory operating communications with Affected System Owner, Arcade, and NYISO. Developer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Developer, Arcade and/or Affected System Owner shall also provide a radio-based communication system necessary to provide Developer data to Arcade and Affected System Owner as set forth in Appendix A hereto. The radio-based communication system shall extend from the Large Generating Facility to the location(s) specified in Appendix A.

5.2 **Remote Terminal Unit.** Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Developer, or by Arcade or Affected System Owner at Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Affected System Owner and NYISO through use of a dedicated radio-based communication system as indicated in

Article 5.1. The communication protocol for the radio-based communication system shall be specified by Affected System Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be capable of being telemetered directly to the location(s) specified by Affected System Owner and NYISO.

5.3 **No Annexation.** Any and all equipment placed on the premises of a Party during the term of this Agreement shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Party providing such equipment and the Party receiving such equipment.

ARTICLE 6. PERFORMANCE OBLIGATION

6.1 **EPC Services.** Affected System Owner, Developer, and Arcade shall perform the EPC Services described in Appendix A hereto and as otherwise set forth by the terms of this Agreement, consistent with Attachment S, at the sole expense of the Developer.

6.2 **Provision of Security**. No later than the Effective Date, Developer and Affected System Owner shall execute an escrow agreement ("Escrow Agreement") with an escrow agent reasonably acceptable to Developer (the "Escrow Agent"). The Escrow Agreement shall establish an interest-bearing escrow account for the deposit and payment of the ASO Estimated Total Cost ("Escrow Account"). The Escrow Account shall be maintained throughout the term of this Agreement and thereafter until all amounts due by Developer are paid in full to the Affected System Owner. Developer shall bear all costs and expenses pursuant and related to the establishment, maintenance and termination of the Escrow Account and Escrow Agreement. No later than the Effective Date, the Developer shall deposit into the Escrow Account the ASO Estimated Total Cost. Unless there are insufficient funds in the Escrow Account, pursuant to the terms of the Escrow Agreement, payments of invoices to Affected System Owner shall be made from such Escrow Account to Affected System Owner upon certification by Affected System Owner to the Escrow Agent, pursuant to Article 7.3, of costs, expenses and fees incurred and services and goods rendered. After payment in full to Affected System Owner of the final invoice and all other amounts due by Developer pursuant to the terms of this Agreement, Affected System Owner and Developer shall promptly and jointly certify to the Escrow Agent, pursuant to Article 7.2, that any thereafter remaining amounts in the Escrow Account be refunded to Developer.

6.3 **Operation and Maintenance Expenses.** With respect to operation and maintenance costs, Developer shall only be responsible for those operation and maintenance costs associated with the design, procurement and construction of the Affected System Upgrade Facilities, to the extent permitted under the NYISO OATT, including the Standard LGIA.

6.4 **Arcade.** All security arrangements with respect to the Arcade EPC Services shall be made pursuant to other mutually-agreeable arrangements between Developer and Arcade. For the avoidance of doubt, Sections 6.2 and 6.3 shall not apply to Arcade and Arcade shall have no rights or obligations pursuant to such sections.

ARTICLE 7. INVOICE; PAYMENT

7.1 **General.** Developer shall make payment to Affected System Owner for all services and goods that Affected System Owner provides to Developer pursuant to the terms of this Agreement. Affected System Owner shall submit to Developer, within the first five (5) days of a calendar month, an invoice reflecting all services and goods provided by Affected System Owner in the immediately preceding calendar month. Each invoice shall state the month to which the invoice applies and fully describe the services and goods provided. The Developer and Affected 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.

7.2 **Final Invoice.** Within six months after completion of the provision of the ASO EPC Services, Affected System Owner shall provide an invoice of the final cost of the ASO EPC Services, determined in accordance with Attachment S to the NYISO OATT, and shall set forth such costs in sufficient detail to enable Developer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Affected System Owner shall refund to Developer any amount by which the actual payment by Developer for costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice. To the extent that any amount remains in the Escrow Account after payment in full of the final invoice submitted to Developer, Affected System Owner and Developer shall mutually certify such overpayment to the Escrow Account disbursement agent and upon the Escrow Account disbursement agent's receipt of such mutual certification, the Escrow Account disbursement agent shall release such amount to Developer.

7.3 **Payment.** Invoices shall be rendered to Developer at the address specified in Appendix B hereto. From time to time, as set forth in the Escrow Agreement and to the extent that sufficient funds remain in the Escrow Account, Affected System Owner may withdraw corresponding invoiced amounts from the Escrow Account in accordance with costs, expenses and fees incurred and services and goods rendered, as certified by Affected System Owner to the Escrow Agent. To the extent that at any time there are insufficient funds in the Escrow Account, Developer shall pay such invoiced amounts directly to Affected System Owner pursuant to the terms of this Agreement. Payment of invoices will not constitute a waiver of any rights or claims Developer may have under this Agreement.

7.4 Disputes. In the event of a billing dispute between Affected System Owner and Developer, Affected System Owner shall continue to perform under this Agreement as long as Developer: (i) continues to make all payments not in dispute; and (ii) pays to Affected System Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Developer fails to meet these two requirements for continuation of service, then Affected System Owner may provide notice to Developer of a Default pursuant to Article 11. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

7.5 Arcade. All invoicing and payment with respect to the Arcade EPC Services shall be made pursuant to other mutually-agreeable arrangements between Developer and Arcade. For the avoidance of doubt, Sections 7.1, 7.2, 7.3 and 7.4 shall not apply to Arcade and Arcade shall have no rights or obligations pursuant to such sections.

7.6 Developer. The Developer EPC Services are being performed by, and for the benefit of, Developer. Developer shall not be entitled to payment from any other Party with respect to or for the Developer EPC Services.

ARTICLE 8. REGULATORY REQUIREMENTS AND GOVERNING LAW

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

8.2 Governing Law.

8.2.1 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.

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

8.2.3 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 9. NOTICES

9.1 General. Unless otherwise provided in this Agreement, any notice, demand or request required or permitted to be given by a Party to 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.

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

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

ARTICLE 10. FORCE MAJEURE

10.1 Force Majeure.

10.1.1 Economic hardship is not considered a Force Majeure event.

10.1.2 A Party shall not be responsible or liable, or deemed in Default with respect to any obligation hereunder, other than the obligation to pay money when due, to the extent the Party is prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease.

The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 11. DEFAULT

11.1 Default.

11.1.1 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 another Party. 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. Notwithstanding Article 3.2, Arcade hereby waives any and all defenses it may have that its performance under this Agreement should be excused due to Developer's performance or non-performance, or other action or inaction, pursuant to this Agreement or otherwise and Developer hereby waives any and all defenses it may have that its performance under this Agreement should be excused due to Arcade's performance or non-performance, or other action or inaction, pursuant to this Agreement or otherwise.

11.1.2 Right to Terminate. If a Breach is not cured as provided in this Article 11, or if a Breach is not capable of being cured within the period provided for herein, any non-Breaching Party shall thereafter have the right to unilaterally declare a Default and unilaterally terminate this Agreement, with respect to itself and all other Parties, by written notice at any time until cure occurs, and all non-defaulting Parties shall thereafter be relieved of any further obligation hereunder and, whether or not such Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, all costs incurred by the non-defaulting Party in order to effectuate such termination (including, with respect only to Developer as the defaulting Party and Affected System Owner as non-defaulting Party, any cancellation costs relating to orders or contracts for ASO EPC Services or equipment, and all charges assessed by Affected System Owner, as of the effective date of termination, that are the responsibility of Developer under this Agreement), plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

ARTICLE 12. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

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

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

12.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 12, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

12.1.3 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 12.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

Except as stated below, the Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and

to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

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

12.2 No Consequential Damages. Other than the indemnity obligations set forth in Article 12.1, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under separate agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

12.3 Insurance. Developer, Arcade and Affected System Owner shall each, at their own expense, maintain in force throughout the period of this Agreement, and until released by the other Parties, the following minimum insurance coverages, with insurers authorized to do business in the state of New York:

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

12.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) 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 and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

Comprehensive Automobile Liability Insurance for coverage of owned and 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.

12.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate.

The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies of Developer, Arcade and Affected System Owner shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. 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.

12.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Developer, Arcade and Affected System Owner shall each be responsible for its respective deductibles or retentions.

The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Developer, Arcade and Affected System Owner.

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

Within ten (10) days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Developer, Arcade and Affected System Owner shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

Notwithstanding the foregoing, Developer, Arcade and Affected System Owner may self-insure to meet its minimum insurance requirements of Articles 12.3.2 through 12.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 12.3.2 through 12.3.8. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 12.3.2 through 12.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 12.3.10, it shall notify the other Parties that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 12.3.9.

Developer, Arcade and Affected 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.

ARTICLE 13. ASSIGNMENT

13.1 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 Developer shall have the right to assign this Agreement, without the consent of the NYISO, Arcade or Affected System Owner, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that Developer will promptly notify the NYISO, Arcade and Affected System Owner of any such assignment. Any financing arrangement entered into by Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO, Arcade and Affected System Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO, Arcade and Affected System Owner with proof that it meets the requirements of Article 6.2. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 14. SEVERABILITY

14.1 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 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.

To the extent another Party seeks protection of Confidential Information by Arcade, Arcade shall comply with the requirements of this Article 15 consistent with and subject to its obligations under the Freedom of Information Law (Public Officers Law, Article 6).

15.1.1 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.

15.1.2 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 NYISO OATT.

15.1.3 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 15.1.8 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

15.1.4 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 or considering providing financing to or equity participation with Developer, or to potential purchasers or assignees of a Party, on a need-to-know basis in connection with this Agreement, unless such

person has first been advised of the confidentiality provisions of this Article 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.

15.1.5 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.

15.1.6 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.

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

15.1.8 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.

15.1.9 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.

15.1.10 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.

15.1.11 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 NYISO 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.

15.1.12 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 NYISO OATT or the NYISO Services Tariff. Prior to any disclosures of a Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 16. ENVIRONMENTAL RELEASES

16.1 Developer, Arcade and Affected System Owner Notice. Developer, Arcade and Affected System Owner shall each 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 Large Generating Facility or the Affected System Upgrade Facilities, each of which may reasonably be expected to affect the other Parties. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four 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. Affected System Owner and Arcade shall submit specific information regarding the electrical characteristics of the Affected System Upgrade Facilities to Developer, and to NYISO, as described below and in accordance with Applicable Reliability Standards.

17.2 Information Submission by Affected System Owner. The initial information submission by Affected System Owner and Arcade shall occur no later than one hundred eighty (180) Calendar Days prior to Commercial Operation. On a monthly basis, Affected System Owner, Developer and Arcade shall provide the other Parties a status report on the construction and installation of the Affected System Upgrade Facilities, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

17.3 Information Supplementation. Prior to Commercial Operation, Affected System Owner and Arcade shall supplement its information submissions described above in this Article 17 with any and all "as-built" 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. Developer shall have the right, during normal business hours, and upon prior reasonable notice to Arcade and/or Affected System Owner, as applicable, to audit at Developer's expense, Arcade's and/or Affected System Owner's, as applicable, accounts and records, including documents relating to the engineering, design, procurement and construction of the Affected System Upgrade Facilities, for the purpose of evaluating costs, status and timing of completion. Such audit rights shall include audits of Arcade's and/or Affected System Owner's, as applicable, costs and calculation of invoiced amounts. Any such audit shall be performed at Arcade's and/or Affected System Owner's, as applicable, offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to the Affected System Upgrade Facilities, as applicable. Any requests for information under this Article 18.1 shall be provided from the Disclosing Party to the Requesting Party within five (5) business days. The Parties shall not use such information for purposes other than those set forth in this Article 18.1 of this Agreement 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.

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, Arcade or Affected System Owner be liable for the actions or inactions of the Developer or its subcontractors with respect to obligations of the Developer under Article 3 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

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 with an interest in the dispute shall choose one arbitrator who shall sit on an 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 must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, or Affected System Upgrade Facilities.

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 panel; or (2) a pro-rata share of 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 or states in which the Large Generating Facility and Affected System Upgrade Facilities owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being

conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

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 it 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 this cover agreement and the Appendices hereto, the terms and conditions of this cover agreement shall be given precedence over the Appendices, except as otherwise expressly agreed to in writing by the Parties.

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 Large Facility Interconnection Procedures or such Appendix to the Large Facility Interconnection Procedures, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

22.4 Compliance. Each Party shall perform its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, 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, Developer, Arcade and Affected System Owner are several, and are neither joint nor joint and several.

22.6 Entire Agreement. Other than with respect to security, payment and invoicing with respect to the Arcade EPC Services, this Agreement, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. Other than with respect to security, payment and invoicing with respect to the Arcade EPC Services (referenced in Sections 6.4 and 7.5 hereof), there are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

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

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 four 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 four 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 Affected 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 Developer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by 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 Developer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Affected System Upgrade Facilities.

22.16 Compliance with Law. During the term of this Agreement, each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards. Each Party shall provide to the other Parties all information that may reasonably be required by the other Parties to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

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

New York Independent System Operator, Inc.

By: ____________________

Title: VP, System & Resource Planning

Date: August 26, 2009

Niagara Mohawk Power Corporation

By: ____________________

Title: ____________________

Date: ____________________

Noble Bliss Windpark, LLC

By: ____________________

Title: ____________________

Date: ____________________

Village of Arcade

By: ____________________

Title: ____________________

Date: ____________________

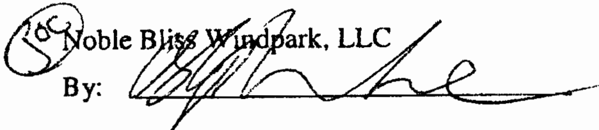
IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

New York Independent System Operator, Inc.	Niagara Mohawk Power Corporation
By: ____________________	By: Mary Ellen Paravalos
Title: ____________________	Title: Vice President Transmission Regulation & Commercial
Date: ____________________	Date: SEP 01 2009

Noble Bliss Windpark, LLC	Village of Arcade
By: ____________________	By: ____________________
Title: ____________________	Title: ____________________
Date: ____________________	Date: ____________________

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.	Niagara Mohawk Power Corporation
By: ______________________	By: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________



Noble Bliss Windpark, LLC	Village of Arcade
By: ______________________	By: ______________________
Title: Vice President	Title: ______________________
Date: September 25, 2009	Date: ______________________

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

New York Independent System Operator, Inc.

By: ______________________

Title: ______________________

Date: ______________________

Niagara Mohawk Power Corporation

By: ______________________

Title: ______________________

Date: ______________________

Noble Bliss Windpark, LLC

By: ______________________

Title: ______________________

Date: ______________________

Village of Arcade

By: [signature]

Title: Mayor

Date: 10-07-09

Appendices

Appendix A
EPC Services

Appendix B
Addresses for Delivery of Notices and Billings

Appendix A
EPC Services

Affected System Owner and Developer agree to use commercially reasonable good faith efforts to develop full customized functional specifications for all Affected System Upgrade Facilities, consistent with this Appendix A.

This Appendix A contains a general description of the interconnection facilities required for the Large Generating Facility; which shall be subject to full customized functional specifications to be developed after the Effective Date of the EPC by Affected System Owner pursuant to the terms of this Agreement.

Affected System Owner will develop and provide a customized functional specification for the three breaker ring bus. The three breaker ring bus will be included in the Arcade Constructed Facilities.

Affected System Owner will develop and provide a customized functional specification for the station upgrade facilities at its Gardenville and Homerhill stations as well as the required modifications at the Arcade switching station. The Developer will be permitted and responsible for the installation of the upgrades at the Gardenville substation, consistent with this Appendix A.

Unless otherwise provided in this Agreement, Arcade shall procure and construct the Arcade Constructed Facilities. Developer shall pay and reimburse Arcade for all of the Arcade EPC Services and Arcade Construction Facilities under a separate agreement between Developer and Arcade. For the avoidance of doubt, Arcade shall have not any right to such payment or reimbursement pursuant to this Agreement.

Unless otherwise specifically stated in this Agreement, Affected System Owner shall have no obligations with respect to the Arcade Constructed Facilities and the Arcade EPC Services.

I. Arcade Constructed Facilities and Arcade EPC Services

Interconnection Station Requirements – Three Breaker Ring Bus

The station shall include, but not be limited to, the following equipment:

- 115 kV Switchyard

    1. 115kV, 2000amp, group-operated line disconnect switches on each of the National Grid transmission line connections and the customer connection (total of three 3-phase switches);

    2. Minimum 2000amp rated tubular aluminum bus conductors;

3. Three 115kV, 2000amp, 40kA, 550kV BIL, SF_6 insulated, dead tank circuit breakers, with provision for future 4th breaker and isolation switches in the ring bus;

4. Two 115kV, 2000amp, group-operated isolation switches per circuit breaker (total of six 3-phase switches);

5. One 115kV, 2000amp, group operated disconnect switch to allow future ring bus expansion capability without requiring a ring bus outage.

6. Three single-phase voltage transformers for protection and control on each of the station bus segments (total of 9 single-phase units);

7. Three 115kV combination CT/PT metering transformers for revenue-grade metering;

8. Three 120kV duty rated (98kV MCOV) surge arresters;

9. All required foundations and structures to support the above equipment;

10. All required conduit and/or cable trench for protection and control wiring;

11. A relay and control building of adequate size to contain the National Grid protection and control equipment, station battery banks, telecommunications and metering equipment;

12. Protective relaying per National Grid requirements with both primary and backup protection packages. This includes the local interface equipment for protective relay telecommunications (DTT & POTT) to the remote National Grid line protection relays;

13. Station service potential transformers tapped from each of the incoming transmission lines or local distribution, with automatic transfer capability, to provide two independent sources of station power;

14. Station lightning protection, grounding, security fence, and lighting.

The above station shall be designed and constructed per applicable National Grid standards and specifications.

Control House equipped with the following:

1. Control and dual relay switchboards, with space for a future breaker position.

2. Dual batteries and chargers with automatic throw over scheme

3. Dual cable trays

4. Station service switchgear

5. Dual AC & DC power panels

6. Data communication systems equipment

7. Fire & security equipment

8. Heating, ventilating, air-conditioning and lighting equipment

9. Controls and Protection

- Controls and Protection

  a. Protection packages for all affected 115 kV transmission lines .

  b. Breaker failure protection (primary and alternate) relays and DTT transmit/receive capability to/from Gardenville & Homer Hill Station's remote breakers as shown below.

  c. Breaker failure protection (primary and alternate) relays and DTT transmit capability to/from Collection Station's remote breakers via existing and newly purchased communications.

  d. Cabinets to accommodate the above listed items, as necessary.

  e. EMS/RTU with telephone circuit to Western Regional Control in Buffalo, NY.

  f. Digital Fault Recorder

  g. Annunciator for local status/alarm indication.

  h Electronic revenue quality meters.

II. ASO and Developer Constructed Facilities and ASO and Developer EPC Services

ASO shall provide specifications for the station upgrade facilities for the Gardenville and Homerhill stations. ASO will procure the required equipment depicted in the specifications. These upgrades shall include, but not be limited to, the following equipment:

At the National Grid Gardenville Substation:

ASO will perform the construction of the following upgrades:

1. The existing 'A' relay package consisting of (121/LN151) Phase Distance relays type GCX17B and (121N/LN151) Ground Distance relays type GCX17X21A will be replaced by a new SEL-311C with RFL 9745 for pilot scheme over leased phone line.

2. The existing 'B' relay package consisting of (67N/LN151) Directional Ground Overcurrent relay type JBCG51 will be replaced with a new NxtPhase LPRO relay for Step Distance and Directional Ground Overcurrent Backup.

3. BBU scheme will be implemented in the SEL-311C and LPRO relays.

4. Addition of RFL 9745 Teleprotection relays for implementation of dual channel DTT Receive/Transmit and POTT functions to/from Freedom Station and Homer Hill.

5. Addition of SEL 311B relays for the DTT receive scheme.

6. New phone line(s) for relays.

7. Development, implementation, and testing of settings for the new 'A' and 'B' line protection relay packages.

8. Engineering, design, construction, and testing/commissioning labor for the above.

At the National Grid Homer Hill Substation:

ASO will perform the construction of the following upgrades.

1. The existing 'A' Relay package consisting of (21A/LN151) Phase Distance relays type GCX17A3S and (21AN/LN151) Ground Distance relays type GCXG51A will be replaced by a new SEL-311C with RFL 9745 for pilot scheme over leased phone line.

2. The existing 'B' Relay package consisting of (21Z/LN151) Phase Distance relays type CEY51 and (21ZN/LN151) Ground Distance relays type CEYG51A will be replaced with NxtPhase LPRO relay for Step Distance and Directional Ground Overcurrent Backup protection.

3. BBU scheme will be implemented in the SEL-311C and LPRO relays.

4. Addition of RFL 9745 Teleprotection relays for implementation of dual channel DTT Receive/Transmit and POTT functions to/from Freedom Station and Gardenville.

5. Addition of SEL-311B relays for the DTT scheme.

6. Addition of SEL 2020 and Arbiter Clock for communication and time-sync purposes.

7. New phone line(s) for relays.

8. Development, implementation, and testing of settings for the new 'A' and 'B' line protection relay packages;

9. Engineering, design, construction, and testing/commissioning labor for the above.

ASO shall provide the Developer with general specifications for the design and installation of the microwave radio infrastructure. ASO will review and approve Developers proposed contractor and final design. These facilities and responsibilities shall include, but not be limited to, the following:

Developer Responsibilities

- Design, furnish, install, turn up and test all equipment needed for the radio system described in this specification and shown on Figure 1.
- FAA and FCC tower determinations.

General Radio Specifications

- 2 T-1 minimum capacity with ability to expand or upgrade.
- Licensed Frequencies.
- Aux alarm channel preferred.
- Outdoor units can be considered where applicable.

Path Engineering

- Developer shall provide a path engineering report that specifies all pertinent data in order to provide a firm proposal for the radio system based on the specifications contained within this spec.
- Path Availability objective is 99.999%.

Reliability

- Radio redundancy shall be MHSB.

Power

- Developer shall provide -48VDC power at each site with 8 hours of battery run time provided. Chargers & rectifiers shall be N+1 protected. Acceptable make & model is Argus Cordex unless agreed to by National Grid.

- Where 125VDC station battery exists, a 125VDC to -48VDC converter can be used. DC-DC converters shall be N+1 protected. Acceptable mfgs are Wilmore Electronics and LaMarche unless agreed to by National Grid.

Grounding

- Grounding per RS-222G and shall be approved by National Grid at National Grid owned electric substations.

Radio Tower

- Towers and tower foundations shall be designed per TIA RS-222G and NY State PE Stamped. All designs shall be approved by National Grid.

- Antenna Load shall be calculated for at least 50% growth.

- Existing antenna loads at Park St to be determined with Arcade Municipal.

- Cable & feedline pathways such as conduits and ice bridges to be determined by site visits.

Shelters

- Radio equipment and tower locations will be mutually agreed upon by Developer, National Grid and the Village of Arcade and the use of additional radio shelters may be necessary.

Spare Parts

- Developer shall provide a list of recommended spare parts to be purchased as part of the project.

Training

- Developer shall arrange a one day training class on radios and Muxes for National Grid and the Village of Arcade.

Acceptance Testing

- Developer shall provide acceptance test reports per manufacturer's specification for National Grid to sign off before system turn up. All radio systems shall operate within manufacturers specifications and vendors' path engineering.

Permitting

- Developer shall be responsible for obtaining the required permitting for the radio tower installations at the Freedom Station, the Park Street location and the new three breaker ring bus location.

- National Grid will be responsible for securing the necessary permits at the Homer Hill and Olean locations.

<u>National Grid Costs for ASO EPC Services</u>

(1) National Grid estimated costs related to the development of the three breaker ring functional specification, Large Generating Facility management oversight, construction of the loop in an out of line #151 and all other related activity and required equipment: $1,570,800.00 (the "Breaker Ring Estimated Total Cost").

(2) National Grid estimated costs related to the required system upgrades at the Gardenville and Homer Hill Station: $1,306,917.00 (the "Non-Breaker Ring estimated Total Cost", collectively with the Breaker Ring Estimated Total Cost, the "ASO Estimated Total Cost").

Total Estimated Cost **$2,877,717.00**

III. Schedule

Except where dates are included in the following schedule rather than numbers of weeks, the durations included in the following schedule represent the number of weeks from written authorization to proceed with construction from Developer pursuant to Section 3.4.3 and Section 9.1.

Milestone	Phase I - Freedom Switchyard				Phase I - Tap Station			
	VOA	NG	Noble	Vendor	VOA	NG	Noble	Vendor
Preliminary Design	Complete				2			
Preliminary Design- Review		4						
Bid and Award Equipment			5				3	
Bid and Award Control Building	Complete							
Last Delivery of Equipment				17				15
Delivery of Control Building	Complete							
Complete Engineering -Issue Drawings	7				7			
Installation Underground Facilities	Complete				17			
Installation Above Ground Facilities	19				17			
Radio Communications Spec's			Complete				Complete	
Radio Communications Installation			10				10	
Functional Testing/Energize Phase I	20				18			
Backfeed Bliss Substation	24							
Initial Generation for Testing			24					
Commercial Operation Bliss			27					
Functional Testing Phase II only								
Energize Phase II only								

Milestone	Phase I – NG Substations				Phase II – Tap Stations[1]			
	VOA	NG	Noble	Vendor	VOA	NG	Noble	Vendor
Preliminary Design		2				Complete		
Preliminary Design- Review	Included above				Included above			
Bid and Award Equipment			6			Complete	Complete	
Bid and Award Control Building							Complete	
Last Delivery of Equipment				17				9/30/09
Delivery of Control Building								9/30/09
Complete Engineering -Issue Drawings		10			9/17/09			
Installation Underground Facilities					10/30/09			
Installation Above Ground Facilities[2]		24			1/31/10	12/31/09		
Radio Communications Spec's			Complete			Exist Ph1		
Radio Communications Installation			10			Exist Ph1		
Functional Testing/Energize Phase I		24						
Backfeed Bliss Substation								
Initial Generation for Testing								
Commercial Operation Bliss								
Functional Testing Phase II only[3]					6/18/10	6/18/10		
Energize Phase II only[4]					5/23/10	5/23/10		

(1) The dates included in the Phase II schedule represent the Parties mutually-agreed revised schedule for the completion of Three Breaker Ring Bus work, as earlier described in this Appendix A to the Agreement.
(2) VOA Arcade cutover to be complete by May 23, 2010. NG Line 167 permanent configuration to be complete by June 18, 2010.
(3) Arcade to Homer Hill – Line 167 is the last leg to be tested for total energization subsequent to energizing Three Breaker Ring Bus substation.
(4) Energize Three Breaker Ring Bus substation from Gardensville prior to Arcade cut over.

Appendix B

Addresses for Delivery of Notices and Billings

Notices:

NYISO:

Henry Chao, Director of System and Resource Planning
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144

Affected System Owner:

Niagara Mohawk Power Corporation, d/b/a National Grid
Manager Transmission Commercial Services
300 Erie Boulevard West
Syracuse, NY 13202

Developer:

Managing Director, Construction
Noble Environmental Power, LLC
8 Railroad Avenue
Second Floor, Suite 8
Essex, CT 06426

Arcade:

Larry Kilburn, Supt. Public Works
Village of Arcade
17 Church Street
Arcade, NY 14009

Billings and Payments:

Affected System Owner:

Niagara Mohawk Power Corporation, d/b/a National Grid
Misc. Billing Department
300 Erie Boulevard West
Syracuse, NY 13202

Developer:

Accounts Payable
Noble Environmental Power, LLC
8 Railroad Avenue
Second Floor, Suite 8
Essex, CT 06426

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

NYISO:

Henry Chao, Director of System and Resource Planning
New York Independent System Operator, Inc.
10 Krey Blvd.
Rensselaer, NY 12144

Affected System Owner:

Niagara Mohawk Power Corporation, d/b/a National Grid
Manager Transmission Commercial Services
300 Erie Boulevard West
Syracuse, NY 13202

Developer:

Noble Environmental Power, LLC
8 Railroad Avenue
Second Floor, Suite 8
Essex, CT 06426

Telephone: 860-581-5102
Fax: 860-767-7041
Email: haasd@noblepower.com

Arcade:

Larry Kilburn, Supt. Public Works
Village of Arcade
17 Church Street
Arcade, NY 14009

Telephone: 585-492-1111 x 113
Fax: 585-496-7444
Email: larrykilburn@villageofarcade.org

ATTACHMENT II

AMENDED AND RESTATED

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

AMONG THE

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

AND

NIAGARA MOHAWK POWER CORPORATION DBA NATIONAL GRID

AND

THE VILLAGE OF ARCADE

AND

NOBLE BLISS WINDPARK, LLC

AMENDED AND RESTATED
ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AMENDED AND RESTATED ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into this ~~17~~7th day of October, ~~2007,~~**2009,** by and among, Niagara Mohawk Power Corporation dba National Grid, a New York corporation ("Affected System Owner"), Noble Bliss Windpark, LLC, a Delaware limited liability company ("Developer"), the Village of Arcade, a New York municipality ("Arcade") and the New York Independent System Operator, Inc., a New York not-for-profit corporation ("NYISO"). Affected System Owner, Developer, Arcade and the NYISO each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Developer is developing a wind electric generating project, identified as the Noble Bliss Windpark (the "Large Generating Facility"), that will be interconnected to Arcade's Electric System, which is, in turn, interconnected to the Affected System;

WHEREAS, to enable Developer to inject electricity from the Large Generating Facility into the New York State Transmission System operated by the NYISO, Developer desires that Affected System Owner engineer, design, procure and/or construct certain facilities identified in Appendix A hereto (the "Affected System Upgrade Facilities") required to achieve such purpose;

WHEREAS, Developer, Arcade and Affected System Owner desire to have Arcade furnish, and Arcade is willing to furnish, the procurement and construction services (the "Arcade EPC Services") for a portion of the Affected System Upgrade Facilities (as identified in Appendix A, the "Arcade Constructed Facilities");

WHEREAS, the Developer, Arcade and Affected System Owner desire to have Developer furnish, and Developer is willing to furnish, the procurement and construction services (the "Developer EPC Services") for a portion of the Affected System Upgrade Facilities (as identified in Appendix A, the "Developer Constructed Facilities"); and

WHEREAS, Developer desires to have Affected System Owner furnish, and Affected System Owner is willing to furnish, certain of the engineering and design services for the Arcade Constructed Facilities and the engineering, design, procurement, and construction services (collectively, all engineering, design, procurement and/or construction services shall be the "ASO EPC Services") for certain of the Affected System Upgrade Facilities (as identified in Appendix A, the "ASO Constructed Facilities") upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, the Parties agree as follows:

Arcade EPC Services shall have the meaning set forth in the recitals hereto and are described in Appendix A hereto.

ASO Constructed Facilities shall have the meaning set forth in the recitals, and shall consist of the facilities described Appendix A hereto.

ASO Estimated Total Cost shall have the meaning set forth in Appendix A.

ASO EPC Services shall have the meaning set forth in the recitals hereto and are described in Appendix A hereto.

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.

Breaker Ring Estimated Total Cost shall have the meaning set forth in Appendix A.

Bus Commercial Operation shall mean the status of the Arcade Constructed Facilities consisting of the three breaker ring bus described in Appendix A being placed into operational service **such that the Milestone in Part III of Appendix A entitled "Functional Testing Phase II only" has been completed**.

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

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

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

Commercial Operation Date shall mean the date that the final turbine of the Large Generating Facility achieves Commercial Operation.

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

Control Area shall mean an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the Generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the Load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain Operating Reserves in accordance with Good Utility Practice. A Control Area must be certified by the NPCC.

3.15.3 Modification Costs. Developer shall not be assigned the costs of any additions, modifications, or replacements that Affected System Owner makes to the Affected System Upgrade Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Affected System Upgrade Facilities or the New York State Transmission System, or to provide Transmission Service to a third party under the NYISO OATT, except in accordance with the cost allocation procedures in Attachment S of the NYISO OATT. Developer shall be responsible for the costs of any additions, modifications, or replacements to the Affected System Upgrade Facilities that may be necessary to maintain or upgrade the Affected System Upgrade Facilities to the extent consistent with the cost allocation procedures in Attachment S of the NYISO OATT.

3.16 Completion of the Arcade Constructed Facilities.

If the Arcade Constructed Facilities have not achieved Bus Commercial Operation by ~~one (1) year after the later of (a) Affected System Owner providing to Arcade and Developer the functional specifications for the Arcade Constructed Facilities and (b) the Commercial Operation Date~~**the date required in Part III of Appendix A of the Agreement**, such occurrence shall be considered a Breach and the Affected System Owner may do any combination of the following: (1) suspend any and all of Affected System Owner's performance under this Agreement, (2) terminate this Agreement by written notice and be relieved of any further obligation under the Agreement, or (3) take action pursuant to Article 11; *provided, however*, with respect to each of (1) through (3) above, if the Affected System Owner determines, on a commercially reasonable basis, that, upon a demonstration made by Developer and Arcade within the period for cure set forth in Article 11, Developer and Arcade are working **diligently** toward ~~diligent~~ completion of the Bus Commercial Operation within ninety (90) days of the ~~later of (a) Affected System Owner providing to Arcade and Developer the functional specifications for the Arcade Constructed Facilities and (b) the Commercial Operation Date~~**date required in Part III of Appendix A of the Agreement**, the failure to achieve Bus Commercial ~~Operations~~**Operation** shall not be deemed a Breach during that period of time which the Arcade Constructed Facilities may be reasonably completed.

ARTICLE 1. TESTING AND INSPECTION

4.1 Pre-Electrification Testing and Modifications. Prior to the electrification of the Affected System Upgrade Facilities, the Affected System Owner shall test the Affected System Upgrade Facilities and Developer shall test the Large Generating Facility and the Affected System Upgrade Facilities to ensure the safe and reliable operation of the Affected System Upgrade Facilities. Similar testing may be required after initial operation. Developer and Affected System Owner shall each make any modifications to its facilities that are found to be necessary as a result of such testing. Developer shall bear the cost of all such testing and modifications. Developer shall generate test energy at the Large Generating Facility only if it has arranged for the injection of such test energy in accordance with NYISO procedures.

III. -Schedule

~~The~~**Except where dates are included in the following schedule rather than numbers of weeks, the** durations included in the following schedule represent the number of weeks from written authorization to proceed with construction from Developer pursuant to Section 3.4.3 and Section 9.1.

Milestone		Phase I - Freedom Switchyard				Phase I - Tap Station			
		VOA	NG	Noble	Vendor	VOA	NG	Noble	Vendor
Preliminary Design		Complete				2			
Preliminary Design- Review			4						
Bid and Award Equipment				5				3	
Bid and Award Control Building		Complete							
Last Delivery of Equipment					17				15
Delivery of Control Building		Complete							
Complete Engineering -Issue Drawings		7				7			
Installation Underground Facilities		Complete				17			
Installation Above Ground Facilities		19				17			
Radio Communications Spec's				Complete				Complete	
Radio Communications Installation				10				10	
Functional Testing/Energize Phase I		20				18			
Backfeed Bliss Substation		24							
Initial Generation for Testing				24					
Commercial Operation Bliss				27					
Functional Testing Phase II only									
Energize Phase II only									

Milestone	Phase I – NG Substations				Phase II – Tap Stations[1]			
	VOA	NG	Noble	Vendor	VOA	NG	Noble	Vendor
Preliminary Design		2				Complete		
Preliminary Design- Review	Included above				Included above			
Bid and Award Equipment			6			Complete	Complete	
Bid and Award Control Building							Complete	
Last Delivery of Equipment				17				9/30/09
Delivery of Control Building								9/30/09
Complete Engineering -Issue Drawings		10			9/17/09			
Installation Underground Facilities					10/30/09			
Installation Above Ground Facilities[2]		24			1/31/10	12/31/09		
Radio Communications Spec's			Complete			Exist Ph1		
Radio Communications Installation			10			Exist Ph1		
Functional Testing/Energize Phase I		24						
Backfeed Bliss Substation								
Initial Generation for Testing								
Commercial Operation Bliss								
Functional Testing Phase II only[3]					6/18/10	6/18/10		
Energize Phase II only[4]					5/23/10	5/23/10		

(1) The dates included in the Phase II schedule represent the Parties mutually-agreed revised schedule for the completion of Three Breaker Ring Bus work, as earlier described in this Appendix A to the Agreement.

(2) VOA Arcade cutover to be complete by May 23, 2010. NG Line 167 permanent configuration to be complete by June 18, 2010.

(3) Arcade to Homer Hill – Line 167 is the last leg to be tested for total energization subsequent to energizing Three Breaker Ring Bus substation.

(4) Energize Three Breaker Ring Bus substation from Gardensville prior to Arcade cut over.