

ATTACHMENT I

New York Independent System Operator, Inc.
FERC Electric Tariff, Original Volume No. 1
Service Agreement No. 1169

Original Sheet No. 1

**MERCHANT TRANSMISSION FACILITY
INTERCONNECTION AGREEMENT**

BY AND AMONG

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

AND

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

AND

LINDEN VFT, LLC

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

Effective: February 29, 2008

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	7
ARTICLE 2 EFFECTIVE DATE, TERM AND TERMINATION	16
2.1 Effective Date	16
2.2 Term of Agreement.....	16
2.3 Termination.....	16
2.4 Termination Costs.....	17
2.5 Disconnection	18
2.6 Survival.....	18
ARTICLE 3 REGULATORY FILINGS	18
3.1 Filing.....	18
ARTICLE 4 SCOPE OF INTERCONNECTION SERVICE.....	18
4.1 Provision of Service.....	18
4.2 No Transmission Delivery Service	19
4.3 No Other Services.....	19
ARTICLE 5 INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION.....	20
5.1 Options.....	20
5.2 General Conditions Applicable to Option to Build.....	21
5.3 Liquidated Damages	23
5.4 Reserved.....	24
5.5 Equipment Procurement.....	24
5.6 Construction Commencement.....	24
5.7 Work Progress.....	25
5.8 Information Exchange.....	25
5.9 Limited Operation.....	25
5.10 Developer's Attachment Facilities ("DAF")	25
5.11 Transmission Owner's Attachment Facilities Construction	27
5.12 Access Rights.....	27
5.13 Lands of Other Property Owners	27
5.14 Permits	28
5.15 Early Construction of Base Case Facilities.....	28
5.16 Suspension	28
5.17 Taxes.....	29

5.18	Tax Status; Non-Jurisdictional Entities	34
5.19	Modification.....	35
ARTICLE 6 TESTING AND INSPECTION		36
6.1	Pre-Commercial Operation Date Testing and Modifications	36
6.2	Post-Commercial Operation Date Testing and Modifications.....	36
6.3	Right to Observe Testing	36
6.4	Right to Inspect.....	36
ARTICLE 7 METERING		37
7.1	General.....	37
7.2	Check Meters	37
7.3	Standards.....	38
7.4	Testing of Metering Equipment.....	38
7.5	Metering Data	38
ARTICLE 8 COMMUNICATIONS.....		38
8.1	Developer Obligations	38
8.2	Remote Terminal Unit	39
8.3	No Annexation	39
ARTICLE 9 OPERATIONS.....		39
9.1	General.....	39
9.2	NYISO and Transmission Owner Obligations	40
9.3	Developer Obligations	40
9.4	Start-Up and Synchronization.....	40
9.5	Reactive Power.	40
9.6	Outages and Interruptions.....	41
9.7	Switching and Tagging Rules	45
9.8	Use of Attachment Facilities by Third Parties.....	45
9.9	Disturbance Analysis Data Exchange.....	45
ARTICLE 10 MAINTENANCE		46
10.1	Transmission Owner Obligations	46
10.2	Developer Obligations	46
10.3	Coordination	46
10.4	Secondary Systems	46
10.5	Operating and Maintenance Expenses.....	46
ARTICLE 11 PERFORMANCE OBLIGATION		47
11.1	Developer Attachment Facilities.....	47

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

Effective: February 29, 2008

11.2	Transmission Owner's Attachment Facilities	47
11.3	System Upgrade Facilities	47
11.4	Special Provisions for Affected Systems	47
11.5	Provision of Security.....	47
11.6	Developer Compensation for Emergency Services	48
11.7	Line Outage Costs.....	48
ARTICLE 12 INVOICE		48
12.1	General.....	48
12.2	Final Invoice	48
12.3	Payment.....	49
12.4	Disputes.....	49
ARTICLE 13 EMERGENCIES.....		49
13.1	Obligations.....	49
13.2	Notice.....	49
13.3	Immediate Action.....	50
13.4	NYISO and Transmission Owner Authority.....	50
13.5	Developer Authority	51
13.6	Limited Liability	51
ARTICLE 14 REGULATORY REQUIREMENTS AND GOVERNING LAW		51
14.1	Regulatory Requirements.....	51
14.2	Governing Law	52
ARTICLE 15 NOTICES.....		52
15.1	General.....	52
15.2	Billings and Payments.....	52
15.3	Alternative Forms of Notice	52
15.4	Operations and Maintenance Notice	52
ARTICLE 16 FORCE MAJEURE		53
16.1	Force Majeure	53
ARTICLE 17 DEFAULT		53
17.1	Default.....	53
ARTICLE 18 INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE		54
18.1	Indemnity	54
18.2	No Consequential Damages.....	55
18.3	Insurance.....	56

ARTICLE 19 ASSIGNMENT	58
19.1 Assignment	58
ARTICLE 20 SEVERABILITY	59
20.1 Severability	59
ARTICLE 21 COMPARABILITY	59
21.1 Comparability	59
ARTICLE 22 CONFIDENTIALITY	59
22.1 Confidentiality	59
ARTICLE 23 ENVIRONMENTAL RELEASES	64
23.1 Developer and Transmission Owner Notice	64
ARTICLE 24 INFORMATION REQUIREMENT	64
24.1 Information Acquisition	64
24.2 Information Submission by Transmission Owner	64
24.3 Updated Information Submission by Developer	64
24.4 Information Supplementation	65
ARTICLE 25 INFORMATION ACCESS AND AUDIT RIGHTS	66
25.1 Information Access	66
25.2 Reporting of Non-Force Majeure Events	66
25.3 Audit Rights	66
25.4 Audit Rights Periods	66
25.5 Audit Results	67
ARTICLE 26 SUBCONTRACTORS	67
26.1 General	67
26.2 Responsibility of Principal	67
26.3 No Limitation by Insurance	67
ARTICLE 27 DISPUTES	68
27.1 Submission	68
27.2 External Arbitration Procedures	68
27.3 Arbitration Decisions	68
27.4 Costs	69
27.5 Termination	69

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

Effective: February 29, 2008

ARTICLE 28 REPRESENTATIONS, WARRANTIES AND COVENANTS	69
28.1 General	69
ARTICLE 29 MISCELLANEOUS	70
29.1 Binding Effect	70
29.2 Conflicts	70
29.3 Rules of Interpretation	70
29.4 Compliance	71
29.5 Joint and Several Obligations	71
29.6 Entire Agreement	71
29.7 No Third Party Beneficiaries	71
29.8 Waiver	71
29.9 Headings	71
29.10 Multiple Counterparts	72
29.11 Amendment	72
29.12 Modification by the Parties	72
29.13 Reservation of Rights	72
29.14 No Partnership	72
29.15 Other Transmission Rights	72

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

Effective: February 29, 2008

**MERCHANT TRANSMISSION FACILITY
INTERCONNECTION AGREEMENT**

THIS MERCHANT TRANSMISSION FACILITY INTERCONNECTION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 2008, by and among Linden VFT, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Developer”), the New York Independent System Operator, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (“NYISO”), and Consolidated Edison Company of New York, Inc. a corporation organized and existing under the laws of the State of New York (“Transmission Owner”). Developer, the NYISO, or Transmission Owner each may be referred to as a “Party” or collectively referred to as the “Parties.”

RECITALS

WHEREAS, NYISO operates the Transmission System and Transmission Owner owns certain facilities included in the Transmission System; and

WHEREAS, Developer intends to own, lease and/or control and operate the Merchant Transmission Facility; and

WHEREAS, Developer, NYISO, and Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Merchant Transmission Facility with the New York State Transmission System;

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

**ARTICLE 1.
DEFINITIONS**

Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 or otherwise herein shall have the meanings specified in Section 1.0 or Attachment S of the NYISO OATT.

Affected System shall mean an electric system other than the transmission system owned, controlled or operated by the NYISO or the Transmission Owner that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Issued by: Mark S. Lynch, President
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Effective: February 29, 2008

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.

Ancillary Services shall mean those services that are necessary to support the transmission of Capacity and Energy from resources to Loads while maintaining reliable operation of the New York State Transmission System in accordance with Good Utility Practice.

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

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

Applicable Reliability Standards shall mean the requirements and guidelines of the Applicable Reliability Councils, and the Transmission District to which the Developer's Merchant Transmission 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.

Attachment Facilities shall mean the Transmission Owner's Attachment Facilities and the Developer's Attachment Facilities. Collectively, Attachment Facilities include all facilities and equipment between the Merchant Transmission Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Merchant Transmission Facility to the New York State Transmission System. Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities or System Upgrade Facilities.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by NYISO, Transmission Owner or Developer; described in Section 2.3 of the Large Facility Interconnection Procedures.

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

Issued by: Mark S. Lynch, President
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Effective: February 29, 2008

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

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

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

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Reliability Impact Study.

Commercial Operation shall mean the status of a Merchant Transmission Facility that has commenced transmitting electricity, excluding electricity transmitted during Trial Operation.

Commercial Operation Date shall mean the date on which the Merchant Transmission Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to this Agreement.

Confidential Information shall mean any information that is defined as confidential by Article 22 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 17 of this Agreement.

Delivery Point shall mean the point at which electricity will be measured by electric meters and associated equipment at Transmission Owner's Goethals 345 kV substation, and owned, installed, operated and maintained by Transmission Owner at Developer's expense.

Developer shall mean an Eligible Customer developing a Merchant Transmission Facility, proposing to connect to the New York State Transmission System, in compliance with the NYISO Minimum Interconnection Standard.

Developer's Attachment Facilities shall mean all facilities and equipment, as identified in Appendix A of this Agreement, that are located between the Merchant Transmission Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Merchant Transmission Facility to the New York State Transmission System. Developer's Attachment Facilities are sole use facilities.

Dispute Resolution shall mean the procedure described in Article 27 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.

Emergency State shall mean the condition or state that the New York State Power System is in when an abnormal condition occurs that requires automatic or immediate manual action to prevent or limit loss of the New York State Transmission System or Generators that could adversely affect the reliability of the New York State Power System.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes Transmission Owner to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

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

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 Transmission Owner, or any Affiliate thereof.

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

Initial Synchronization Date shall mean the date upon which the Merchant Transmission Facility is initially synchronized with the New York State Transmission System and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Developer reasonably expects it will be ready to begin use of the Merchant Transmission Facility.

Interconnection Facilities Study shall mean a study conducted by NYISO or a third party consultant for the Developer to determine a list of facilities (including Transmission Owner's Attachment Facilities and System Upgrade Facilities as identified in the Interconnection System Reliability Impact Study), the cost of those facilities, and the time required to interconnect the Merchant Transmission Facility with the New York State Transmission System. The scope of the study is defined in Section 8 of the Standard Large Facility Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Merchant Transmission Facility to the New York State Transmission System, the scope of which is described in Section 6 of the Standard Large Facility Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection Feasibility Study.

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

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Reliability Impact Study, and the Interconnection Facilities Study described in the Standard Large Facility Interconnection Procedures.

Interconnection System Reliability Impact Study ("SRIS") shall mean an engineering study, conducted in accordance with Section 7 of the Large Facility Interconnection Procedures, that evaluates the impact of the proposed Merchant Transmission Facility on the safety and reliability of the New York State Transmission System and, if applicable, an Affected System, to determine what Attachment Facilities and System Upgrade Facilities are needed for the proposed Merchant Transmission Facility of the Developer to connect reliably to the New York State Transmission System in a manner that meets the NYISO Minimum Interconnection Standard.

Interconnection System Reliability Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Facility Interconnection Procedures for conducting the Interconnection System Reliability Impact Study.

IRS shall mean the Internal Revenue Service.

Linden Cogen shall mean the Linden Cogeneration Facility located in Linden, New Jersey.

Linden VFT Project shall mean the project described in Appendix C to this Agreement.

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.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Merchant Transmission Facility shall mean generally a merchant facility for the transmission of electricity, and specifically the Developer's facility for the transmission of electricity as described in this Agreement and the Appendices hereto.

Merchant Transmission Facility Interconnection Agreement ("MTFIA") shall mean this Agreement.

Metering Equipment shall mean all metering equipment installed at the Delivery Point and at the Point of Connection, or at other locations, as set forth in Appendix C to this Agreement, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

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

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

Network Access Interconnection Service shall mean the service provided by NYISO to interconnect the Developer's Merchant Transmission Facility to the New York State Transmission System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive electric energy and capacity from the Merchant Transmission Facility at the Point of Interconnection, pursuant to the terms of this Agreement and the NYISO OATT.

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

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

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

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

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Developer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Facility Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean NYISO, Transmission Owner, or Developer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to this Agreement, where the Developer's Attachment Facilities connect to the Transmission Owner's Attachment Facilities.

Point of Connection means the point, as set forth in Appendix A to this Agreement, where the Merchant Transmission Facility connects to the Linden Cogen ring bus.

Point of Interconnection shall mean the point, as set forth in Appendix A to this Agreement, where the Attachment Facilities connect to the New York State Transmission System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by NYISO.

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.

Scoping Meeting shall mean the meeting between representatives of the Developer, NYISO and Transmission Owner conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

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.

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Merchant Transmission Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Developer and the entity having the right to sell, lease or grant Developer the right to possess or occupy a site for such purpose.

Stand Alone System Upgrade Facilities shall mean System Upgrade Facilities that a Developer may construct without affecting day-to-day operations of the New York State Transmission System during their construction. NYISO, the Transmission Owner and the Developer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify them in Appendix A to this Agreement.

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

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to (1) protect the New York State Transmission System from faults or other electrical disturbances occurring at the Merchant Transmission Facility and (2) protect the Merchant Transmission Facility from faults or other electrical system disturbances occurring on the New York State Transmission System or on other delivery systems or other generating systems to which the New York State Transmission System is directly connected.

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

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

Transmission Owner shall mean the public utility or authority (or its designated agent) that (i) owns facilities used for the transmission of Energy in interstate commerce and provides Transmission Service under the Tariff, (ii) owns, leases or otherwise possesses an interest in the portion of the New York State Transmission System at the Point of Interconnection, and (iii) is a Party to this Agreement.

Transmission Owner's Attachment Facilities shall mean all facilities and equipment owned, controlled or operated by the Transmission Owner from the Point of Change of Ownership to the Point of Interconnection, as identified in Appendix A to this Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Owner's Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities or System Upgrade Facilities.

Trial Operation shall mean the period during which Developer is engaged in test operations and commissioning of the Merchant Transmission 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 Transmission Owner shall promptly file this Agreement with FERC upon execution in accordance with Article 3.1.

2.2 Term of Agreement. Subject to the provisions of Article 2.3, this Agreement shall remain in effect for a period of twenty five (25) years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination.

2.3.1 Written Notice. This Agreement may be terminated by the Developer after giving the NYISO and Transmission Owner ninety (90) Calendar Days advance written notice, or by the NYISO and Transmission Owner notifying FERC after the Merchant Transmission Facility permanently ceases Commercial Operations.

2.3.2 Default. Any Party may terminate this Agreement in accordance with Article 17.

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 a Party elects to terminate this Agreement pursuant to Article 2.3.1 above, the terminating Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment) or charges assessed by the other Parties, as of the date of the other Parties' receipt of such notice of termination, that are the responsibility of the terminating Party under this Agreement. 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 Transmission Owner's Attachment Facilities that have not yet been constructed or installed, the Transmission Owner 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, such 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 the Transmission Owner shall deliver such material and equipment, and, if necessary, assign such contracts, to Developer as soon as practicable, at Developer's expense. To the extent that Developer has already paid Transmission Owner for any or all such costs of materials or equipment not taken by Developer, Transmission Owner shall promptly refund such amounts to Developer, less any costs, including penalties incurred by the Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts.

If a Developer terminates this Agreement, it shall be responsible for all costs incurred in association with that Developer's interconnection, including any cancellation costs relating to orders or contracts for Attachment Facilities and equipment, and other expenses including any System Upgrade Facilities for which the Transmission Owner has incurred expenses and has not been reimbursed by the Developer.

2.4.2 Transmission 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 Transmission 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 Attachment Facilities, and any other facilities already installed or constructed 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 materials, equipment, or facilities.

- 2.5 Disconnection.** Upon termination of this Agreement, Developer and Transmission Owner will take all appropriate steps to disconnect the Developer's Merchant Transmission Facility from the New York State Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.
- 2.6 Survival.** This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder; including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit Developer and Transmission Owner each to have access to the lands of the other pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

ARTICLE 3. REGULATORY FILINGS

- 3.1 Filing.** NYISO and Transmission Owner shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Developer to contain Confidential Information shall be treated in accordance with Article 22 of this Agreement and Attachment F to the NYISO OATT. If the Developer has executed this Agreement, or any amendment thereto, the Developer shall reasonably cooperate with NYISO and Transmission Owner with respect to such filing and to provide any information reasonably requested by NYISO and Transmission Owner needed to comply with Applicable Laws and Regulations.

ARTICLE 4. SCOPE OF INTERCONNECTION SERVICE

- 4.1 Provision of Service.** NYISO will provide Developer with interconnection service of the following type for the term of this Agreement.
- 4.1.1 Product.** NYISO will provide Network Access Interconnection Service to Developer at the Point of Interconnection.

- 4.1.2 Developer** is responsible for ensuring that its actual Merchant Transmission Facility output matches the scheduled delivery from the Merchant Transmission Facility to the New York State Transmission System, consistent with the scheduling requirements of the NYISO's FERC-approved market structure, including ramping into and out of such scheduled delivery, as measured at the Delivery Point, consistent with the scheduling requirements of the NYISO OATT and any applicable FERC-approved market structure.
- 4.2 No Transmission Delivery Service.** The execution of this Agreement does not constitute a request for, nor agreement to provide, any Transmission Service under the NYISO OATT, and does not convey any right to deliver electricity to any specific customer or Point of Delivery. If Developer wishes to obtain Transmission Service on the New York State Transmission System, then Developer must request such Transmission Service in accordance with the provisions of the NYISO OATT.
- 4.3 No Other Services.** The execution of this Agreement does not constitute a request for, nor agreement to provide energy, any Ancillary Services or Installed Capacity under the NYISO Market Administration and Control Area Services Tariff ("Services Tariff"). If Developer wishes to supply energy, Installed Capacity or Ancillary Services, then Developer will make application to do so in accordance with the NYISO Services Tariff.

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

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ARTICLE 5.
**INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND
CONSTRUCTION**

5.1 Options. Unless otherwise mutually agreed to by Developer and Transmission Owner, Developer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Transmission Owner's Attachment Facilities and System Upgrade Facilities as set forth in Appendix A hereto, and such dates and selected option shall be set forth in Appendix B hereto.

5.1.1 Standard Option. The Transmission Owner shall design, procure, and construct the Transmission Owner's Attachment Facilities and System Upgrade Facilities, using Reasonable Efforts to complete the Transmission Owner's Attachment Facilities and System Upgrade Facilities by the dates set forth in Appendix B hereto. The Transmission Owner 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 Transmission Owner reasonably expects that it will not be able to complete the Transmission Owner's Attachment Facilities and System Upgrade Facilities by the specified dates, the Transmission Owner shall promptly provide written notice to the Developer and NYISO, and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option. If the dates designated by Developer are acceptable to Transmission Owner, the Transmission Owner shall so notify Developer and NYISO within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Transmission Owner's Attachment Facilities by the designated dates. If Transmission Owner subsequently fails to complete Transmission Owner's Attachment Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete System Upgrade Facilities by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Developer and Transmission Owner for such Trial Operation; or fails to complete the system Upgrade Facilities by the Commercial Operation Date, as such dates are reflected in Appendix B hereto; Transmission Owner shall pay Developer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Developer shall be extended day for day for each day that NYISO refuses to grant clearances to install equipment.

5.1.3 Option to Build. If the dates designated by Developer are not acceptable to Transmission Owner, the Transmission Owner shall so notify the Developer and NYISO within thirty (30) Calendar Days, and unless the Developer and Transmission Owner agree otherwise, Developer shall have the option to assume responsibility for the design, procurement and construction of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities on the dates specified in Article 5.1.2; provided that if an Attachment Facility or Stand Alone System Upgrade Facility is needed for more than one Developer's project, Developer's option to build such Facility shall be contingent on the agreement of all other affected Developers. NYISO, Transmission Owner and Developer must agree as to what constitutes Stand Alone System Upgrade Facilities and identify such Stand Alone System Upgrade Facilities in Appendix A hereto. Except for Stand Alone System Upgrade Facilities, Developer shall have no right to construct System Upgrade Facilities under this option.

5.1.4 Negotiated Option. If the Developer elects not to exercise its option under Article 5.1.3, Option to Build, Developer shall so notify Transmission Owner and NYISO within thirty (30) Calendar Days, and the Developer and Transmission Owner shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities by Developer) pursuant to which Transmission Owner is responsible for the design, procurement and construction of the Transmission Owner's Attachment Facilities and System Upgrade Facilities. If the two Parties are unable to reach agreement on such terms and conditions, Transmission Owner shall assume responsibility for the design, procurement and construction of the Transmission Owner's Attachment Facilities and System Upgrades Facilities pursuant to 5.1.1, Standard Option.

5.2 General Conditions Applicable to Option to Build. If Developer assumes responsibility for the design, procurement and construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities,

(1) Developer shall engineer, procure equipment, and construct the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Transmission Owner;

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- (2) Developer's engineering, procurement and construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities shall comply with all requirements of law to which Transmission Owner would be subject in the engineering, procurement or construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;
- (3) Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;
- (4) Prior to commencement of construction, Developer shall provide to Transmission Owner and NYISO a schedule for construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities, and shall promptly respond to requests for information from Transmission Owner or NYISO;
- (5) At any time during construction, Transmission Owner shall have the right to gain unrestricted access to the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities and to conduct inspections of the same;
- (6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities not meet the standards and specifications provided by Transmission Owner, the Developer shall be obligated to remedy deficiencies in that portion of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities;
- (7) Developer shall indemnify Transmission Owner and NYISO for claims arising from the Developer's construction of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities under procedures applicable to Article 18.1 Indemnity;
- (8) Developer shall transfer control of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the Transmission Owner;
- (9) Unless the Developer and Transmission Owner otherwise agree, Developer shall transfer ownership of Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to Transmission Owner;
- (10) Transmission Owner shall approve and accept for operation and maintenance the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

(11) Developer shall deliver to NYISO and Transmission Owner "as built" drawings, information, and any other documents that are reasonably required by NYISO or Transmission Owner to assure that the Attachment Facilities and Stand Alone System Upgrade Facilities are built to the standards and specifications required by Transmission Owner.

5.3 Liquidated Damages. The actual damages to the Developer, in the event the Transmission Owner Attachment Facilities or System Upgrade Facilities are not completed by the dates designated by the Developer and accepted by the Transmission Owner pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Developer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Transmission Owner to the Developer in the event that Transmission Owner does not complete any portion of the Transmission Owner's Attachment Facilities or System Upgrade Facilities by the applicable dates, shall be an amount equal to 1/2 of 1 percent per day of the actual cost of the Transmission Owner's Attachment Facilities and System Upgrade Facilities, in the aggregate, for which Transmission Owner has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Transmission Owner's Attachment Facilities and System Upgrade Facilities for which the Transmission Owner has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Transmission Owner to the Developer as just compensation for the damages caused to the Developer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement. Liquidated damages, when the Developer and Transmission Owner agree to them, are the exclusive remedy for the Transmission Owner's failure to meet its schedule. Further, Transmission Owner shall not pay liquidated damages to Developer if: (1) Developer is not ready to commence use of the Transmission Owner's Attachment Facilities or System Upgrade Facilities to take the delivery of power for the Developer's Merchant Transmission Facility's Trial Operation or to transmit power from the Developer's Merchant Transmission Facility on the specified dates, unless the Developer would have been able to commence use of the Transmission Owner's Attachment Facilities or System Upgrade Facilities to take the delivery of power for Developer's Merchant Transmission Facility's Trial Operation or to transmit power from the Developer's Merchant Transmission Facility, but for Transmission Owner's delay; (2) the Transmission Owner's failure to meet the specified dates is the result of the action or

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inaction of the Developer or any other Developer who has entered into a Merchant Transmission Facility Interconnection Agreement with the Transmission Owner and NYISO, or action or inaction by any other Party, or any other cause beyond Transmission Owner's reasonable control or reasonable ability to cure; (3) the Developer has assumed responsibility for the design, procurement and construction of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities; or (4) the Transmission Owner and Developer have otherwise agreed. In no event shall NYISO have any liability whatever to Developer for liquidated damages associated with the engineering, procurement or construction of Attachment Facilities or System Upgrade Facilities.

5.4 Reserved.

5.5 Equipment Procurement. If responsibility for construction of the Transmission Owner's Attachment Facilities or System Upgrade Facilities is to be borne by the Transmission Owner, then the Transmission Owner shall commence design of the Transmission Owner's Attachment Facilities or System Upgrade Facilities and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Developer and Transmission Owner otherwise agree in writing:

5.5.1 NYISO and Transmission Owner have completed the Interconnection Facilities Study pursuant to the Interconnection Facilities Study Agreement;

5.5.2 The NYISO has completed the required cost allocation analyses, and Developer has accepted his share of the costs for necessary System Upgrade Facilities in accordance with the provisions of Attachment S of the NYISO OATT;

5.5.3 The Transmission Owner has received written authorization to proceed with design and procurement from the Developer by the date specified in Appendix B hereto; and

5.5.4 The Developer has provided security to the Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.

5.6 Construction Commencement. The Transmission Owner shall commence construction of the Transmission Owner's Attachment Facilities and System Upgrade Facilities for which it is responsible as soon as practicable after the following additional conditions are satisfied:

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

- 5.6.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Owner's Attachment Facilities and System Upgrade Facilities;
- 5.6.3** The Transmission Owner has received written authorization to proceed with construction from the Developer by the date specified in Appendix B hereto; and
- 5.6.4** The Developer has provided security to the Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B hereto.
- 5.7 Work Progress.** The Developer and Transmission Owner will keep each other, and NYISO, advised periodically as to the progress of their respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from the Developer or Transmission Owner. If, at any time, the Developer determines that the completion of the Transmission Owner's Attachment Facilities or System Upgrade Facilities will not be required until after the specified In-Service Date, the Developer will provide written notice to the Transmission Owner and NYISO of such later date upon which the completion of the Transmission Owner's Attachment Facilities or System Upgrade Facilities will be required.
- 5.8 Information Exchange.** As soon as reasonably practicable after the Effective Date, the Developer and Transmission Owner shall exchange information, and provide NYISO the same information, regarding the design and compatibility of the Attachment Facilities and System Upgrade Facilities and compatibility of the Attachment Facilities and System Upgrade Facilities with the New York State Transmission System, and shall work diligently and in good faith to make any necessary design changes.
- 5.9 Limited Operation.** If any of the Transmission Owner's Attachment Facilities or System Upgrade Facilities are not reasonably expected to be completed prior to the Commercial Operation Date of the Developer's Merchant Transmission Facility, NYISO shall, upon the request and at the expense of Developer, in conjunction with the Transmission Owner, perform operating studies on a timely basis to determine the extent to which the Developer's Merchant Transmission Facility and the Developer's Attachment Facilities may operate prior to the completion of the Transmission Owner's Attachment Facilities or System Upgrade Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this Agreement. Transmission Owner and NYISO shall permit Developer to operate the Developer's Merchant Transmission Facility and the Developer's Attachment Facilities in accordance with the results of such studies.
- 5.10 Developer's Attachment Facilities ("DAF").** Developer shall, at its expense, design, procure, construct, own and install the DAF, as set forth in Appendix A hereto.

- 5.10.1 DAF Specifications.** Developer shall submit initial specifications for the DAF, including System Protection Facilities, to Transmission Owner and NYISO at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Owner and NYISO shall review such specifications to ensure that the DAF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Owner and NYISO and comment on such specifications within thirty (30) Calendar Days of Developer's submission. All specifications provided hereunder shall be deemed to be Confidential Information.
- 5.10.2 No Warranty.** The review of Developer's final specifications by Transmission Owner and NYISO shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Merchant Transmission Facility, or the DAF. Developer shall make such changes to the DAF as may reasonably be required by Transmission Owner or NYISO, in accordance with Good Utility Practice, to ensure that the DAF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Owner and NYISO.
- 5.10.3 DAF Construction.** The DAF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Developer and Transmission Owner agree on another mutually acceptable deadline, the Developer shall deliver to the Transmission Owner and NYISO "as-built" drawings, information and documents for the DAF, such as: a one-line diagram, a site plan showing the Merchant Transmission Facility and the DAF, plan and elevation drawings showing the layout of the DAF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Developer's step-up transformers, the facilities connecting the Merchant Transmission Facility to the step-up transformers and the DAF, and the impedances (determined by factory tests) for the associated step-up transformers and the Merchant Transmission Facility. The Developer shall provide to, and coordinate with, Transmission Owner and NYISO with respect to proposed specifications for the excitation system, automatic voltage regulator, Merchant Transmission Facility control and protection settings, transformer tap settings, and communications, if applicable.

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5.11 Transmission Owner's Attachment Facilities Construction. The Transmission Owner's Attachment Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Transmission Owner and Developer agree on another mutually acceptable deadline, the Transmission Owner shall deliver to the Developer "as-built" drawings, information and documents for the Transmission Owner's Attachment Facilities.

The Transmission Owner shall transfer operational control of the Transmission Owner's Attachment Facilities and Stand Alone System Upgrade Facilities to the NYISO upon completion of such facilities.

5.12 Access Rights. Upon reasonable notice and supervision by the Granting Party, and subject to any required or necessary regulatory approvals, either the Transmission Owner or Developer ("Granting Party") shall furnish to the other of those two Parties ("Access Party"), at no cost, any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Merchant Transmission Facility with the New York State Transmission System; (ii) operate and maintain the Merchant Transmission Facility, the Attachment Facilities and the New York State Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this Agreement. 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 access rights and obligations and associated safety rules and procedures presented in Appendix G to this Agreement. 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.

5.13 Lands of Other Property Owners. If any part of the Transmission Owner's Attachment Facilities and/or System Upgrade Facilities is to be installed on property owned by persons other than Developer or Transmission Owner, the Transmission Owner 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, operate, maintain, test, inspect, replace or remove the Transmission Owner's Attachment Facilities and/or System Upgrade Facilities upon such property.

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- 5.14 Permits.** NYISO, Transmission Owner and the Developer shall cooperate with each other in good faith in obtaining all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Transmission Owner shall provide permitting assistance to the Developer comparable to that provided to the Transmission Owner's own, or an Affiliate's, generation or transmission facilities, if any.
- 5.15 Early Construction of Base Case Facilities.** Developer may request Transmission Owner to construct, and Transmission Owner shall construct, subject to a binding cost allocation agreement reached in accordance with Attachment S to the NYISO OATT, including Section IV.F.12 thereof, using Reasonable Efforts to accommodate Developer's In-Service Date, all or any portion of any System Upgrade Facilities required for Developer to be interconnected to the New York State Transmission System which are included in the Base Case of the Facilities Study for the Developer, and which also are required to be constructed for another Developer, but where such construction is not scheduled to be completed in time to achieve Developer's In-Service Date.
- 5.16 Suspension.** Developer reserves the right, upon written notice to Transmission Owner and NYISO, to suspend at any time all work by Transmission Owner associated with the construction and installation of Transmission Owner's Attachment Facilities and/or System Upgrade Facilities required for only that Developer 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 Transmission Owner and NYISO. In such event, Developer shall be responsible for all reasonable and necessary costs and/or obligations in accordance with Attachment S to the NYISO OATT including those which Transmission Owner (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 Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Owner shall obtain Developer's authorization to do so.

Transmission Owner shall invoice Developer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Developer suspends work by Transmission Owner required under this Agreement pursuant to this Article 5.16, and has not requested Transmission Owner to recommence the work required under this

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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 Transmission Owner and NYISO, if no effective date is specified.

5.17 Taxes.

5.17.1 Developer Payments Not Taxable. The Developer and Transmission Owner intend that all payments or property transfers made by Developer to Transmission Owner for the installation of the Transmission Owner's Attachment Facilities and the 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.

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

5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Owner. Notwithstanding Article 5.17.1, Developer shall protect, indemnify and hold harmless Transmission Owner from the cost consequences of any current tax liability imposed against Transmission Owner as the result of payments or property transfers made by Developer to Transmission Owner under this Agreement, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Owner.

Transmission 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) Transmission Owner has determined, in good faith, that the payments or property transfers made by Developer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Developer to provide security, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Developer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission 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 Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 Tax Gross-Up Amount. Developer's liability for the cost consequences of any current tax liability under this Article 5.17 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 Transmission Owner, in addition to the amount paid for the Attachment Facilities and System Upgrade Facilities, an amount equal to (1) the current taxes imposed on Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Transmission Owner as a result of payments or property transfers made by Developer to Transmission Owner under this

Agreement (without regard to any payments under this Article 5.17) (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 Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Developer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$.

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

5.17.5 Private Letter Ruling or Change or Clarification of Law. At Developer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Developer to Transmission 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. Transmission Owner and Developer shall cooperate in good faith with respect to the submission of such request.

Transmission 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. Transmission 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.

5.17.6 Subsequent Taxable Events. If, within 10 years from the date on which the relevant Transmission Owner Attachment Facilities and System Upgrade Facilities are placed in service, (i) Developer Breaches the covenants contained in Article 5.17.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Transmission Owner retains ownership of the Attachment Facilities and System Upgrade Facilities, the Developer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Owner, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

5.17.7 Contests. In the event any Governmental Authority determines that Transmission Owner's receipt of payments or property constitutes income that is subject to taxation, Transmission 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, Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Developer's written request and sole expense, Transmission Owner may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission 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 Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Owner may agree to a settlement either with Developer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission 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 Transmission Owner for the tax at issue in the contest.

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

(i) Any payment made by Developer under this Article 5.17 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 Transmission Owner for such taxes which Transmission Owner did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date payment was made by Developer to the date Transmission Owner refunds such payment to Developer, and

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

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

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

5.18 Tax Status; Non-Jurisdictional Entities.

5.18.1 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 any Transmission Owner with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds. Notwithstanding any other provisions of this Agreement, LIPA, NYPA and Consolidated Edison Company of New York, Inc. shall not be required to comply with any provisions of this Agreement that would result in the loss of tax-exempt status of any of their Tax-Exempt Bonds or impair their ability to issue future tax-exempt obligations. For purposes of this provision, Tax-Exempt Bonds shall include the obligations of the Long Island Power Authority, NYPA and Consolidated Edison Company of New York, Inc., the interest on which is not included in gross income under the Internal Revenue Code.

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

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Effective: February 29, 2008

5.19 Modification.

5.19.1 General. Either the Developer or Transmission Owner may undertake modifications to its facilities covered by this Agreement. If either the Developer or Transmission 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, and to NYISO, sufficient information regarding such modification so that the other Party 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 Merchant Transmission 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 Merchant Transmission Facility modifications that do not require Developer to submit an Interconnection Request, Transmission Owner 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, Transmission Owner's Attachment Facilities or System Upgrade Facilities necessitated by such Developer modification and a good faith estimate of the costs thereof.

5.19.2 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.

5.19.3 Modification Costs. Developer shall not be assigned the costs of any additions, modifications, or replacements that Transmission Owner makes to the Transmission Owner's Attachment Facilities or the New York State Transmission System to facilitate the interconnection of a third party to the Transmission Owner's Attachment 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 Developer Attachment Facilities that may be necessary to maintain or upgrade such Developer Attachment Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

**ARTICLE 6.
TESTING AND INSPECTION**

- 6.1 Pre-Commercial Operation Date Testing and Modifications.** Prior to the Commercial Operation Date, the Transmission Owner shall test the Transmission Owner's Attachment Facilities and System Upgrade Facilities and Developer shall test the Merchant Transmission Facility and the Developer Attachment Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Developer and Transmission 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 transmit test energy from or to the Merchant Transmission Facility only if it has arranged for the injection or withdrawal of such test energy in accordance with NYISO procedures.
- 6.2 Post-Commercial Operation Date Testing and Modifications.** Developer and Transmission Owner shall each at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice and Applicable Reliability Standards as may be necessary to ensure the continued interconnection of the Merchant Transmission Facility with the New York State Transmission System in a safe and reliable manner. Developer and Transmission Owner shall each have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.
- 6.3 Right to Observe Testing.** Developer and Transmission Owner shall each notify the other Party, and the NYISO, in advance of its performance of tests of its Attachment Facilities, System Upgrade Facilities and Merchant Transmission Facility. The other Party, and the NYISO, shall each have the right, at its own expense, to observe such testing.
- 6.4 Right to Inspect.** Developer and Transmission Owner shall each have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Attachment Facilities, System Upgrade Facilities, the System Protection Facilities and other protective equipment. NYISO shall have these same rights of inspection as to the facilities and equipment of Developer and Transmission Owner. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

Effective: February 29, 2008

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 Attachment Facilities, System Upgrade Facilities or the System Protection 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 6.4 shall be treated in accordance with Article 22 of this Agreement and Attachment F to the NYISO OATT.

ARTICLE 7. METERING

- 7.1 General.** Prior to any operation of the Merchant Transmission Facility, Developer and Transmission Owner shall install the Metering Equipment, and implement the metering protocols that the NYISO determines to be necessary to meet the requirements described in Section 4 of Appendix C to this Agreement. Metering Equipment and protocols shall be modified, as necessary, to meet NYISO requirements, and to reflect changes in NYISO requirements that may be instituted from time to time. Developer and Transmission Owner shall each comply with applicable requirements of NYISO and the New York Public Service Commission when exercising its rights and fulfilling its responsibilities under this Article 7. Unless otherwise agreed by the Transmission Owner and NYISO approved meter service provider and Developer, the Transmission Owner shall install Metering Equipment at the Delivery Point prior to any operation of the Merchant Transmission Facility and shall own, operate, test and maintain such Metering Equipment. Developer shall install all other required Metering Equipment, including Metering Equipment adjacent to the Point of Connection, prior to any operation of the Merchant Transmission Facility and shall own, operate, test and maintain such Metering Equipment. Transmission Owner and/or Developer shall provide metering quantities, in analog and/or digital form, as required, to Developer, Transmission Owner or NYISO upon request. Developer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.
- 7.2 Check Meters.** Developer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Owner's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this Agreement, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Owner or its designee. The installation, operation and maintenance thereof shall be performed entirely by Developer in accordance with Good Utility Practice.

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

Effective: February 29, 2008

- 7.3 Standards.** Transmission Owner and Developer shall install, calibrate, and test revenue quality Metering Equipment including potential transformers and current transformers in accordance with applicable ANSI and PSC standards as detailed in the NYISO Control Center Manual and the NYISO Revenue Meter Requirements Manual.
- 7.4 Testing of Metering Equipment.** Transmission Owner shall inspect and test all of its Metering Equipment at the Goethals 345 kV substation upon installation and at least once every two (2) years thereafter, and Developer shall inspect and test all of its Metering Equipment at Linden Cogen and at the Point of Connection upon installation and at least once every two (2) years thereafter. If requested to do so by NYISO or Developer, Transmission Owner shall, at Developer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Owner shall give reasonable notice of the time when any inspection or test shall take place, and Developer and NYISO may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Developer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Owner's failure to maintain, then Transmission Owner shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Owner shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Developer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment. The NYISO shall reserve the right to review all associated metering equipment installation on the Developer's or Transmission Owner's property at any time.
- 7.5 Metering Data.** At Developer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Owner, Developer and NYISO.

ARTICLE 8. COMMUNICATIONS

- 8.1 Developer Obligations.** In accordance with applicable NYISO requirements, Developer shall maintain satisfactory operating communications with Transmission Owner and NYISO. Developer shall provide standard voice line, dedicated voice line and facsimile communications at its Merchant Transmission Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

Effective: February 29, 2008

system that does not rely on the public telephone system. Developer shall also provide the dedicated data circuit(s) necessary to provide Developer data to Transmission Owner and NYISO as set forth in Appendix D hereto. The data circuit(s) shall extend from the Merchant Transmission Facility to the location(s) specified by Transmission Owner and NYISO. Any required maintenance of such communications equipment shall be performed by Developer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

- 8.2 Remote Terminal Unit.** Prior to the Initial Synchronization Date of the Merchant Transmission Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Developer, or by Transmission Owner at Developer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Owner and NYISO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Owner and NYISO. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Owner and NYISO.

Each Party will promptly advise the appropriate other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by that other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

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

ARTICLE 9. OPERATIONS

- 9.1 General.** 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.

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

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- 9.2 NYISO and Transmission Owner Obligations.** Transmission Owner and NYISO shall cause the New York State Transmission System and the Transmission Owner's Attachment Facilities to be operated, maintained and controlled in a safe and reliable manner in accordance with this Agreement and the NYISO Tariffs. Transmission Owner and NYISO may provide operating instructions to Developer consistent with this Agreement, NYISO procedures and Transmission Owner's operating protocols and procedures as they may change from time to time. Transmission Owner and NYISO will consider changes to their respective operating protocols and procedures proposed by Developer.
- 9.3 Developer Obligations.** Developer shall at its own expense operate, maintain and control the Merchant Transmission Facility and the Developer Attachment Facilities in a safe and reliable manner and in accordance with this Agreement. Developer shall operate the Merchant Transmission Facility and the Developer Attachment Facilities in accordance with NYISO and Transmission Owner requirements, as such requirements are set forth or referenced in Appendix C hereto. Appendix C will be modified to reflect changes to the requirements as they may change from time to time. Any Party may request that the appropriate other Party or Parties provide copies of the requirements set forth or referenced in Appendix C hereto.
- 9.4 Start-Up and Synchronization.** Consistent with the mutually acceptable procedures of the Developer and Transmission Owner, the Developer is responsible for the proper synchronization of the Merchant Transmission Facility to the New York State Transmission System in accordance with NYISO and Transmission Owner procedures and requirements.
- 9.5 Reactive Power.**
- 9.5.1 Power Factor Design Criteria.** Developer shall design the Merchant Transmission Facility to maintain an effective power delivery at maximum net capability at the Point of Interconnection at a power factor to be measured at the Delivery Point, of 0.85 lagging to 0.95 leading.
- 9.5.2 Voltage Schedules.** Once the Developer has synchronized the Merchant Transmission Facility with the New York State Transmission System, NYISO shall require Developer to operate the Merchant Transmission Facility to transmit reactive power within the design capability of the Merchant Transmission Facility set forth in Article 9.5.1 (Power Factor Design Criteria), provided that the voltage at the Point of Interconnection is within the range of 346 kV to 362 kV in accordance with Con Edison's engineering specification EP-7000. When voltages

are outside the range specified by EP-7000 due to conditions beyond the control of Con Edison and NYISO, the Developer shall also provide assistance consistent with Good Utility Practice within the full capability of the Merchant Transmission Facility in restoring the voltage at the Point of Interconnection to the normal range as may be directed by the Con Edison or NYISO operators. If the Merchant Transmission Facility is unable to provide the requested assistance, or maintain the specified power factor, it shall promptly notify both the Con Edison and NYISO operators.

9.5.2.1 Reserved.

9.5.3 Reserved.

9.6 Outages and Interruptions.

9.6.1 Outages.

9.6.1.1 Outage Authority and Coordination. Developer and Transmission Owner may each, in accordance with NYISO procedures and Good Utility Practice and in coordination with the other Party, remove from service any of its respective Attachment Facilities or System Upgrade Facilities that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency State, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both the Developer and the Transmission Owner. In all circumstances either Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.6.1.2 Outage Schedules. The Transmission Owner shall post scheduled outages of its transmission facilities on the NYISO OASIS. Developer shall submit its planned maintenance schedules for the Merchant Transmission Facility to Transmission Owner and NYISO for a minimum of a rolling thirty-six month period. Developer shall update its planned maintenance schedules as necessary. NYISO may direct, or the Transmission Owner may request, Developer to reschedule its maintenance as necessary to maintain the reliability of the New York State Transmission System. Compensation to Developer for any additional

direct costs that the Developer incurs as a result of rescheduling maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Developer would have incurred absent the request to reschedule maintenance, shall be in accordance with the NYISO OATT. Developer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Developer had modified its schedule of maintenance activities other than at the direction of the NYISO or request of the Transmission Owner.

9.6.1.3 Outage Restoration. If an outage on the Attachment Facilities or System Upgrade Facilities of the Transmission Owner or Developer adversely affects the other Party's operations or facilities, the Party that owns the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns the facility that is out of service shall provide the other Party and NYISO, to the extent such information is known, information on the nature of the Emergency State, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.6.2 Interruption of Service. If required by Good Utility Practice or Applicable Reliability Standards to do so, the NYISO or Transmission Owner may require Developer to interrupt or reduce transmission of electricity over the Merchant Transmission Facility if such transmission of electricity could adversely affect the ability of NYISO and Transmission Owner to perform such activities as are necessary to safely and reliably operate and maintain the New York State Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.6.2:

9.6.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.6.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all merchant transmission facilities directly connected to the New York State Transmission System;

9.6.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, NYISO or

Transmission Owner shall notify Developer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.6.2.4 Except during the existence of an Emergency State, when the interruption or reduction can be scheduled without advance notice, NYISO or Transmission Owner shall notify Developer in advance regarding the timing of such scheduling and further notify Developer of the expected duration. NYISO or Transmission Owner shall coordinate with each other and the Developer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Developer, the Transmission Owner and the New York State Transmission System;

9.6.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Merchant Transmission Facility, Attachment Facilities, and the New York State Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

9.6.3 Reserved.

9.6.4 System Protection and Other Control Requirements.

9.6.4.1 **System Protection Facilities.** Developer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Merchant Transmission Facility or Developer Attachment Facilities. Transmission Owner shall install at Developer's expense any System Protection Facilities that may be required on the ~~Transmission Owner Attachment Facilities or the New York State~~ Transmission System as a result of the interconnection of the Merchant Transmission Facility and Developer Attachment Facilities.

9.6.4.2 The protection facilities of both the Developer and Transmission Owner shall be designed and coordinated with other systems in accordance with Good Utility Practice and Applicable Reliability Standards.

9.6.4.3 The Developer and Transmission Owner shall each be responsible for protection of its respective facilities consistent with Good Utility Practice and Applicable Reliability Standards.

- 9.6.4.4** The protective relay design of the Developer and Transmission Owner shall each incorporate the necessary test switches to perform the tests required in Article 6 of this Agreement. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations of the Developer's Merchant Transmission Facility or the Transmission Owner's facilities.
- 9.6.4.5** The Developer and Transmission Owner will each test, operate and maintain System Protection Facilities in accordance with Good Utility Practice and NPCC criteria.
- 9.6.4.6** Prior to the In-Service Date, and again prior to the Commercial Operation Date, the Developer and Transmission Owner shall each perform, or their agents shall perform, a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, the Developer and Transmission Owner shall each perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.
- 9.6.5 Requirements for Protection.** In compliance with NPCC requirements and Good Utility Practice, Developer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Merchant Transmission Facility to any short circuit occurring on the New York State Transmission System not otherwise isolated by Transmission Owner's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the New York State Transmission System. Developer shall be solely responsible to disconnect the Merchant Transmission Facility and Developer's other equipment if conditions on the New York State Transmission System could adversely affect the Merchant Transmission Facility.
- 9.6.6 Power Quality.** Neither the facilities of Developer nor the facilities of Transmission Owner shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

9.7 Switching and Tagging Rules. The Developer and Transmission Owner shall each provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a nondiscriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.8 Use of Attachment Facilities by Third Parties.

9.8.1 Purpose of Attachment Facilities. Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Attachment Facilities shall be constructed for the sole purpose of interconnecting the Merchant Transmission Facility to the New York State Transmission System and shall be used for no other purpose.

9.8.2 Third Party Users. If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Transmission Owner's Attachment Facilities, or any part thereof, Developer will be entitled to compensation for the capital expenses it incurred in connection with the Attachment Facilities based upon the pro rata use of the Attachment Facilities by Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Attachment Facilities, will be allocated between Developer and any third party users based upon the pro rata use of the Attachment Facilities by Transmission Owner, all third party users, and Developer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.9 Disturbance Analysis Data Exchange. The Parties will cooperate with one another and the NYISO in the analysis of disturbances to either the Merchant Transmission Facility or the New York State Transmission System by gathering and providing access to any information relating to any disturbance, including information from disturbance recording equipment, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

**ARTICLE 10.
MAINTENANCE**

- 10.1 Transmission Owner Obligations.** Transmission Owner shall maintain its transmission facilities and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.
- 10.2 Developer Obligations.** Developer shall maintain its Merchant Transmission Facility and Attachment Facilities in a safe and reliable manner and in accordance with this Agreement.
- 10.3 Coordination.** The Developer and Transmission Owner shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Merchant Transmission Facility, System Upgrade Facilities and the Attachment Facilities. The Developer and Transmission Owner shall keep NYISO fully informed of the preventive and corrective maintenance that is planned, and shall schedule all such maintenance in accordance with NYISO procedures.
- 10.4 Secondary Systems.** Developer and Transmission Owner shall each cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of Developer or Transmission Owner's facilities and equipment which may reasonably be expected to impact the other Party. The Developer and Transmission Owner shall each provide advance notice to the other Party, and to NYISO, before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.
- 10.5 Operating and Maintenance Expenses.** Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Developer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Developer Attachment Facilities; and (2) operation, maintenance, repair and replacement of Transmission Owner's Attachment Facilities. The Transmission Owner shall be entitled to the recovery of incremental operating and maintenance expenses that it incurs associated with System Upgrade Facilities if and to the extent provided for under Attachment S to the NYISO OATT.

Issued by: Mark S. Lynch, President
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**ARTICLE 11.
PERFORMANCE OBLIGATION**

- 11.1 Developer Attachment Facilities.** Developer shall design, procure, construct, install, own and/or control the Developer Attachment Facilities described in Appendix A hereto, at its sole expense.
- 11.2 Transmission Owner's Attachment Facilities.** Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Owner's Attachment Facilities described in Appendix A hereto, at the sole expense of the Developer.
- 11.3 System Upgrade Facilities.** Transmission Owner shall design, procure, construct, install, and own the System Upgrade Facilities described in Appendix A hereto. The responsibility of the Developer for costs related to System Upgrade Facilities shall be determined in accordance with the provisions of Attachment S to the NYISO OATT.
- 11.4 Special Provisions for Affected Systems.** For the re-payment of amounts advanced to Affected System Operator for System Upgrade Facilities, the Developer and Affected System Operator shall enter into an agreement that provides for such re-payment, but only if responsibility for the cost of such System Upgrade Facilities is not to be allocated in accordance with Attachment S to the NYISO OATT. The agreement shall specify the terms governing payments to be made by the Developer to the Affected System Operator as well as the re-payment by the Affected System Operator.
- 11.5 Provision of Security.** At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of Transmission Owner's Attachment Facilities, Developer shall provide Transmission Owner, at Developer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1 of this Agreement. Such security for payment shall be in an amount sufficient to cover the cost for the Developer's share of constructing, procuring and installing the applicable portion of Transmission Owner's Attachment Facilities, and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes.

In addition:

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

- 11.5.2** The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Owner and must specify a reasonable expiration date.
- 11.5.3** The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner and must specify a reasonable expiration date.
- 11.5.4** Attachment S to the NYISO OATT shall govern the Security that Developer provides for System Upgrade Facilities.
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- 11.6 Developer Compensation for Emergency Services.** If, during an Emergency State, the Developer provides services at the request or direction of the NYISO or Transmission Owner, the Developer will be compensated for such services in accordance with the NYISO Services Tariff.
- 11.7 Line Outage Costs.** Notwithstanding anything in the NYISO OATT to the contrary, the Transmission Owner may propose to recover line outage costs associated with the installation of Transmission Owner's Attachment Facilities or System Upgrade Facilities on a case-by-case basis.

ARTICLE 12.
INVOICE

- 12.1 General.** The Developer and Transmission Owner shall each submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Developer and Transmission 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.
- 12.2 Final Invoice.** Within six months after completion of the construction of the Transmission Owner's Attachment Facilities and the System Upgrade Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Transmission Owner's Attachment Facilities and the System Upgrade Facilities, 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. Transmission Owner shall refund to Developer any amount by which the actual payment by Developer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

Issued by: Mark S. Lynch, President
Issued on: February 29, 2008

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- 12.3 Payment.** Invoices shall be rendered to the paying Party at the address specified in Appendix F hereto. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices will not constitute a waiver of any rights or claims the paying Party may have under this Agreement.
- 12.4 Disputes.** In the event of a billing dispute between Transmission Owner and Developer, Transmission 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 Transmission 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 Transmission Owner may provide notice to Developer of a Default pursuant to Article 17. 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)(ii).

**ARTICLE 13.
EMERGENCIES**

- 13.1 Obligations.** Each Party shall comply with the Emergency State procedures of NYISO, the applicable Reliability Councils, Applicable Laws and Regulations, and any emergency procedures agreed to by the NYISO Operating Committee.
- 13.2 Notice.** NYISO or, as applicable, Transmission Owner shall notify Developer promptly when it becomes aware of an Emergency State that affects the Transmission Owner's Attachment Facilities or the New York State Transmission System that may reasonably be expected to affect Developer's operation of the Merchant Transmission Facility or the Developer's Attachment Facilities. Developer shall notify NYISO and Transmission Owner promptly when it becomes aware of an Emergency State that affects the Merchant Transmission Facility or the Developer Attachment Facilities that may reasonably be expected to affect the New York State Transmission System or the Transmission Owner's Attachment Facilities. To the extent information is known, the notification shall describe the Emergency State, the extent of the damage or deficiency, the expected effect on the operation of Developer's or Transmission Owner's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

Issued by: Mark S. Lynch, President
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13.3 Immediate Action. Unless, in Developer's reasonable judgment, immediate action is required, Developer shall obtain the consent of Transmission Owner, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Merchant Transmission Facility or the Developer Attachment Facilities in response to an Emergency State either declared by NYISO, Transmission Owner or otherwise regarding New York State Transmission System.

13.4 NYISO and Transmission Owner Authority.

13.4.1 General. NYISO or Transmission Owner may take whatever actions with regard to the New York State Transmission System or the Transmission Owner's Attachment Facilities it deems necessary during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the New York State Transmission System or the Transmission Owner's Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

NYISO and Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Merchant Transmission Facility or the Developer Attachment Facilities. NYISO or Transmission Owner may, on the basis of technical considerations, require the Merchant Transmission Facility to mitigate an Emergency State by taking actions necessary and limited in scope to remedy the Emergency State, including, but not limited to, directing Developer to shut down, start up, increase or decrease the real power output of the Merchant Transmission Facility; implementing a reduction or disconnection pursuant to Article 13.4.2; directing the Developer to assist with restoration efforts; or altering the outage schedules of the Merchant Transmission Facility and the Developer Attachment Facilities. Developer shall comply with all of the NYISO and Transmission Owner's operating instructions concerning Merchant Transmission Facility real power output within the manufacturer's design limitations of the Merchant Transmission Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

~~13.4.2 Reduction and Disconnection.~~ NYISO or Transmission Owner may reduce Network Access Interconnection Service or disconnect the Merchant Transmission Facility or the Developer Attachment Facilities, when such reduction or disconnection is necessary under Good Utility Practice due to an Emergency State. These rights are separate and distinct from any right of Curtailment of NYISO pursuant to the NYISO OATT. When NYISO or

Transmission Owner can schedule the reduction or disconnection in advance, NYISO or Transmission Owner shall notify Developer of the reasons, timing and expected duration of the reduction or disconnection. NYISO or Transmission Owner shall coordinate with the Developer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the Developer and the New York State Transmission System. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Merchant Transmission Facility, the Attachment Facilities, and the New York State Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

- 13.5 Developer Authority.** Consistent with Good Utility Practice and this Agreement, the Developer may take whatever actions or inactions with regard to the Merchant Transmission Facility or the Developer Attachment Facilities during an Emergency State in order to (i) preserve public health and safety, (ii) preserve the reliability of the Merchant Transmission Facility or the Developer Attachment Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Developer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the New York State Transmission System and the Transmission Owner's Attachment Facilities. NYISO and Transmission Owner shall use Reasonable Efforts to assist Developer in such actions.
- 13.6 Limited Liability.** Except as otherwise provided in Article 11.6 of this Agreement, no Party shall be liable to another Party for any action it takes in responding to an Emergency State so long as such action is made in good faith and is consistent with Good Utility Practice and the NYISO Tariffs.

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW

- 14.1 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 or the Public Utility Holding Company Act of 1935 or the Public Utility Regulatory Policies Act of 1978, as amended.

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Effective: February 29, 2008

14.2 Governing Law.

14.2.1 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.

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

14.2.3 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 15. NOTICES

15.1 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 F 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.

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

15.3 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 F hereto.

15.4 Operations and Maintenance Notice. Developer and Transmission Owner shall each notify the other Party, and NYISO, in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10 of this Agreement.

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**ARTICLE 16.
FORCE MAJEURE**

16.1 Force Majeure.

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 A Party shall not be responsible or liable, or deemed, in Default with respect to any obligation hereunder, (including obligations under Article 4 of this Agreement), 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 17.
DEFAULT**

17.1 Default.

17.1.1 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 the other Parties. Upon a Breach, the non-Breaching Parties shall give written notice of such to the Breaching Party. The Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

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17.1.2 Right to Terminate. If a Breach is not cured as provided in this Article 17, or if a Breach is not capable of being cured within the period provided for herein, the non-Breaching Parties acting together shall thereafter have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not those Parties terminate this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which they are entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

ARTICLE 18.
INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

18.1 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.

18.1.1 Indemnified Party. If a Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1.3, 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.

18.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, 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.

18.1.3 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 18.1 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.

18.2 No Consequential Damages. Other than the Liquidated Damages heretofore described and the indemnity obligations set forth in Article 18.1, 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.

18.3 Insurance. Developer and Transmission Owner shall each, at its 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:

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

18.3.2 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.

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

18.3.4 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.

- 18.3.5** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies of Developer and Transmission 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.
- 18.3.6** 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 and Transmission Owner shall each be responsible for its respective deductibles or retentions.
- 18.3.7** 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 and Transmission Owner.
- 18.3.8** The requirements contained herein as to the types and limits of all insurance to be maintained by the Developer and Transmission Owner are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by those Parties under this Agreement.
- 18.3.9** 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 and Transmission Owner shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

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Issued on: February 29, 2008

Effective: February 29, 2008

18.3.10 Notwithstanding the foregoing, Developer and Transmission Owner may each self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior secured or unsecured 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 18.3.2 through 18.3.8. For any period of time that a Party's senior secured or unsecured 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 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.10, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.

18.3.11 Developer and Transmission 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 19. ASSIGNMENT

19.1 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, including the Attachment Facilities it owns, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that the Developer shall have the right to assign this Agreement, without the consent of the NYISO or Transmission Owner, for collateral security purposes to aid in providing financing for the Merchant Transmission Facility, provided that the Developer will promptly notify the NYISO and Transmission Owner of any such

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assignment. Any financing arrangement entered into by the Developer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the NYISO and Transmission Owner of the date and particulars of any such exercise of assignment right(s) and will provide the NYISO and Transmission Owner with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

**ARTICLE 20.
SEVERABILITY**

20.1 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; provided that if the Developer (or any third party, but only if such third party is not acting at the direction of the Transmission Owner) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the rights and obligations of Developer and Transmission Owner shall be governed solely by the Standard Option (Article 5.1.1).

**ARTICLE 21.
COMPARABILITY**

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

**ARTICLE 22.
CONFIDENTIALITY**

22.1 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 22.