

**FORM OF  
CONSTRUCTION  
SERVICE AGREEMENT**

**DRAFT**

(Project Identifier # [ ])

**CONSTRUCTION SERVICE AGREEMENT**

**By and Among**

**PJM Interconnection, L.L.C.**

**And**

[Name of Project Developer, Eligible Customer,  
or Affected System Customer]

**And**

[Name of Transmission Owner]

**DRAFT**

**CONSTRUCTION SERVICE AGREEMENT**

**By and Among  
PJM Interconnection, L.L.C.**

**And**

**\_\_\_\_\_ [Name of Project Developer, Eligible Customer, or  
Affected System Customer]**

**And**

**\_\_\_\_\_ [Name of Transmission Owner]**

(Project Identifier # \_\_\_\_\_)

This Construction Service Agreement, including the Appendices attached hereto and incorporated herein (collectively, "CSA") is made and entered into as of the Effective Date (as defined in the attached Appendix III) by and among PJM Interconnection, L.L.C. ("Transmission Provider" or "PJM"), \_\_\_\_\_ ("Developer Party" [OPTIONAL: or "[short name]"]) and \_\_\_\_\_ ("Transmission Owner" [OPTIONAL: or "[short name]"]). Transmission Provider, Developer Party and Transmission Owner are referred to herein individually as "Party" and collectively as "the Parties." Developer Party is a {instruction: select [Project Developer, Eligible Customer or Affected System Customer] as defined in in this GIP. For purposes of this Upgrade CSA, For purposes of the Agreement, the terms "Generation Interconnection Procedures" or "GIP" will refer to the interconnection procedures set forth in {Instructions: use Tariff, Part VII if this is a transition period agreement, or use Tariff, Part VIII if this is a post-transition period agreement}.

**WITNESSETH**

WHEREAS, Developer Party (1) has requested Long-Term Firm Point-To-Point Transmission Service or Network Integration Transmission Service ("Transmission Service") from Transmission Provider pursuant to Transmission Provider's Open Access Transmission Tariff (the "PJM Tariff"); (2) is an Affected System Customer that requires Network Upgrades; or (3) is a Project Developer that requires Network Upgrades to the system of a Transmission Owner with which its Generation Facility or Merchant Transmissin Facility does not directly interconnect;

WHEREAS, pursuant to Developer Party's Completed Application, Affected System Customers Facility Study or Interconnection Request, Transmission Provider has conducted the required studies to determine whether such requests can be accommodated, and if so, under what terms and conditions, including the identification of any Network Upgrades that must be constructed in order to provide the service or rights requested by Developer Party;

WHEREAS, Transmission Provider's studies have identified the Network Upgrades described in Appendix I of this CSA as necessary to provide Developer Party the service or rights it has requested; and

WHEREAS, Developer Party: (i) desires that Transmission Owner construct the required Network Upgrades; and (ii) agrees to assume cost responsibility for the design, engineering, procurement and construction of such Network Network Upgrades in accordance with the PJM Tariff.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, the receipt and sufficiency is hereby mutually acknowledged by each Party, the Parties mutually covenant and agree as follows:

## **Article 1 – Definitions And Other Documents**

### **1.0 Defined Terms.**

All capitalized terms used in this CSA shall have the meanings ascribed to them in the GIP or in definitions either in the body of this CSA or its attached appendices. In the event of any conflict between defined terms set forth in the PJM Tariff or defined terms in this CSA, such conflict will be resolved in favor of the terms as defined in this CSA. Any provision of the PJM Tariff relating to this CSA that uses any such defined term shall be construed using the definition given to such defined term in this CSA.

### **1.1 Incorporation of Other Documents.**

Subject to the provisions of Section 1.0 above, all portions of the PJM Tariff and the Operating Agreement as of the date of this CSA, and as pertinent to the subject of this CSA, are hereby incorporated herein and made a part hereof.

## **Article 2 – Responsibility For Network Upgrades**

### **2.0 Developer Party Financial Responsibilities.**

Developer Party shall pay all Costs for the design, engineering, procurement and construction of the Network Upgrades identified in Appendix I to this CSA. An estimate of such Costs is provided in Appendix I to this CSA.

### **2.1 Obligation to Provide Security.**

Unless Security is provided pursuant to a Generation Interconnection Agreement Developer Party shall provide Security to collateralize Developer Party's obligation to pay the Costs incurred by Transmission Owner to construct the Network Network Upgrades identified in Appendix I to this CSA, less any Costs already paid by Developer Party, in accordance with Sections 16.1, and GIP, sections [tp be provided]. Developer Party shall deliver such Security to Transmission Provider prior to the Effective Date of this CSA, as described in Appendix III. Unless otherwise specified by the Transmission Provider, such Security shall take the form of a letter of credit, in the amount of \$ [redacted] naming the Transmission Provider and Transmission Owner as beneficiaries.

## **2.2 Failure to Provide Security.**

If the Developer Party fails to provide Security in the amount, in the time or in the form required by Section 2.1, then this CSA shall terminate immediately and the Developer Party's Completed Application or Interconnection Request shall be deemed terminated and withdrawn.

## **2.3 Costs.**

In accordance with Sections 16.1 and GIP, section **[to be provided]**, the Developer Party shall pay for the Network Upgrades identified in Appendix I to this CSA based upon the Costs of the Network Upgrades described in Appendix I. The Developer Party's obligation to pay the Costs for the Network Upgrades identified in Appendix I to this CSA, whether greater or lesser than the amount of the Security specified in Section 2.1, will continue regardless of whether the Developer Party takes Transmission Service pursuant to the terms of the Transmission Service Agreement as defined in Section 3.0 of this CSA, if applicable.

## **2.4 Transmission Owner Responsibilities.**

If the Developer Party satisfies all requirements of this Article 2 and applicable requirements set forth in the PJM Tariff, Transmission Owner shall use Reasonable Efforts to construct or cause to be constructed the Network Upgrades, identified in Appendix I to this CSA, on its transmission system. Transmission Owner shall own the Network Upgrades it has, or has arranged to have, constructed and shall have ongoing responsibility to maintain such Network Upgrades consistent with the Operating Agreement and the Transmission Owner's Agreement.

### **Article 3 – Rights To Transmission Service**

#### **3.0 No Transmission Service.**

This CSA does not entitle the Developer Party to take Transmission Service under the PJM Tariff. Transmission Provider shall provide Transmission Service to Developer Party pursuant to a separate service agreement by and between Developer Party and Transmission Provider dated as of the same effective date as this CSA (the "Transmission Service Agreement"), if applicable.

### **Article 4 – Early Termination**

#### **4.0 Termination by Developer Party.**

Subject to the terms of Section 14 of Appendix III, Developer Party may terminate this CSA at any time by providing written notice of termination to Transmission Provider and Transmission Owner. Developer Party's notice of termination shall become effective sixty (60) calendar days after either the Transmission Provider or Transmission Owner receives such notice.

### **Article 5 – [Reserved]**

**Article 6 – Miscellaneous**

**6.0 Notices.**

Any notice or request made to or by any Party regarding this CSA shall be made to the Parties, as indicated below:

**Transmission Provider:**

PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
[interconnectionagreementnotices@pjm.com](mailto:interconnectionagreementnotices@pjm.com)

**Developer Party:**

[Redacted]

**Transmission Owner:**

[Redacted]

**6.1 Waiver.**

No waiver by any Party of one or more Defaults by another in performance of any of the provisions of this CSA shall operate or be construed as a waiver of any other or further Default or Defaults, whether of a like or different character.

**6.2 Amendment.**

This CSA or any part thereof, may not be amended, modified or waived other than by a writing signed by all Parties. In the event an amendment is desired, Transmission Provider, consistent with Tariff, Part IX, section 1, Transmission Provider shall tender an agreement to amend. No later than fifteen (15) Business Days after Transmission Provider’s tender for execution of such agreement, Developer Party shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or that the agreement be filed unexecuted with the Commission. Following tender of the agreement and no later than fifteen (15) Business Days after execution by Developer Party, Transmission Owner shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or that the agreement be filed unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall

either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or (iii) file with FERC the agreement in unexecuted form. Transmission Provider may also file the agreement with FERC in unexecuted form if Transmission Owner does not comply with the requirements above,

### **6.3 No Partnership.**

Notwithstanding any provision of this CSA, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

### **6.4 Counterparts.**

This CSA may be executed in multiple counterparts to be construed as one effective as of the Effective Date.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties have caused this CSA to be executed by their respective authorized officials.

(Project Identifier # [REDACTED])

**Transmission Provider: PJM Interconnection, L.L.C.**

By: \_\_\_\_\_  
Name Title Date

Printed name of signer: \_\_\_\_\_

**Developer Party: [Name of Developer Party]**

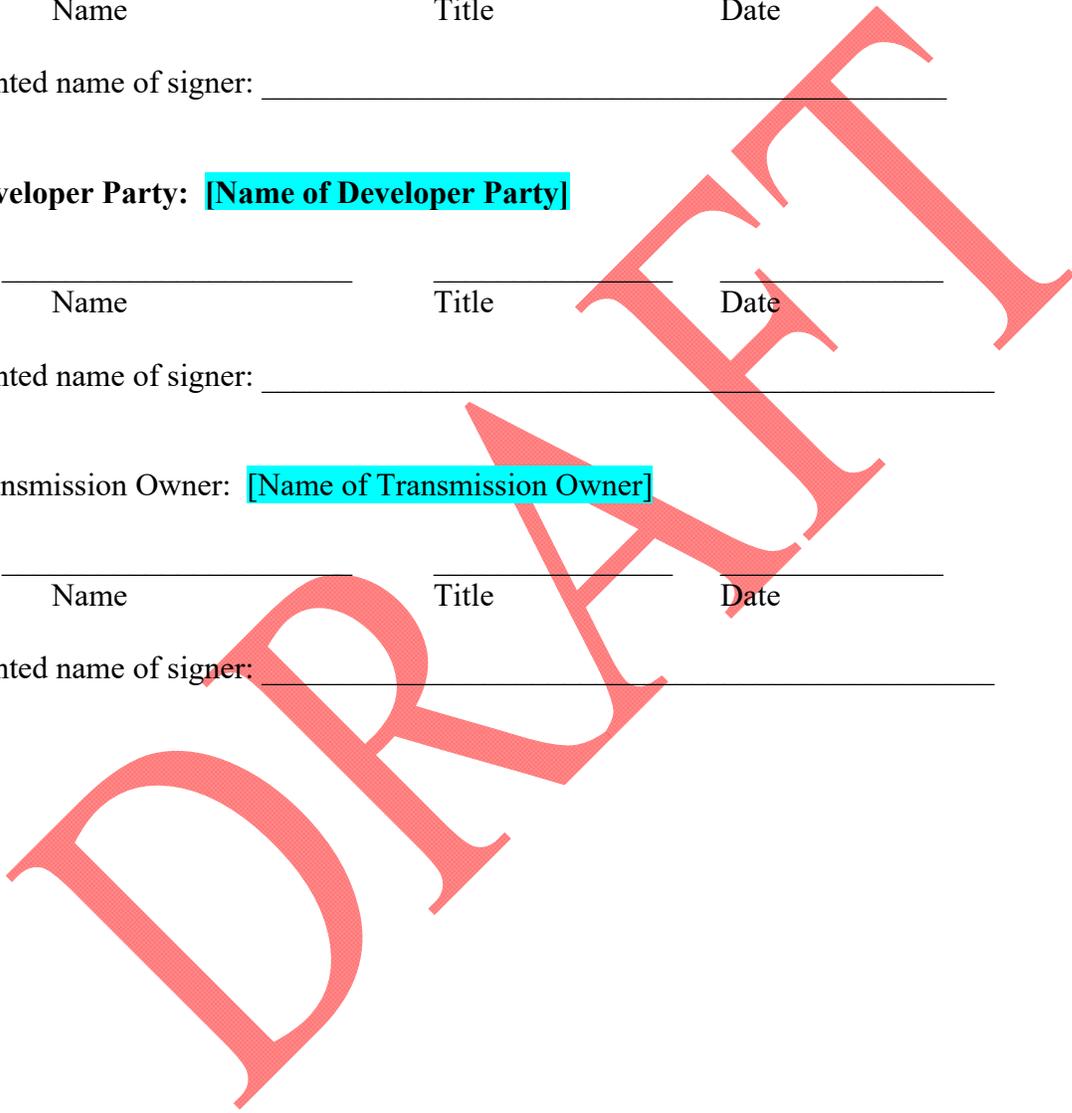
By: \_\_\_\_\_  
Name Title Date

Printed name of signer: \_\_\_\_\_

**Transmission Owner: [Name of Transmission Owner]**

By: \_\_\_\_\_  
Name Title Date

Printed name of signer: \_\_\_\_\_



## APPENDIX I

### SCOPE AND SCHEDULE OF WORK FOR NETWORK UPGRADES TO BE BUILT BY TRANSMISSION OWNER

#### A. Scope of Work

Transmission Owner hereby agrees to provide the following Network Upgrades pursuant to the terms of this CSA:

[Identify Network Upgrades to be constructed]

#### B. Schedule of Work

[Add schedule for construction work to be completed]

#### C. Costs.

Developer Party shall be subject to the estimated charges detailed below, which shall be billed and paid in accordance with Section 9.0 of Appendix III to this CSA.

Network Upgrades Charge: \$ [redacted]

[Add additional sections to list: any Contingencies, Applicable Technical Requirements, and Estimate of Tax Gross-ups, as required pursuant to Appendix III]

#### D. Construction of Network Upgrades

[include 1 through 3 below only for Project Developers or Affected System Customers]

1. The Network Upgrades regarding which Transmission Owner shall be the Constructing Entity are described on the attached Appendix I, Section A to this CSA.

2. Election of Construction Option. Specify below whether the Constructing Entities have mutually agreed to construction of the Network Upgrades that will be built by the Transmission Owner pursuant to the Standard Option or the Negotiated Contract Option. (See Sections 6.1 and 6.1.1 of Appendix III to this CSA.)

[redacted] Standard Option.

[redacted] Negotiated Contract Option.

If the parties have mutually agreed to use the Negotiated Contract Option, the permitted, negotiated terms on which they have agreed and which are not already set forth as part of the Scope of Work and/or Schedule of Work attached to this CSA, respectively, shall be

as set forth in Schedule A attached to this CSA. The Negotiated Option can only be used in connection with a Network Upgrade subject to the Network Upgrade Cost Responsibility Agreement all Project Developers and the relevant Transmission Owner agree.

3. Specify whether Developer Party has exercised the Option to Build in accordance with Section 6.2 of Appendix III to this CSA with respect to some or all of the Stand Alone Network Upgrades:

Yes

No

If Yes is indicated, Developer Party shall build, in accordance with and subject to the conditions and limitations set forth in section 6.2.3 of Appendix III to this CSA, those portions of the Stand Alone Network Upgrades described below:

**[The following section applies only to Eligible Customers]**

Specify whether Developer Party has exercised the Option to Build in accordance with Section 6.2 of Appendix III to this CSA with respect to some or all of the Stand Alone Network Upgrades:

Yes

No

If Yes is indicated, Developer Party shall build, in accordance with and subject to the conditions and limitations set forth in section 6.2.3 of Appendix III to this CSA, those portions of the Stand Alone Network Upgrades described below:

**APPENDIX II**

**DEFINITIONS**

**From the Generation Interconnection Procedures accepted for filing by the Commission as of the effective date of this agreement**

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**APPENDIX III**

**GENERAL TERMS AND CONDITIONS**

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## **1.0 Effective Date and Term**

### **1.1 Effective Date.**

Subject to regulatory acceptance, this CSA shall become effective on the date the agreement has been executed by all Parties, or if the agreement is filed with FERC unexecuted, upon the date specified by FERC. The Transmission Owner shall have no obligation to begin construction or preparation for construction of the Network Upgrades, identified in Appendix I to this CSA, until: (i) thirty days after such agreement, if executed and nonconforming, has been filed with the Commission; (ii) such agreement, if unexecuted and non-conforming, has been filed with and accepted by the Commission; or (iii) the earlier of thirty days after such agreement, if conforming, has been executed or has been reported in Transmission Provider's Electronic Quarterly Reports.

### **1.2 Term.**

This CSA shall continue in full force and effect from the Effective Date until the termination hereof.

### **1.3 Survival.**

This CSA shall continue in effect after termination to the extent necessary to provide for final billings and payments, including billings and payments pursuant to this CSA, and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this CSA was in effect.

## **2.0 Facilitation by Transmission Provider**

Transmission Provider shall keep itself apprised of the status of the Transmission Owner's construction-related activities and, upon request of Developer Party or Transmission Owner, Transmission Provider shall meet with the Developer Party and Transmission Owner separately or together to assist them in resolving issues between them regarding their respective activities, rights and obligations under this CSA. Transmission Owner shall cooperate in good faith with the other Parties in Transmission Provider's efforts to facilitate resolution of disputes.

## **3.0 Construction Obligations.**

### **3.1 Network Upgrades.**

#### **3.1.1 Generally.**

All Network Upgrades identified in Appendix I to this CSA shall be designed, engineered, procured, installed and constructed in accordance with this Section 3.0, Applicable Standards, Applicable Laws and Regulations, Good Utility Practice, the Facilities Study and the Scope of Work under this CSA.

### **3.2 Scope of Applicable Technical Requirements and Standards.**

Applicable technical requirements and standards shall apply to the design, engineering, procurement, construction and installation of the Network Upgrades identified in Appendix I to this CSA only to the extent that the provisions thereof relate to the design, engineering, procurement, construction and/or installation of such Network Upgrades. Such provisions relating to the design, engineering, procurement, construction and/or installation of such Network Upgrades shall be contained in Appendix I appended to this CSA. The Parties shall mutually agree upon, or in the absence of such agreement, Transmission Provider shall determine, which provisions of the applicable technical requirements and standards should be appended to this CSA. In the event of any conflict between the provisions of the applicable technical requirements and standards that are appended to this CSA and any later-modified provisions that are stated in the pertinent PJM Manuals, the provisions appended to this CSA shall control.

#### **4.0 Tax Liability**

##### **4.1 Safe Harbor Provisions.**

Provided that Developer Party agrees to conform to all requirements of the Internal Revenue Service (“IRS”) (e.g., the “safe harbor” section 118(a) and 118(b) of the Internal Revenue Code of 1986, as amended and interpreted by Notice 2016-36, 2016-25 I.R.B. (6/20/2016)) that would confer nontaxable status on some or all of the transfer of property, including money, by Developer Party to the Transmission Owner for payment of the Costs of construction of the Network Upgrades, the Transmission Owner, based on such agreement and on current law, shall treat such transfer of property to it as nontaxable income and, except as provided in section 4.4.2 below, shall not include income taxes in the Costs of Network Upgrades that are payable by Developer Party under the Generation Interconnection Agreement or this Agreement. Developer Party shall document its agreement to conform to IRS requirements for such non-taxable status in the Generation Interconnection Agreement or this Agreement.

##### **4.2 Tax Indemnity:**

Developer Party shall indemnify the Transmission Owner for any costs that Transmission Owner incurs in the event that the IRS and/or a state department of revenue (“State”) determines that the property, including money, transferred by Developer Party to the Transmission Owner with respect to the construction of the Network Upgrades is taxable income to the Transmission Owner. Developer Party shall pay to the Transmission Owner, on demand, the amount of any income taxes that the IRS or a State assesses to the Transmission Owner in connection with such transfer of property and/or money, plus any applicable interest and/or penalty charged to the Transmission Owner. In the event that the Transmission Owner chooses to contest such assessment, either at the request of Developer Party or on its own behalf, and prevails in reducing or eliminating the tax, interest and/or penalty assessed against it, the Transmission Owner shall refund to Developer Party the excess of its demand payment made to the Transmission Owner over the amount of the tax, interest and penalty for which the Transmission Owner is finally determined to be liable. Developer Party’s tax indemnification obligation under this section shall survive any termination of the Generation Interconnection Agreement or this Agreement.

### **4.3 Taxes Other Than Income Taxes:**

Upon the timely request by Developer Party, and at Developer Party's sole expense, the Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against the Transmission Owner for which Developer Party may be required to reimburse Transmission Provider under the terms of this Appendix 2 or the GIP. Developer Party shall pay to the Transmission Owner on a periodic basis, as invoiced by the Transmission Owner, the Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Developer Party and the 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 Party to the Transmission Owner for such contested 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 Party will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by the Transmission Owner.

### **4.4 Income Tax Gross-Up**

#### **4.4.1 Additional Security:**

In the event that Developer Party does not provide the safe harbor documentation required under section 4.1 prior to execution of the Generation Interconnection Agreement or this Agreement, within the later of 15 days after execution of the Generation Interconnection Agreement or this Agreement, Transmission Provider shall notify Developer Party in writing of the amount of additional Security that Developer Party must provide. The amount of Security that a Transmission Developer Party must provide initially pursuant to the Generation Interconnection Agreement or this Agreement shall include any amounts described as additional Security under this section 4.4 regarding income tax gross-up.

#### **4.4.2 Amount:**

The required additional Security shall be in an amount equal to the amount necessary to gross up fully for currently applicable federal and state income taxes the estimated Costs of any Network Upgrades for which Developer Party previously provided Security. Accordingly, the additional Security shall equal the amount necessary to increase the total Security provided to the amount that would be sufficient to permit the Transmission Owner to receive and retain, after the payment of all applicable income taxes ("Current Taxes") and taking into account the present value of future tax deductions for depreciation that would be available as a result of the anticipated payments or property transfers (the "Present Value Depreciation Amount"), an amount equal to the estimated Costs of the Network Upgrades for which Developer Party is responsible under the Generation Interconnection Agreement or this Agreement. For this purpose, Current Taxes shall be computed based on the composite federal and state income tax rates applicable to the Transmission Owner at the time the additional Security is received, determined using the highest marginal rates in effect at that time (the "Current Tax Rate"); and

the Present Value Depreciation Amount shall be computed by discounting the Transmission Owner's anticipated tax depreciation deductions associated with such payments or property transfers by its current weighted average cost of capital.

#### **4.4.3 Time for Payment:**

Developer Party must provide the additional Security, in a form and with terms as required by GIP, section **[to be determined]**, within 15 days after its receipt of Transmission Provider's notice under this section.

#### **4.5 Tax Status:**

Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in the Generation Interconnection Agreement, this Agreement or the GIP is intended to adversely affect any Transmission Owner's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

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## **5.0 Safety**

### **5.1 General.**

Transmission Owner shall perform all work hereunder in accordance with Good Utility Practice, Applicable Standards and Applicable Laws and Regulations pertaining to the safety of persons or property.

### **5.2 Environmental Releases.**

Transmission Owner shall notify Transmission Provider and Developer Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the facility or the facilities, any of which may reasonably be expected to affect Transmission Provider or Developer Party. Transmission Owner shall: (i) provide the notice as soon as possible; (ii) make a good faith effort to provide the notice within twenty-four hours after it becomes aware of the occurrence; and (iii) promptly furnish to Transmission Provider and Developer Party copies of any publicly available reports filed with any governmental agencies addressing such events.

## **6.0 Schedule Of Work.**

### **6.1 Standard Option.**

The Transmission Owner shall use Reasonable Efforts to design, engineer, procure, construct and install the Network Upgrades, identified in Appendix I to this CSA, in accordance with the Schedule and Scope of Work.

#### **6.1.1 Negotiated Contract Option.**

Consistent with Appendix 1, section D.2 (negotiated contract option), as an alternative to the Standard Option set forth in Section 6.1 of this Appendix III, the Transmission Owner and the Developer Party may mutually agree to a Negotiated Contract Option for the Transmission Owner's design, procurement, construction and installation of the Network Upgrades. Under the Negotiated Contract Option, the Affected System Customer and the Transmission Owner may agree to terms different from those included in the Standard Option of Section 6.1 above and the corresponding standard terms set forth in the applicable provisions of Part VI of the Tariff and this Appendix III. Under the Negotiated Contract Option, negotiated terms may include the work schedule applicable to the Transmission Owner's construction activities and changes to same; payment provisions, including the schedule of payments; incentives, penalties and/or liquidated damages related to timely completion of construction; use of third party contractors; and responsibility for Costs, but only as between the Affected System Customer and the Transmission Owner that are parties to this CSA; no other Developer Party's responsibility for Costs may be affected (Section 217 of the Tariff). No other terms of the

Tariff or this Appendix III shall be subject to modification under the Negotiated Contract Option. The terms and conditions of the Tariff that may be negotiated pursuant to the Negotiated Contract Option shall not be affected by use of the Negotiated Contract Option except as and to the extent that they are modified by the parties' agreement pursuant to such option. All terms agreed upon pursuant to the Negotiated Contract Option shall be stated in full in an appendix to this CSA.

## **6.2 Option to Build.**

### **6.2.1 Option.**

Developer Party shall have the option, ("Option to Build"), to design, procure, construct and install all or any portion of the Stand Alone Network Upgrades on the dates specified in Appendix I of this Agreement. Transmission Provider and Developer Party must agree as to what constitutes Stand Alone Network Upgrades in Schedule C of this Agreement. If the Transmission Provider and Developer Party disagree about whether a particular Network Upgrade is a Stand Alone Network Upgrade, the Transmission Provider must provide the Developer Party a written technical explanation outlining why the Transmission Provider does not consider the Network Upgrade to be a Stand Alone Network Upgrade within fifteen (15) days of its determination. Transmission Provider and Developer Party must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Schedule C (Option to Build) of this Agreement. Except for Stand Alone Network Upgrades, Developer Party shall have no right to construct Network Upgrades under this option. Unless a Developer party is subject to a Generation Interconnection Agreement, in order to exercise this Option to Build, the Developer Party must provide Transmission Provider and the Transmission Owner with written notice of its election to exercise the option no later than thirty (30) days from the date the Developer Party receives the results of the Facility Study (or, if no Facilities Study was required completion of the System Impact Study). Developer Party may not elect Option to Build after such date. Developer Party shall indicate its election to exercise the option in this CSA.

### **6.2.2 General Conditions Applicable to Option.**

In addition to the other terms and conditions applicable to the construction of facilities under this Appendix III, the Option to Build is subject to the following conditions:

(a) If Developer Party assumes responsibility for the design, procurement and construction of Stand Alone Network Upgrades:

(i) Developer Party shall engineer, procure equipment, and construct Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Transmission Owner;

(ii) Developer Party's engineering, procurement and construction of Stand Alone Network Upgrades shall comply with all requirements of law to which

Transmission Owner shall be subject in the engineering, procurement or construction of Stand Alone Network Upgrades;

(iii) Transmission Owner shall review and approve engineering design, equipment acceptance tests, and the construction of Stand Alone Network Upgrades;

(iv) Prior to commencement of construction, Developer Party shall provide to Transmission Owner a schedule for construction of Stand Alone Network Upgrades and shall promptly respond to requests for information from Transmission Owner;

(v) At any time during construction, Transmission Owner shall have the right to gain unrestricted access to the Stand Alone Network Upgrades and to conduct inspections of the same;

(vi) At any time during construction, should any phase of the engineering, equipment procurement, or construction of Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Owner, Developer Party shall be obligated to remedy deficiencies in that portion of the Stand Alone Network Upgrades;

(vii) Developer Party shall indemnify Transmission Owner and Transmission Provider for claims arising from Developer Party's construction of Network Upgrades that are Direct Connection Network Upgrades under the terms and procedures applicable to this Appendix III, sections 12.1, 12.2, 12.3, and 12.4;

(viii) Developer Party shall transfer control of Network Upgrades that are Direct Connection Network Upgrades to Transmission Owner;

(ix) Unless Parties otherwise agree, Developer Party shall transfer ownership of Stand Alone Network Upgrades to Transmission Owner;

(x) Transmission Owner shall approve and accept for operation and maintenance for Stand Alone to the extent engineered, procured, and constructed in accordance with this Agreement, Appendix 2, section 3.2.3.2;

(xi) Developer Party shall deliver to Transmission Owner "as-built" drawings, information, and any other documents that are reasonably required by Transmission Provider to assure that the Stand Alone Network Upgrades are built to the standards and specifications required by Transmission Owner; and

(xii) If Developer Party exercises the Option to Build pursuant to section 6.2.1, Developer Party shall pay Transmission Owner to execute the responsibilities enumerated to Transmission Owner under section 6.2.2. Transmission Owner shall invoice Developer Party for this total amount to be divided on a monthly basis pursuant to Appendix III, section 9.3.

(b) The Developer Party must obtain or arrange to obtain all necessary permits and authorizations for the construction and installation of the Stand Alone Network Upgrades that it is building, provided, however, that when the Transmission Owner's assistance is required, the Transmission Owner shall assist the Developer Party in obtaining such necessary permits or authorizations with efforts similar in nature and extent to those that the Transmission Owner typically undertakes in acquiring permits and authorizations for construction of facilities on its own behalf;

(c) The Developer Party must obtain all necessary land rights for the construction and installation of the Stand Alone Network Upgrades that it is building, provided, however, that upon Developer Party's reasonable request, the Transmission Owner shall assist the Developer Party in acquiring such land rights with efforts similar in nature and extent to those that the Transmission Owner typically undertakes in acquiring land rights for construction of facilities on its own behalf;

(d) Notwithstanding anything stated herein, each Transmission Owner shall have the exclusive right and obligation to perform the line attachments (tie-in work), and to calibrate remote terminal units and relay settings, required for the interconnection to such Transmission Owner's existing facilities of any Stand Alone Network Upgrades that the Developer Party builds; and

(e) The Stand Alone Network Upgrades built by the Developer Party shall be successfully inspected, tested and energized pursuant to Sections 19 and 20 of this Appendix III.

### **6.2.3 Additional Conditions Regarding Network Facilities.**

To the extent that the Developer Party utilizes the Option to Build for design, procurement, construction and/or installation of Stand Alone Network Upgrades in existence or under construction by or on behalf of the Transmission Owner on the date that the Developer Party solicits bids under Section 6.2.7 below, or Stand Alone Network Upgrades to be located on land or in right-of-way owned or controlled by the Transmission Owner, and in addition to the other terms and conditions applicable to the design, procurement, construction and/or installation of facilities under this Appendix III, all work shall comply with the following further conditions:

(i) All work performed by or on behalf of the Developer Party shall be conducted by contractors, and using equipment manufacturers or vendors, that are listed on the Transmission Owner's List of Approved Contractors;

(ii) The Transmission Owner shall have full site control of, and reasonable access to, its property at all times for purposes of tagging or operation, maintenance, repair or construction of modifications to, its existing facilities and/or for performing all tie-ins of Network Upgrades built by or for the Developer Party; and for acceptance testing of any equipment that will be owned and/or operated by the Transmission Owner;

(iii) The Transmission Owner shall have the right to have a reasonable number of appropriate representatives present for all work done on its property/facilities or regarding the Stand Alone Network Upgrades, and the right to stop, or to order corrective measures with respect to, any such work that reasonably could be expected to have an adverse effect on reliability, safety or security of persons or of property of the Transmission Owner or any portion of the Transmission System, provided that, unless circumstances do not reasonably permit such consultations, the Transmission Owner shall consult with the Developer Party and with Transmission Provider before directing that work be stopped or ordering any corrective measures;

(iv) The Developer Party and its contractors, employees and agents shall comply with the Transmission Owner's safety, security and work rules, environmental guidelines and training requirements applicable to the area(s) where construction activity is occurring and shall provide all reasonably required documentation to the Transmission Owner, provided that the Transmission Owner previously has provided its safety, security and work rules and training requirements applicable to work on its facilities to Transmission Provider and the Developer Party within 20 business days after a request therefore made by Developer Party following its receipt of the Facilities Study;

(v) The Developer Party shall be responsible for controlling the performance of its contractors, employees and agents; and

(vi) All activities performed by or on behalf of the Developer Party pursuant to its exercise of the Option to Build shall be subject to compliance with Applicable Laws and Regulations, including those governing union staffing and bargaining unit obligations, and Applicable Standards.

#### **6.2.4 Administration of Conditions.**

To the extent that a Transmission Owner exercises any discretion in the application of any of the conditions stated in Sections 6.2.2 and 6.2.3 of this Appendix III, it shall apply each such condition in a manner that is reasonable and not unduly discriminatory and it shall not unreasonably withhold, condition, or delay any approval or authorization that the Developer Party may require for the purpose of complying with any of those conditions.

#### **6.2.5 Approved Contractors.**

(a) Each Transmission Owner shall develop and shall provide to Transmission Provider a List of Approved Contractors. Each Transmission Owner shall include on its List of Approved Contractors no fewer than three contractors and no fewer than three manufacturers or vendors of major transmission-related equipment, unless a Transmission Owner demonstrates to Transmission Provider's reasonable satisfaction that it is feasible only to include a lesser number of construction contractors, or manufacturers or vendors, on its List of Approved Contractors. Transmission Provider shall publish each Transmission Owner's List of Approved Contractors in a PJM Manual and shall make such manual available on its internet website.

(b) Upon request of a Developer Party, a Transmission Owner shall add to its List of Approved Contractors (1) any design or construction contractor regarding which the Developer Party provides such information as the Transmission Owner may reasonably require which demonstrates to the Transmission Owner's reasonable satisfaction that the candidate contractor is qualified to design, or to install and/or construct new facilities or upgrades or modifications to existing facilities on the Transmission Owner's system, or (2) any manufacturer or vendor of major transmission-related equipment (e.g., high-voltage transformers, transmission line, circuit breakers) regarding which the Developer Party provides such information as the Transmission Owner may reasonably require which demonstrates to the Transmission Owner's reasonable satisfaction that the candidate entity's major transmission-related equipment is acceptable for installation and use on the Transmission Owner's system. No Transmission Owner shall unreasonably withhold, condition, or delay its acceptance of a contractor, manufacturer, or vendor proposed for addition to its List of Approved Contractors.

#### **6.2.6 Construction by Multiple Developer Partys:**

In the event that there are multiple Developer Partys that wish to exercise an Option to Build with respect to facilities of the types described in Section 6.2.3 to this Appendix III, the Transmission Provider shall determine how to allocate the construction responsibility among them unless they reach agreement among themselves on how to proceed.

#### **6.2.7 Option Procedures**

(a) Within 10 days after notifying Transmission Provider and the Transmission Owner of its election to exercise the Option to Build, Developer Party shall solicit bids from one or more Approved Contractors named on the Transmission Owner's List of Approved Contractors to procure equipment for, and/or to design, construct and/or install, the Network Upgrades that the Developer Party seeks to build under the Option to Build on terms (i) that will meet the Developer Party's proposed schedule; (ii) that, if the Developer Party seeks to have an Approved Contractor construct or install Stand Alone Network Upgrades, will satisfy all of the conditions on construction specified in Sections 6.2.2 and 6.2.3 of this Appendix III; and (iii) that will satisfy the obligations of a Constructing Entity (other than those relating to responsibility for the costs of facilities) under this CSA.

(b) Any additional costs arising from the bidding process or from the final bid of the successful Approved Contractor shall be the sole responsibility of the Developer Party.

(c) Upon receipt of a qualifying bid acceptable to it, the Developer Party shall contract with the Approved Contractor that submitted the qualifying bid. Such contract shall meet the standards stated in paragraph (a) of this section.

(d) In the absence of a qualifying bid acceptable to the Developer Party in response to its solicitation, the Transmission Owner(s) shall be responsible for the design, procurement, construction and installation of the Network Upgrades in accordance with the Standard Option described in Section 6.2.1 of this Appendix III.

#### **6.2.8 Developer Party Drawings.**

Developer Party shall submit to the Transmission Owner and Transmission Provider initial drawings, certified by a professional engineer, of the Network Upgrades that Developer Party arranges to build under the Option to Build. The Transmission Owner and Transmission Provider shall review the drawings to assess the consistency of Developer Party's design of the pertinent Network Upgrades with Applicable Standards and the Facilities Study. After consulting with the Transmission Owner, Transmission Provider shall provide comments on such drawings to Developer Party within sixty days after its receipt thereof, after which time any drawings not subject to comment shall be deemed to be approved. All drawings provided hereunder shall be deemed to be Confidential Information.

#### **6.2.9 Effect of Review.**

Transmission Owner's and Transmission Provider's reviews of Developer Party's initial drawings of the Network Upgrades that the Developer Party is building shall not be construed as confirming, endorsing or providing a warranty as to the fitness, safety, durability or reliability of such facilities or the design thereof. At its sole cost and expense, Developer Party shall make such changes to the design of the pertinent Network Upgrades as may reasonably be required by Transmission Provider, in consultation with the Transmission Owner, to ensure that the Network Upgrades that Developer Party is building meet Applicable Standards and conform with the Facilities Study.

#### **6.3 Revisions to Schedule and Scope of Work.**

The Schedule and Scope of Work shall be revised as required in accordance with Transmission Provider's scope change process for projects set forth in the PJM Manuals, or otherwise by mutual agreement of the Transmission Provider and Transmission Owner, which agreement shall not be unreasonably withheld, conditioned or delayed.

#### **7.0 Suspension of Work Upon Default.**

Upon the occurrence of a Default by Developer Party, the Transmission Provider or the Transmission Owner may, by written notice to Developer Party, suspend further work associated with the Network Upgrades, identified in Appendix I to this CSA, Transmission Owner is responsible for constructing. Such suspension shall not constitute a waiver of any termination rights under this Section 7.0. In the event of a suspension by Transmission Provider or Transmission Owner, the Developer Party shall be responsible for the Costs incurred in connection with any suspension hereunder.

#### **7.1 Notification and Correction of Defects**

7.1.1 In the event that inspection and/or testing of any Network Upgrades, identified in Appendix I to this CSA, built by Transmission Owner identifies any defects or failures to comply with Applicable Standards in such Network Upgrades, then Transmission Owner shall take appropriate action to correct any such defects or failures within 20 days after it learns thereof. If such a defect or failure cannot reasonably be corrected within such 20-day period, Transmission Owner shall commence the necessary correction within that time and shall thereafter diligently pursue it to completion. Such acceptance does not modify and shall not limit the Project Developer's indemnification obligations set forth in Tariff, Attachment P, Appendix 2, section 3.2.3(e).

## **8.0 Transmission Outages**

### **8.1 Outages; Coordination.**

The Transmission Provider and Transmission Owner acknowledge and agree that certain outages of transmission facilities owned by the Transmission Owner, as more specifically detailed in the Scope of Work, may be necessary in order to complete the process of constructing and installing the Network Upgrades identified in Appendix I to this CSA. The Transmission Provider and Transmission Owner further acknowledge and agree that any such outages shall be coordinated by and through Transmission Provider.

## **9.0 Security, Billing And Payments**

The following provisions shall apply with respect to charges for the Costs of the Transmission Owner for which the Developer Party is responsible.

### **9.1 Adjustments to Security.**

The Security provided by Developer Party at or before the Effective Date of this CSA shall be: (a) reduced as portions of the work on Network Upgrades, identified in Appendix I to this CSA, are completed; and/or (b) increased or decreased as required to reflect adjustments to Developer Party's cost responsibility, to correspond with changes in the Scope of Work developed in accordance with Transmission Provider's scope change process for projects set forth in the PJM Manuals.

### **9.2 Invoice.**

Transmission Owner shall provide Transmission Provider a quarterly statement of its scheduled expenditures during the next three months for, as applicable, the design, engineering and construction of, and/or for other charges related to, construction of the Network Upgrades identified in Appendix I to this CSA, or (b) in the event that the Developer Party exercises the Option to Build pursuant to Section 6.2.1 of this Appendix III, for the Interconnected Transmission Owner's oversight costs (i.e. costs incurred by the Transmission Owner when engaging in oversight activities to satisfy itself that the Developer Party is complying with the Transmission Owner's standards and specifications for the construction of facilities) associated with the Developer Party's

building Stand Alone Network Upgrades, including but not limited to Costs for tie-in work and Cancellation Costs. Transmission Owner's oversight costs shall be consistent with Attachment GG, Appendix III, section 6.2.2(a)(12). If Developer Party exercises the Option to Build pursuant to Appendix III, section 6.2.1, Developer Party shall pay Transmission Owner costs associated with its responsibilities pursuant to section 6.2.1 and in accordance with the amount agreed to by the Transmission Owner and Developer Party pursuant to Appendix III, section 6.2.1(a)(12). Transmission Provider shall bill Developer Party, on behalf of Transmission Owner, for Transmission Owner's expected costs during the subsequent three months. Developer Party shall pay each bill within twenty (20) days after receipt thereof. Upon receipt of each of Developer Party's payments of such bills, Transmission Provider shall reimburse the Transmission Owner. Developer Party may request that the Transmission Provider provide quarterly cost reconciliation. Such a quarterly cost reconciliation will have a one-quarter lag, e.g., reconciliation of costs for the first calendar quarter of work will be provided at the start of the third calendar quarter of work, provided, however, that Section 9.3 of this Appendix III shall govern the timing of the final cost reconciliation upon completion of the work.

#### **9.4 Final Invoice.**

Within 120 days after Transmission Owner completes construction and installation of the Network Upgrades under this CSA, Transmission Provider shall provide Developer Party with an accounting of, and the appropriate Party shall make any payment to the other that is necessary to resolve, any difference between: (a) Developer Party's responsibility under the Tariff for the Costs of the Network Upgrades identified in Appendix I to this CSA; and (b) Developer Party's previous aggregate payments to Transmission Provider for the Costs of the facilities identified in Appendix I to this CSA. Notwithstanding the foregoing, however, Transmission Provider shall not be obligated to make any payment to the Developer Party or the Transmission Owner that the preceding sentence requires it to make unless and until the Transmission Provider has received the payment that it is required to refund from the Party owing the payment.

#### **9.5 Disputes.**

In the event of a billing dispute among the Transmission Provider, Transmission Owner, and Developer Party, Transmission Provider and the Transmission Owner shall continue to perform their respective obligations pursuant to this CSA so long as: (a) the Developer Party continues to make all payments not in dispute, and the Security held by the Transmission Provider while the dispute is pending exceeds the amount in dispute; or (b) the Developer Party pays to Transmission Provider, or into an independent escrow account established by the Developer Party, the portion of the invoice in dispute, pending resolution of such dispute. If the Developer Party fails to meet any of these requirements, then Transmission Provider shall so inform the other Parties and Transmission Provider or the Transmission Owner may provide notice to Developer Party of a Breach pursuant to Section 13 of this Appendix III.

#### **9.6 Interest.**

Interest on any unpaid, delinquent amounts shall be calculated in accordance with the methodology specified for interest on refunds in the FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) and shall apply from the due date of the bill to the date of payment.

#### **9.7 No Waiver.**

Payment of an invoice shall not relieve Developer Party from any other responsibilities or obligations it has under this CSA, nor shall such payment constitute a waiver of any claims arising hereunder.

#### **10.0 Assignment**

##### **10.1 Assignment with Prior Consent.**

Subject to Section 10.2 of this Appendix III, no Party shall assign its rights or delegate its duties, or any part of such rights or duties, under this CSA without the written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent shall be null and void.

Such written consent can be in the form of a consent to assignment or other written agreement. Such written consent of the other Interconnection Parties shall not be unreasonably withheld, conditioned, or delayed. Consistent with Tariff, Part IX, section 1, Transmission Provider shall tender a consent to assignment agreement to Project Developer. No later than fifteen (15) Business Days after Transmission Provider's tender for execution of such agreement, Project Developer shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or that the agreement be filed unexecuted with the Commission. Such agreement shall be deemed terminated and withdrawn if Project Developer fails to comply with these requirements. Following tender of the agreement and no later than fifteen (15) Business Days after execution by Project Developer, Transmission Owner shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or that the agreement be filed unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall either: (i) execute the agreement; (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or (iii) file the agreement unexecuted with the Commission. Transmission Provider may also file the agreement with FERC.

In addition, the Transmission Owner shall be entitled, subject to Applicable Laws and Regulations, to assign this CSA to any Affiliate or successor of the Transmission Owner that owns and operates all or a substantial portion of such Transmission Owner's transmission facilities.

## **10.2 Assignment Without Prior Consent**

### **10.2.1 Assignment by Developer Party.**

Developer Party may assign this CSA without the Transmission Owner's or Transmission Provider's prior consent to any Affiliate or person that purchases or otherwise acquires, directly or indirectly, all or substantially all of the Developer Party's assets provided that, prior to the effective date of any such assignment, the assignee shall demonstrate that, as of the effective date of the assignment, the assignee has the technical competence and financial ability to comply with the requirements of this CSA and assumes in a writing provided to the Transmission Owner and Transmission Provider all rights, duties, and obligations of Developer Party arising under this CSA. However, any assignment described herein shall not relieve or discharge the Developer Party from any of its obligations hereunder absent the written consent of the Transmission Owner, such consent not to be unreasonably withheld, conditioned, or delayed.

An Interconnection Party may choose to enter a consent to assignment or other written agreement to effectuate an assignment allowed by section 10.2.1 of this Appendix 2. Consistent with Tariff, Part IX, section 1, Transmission Provider shall tender a consent to assignment agreement to Project Developer. No later than fifteen (15) Business Days after Transmission Provider's tender for execution of such agreement, Project Developer shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or that the agreement be filed unexecuted with the Commission. Such agreement shall be deemed to be terminated and withdrawn if Project Developer fails to comply with these requirements. Not later than fifteen (15) Business Days after execution by Project Developer, Transmission Owner shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or request that a consent to assignment agreement be filed unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or (iii) file the agreement with FERC in unexecuted form. Transmission Provider may also file the agreement with FERC in unexecuted form if Transmission Owner does not comply with the requirements above.

### **10.2.2 Assignment by Transmission Owner.**

Transmission Owner shall be entitled, subject to applicable laws and regulations, to assign this Upgrade CSA to an Affiliate or successor that owns and operates all or a substantial portion of Transmission Owner's transmission facilities.

### **10.2.3 Assignment to Lenders.**

Developer Party may, without the consent of the Transmission Provider or the Transmission Owner, assign this CSA to any Project Finance Entity(ies), provided that such assignment shall not alter or diminish Developer Party's duties and obligations under this CSA. If Developer Party provides the Transmission Owner with notice of an assignment to any Project Finance Entity(ies) and identifies such Project Finance Entity(ies) as contacts for notice purposes pursuant to Article 6 of this CSA, the Transmission Provider or Transmission Owner shall provide notice and reasonable opportunity for such entity(ies) to cure any Breach under this CSA in accordance with this CSA. Transmission Provider or Transmission Owner shall, if requested by such lenders, provide such customary and reasonable documents, including consents to assignment, as may be reasonably requested with respect to the assignment and status of this CSA, provided that such documents do not alter or diminish the rights of the Transmission Provider or Transmission Owner under this CSA, except with respect to providing notice of Breach to a Project Finance Entity. Upon presentation of the Transmission Provider's and/or the Transmission Owner's invoice therefore, Developer Party shall pay the Transmission Provider and/or the Transmission Owner's reasonable documented cost of providing such documents and certificates. Any assignment described herein shall not relieve or discharge the Developer Party from any of its obligations hereunder absent the written consent of the Transmission Owner and Transmission Provider.

### **10.3 Successors and Assigns.**

This CSA and all of its provisions are binding upon, and inure to the benefit of, the Transmission Provider and Transmission Owner and their respective successors and permitted assigns.

### **11.0 Insurance**

#### **11.1 Required Coverages.**

Constructing Entity shall maintain, at its own expense, insurance as described in paragraphs A through E below. All insurance shall be procured from insurance companies rated "A-," VII or better by AM Best and authorized to do business in a State or States in which the Network Upgrades, identified in Appendix I to this CSA, will be located. Failure to maintain required insurance shall be a Breach of this CSA.

A. Workers Compensation Insurance with statutory limits, as required by the State and/or jurisdiction in which the work is to be performed, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).

B. Commercial General Liability Insurance and/or Excess Liability Insurance covering liability arising out of premises, operations, personal injury, advertising, products and completed operations coverage, independent contractors coverage, liability assumed under an insured contract, coverage for pollution to the extent normally available and punitive damages to the extent allowable under applicable law, with limits of not less than one million dollars (\$1,000,000) per occurrence/one million dollars

(\$1,000,000) general aggregate/one million dollars (\$1,000,000) each accident products and completed operations aggregate.

C. Business/Commercial 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 no less than one million dollars (\$1,000,000) each accident for bodily injury, including death, and property damage.

D. Excess and/or Umbrella Liability Insurance with a limit of liability of twenty million dollars (\$20,000,000) per occurrence. These limits apply in excess of the employer's liability, commercial general liability and business/commercial automobile liability coverages described above. This requirement can be met alone or via a combination of primary, excess and/or umbrella insurance.

E. Professional Liability, including Contractors Legal Liability, providing errors, omissions and/or malpractice coverage. Coverage shall be provided for the Constructing Entity's duties, responsibilities and performance outlined in this CSA, with limits of liability as follows:

\$10,000,000 each occurrence

\$10,000,000 aggregate

An entity may meet the Professional Liability Insurance requirements by requiring third-party contractors, designers, or engineers, or other parties that are responsible for design and engineering work associated with the Network Upgrades, identified in Appendix I to this CSA, necessary for the transmission service to procure professional liability insurance in the amounts and upon the terms prescribed by this section, and providing evidence of such insurance to the other entity. Such insurance shall be procured from companies rated "A-," VII or better by AM Best and authorized to do business in a State or States in which the Network Upgrades, identified in Appendix I to this CSA, are located. Nothing in this section relieves the entity from complying with the insurance requirements. In the event that the policies of the designers, engineers, or other parties used to satisfy the entity's insurance obligations under this section become invalid for any reason, including but not limited to: (i) the policy(ies) lapsing or otherwise terminating or expiring; (ii) the coverage limits of such policy(ies) are decreased; or (iii) the policy(ies) do not comply with the terms and conditions of the PJM Tariff; entity shall be required to procure insurance sufficient to meet the requirements of this section, such that there is no lapse in insurance coverage. Notwithstanding the foregoing, in the event an entity will not design, engineer or construct or cause to design, engineer or construct any new Network Upgrades, Transmission Provider, in its discretion, may waive the requirement that an entity maintain the Professional Liability Insurance pursuant to this section.

## **11.2 Additional Insureds.**

The Commercial General Liability, Business/Commercial Automobile Liability and Excess and/or Umbrella Liability policies procured by each Constructing Entity (“Insuring Constructing Entity”) shall include each other party (the “Insured Party”), its officers, agents and employees as additional insureds, providing all standard coverages and covering liability of the Insured Party arising out of bodily injury and/or property damage (including loss of use) in any way connected with the operations, performance, or lack of performance under this CSA.

### **11.3 Other Required Terms.**

The above-mentioned insurance policies (except workers’ compensation) shall provide the following:

(a) Each policy shall contain provisions that specify that it is primary and non contributory for any liability arising out of that party’s negligence, 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. Each Insuring Constructing Entity shall be responsible for its respective deductibles or retentions.

(b) If any coverage is written on a Claims First Made Basis, continuous coverage shall be maintained or an extended discovery period will be exercised for a period of not less than two (2) years after termination of this CSA.

(c) Provide for a waiver of all rights of subrogation which the Insuring Constructing Entity’s insurance carrier might exercise against the Insured Party.

### **11.4 No Limitation of Liability.**

The requirements contained herein as to the types and limits of all insurance to be maintained by the Constructing Entities are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this CSA.

### **11.5 Self-Insurance.**

Notwithstanding the foregoing, each Constructing Entity may self-insure to meet the minimum insurance requirements of this section to the extent it maintains a self-insurance program; provided that such Constructing Entity’s senior secured debt is rated at investment grade or better by Standard & Poor’s and its self-insurance program meets the minimum insurance requirements of this Section 11. For any period of time that a Constructing Entity’s senior secured debt is unrated by Standard & Poor’s or is rated at less than investment grade by Standard & Poor’s, it shall comply with the insurance requirements applicable to it under this Section 11. In the event that a Constructing Entity is permitted to self-insure pursuant to this section, it shall notify the other Parties that it meets the requirements to self-insure and that its self-insurance program meets the

minimum insurance requirements in a manner consistent with that specified in Section 11.6 of this Appendix III.

#### **11.6 Notices; Certificates of Insurance.**

Prior to the commencement of work pursuant to this CSA, the Constructing Entities agree to furnish certificate(s) of insurance evidencing the insurance coverage obtained in accordance with Section 11 of this Appendix III. All certificates of insurance shall indicate that the certificate holder is included as an additional insured under the Commercial General Liability, Business/Commercial Automobile Liability and Excess and/or Umbrella Liability coverages, and that this insurance is primary with a waiver of subrogation in favor of the other Interconnected Entities. All policies of insurance shall provide for thirty days prior written notice of cancellation or material adverse change. If the policies of insurance do not or cannot be endorsed to provide thirty days prior written notice of cancellation or material adverse change, each Constructing Entity shall provide the other Constructing Entities with thirty days prior written notice of cancellation or material adverse change to any of the insurance required in this CSA.

#### **11.7 Subcontractor Insurance.**

In accord with Good Utility Practice, each Constructing Entity shall require each of its subcontractors to maintain and provide evidence of insurance coverage of types, and in amounts, commensurate with the risks associated with the services provided by the subcontractor. Bonding of contractors or subcontractors shall be at the hiring Constructing Entity's discretion, but regardless of bonding, the Transmission Owner shall be responsible for the performance or non-performance of any contractor or subcontractor it hires.

#### **11.8 Reporting Incidents:**

The Parties shall 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 CSA.

#### **12.0 Indemnity**

##### **12.1 Indemnity.**

Each Constructing Entity shall indemnify and hold harmless the other Parties, and the other Parties' officers, shareholders, stakeholders, members, managers, representatives, directors, agents and employees, and Affiliates, from and against any and all loss, liability, damage, cost or expense to third parties, including damage and liability for bodily injury to or death of persons, or damage to property of persons (including reasonable attorneys' fees and expenses, litigation costs, consultant fees, investigation fees, sums paid in settlements of claims, penalties or fines imposed under Applicable Laws and Regulations, and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "Loss") to the extent

arising out of, in connection with or resulting from: (i) the indemnifying Constructing Entity's breach of any of the representations or warranties made in, or failure of the indemnifying Constructing Entity or any of its subcontractors to perform any of its obligations under, this CSA; or (ii) the negligence or willful misconduct of the indemnifying Constructing Entity or its contractors; provided, however, that the neither Constructing Entity shall not have any indemnification obligations under this Section in respect of any Loss to the extent the Loss results from the negligence or willful misconduct of the Party seeking indemnity.

## **12.2 Indemnity Procedures.**

Promptly after receipt by a person entitled to indemnity ("Indemnified Person") 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 this Section 12 may apply, the Indemnified Person shall notify the indemnifying Constructing Entity of such fact. Any failure of or delay in such notification shall not affect a Constructing Entity's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Constructing Entity. The Indemnified Person shall cooperate with the indemnifying Constructing Entity with respect to the matter for which indemnification is claimed. The indemnifying Constructing Entity shall have the right to assume the defense thereof with counsel designated by such indemnifying Constructing Entity and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the indemnifying Constructing Entity and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the indemnifying Constructing Entity, the Indemnified Person 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 Constructing Entity shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses. The Indemnified Person shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the indemnifying Constructing Entity. Notwithstanding the foregoing, the indemnifying Constructing Entity shall not: (i) 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 Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the indemnifying Constructing Entity, in such event the indemnifying Constructing Entity shall pay the reasonable expenses of the Indemnified Person; and (ii) settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld, conditioned or delayed.

## **12.3 Indemnified Person.**

If an Indemnified Person is entitled to indemnification under this Section 12 as a result of a claim by a third party, and the indemnifying Constructing Entity fails, after notice and

reasonable opportunity to proceed under this Section 12, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Constructing Entity contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

#### **12.4 Amount Owing.**

If the indemnifying Constructing Entity is obligated to indemnify and hold any Indemnified Person harmless under this Section 12, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

#### **12.5 Limitation on Damages.**

Except as otherwise provided in this Section 12, the liability of a Party shall be limited to direct actual damages, and all other damages at law are waived. Under no circumstances shall any Party or its Affiliates, directors, officers, employees and agents, or any of them, be liable to another Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The limitations on damages specified in this Section 12.5 are without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. This limitation on damages shall not affect any Party's rights to obtain equitable relief as otherwise provided in this CSA. The provisions of this Section 12 shall survive the termination or expiration of this CSA.

#### **12.6 Limitation of Liability in Event of Breach.**

A Breaching Party shall have no liability hereunder to any other Party, and each other Party hereby releases the Breaching Party, for all claims or damages it incurs that are associated with any interruption in the availability of the Network Upgrades identified in Appendix I to this CSA, the Transmission System, or Transmission Service, or associated with damage to the Network Upgrades identified in Appendix I to this CSA, except to the extent such interruption or damage is caused by the Breaching Party's gross negligence or willful misconduct in the performance of its obligations under this CSA.

#### **12.7 Limited Liability in Emergency Conditions.**

Except as otherwise provided in the PJM Tariff or the Operating Agreement, no Party shall be liable to any other Party for any action that it takes in responding to an Emergency Condition, so long as such action is made in good faith, is consistent with Good Utility Practice and is not contrary to the directives of the Transmission Provider or the Transmission Owner with respect to such Emergency Condition. Notwithstanding the above, Developer Party shall be liable in the event that it fails to comply with any instructions of Transmission Provider or the Transmission Owner related to an Emergency Condition.

#### **13.0 Breach, Cure And Default**

### **13.1 Breach:**

A Breach of this CSA shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Appendix 2 or of the other portions of the CSA or any attachments or Schedule hereto, including but not limited to any material breach of a representation, warranty or covenant (other than in subsections (a) and (c)-(e) of this section) made in this Appendix 2;
- (c) Assignment of the CSA in a manner inconsistent with its terms;
- (d) Failure of an Interconnection Party to provide access rights, or an Interconnection Party's attempt to revoke or terminate access rights, that are provided under this Appendix 2; or
- (e) Failure of an Interconnection Party to provide information or data required to be determined under this Appendix 2 to another Interconnection Party for such other Interconnection Party to satisfy its obligations under this Appendix 2.

### **13.2 Continued Operation:**

In the event of a Breach or Default by either Interconnected Entity, and subject to termination of this CSA under section 16 of this Appendix 2, the Interconnected Entities shall continue to operate and maintain, as applicable, such DC power systems, protection and Metering Equipment, telemetering equipment, SCADA equipment, transformers, Secondary Systems, communications equipment, building facilities, software, documentation, structural components, and other facilities and appurtenances that are reasonably necessary for Transmission Provider and the Transmission Owner to operate and maintain the Transmission System and the Transmission Owner Upgrades and for Developer Party to operate and maintain the Generating Facility or Merchant Transmission Facility and the Developer Party Interconnection Facilities, in a safe and reliable manner.

### **13.3 Notice of Breach:**

An Interconnection Party not in Breach shall give written notice of an event of Breach to the Breaching Party, to Transmission Provider and to other persons that the Breaching Party identifies in writing to the other Interconnection Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. In the event of a Breach by Developer Party, Transmission Provider or the Transmission Owner agree to provide notice of such Breach and in the same manner as its notice to Developer Party, to any Project Finance Entity provided that the Developer Party has provided the notifying Interconnection Party with notice of an assignment to such Project Finance Entity(ies)

and identifies such Project Finance Entity(ies) as contacts for notice purposes pursuant to section 21 of this Appendix 2.

### **13.4 Cure and Default:**

An Interconnection Party that commits a Breach and does not take steps to cure the Breach pursuant to this section 13.4 is automatically in Default of this Appendix 2 and of the CSA, and its project and this Agreement shall be deemed terminated and withdrawn. Transmission Provider shall take all necessary steps to effectuate this termination, including submitted the necessary filings with FERC.

#### **13.4.1 Cure of Breach:**

13.4.1.1 Except for the event of Breach set forth in section 13.1(a) above, the Breaching Interconnection Party (a) may cure the Breach within thirty (30) days of the time the Non-Breaching Party sends such notice; or (b) if the Breach cannot be cured within thirty (30) days, may commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty (30) day time period and thereafter diligently pursue such action to completion pursuant to a plan to cure, which shall be developed and agreed to in writing by the Interconnection Parties. Such agreement shall not be unreasonably withheld.

13.4.1.2 In an event of Breach set forth in section 13.1(a), the Breaching Interconnection Party shall cure the Breach within five (5) days from the receipt of notice of the Breach. If the Breaching Interconnection Party is the Developer Party, and the Developer Party fails to pay an amount due within five (5) days from the receipt of notice of the Breach, Transmission Provider may use Security to cure such Breach. If Transmission Provider uses Security to cure such Breach, Developer Party shall be in automatic Default and its project and this Agreement shall be deemed terminated and withdrawn.

### **13.5 Right to Compel Performance:**

Notwithstanding the foregoing, upon the occurrence of a Default, a non-Defaulting Interconnection Party shall be entitled to exercise such other rights and remedies as it may have in equity or at law. Subject to section 20.1, no remedy conferred by any provision of this Appendix 2 is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies..

## **14 Termination**

### **14.1 Termination**

### **14.1.1 Upon Completion of Construction:**

#### **14.1.1.1 Conforming CSAs**

If this CSA is conforming and, therefore, is only reported to the Commission on PJM's Electric Quarterly Report, it shall terminate upon the date Transmission Provider receives written notice, in a form acceptable to the Transmission Provider from the Transmission Owner that the following conditions have occurred: (i) completion of construction of all Transmission Owner Upgrades; (ii) if Developer Party exercised the Option to Build, transfer of title under section 5.5 of this Appendix 2; (iii) final payment of all Costs due and owing under this CSA; and (iv) if Developer Party exercised the Option to Build, delivery to the Transmission Owner of final "as-built" drawings of any Stand Alone Network Upgrades built by the Developer Party in accordance with section 3.2.3.2(a)(xi) of this Appendix 2.

#### **14.1.1.2 Non-Conforming CSAs**

If this CSA is non-conforming and, therefore, has been filed with and accepted by the Commission, it shall terminate upon (a) Transmission Provider receiving written notice, in a form acceptable to Transmission Provider, from Transmission Owner that the following conditions have occurred: (i) completion of construction of all Transmission Owner Upgrades; (ii) if Developer Party exercised the Option to Build, transfer of title under section 5.5 of this Appendix 2; (iii) final payment of all Costs due and owing under this CSA; and (iv) if Developer Party exercised the Option to Build, delivery to Transmission Owner of final "as-built" drawings of any Stand Alone Network built by Developer Party in accordance with section 3.2.3.2(a)(xi) of this CSA; and (b) the effective date of Transmission Provider's cancellation of the CSA in accordance with Commission rules and regulations. Transmission Provider shall serve the Transmission Owner and Developer Party with a copy of the notice of cancellation of any CSA in accordance with Commission rules and regulations.

### **14.1.2 Upon Default By Either Constructing Entity:**

Either Constructing Entity may terminate its obligations hereunder in the event of a Default by the other Constructing Entity as defined in section 13.3 of this Appendix 2. Transmission Provider may terminate the CSA upon the Default of Developer Party of its obligations under this CSA or the applicable Generation Interconnection Agreement by providing Developer Party and the Transmission Owner prior written notice of termination

#### **14.1.3 By Developer Party:**

Subject to its payment of Cancellation Costs as explained in section 14.3 below, the Developer Party may be relieved of its obligations hereunder upon sixty (60) days written notice to Transmission Provider and the Transmission Owner.

## 14.2 [Reserved.]

## 14.3 Cancellation By Developer Party

### 14.3.1 Applicability:

The following provisions shall survive and shall apply in the event that Developer Party terminates the CSA pursuant to this section 14.1.3.

#### 14.3.1.1 Cancellation Cost Responsibility Upon Termination:

Upon the unilateral termination of the CSA by the Developer Party, the Developer Party shall be liable to pay to the Transmission Owner or Transmission Provider all Cancellation Costs in connection with Construction Service for the Developer Party pursuant to this CSA, including section 14.3.1.2 of this Appendix 2. Cancellation costs may include costs for Network Upgrades assigned to Developer Party, in accordance with the Tariff and as reflected in this CSA, that remain the responsibility of Developer Party under the Tariff. This shall include costs including, but not limited to, the costs, cost for such Network Upgrades to the extent such cancellation would be a Material Modification, or would have an adverse effect or impose costs on other Developer Parties. In the event the Transmission Owner incurs Cancellation Costs, it shall provide the Transmission Provider, with a copy to the Developer Party, with a written demand for payment and with reasonable documentation of such Cancellation Costs. The Developer Party shall pay the Transmission Provider each bill for Cancellation Costs within thirty (30) days after, as applicable, the Transmission Owner's or Transmission Provider's presentation to the Developer Party of written demand therefor, provided that such demand includes reasonable documentation of the Cancellation Costs that the invoicing party seeks to collect. Upon receipt of each of Developer Party's payments of such bills of the Transmission Owner, Transmission Provider shall reimburse the Transmission Owner for Cancellation Costs incurred by the latter.

#### 14.3.1.2 Disposition of Facilities Upon Termination:

Upon termination of the CSA by a Developer Party, Transmission Provider, after consulting with the Transmission Owner, may, at the sole cost and expense of the Developer Party, authorize the Transmission Owner to (a) cancel supplier and contractor orders and agreements entered into by the Transmission Owner to design, construct, install, operate, maintain and own the Transmission Owner Upgrades, provided, however, that Developer Party shall have the right to choose to take delivery of any equipment ordered by the Transmission Owner for which Transmission Provider otherwise would authorize cancellation of the purchase order; or (b) remove any Transmission Owner Upgrades built by the Transmission Owner or any Transmission Owner Stand Alone Network (only after title to the subject facilities has been transferred to the Transmission Owner) built by the Developer Party; or (c) partially or entirely complete the Transmission Owner Upgrades as necessary to preserve the integrity or reliability of the Transmission System, provided that Developer Party shall be entitled to receive any rights associated with such facilities and upgrades as determined in accordance with the

CSA; or (d) undo any of the changes to the Transmission System that were made pursuant to this CSA. To the extent that the Developer Party has fully paid for equipment that is unused upon cancellation or which is removed pursuant to subsection (b) above, the Developer Party shall have the right to take back title to such equipment; alternatively, in the event that the Developer Party does not wish to take back title, the Transmission Owner may elect to pay the Developer Party a mutually agreed amount to acquire and own such equipment.

#### **14.3.2 Termination Upon Default:**

In the event that Developer Party exercises its right to terminate under section 14.1.2 of this Appendix 2, and notwithstanding any other provision of this CSA, the Developer Party shall be liable for payment of the Transmission Owner's Costs incurred up to the date of Developer Party's notice of termination pursuant to section 14.1.2 and the costs of completion of some or all of the Transmission Owner Transmission Owner Upgrades or specific unfinished portions thereof, and/or removal of any or all of such facilities which have been installed, to the extent that Transmission Provider determines such completion or removal to be required for the Transmission Provider and/or Transmission Owner to perform their respective obligations under the GIP of the Tariff or this CSA, provided, however, that Developer Party's payment of such costs shall be without prejudice to any remedies that otherwise may be available to it under this Appendix 2 for the Default of the Transmission Owner. Developer Party will also be subject to Cancellation Cost responsibility provisions of section 14.3.1.1 of this Appendix 2.

#### **14.4 Survival of Rights:**

Termination of this CSA or the applicable Generation Interconnection Agreement shall not relieve any Interconnection Party of any of its liabilities and obligations arising under this CSA or the applicable Generation Interconnection Agreement (including Appendix 2) prior to the date on which termination becomes effective, and each Interconnection Party may take whatever judicial or administrative actions it deems desirable or necessary to enforce its rights hereunder. Applicable provisions of this Appendix 2 will continue in effect after termination to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from events or acts that occurred while the CSA or the applicable Generation Interconnection Agreement was in effect.

### **15 Force Majeure**

#### **15.1 Notice:**

A Construction Party that is unable to carry out an obligation imposed on it by this Appendix 2 due to Force Majeure shall notify each other Construction Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.

#### **15.2 Duration of Force Majeure:**

A party shall not be considered to be in Default with respect to any obligation hereunder, other than the obligation to pay money when due, if 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 as soon as reasonably possible after the occurrence of the cause relied upon. Those notices 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. Written notices given pursuant to this Article shall be acknowledged in writing as soon as reasonably possible. The party affected shall exercise Reasonable Efforts 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. The party affected has a continuing notice obligation to the other parties, and must update the particulars of the original Force Majeure notice and subsequent notices, in writing, as the particulars change. The affected party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such party shall resume performance and give prompt written notice thereof to the other parties.

### **15.3 Obligation to Make Payments:**

Any Construction Party's obligation to make payments for services shall not be suspended by Force Majeure.

### **15.4 Definition of Force Majeure:**

For the purposes of this section, an event of force majeure shall mean 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 that, in any of the foregoing cases, by exercise of due diligence, such party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. Force majeure does not include (i) a failure of performance that is due to an affected party's own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected party.

### **16.0 Confidentiality.**

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the other

Party receiving the information that the information is confidential. If requested by any Party, the disclosing Party shall provide in writing the basis for asserting that the information referred to in this section warrants confidential treatment, and the requesting Party may disclose such writing to an appropriate Governmental Authority. Any Party shall be responsible for the costs associated with affording confidential treatment to its information.

#### **16.1 Term.**

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

#### **16.2 Scope.**

Confidential Information shall not include information that the receiving Party can demonstrate: (i) is generally available to the public other than as a result of a disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (iv) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this CSA; or (vi) is required, in accordance with Section 16.7 of this Appendix III, to be disclosed to any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this CSA. Information designated as Confidential Information shall no longer be deemed confidential if the Party that designated the information as confidential notifies the other Parties that it no longer is confidential.

#### **16.3 Release of Confidential Information.**

No Party shall disclose Confidential Information of another Party to any other person, except to its Affiliates (in accordance with the Commission's Standards of Conduct requirements), subcontractors, employees, consultants or to parties who may be or considering providing financing to or equity participation in Developer Party on a need-to-know basis in connection with this CSA, unless such person has first been advised of the confidentiality provisions of this Section and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party that provides Confidential Information of another Party to any person shall remain responsible for any release of Confidential Information in contravention of this Section.

#### **16.4 Rights.**

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

#### **16.5 No Warranties.**

By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to any other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

#### **16.6 Standard of Care.**

Each Party shall use at least the same standard of care to protect Confidential Information it receives as the Party uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this CSA or to comply with Applicable Laws and Regulations.

#### **16.7 Order of Disclosure.**

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

#### **16.8 Termination of Construction Service Agreement.**

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

#### **16.9 Remedies.**

The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Section 16. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Section, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this Section, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, consequential, or punitive damages of any nature or kind resulting from or arising in connection with a Breach of any obligation under this Section 16.

#### **16.10 Disclosure to FERC or its Staff.**

Notwithstanding anything in this Section to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this CSA, the Party, shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this CSA prior to the release of the Confidential Information to the Commission or its staff. A Party shall notify the other Parties when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112.

#### **16.11**

Subject to the exception noted above in Section 16.10 of this Appendix III, no Party shall disclose Confidential Information of Party to any person not employed or retained by the disclosing Party, except to the extent disclosure is: (i) required by law; (ii) reasonably deemed by the disclosing Party to be required in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the Party that provided such Confidential Information, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this CSA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. Prior to any disclosures of another Party's Confidential Information under this subparagraph, the disclosing Party shall promptly notify the other Parties in writing and shall assert confidentiality and cooperate with the other Parties in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

## **16.12**

This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

## **16.13 Return or Destruction of Confidential Information.**

If any Party provides any Confidential Information to another Party in the course of an audit or inspection, the providing Party may request the other Party to return or destroy such Confidential Information after the termination of the audit period and the resolution of all matters relating to that audit. Each Party shall make Reasonable Efforts to comply with any such requests for return or destruction within ten days after receiving the request and shall certify in writing to the requesting Party that it has complied with such request.

## **17.0 Information Access And Audit Rights**

### **17.1 Information Access.**

Subject to Applicable Laws and Regulations, each Party shall make available to the other Parties information necessary: (i) to verify the Costs incurred by the other Party for which the requesting Party is responsible under this CSA and the PJM Tariff; and (ii) to carry out obligations and responsibilities under this CSA and the PJM Tariff. The Parties shall not use such information for purposes other than those set forth in this Section 17 and to enforce their rights under this CSA and the PJM Tariff.

### **17.2 Reporting of Non-Force Majeure Events.**

Each Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this CSA for a reason other than an event of force majeure as defined in Section 1.21 of Appendix 2 of this Attachment GG. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Section 17 shall not entitle the receiving Party to allege a cause of action for anticipatory breach of this CSA and the PJM Tariff.

### **17.3 Audit Rights.**

Subject to the requirements of confidentiality of this CSA and the PJM Tariff, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the pertinent Party, to audit at its own expense the other Party's accounts and records pertaining to such Party's performance and/or satisfaction of obligations arising under this CSA and the PJM Tariff. Any audit authorized by this Section 17 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this CSA. Any request for audit shall be presented to the other Party not later than twenty-four

months after the event as to which the audit is sought. Each Party shall preserve all records held by it for the duration of the audit period.

#### **17.4 Waiver.**

Any waiver at any time by any Party of its rights with respect to a Breach or Default under this CSA, or with respect to any other matters arising in connection with this CSA, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter.

#### **17.5 Amendments and Rights under the Federal Power Act.**

Except as set forth in this Section 17, this CSA may be amended, modified, or supplemented only by written agreement of the Parties. Such amendment shall become effective and a part of this CSA upon satisfaction of all Applicable Laws and Regulations. In the event an amendment is desired, Transmission Provider, consistent with Tariff, Part IX, section 1, Transmission Provider shall tender an agreement to amend. No later than fifteen (15) Business Days after Transmission Provider's tender for execution of such agreement, Developer Party shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or that the agreement be filed unexecuted with the Commission. Such agreement shall be deemed terminated and withdrawn if Developer Party fails to comply with these requirements. Not later than fifteen (15) Business Days after execution by Developer Party, Transmission Owner shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or request that a consent to assignment agreement be filed unexecuted with the Commission. Following execution by Transmission Owner, Transmission Provider shall either: (i) execute the agreement; or (ii) request in writing dispute resolution as allowed under Tariff, Part I, section 12 or, if concerning the Regional Transmission Expansion Plan, consistent with Operating Agreement, Schedule 5, or (iii) file the agreement with FERC in unexecuted form. Transmission Provider may also file the agreement with FERC in unexecuted form if Transmission Owner does not comply with the requirements above.

Notwithstanding the foregoing, nothing contained in this CSA shall be construed as affecting in any way any of the rights of any Party with respect to changes in applicable rates or charges under Section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder, or any of the rights of any Party under Section 206 of the Federal Power Act and/or FERC's rules and regulations thereunder. The terms and conditions of this CSA shall be amended, as mutually agreed by the Parties, to comply with changes or alterations made necessary by a valid applicable order of any Governmental Authority having jurisdiction hereof.

#### **17.6 Regulatory Requirements.**

Each Party's performance of any obligation under this CSA for which such Party requires approval or authorization of any Governmental Authority shall be subject to its receipt of such required approval or authorization in the form and substance satisfactory to the receiving 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 shall use Reasonable Efforts to obtain, such required authorizations or approvals as soon as reasonably practicable.

## **18.0 Representations and Warranties**

### **18.1 General.**

Each Constructing Entity hereby represents, warrants and covenants as follows, with these representations, warranties, and covenants effective as to the Constructing Entity during the full time this CSA is effective:

#### **18.1.1 Good Standing.**

Such Constructing Entity is duly organized or formed, as applicable, validly existing and in good standing under the laws of its State of organization or formation, and is in good standing under the laws of the respective State(s) in which it is incorporated.

#### **18.1.2 Authority.**

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

#### **18.1.3 No Conflict.**

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

## **19.0 Inspection and Testing of Completed Facilities**

### **19.1 Coordination.**

Developer Party and the Transmission Owner shall coordinate the timing and schedule of all inspection and testing of the Network Upgrades, identified in Appendix I to this CSA.

### **19.2 Inspection and Testing.**

Each Constructing Entity shall cause inspection and testing of any Network Upgrades that it constructs in accordance with the provisions of this section. The Parties acknowledge and agree that inspection and testing of facilities may be undertaken as facilities are completed and need not await completion of all of the facilities that a Constructing Entity is building.

#### **19.2.1 Of Developer Party-Built Facilities.**

Upon the completion of the construction and installation, but prior to energization, of any Network Upgrades constructed by the Developer Party shall have the same inspected and/or tested by an authorized electric inspection agency or qualified third party reasonably acceptable to the Transmission Owner to assess whether the facilities substantially comply with Applicable Standards. Said inspection and testing shall be held on a mutually agreed-upon date, and the Transmission Owner and Transmission Provider shall have the right to attend and observe, and to obtain the written results of, such testing.

#### **19.2.2 Of Transmission Owner-Built Facilities.**

Upon the completion of the construction and installation, but prior to energization, of any Network Upgrades constructed by the Transmission Owner, the Transmission Owner shall have the same inspected and/or tested by qualified personnel or a qualified contractor to assess whether the facilities substantially comply with Applicable Standards. Subject to Applicable Laws and Regulations, said inspection and testing shall be held on a mutually agreed-upon date, and the Developer Party and Transmission Provider shall have the right to attend and observe, and to obtain the written results of, such testing.

### **19.3 Review of Inspection and Testing by Transmission Owner.**

In the event that the written report, or the observation of either Constructing Entity or Transmission Provider, of the inspection and/or testing pursuant to Section 19.2 of this Appendix III reasonably leads the Transmission Provider or Transmission Owner to believe that the inspection and/or testing of some or all of the Network Upgrades built by the Developer Party was inadequate or otherwise deficient, the Transmission Owner may, within 20 days after its receipt of the results of inspection or testing and upon reasonable notice to the Developer Party, perform its own inspection and/or testing of such Network Upgrades to determine whether the facilities are acceptable for energization, which determination shall not be unreasonably delayed, withheld or conditioned.

### **19.4 Notification and Correction of Defects**

19.4.1 If the Transmission Owner, based on inspection or testing pursuant to Section 19.2 or 19.3 of this Appendix III, identifies any defects or failures to comply with Applicable Standards in the Network Upgrades constructed by the Developer Party, the Transmission Owner shall notify the Developer Party and Transmission Provider of any

identified defects or failures within 20 days after the Transmission Owner's receipt of the results of such inspection or testing. The Developer Party shall take appropriate actions to correct any such defects or failure at its sole cost and expense, and shall obtain the Transmission Owner's acceptance of the corrections, which acceptance shall not be unreasonably delayed, withheld or conditioned.

19.4.2 In the event that inspection and/or testing of any Network Upgrades built by the Transmission Owner identifies any defects or failures to comply with Applicable Standards in such facilities, Transmission Owner shall take appropriate action to correct any such defects or failures within 20 days after it learns thereof. In the event that such a defect or failure cannot reasonably be corrected within such 20-day period, Transmission Owner shall commence the necessary correction within that time and shall thereafter diligently pursue it to completion.

### **19.5 Notification of Results.**

Within 10 days after satisfactory inspection and/or testing of Network Upgrades built by the Developer Party (including, if applicable, inspection and/or testing after correction of defects or failures), the Transmission Owner shall confirm in writing to the Developer Party and Transmission Provider that the successfully inspected and tested facilities are acceptable for energization.

### **20.0 Energization of Completed Facilities**

(A) Unless otherwise provided in the Schedule of Work, energization, when applicable as determined by Transmission Provider, of the Network Upgrades, identified in Appendix I to this CSA, shall occur in two stages. Stage One energization may occur prior to initial energization of the Network Upgrades. Stage Two energization shall consist of energization of the remainder of the Network Upgrades, identified in Appendix I, to the CSA.

(B) In the case of Network Upgrades for which the Transmission Provider determines that two-stage energization is inapplicable, energization shall occur in a single stage. Such a single-stage energization shall be regarded as Stage Two energization for the purposes of the remaining provisions of this Section 20.9 and of Section 22.0 of this Appendix III.

20.1 Stage One energization may not occur prior to the satisfaction of the following additional conditions:

(a) The Developer Party shall have delivered to the Transmission Owner and Transmission Provider a writing transferring to the Transmission Owner and Transmission Provider operational control over any Stand Alone Network Upgrades that Developer Party has constructed; and

(b) The Developer Party shall have provided a mark-up of construction drawings to the Transmission Owner to show the “as-built” condition of all Stand Alone Network Upgrades that Developer Party has constructed.

20.2 As soon as practicable after the satisfaction of the conditions for Stage One energization specified in Sections 19 and 20.1 of this Appendix III, the Transmission Owner and the Developer Party shall coordinate and undertake the Stage One energization of facilities.

20.3 Stage Two energization of the remainder of the Network Upgrades, identified in Appendix I to this CSA, may not occur prior to the satisfaction of the following additional conditions:

(a) The Developer Party shall have delivered to the Transmission Owner and Transmission Provider a writing transferring to the Transmission Owner and Transmission Provider operational control over any Network Upgrades that Developer Party has constructed and operational control of which it has not previously transferred pursuant to Section 20.1 of this Appendix III; and

(b) The Developer Party shall have provided a mark-up of construction drawings to the Transmission Owner to show the “as-built” condition of all Network Upgrades that Developer Party has constructed and which were not included in the Stage One energization, but are included in the Stage Two energization.

20.4 As soon as practicable after the satisfaction of the conditions for Stage Two energization specified in Sections 19 and 20.3 of this Appendix III, the Transmission Owner and the Developer Party shall coordinate and undertake the Stage Two energization of facilities.

20.5 To the extent defects in any Network Upgrades are identified during the energization process, the energization will not be deemed successful. In that event, the Constructing Entity shall take action to correct such defects in any Network Upgrades that it built as promptly as practical after the defects are identified. The affected Constructing Entity shall so notify the other Construction Parties when it has corrected any such defects, and the Constructing Entities shall recommence efforts, within 10 days thereafter, to energize the appropriate Network Upgrades in accordance with Section 20.9 of this Appendix III; provided that the Transmission Owner may, in the reasonable exercise of its discretion and with the approval of Transmission Provider, require that further inspection and testing be performed in accordance with Section 19 of this Appendix III.

## **21.0 Transmission Owner’s Acceptance of Facilities Constructed by Developer Party.**

Within five days after determining that Network Upgrades have been successfully energized, the Transmission Owner shall issue a written notice to the Developer Party accepting the Network Upgrades built by the Developer Party that were successfully

energized. Such acceptance shall not be construed as confirming, endorsing or providing a warranty by the Transmission Owner as to the design, installation, construction, fitness, safety, durability or reliability of any Network Upgrades built by the Developer Party, or their compliance with Applicable Standards.

## **22.0 Transfer of Title to Certain Facilities Constructed By Developer Party.**

Within thirty (30) days after the Developer Party's receipt of notice of acceptance under Section 21.0 of this Appendix III following Stage Two energization of the Network Upgrades, the Developer Party shall deliver to the Transmission Owner, for the Transmission Owner's review and approval, all of the documents and filings necessary to transfer to the Transmission Owner title to any Network Upgrades constructed by the Developer Party, and to convey to the Transmission Owner any easements and other land rights to be granted by Developer Party that have not then already been conveyed. The Transmission Owner shall review and approve such documentation, such approval not to be unreasonably withheld, delayed, or conditioned. Within 30 days after its receipt of the Transmission Owner's written notice of approval of the documentation, the Developer Party, in coordination and consultation with the Transmission Owner, shall make any necessary filings at the FERC or other governmental agencies for regulatory approval of the transfer of title. Within twenty (20) days after the issuance of the last order granting a necessary regulatory approval becomes final (i.e., is no longer subject to rehearing), the Developer Party shall execute all necessary documentation and shall make all necessary filings to record and perfect the Transmission Owner's title in such facilities and in the easements and other land rights to be conveyed to the Transmission Owner. Prior to such transfer to the Transmission Owner of title to the Network Upgrades built by the Developer Party, the risk of loss or damages to, or in connection with, such facilities shall remain with the Developer Party. Transfer of title to facilities under this section shall not affect the Developer Party's receipt or use of the rights related to the Network Upgrades for which it otherwise may be eligible as provided in Subpart C of Part VI of the Tariff.

## **23.0 Liens.**

The Developer Party shall take all reasonable steps to ensure that, at the time of transfer of title in the Network Upgrades built by the Developer Party to the Transmission Owner, those facilities shall be free and clear of any and all liens and encumbrances, including mechanics' liens. To the extent that the Developer Party cannot reasonably clear a lien or encumbrance prior to the time for transferring title to the Transmission Owner, Developer Party shall nevertheless convey title subject to the lien or encumbrance and shall indemnify, defend and hold harmless the Transmission Owner against any and all claims, costs, damages, liabilities and expenses (including without limitation reasonable attorneys' fees) which may be brought or imposed against or incurred by Transmission Owner by reason of any such lien or encumbrance or its discharge.

## **25.0 Charges**

### **25.1 Specified Charges.**

If and to the extent required by the Transmission Owner, after the Initial Operation of the Network Upgrade, Project Developer shall pay one or more of the types of recurring charges described in this section to compensate the Transmission Owner for costs incurred in performing certain of its obligations under this Appendix III. Transmission Provider will deliver a copy of such filing to Project Developer. Permissible charges under this section may include:

(a) Administration Charge - Any such charge may recover only the costs and expenses incurred by the Transmission Owner in connection with administrative obligations such as the preparation of bills. An Administration Charge shall not be permitted to the extent that the Transmission Owner's other charges to the Project Developer under the same CSA include an allocation of the Transmission Owner's administrative and general expenses and/or other corporate overhead costs.

(b) Network Upgrade Operations and Maintenance Charge - Any such charge may recover only the Transmission Owner's costs and expenses associated with operation and maintenance charges related to the Project Developer's Network Upgrade owned by the Transmission Owner.

(c) Other Charges - Any other charges applicable to the Project Developer, as mutually agreed upon by the Project Developer and the Transmission Owner and as accepted by the FERC as part of an CSA.

## **25.2 FERC Filings.**

To the extent required by law or regulation, each Party shall seek FERC acceptance or approval of its respective charges or the methodology for the calculation of such charges.

**SCHEDULE A**

**NEGOTIATED CONTRACT OPTIONS**

None.

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**SCHEDULE B**  
**OPERATION AND MAINTENANCE CHARGES FOR**  
**NETWORK UPGRADES**

None.

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**SCHEDULE C**  
**SCOPE OF WORK**

**A. Transmission Owner Upgrades to be Built By Transmission Owner**

**[Specify Facilities To Be Constructed or state “None”]**

**[Use the following if facilities are to be constructed or owned]**

- i. Facilities for which the Developer Party has sole cost responsibility**
- ii. Facilities for which a Network Upgrade Cost Responsibility Service Agreement is required.**

**B. Project Developer.**

In the event Developer Party has exercised the Option to Build, it is hereby permitted to build in accordance with and subject to the conditions and limitations set forth in this CSA, the following Stand Alone Network Upgrades:

**[Specify Facilities to Be Constructed or state “None”]**