

Part IX, Subpart E

**Form of
Upgrade Construction Service Agreement**

DRAFT

(Project Identifier # [])

UPGRADE CONSTRUCTION SERVICE AGREEMENT

By and Among

PJM Interconnection, L.L.C.

And

[Upgrade Customer]

And

[Name of Transmission Owner]

DRAFT

UPGRADE CONSTRUCTION SERVICE AGREEMENT

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

And

_____ **[Upgrade Customer]**
And
_____ **[Name of Transmission Owner]**

(Project Identifier # _____)

This Upgrade Construction Service Agreement, including the Appendices attached hereto and incorporated herein (collectively, "Upgrade 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"), _____ ("Upgrade Customer" [OPTIONAL: or "[short name]"]) and _____ ("Transmission Owner" [OPTIONAL: or "[short name]"]). Transmission Provider, Upgrade Customer and Transmission Owner are referred to herein individually as "Party" and collectively as "the Parties."

WITNESSETH

WHEREAS, Upgrade Customer has requested (1) Incremental Auction Revenue Rights pursuant to Section 7.8 of Schedule 1 of the Operating Agreement of PJM Interconnection L.L.C. ("Operating Agreement") and Generation Interconnection Procedures ("GIP") set forth in PJM Interconnection, L.L.C. Open Access Transmission Tariff ("Tariff"), Part {[instruction: {use Part VII if this is a transition period Agreement subject to Tariff Part VII} {use Part VIII if this a new rules Agreement subject to Part VIII}]; or (2) installation of one or more Merchant Network Upgrades pursuant to the GIP;

WHEREAS, pursuant to Upgrade Customer's Upgrade Request proposing Merchant Network Upgrades only and in accordance with the PJM Tariff, 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 Customer-Funded Upgrades that must be constructed in order to provide the service or rights requested by Upgrade Customer;

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

WHEREAS, Upgrade Customer: (i) desires that Transmission Owner construct the required Customer-Funded Upgrades; and (ii) agrees to assume cost responsibility for the design, engineering, procurement and construction of such or Customer-Funded 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 Upgrade CSA shall have the meanings ascribed to them in the GIA or in definitions either in the body of this Upgrade 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 Upgrade CSA, such conflict will be resolved in favor of the terms as defined in this Upgrade CSA. Any provision of the PJM Tariff relating to this Upgrade CSA that uses any such defined term shall be construed using the definition given to such defined term in this Upgrade 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 Upgrade CSA, and as pertinent to the subject of this Upgrade CSA, are hereby incorporated herein and made a part hereof.

Article 2 – Responsibility For Customer-Funded Upgrades

2.0 Upgrade Customer Financial Responsibilities.

Upgrade Customer shall pay all Costs for the design, engineering, procurement and construction of the Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA. An estimate of such Costs is provided in Appendix I to this Upgrade CSA.

2.1 Obligation to Provide Security.

Upgrade Customer shall provide Security to collateralize Upgrade Customer's obligation to pay the Costs incurred by Transmission Owner to construct the Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, less any Costs already paid by Upgrade Customer, in accordance with Tariff, section 16.1 and GIP, sections [to be provided]. Upgrade Customer shall deliver such Security to Transmission Provider prior to the Effective Date of this Upgrade 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 Upgrade Customer fails to provide Security in the amount, in the time or in the form required by Section 2.1, then this Upgrade CSA shall terminate immediately and the Upgrade Customer's Upgrade Request shall be deemed terminated and withdrawn.

2.3 Costs.

In accordance with Tariff, section 16.1 and GIP, section [to be provided], the Upgrade Customer shall pay for the Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA based upon the Costs of the Customer-Funded Upgrades described in Appendix I.

2.4 Charges.

In accordance with Sections 9, 24, and 25 of Appendix III to this Upgrade CSA, the Upgrade Customer shall pay to the Transmission Provider the charges applicable after Initial Operation of the Merchant Network Upgrades, as set forth in SCHEDULE B to this Upgrade CSA. Promptly after receipt of such payments, the Transmission Provider shall forward such payments to the appropriate Transmission Owner.

2.5 Transmission Owner Responsibilities.

If the Upgrade Customer 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 Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, on its transmission system. Transmission Owner shall own the Customer-Funded Upgrades it has, or has arranged to have, constructed and shall have ongoing responsibility to maintain such Customer-Funded Upgrades consistent with the Operating Agreement and the Transmission Owner's Agreement.

Article 3 – Rights To Transmission Service

3.0 No Transmission Service.

This Upgrade CSA does not entitle the Upgrade Customer to take Transmission Service under the PJM Tariff.

Article 4 – Early Termination

4.0 Termination by Upgrade Customer.

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

Article 5 – Rights

5.0 Rights.

Transmission Provider shall make available to Upgrade Customer the rights attributable to the Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA. The rights, allocation and assignment procedures, duration and all other terms and procedures set forth in the GIP and applicable PJM Manuals referenced therein regarding a Upgrade Customer assuming responsibility for Customer-Funded Upgrades to accommodate an Upgrade Request shall apply under this Agreement for the benefit of Upgrade Customer.

5.1 Amount of Rights Granted.

Upgrade Customer shall receive the following rights, subject to Section 5.2 below and the applicable terms of the PJM Tariff:

Incremental Auction Revenue Rights. Pursuant to GIP, section [to be provided], Upgrade Customer shall have Incremental Auction Revenue Rights in the following quantities between the indicated source(s) and sink(s):

Incremental Capacity Transfer Rights. Pursuant to GIP, section [to be provided], Upgrade Customer shall have Incremental Capacity Transfer Rights in the following quantities into the indicated Locational Deliverability Area:

5.2 Availability of Rights Granted.

Upgrade Customer's rights as described in Section 5.1 shall become effective upon the completion of (i) the Customer-Funded Upgrades identified in this Upgrade CSA, and, if applicable, (ii) the transmission upgrade projects noted as contingencies in Appendix I of this Upgrade CSA.

Article 6 – Miscellaneous

6.0 Notices.

Any notice or request made to or by any Party regarding this Upgrade 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

Upgrade Customer:

[Redacted]

[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 Upgrade 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 Upgrade 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, Upgrade Customer 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 Upgrade Customer, 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,

Parties acknowledge that, subsequent to execution of this agreement, errors may be corrected by replacing the page of the agreement containing the error with a corrected page, as agreed to and signed by the parties without modifying or altering the original date of execution or obligations contained therein.

6.3 No Partnership.

Notwithstanding any provision of this Upgrade 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 Upgrade 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 Upgrade 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: _____

Upgrade Customer: [Name of Upgrade Customer]

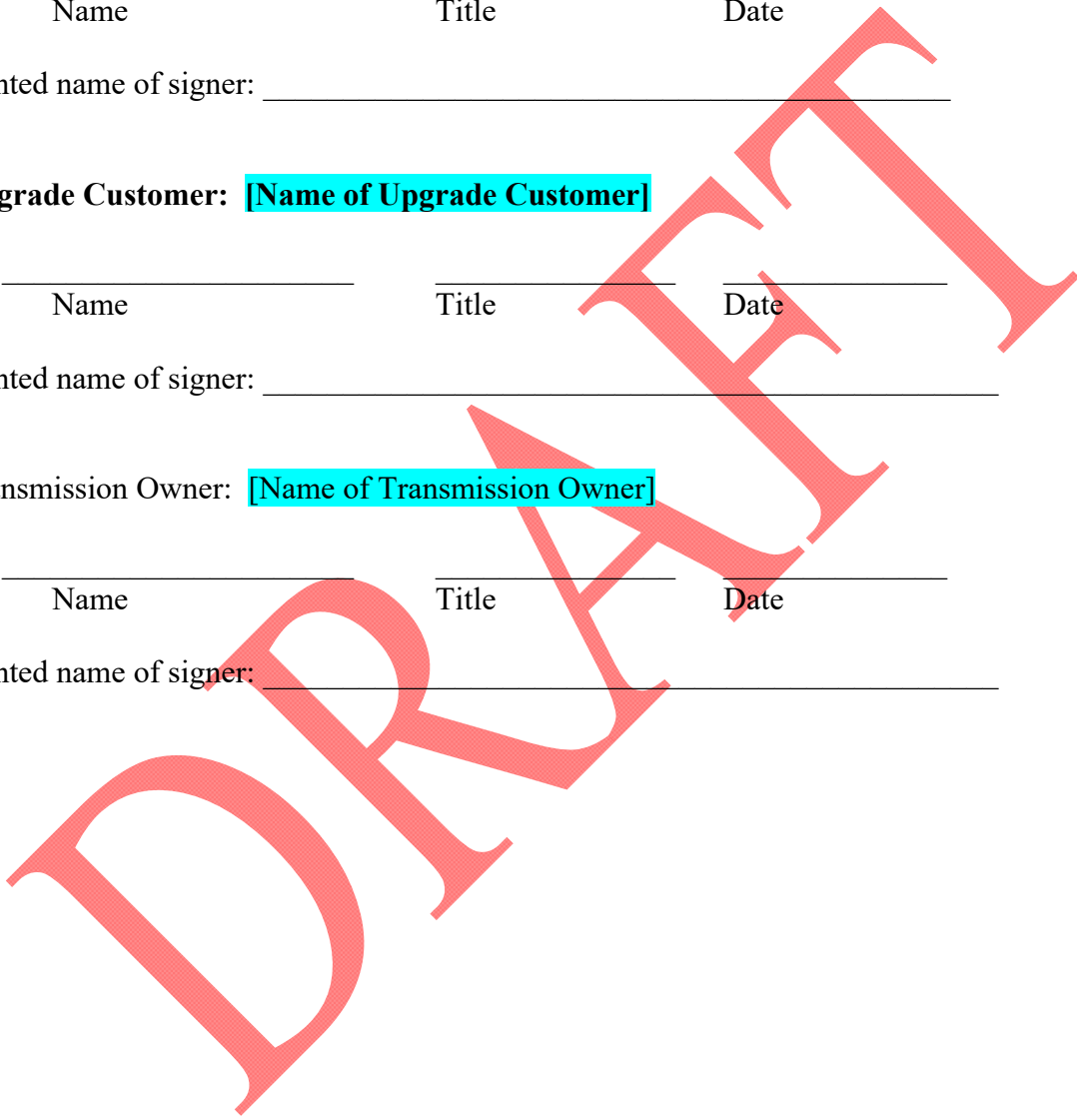
By: _____
Name Title Date

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 CUSTOMER-FUNDED UPGRADES TO BE BUILT BY TRANSMISSION OWNER

A. Scope of Work

Transmission Owner hereby agrees to provide the following or Customer-Funded Upgrades pursuant to the terms of this Upgrade CSA:

[Identify Customer-Funded Upgrades to be constructed]

B. Schedule of Work

[Add schedule for construction work to be completed]

C. Costs.

Upgrade Customer 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 Upgrade CSA.

Merchant 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 Customer Funded Upgrades

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

2. Election of Construction Option. Specify below whether the Constructing Entities have mutually agreed to construction of the Merchant 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 Upgrade 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 Upgrade CSA, respectively, shall be as set forth in Schedule A attached to this Upgrade CSA.

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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 Upgrade 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 Customer-Funded Upgrades, identified in Appendix I to this Upgrade 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 Upgrade CSA shall continue in full force and effect from the Effective Date until the termination hereof.

1.3 Survival.

This Upgrade 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 Upgrade CSA, and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Upgrade 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 Upgrade Customer or Transmission Owner, Transmission Provider shall meet with the Upgrade Customer and Transmission Owner separately or together to assist them in resolving issues between them regarding their respective activities, rights and obligations under this Upgrade 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 Customer-Funded Upgrades.

3.1.1 Generally.

All Customer-Funded Upgrades identified in Appendix I to this Upgrade 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 Upgrade 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 Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA only to the extent that the provisions thereof relate to the design, engineering, procurement, construction and/or installation of such or Customer-Funded Upgrades. Such provisions relating to the design, engineering, procurement, construction and/or installation of such Customer-Funded Upgrades shall be contained in Appendix I appended to this Upgrade 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 Upgrade CSA. In the event of any conflict between the provisions of the applicable technical requirements and standards that are appended to this Upgrade CSA and any later-modified provisions that are stated in the pertinent PJM Manuals, the provisions appended to this Upgrade CSA shall control.

4.0 Tax Liability

4.1 Upgrade Customer Payments Taxable.

The Parties shall treat all payments or property transfers made by Upgrade Customer to Transmission Owner for the installation of the Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, as taxable contributions in aid of construction under section 118(b) of the Internal Revenue Code and any applicable State income tax laws, except in the event, and to the extent, there exists a Favorable Tax Determination, as defined in Section 4.4, indicating otherwise.

4.2 Income Tax Gross-Up.

All payments and property transfers by Upgrade Customer and Transmission Owner in connection with the installation of the Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, shall be made on a fully grossed-up basis. This means that Upgrade Customer will pay Transmission Owner an amount equal to (1) the current taxes imposed on Transmission Owner ("Current Taxes") on the excess of (a) the amount of any payments and the fair market value of any property transferred to Transmission Owner by Upgrade Customer under this Upgrade CSA in connection with the installation of the Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, (without regard to any payments under this Article) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1). For this purpose, (i) Current Taxes shall be computed based on Transmission Owner's composite federal, State, and local tax rates at the time the

payments or property transfers are received and Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Upgrade Customer's liability to Transmission Owner pursuant to this Article can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$. The estimated tax gross-up payments with respect to the facilities, identified in Appendix I to this Upgrade CSA, are stated in Appendix I.

4.3 Private Letter Ruling.

At Upgrade Customer's request, made no later than one year after the termination of this Upgrade CSA pursuant to Section 14 hereof, and expense, Transmission Owner may file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Upgrade Customer to Transmission Owner under this Upgrade CSA are subject to federal income taxation. Upgrade Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Upgrade Customer's knowledge. The Parties shall cooperate in good faith with respect to the submission of such request. Transmission Owner shall keep Upgrade Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Upgrade Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Owner shall allow Upgrade Customer to attend all meetings with IRS officials about the request and shall permit Upgrade Customer to prepare the initial drafts of any follow-up letters in connection with the request.

4.4 Refund.

In the event that (a) a private letter ruling is issued to Transmission Owner which holds that any amount paid or the value of any property transferred by Upgrade Customer to Transmission Owner under the terms of this Upgrade CSA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Owner in good faith that any amount paid or the value of any property transferred by Upgrade Customer to Transmission Owner under the terms of this Upgrade CSA is not taxable to Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Upgrade Customer to Transmission Owner are not subject to federal income tax, or (d) if Transmission Owner receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Upgrade Customer to Transmission Owner pursuant to this Upgrade CSA (each of (a), (b), (c), or (d), a "Favorable Tax Determination"), Transmission Owner shall promptly refund to Upgrade Customer the following: (i) any payment made by Upgrade Customer under this Section 4 for taxes that

are attributable to the amount determined to be non-taxable, together with interest thereon; (ii) interest on any amounts paid by Upgrade Customer to Transmission Owner for such taxes which Transmission Owner did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(ii) from the date payment was made by Upgrade Customer to the date Transmission Owner refunds such payment to Upgrade Customer; and (iii) with respect to any such taxes paid by Transmission Owner, any refund or credit Transmission Owner receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Owner for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Owner to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Owner will remit such amount promptly to Upgrade Customer only after and to the extent that Transmission Owner has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA.

4.5 Contests.

If, following a Favorable Tax Determination, Upgrade Customer receives a refund pursuant to Section 4.4, and, notwithstanding the Favorable Tax Determination, any Governmental Authority determines that Transmission Owner's receipt of payments or property constitutes income that is subject to taxation, Transmission Owner shall notify Upgrade Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Upgrade Customer and at Upgrade Customer's sole expense, Transmission Owner may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Upgrade Customer's written request and sole expense, Transmission Owner may file a claim for refund with respect to any taxes paid under this Article, whether or not it has received such a determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Owner shall keep Upgrade Customer informed, shall consider in good faith suggestions from Upgrade Customer about the conduct of the contest, and shall reasonably permit Upgrade Customer or a Upgrade Customer representative to attend contest proceedings. Upgrade Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Owner may agree to a settlement either with Upgrade Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Owner, but reasonably acceptable to Upgrade Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Upgrade Customer's obligation shall be based on the amount of the settlement agreed to by Upgrade Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence.

4.6 Taxes Other Than Income Taxes.

Upon the timely request by Upgrade Customer, and at Upgrade Customer's sole expense, Transmission Owner may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or State income tax) asserted or assessed against Transmission Owner for which Upgrade Customer may be required to reimburse Transmission Owner under the terms of this Upgrade CSA. Upgrade Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Upgrade Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Upgrade Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction.

4.7 Tax Status.

Each Party shall cooperate with the others to maintain the other Parties' tax status. Nothing in this Upgrade CSA is intended to adversely affect the Transmission Owner's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

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 Upgrade Customer, 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 Upgrade Customer. 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 Upgrade Customer 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 Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, in accordance with the Schedule and Scope of Work.

6.2 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 Upgrade Customer may mutually agree to a Negotiated Contract Option for the Transmission Owner's design, procurement, construction and installation of the Customer-Funded Upgrades. Under the Negotiated Contract Option, the Upgrade 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 the GIP 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 Upgrade Customer and the Transmission Owner that are parties to this Upgrade CSA; no other Upgrade Customer's responsibility for Costs may be affected. 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 Upgrade CSA.

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. The scope change process is intended to be used for changes to the Scope of Work as defined herein, and is not intended to be used to change any of the milestone set forth in the GIA. Any change to the Scope of Work must be agreed to by all Parties in writing by executing a scope change document.

7.0 Suspension of Work Upon Default.

Upon the occurrence of a Default by Upgrade Customer, the Transmission Provider or the Transmission Owner may, by written notice to Upgrade Customer, suspend further work associated with the Customer-Funded Upgrades, identified in Appendix I to this Upgrade 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 Upgrade Customer 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 Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, built by Transmission Owner identifies any defects or failures to comply with Applicable Standards in such Customer-Funded 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.

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 Customer-Funded Upgrades identified in Appendix I to this Upgrade 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 Upgrade Customer is responsible.

9.1 Adjustments to Security.

The Security provided by Upgrade Customer at or before the Effective Date of this Upgrade CSA shall be: (a) reduced as portions of the work on Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, are completed; and/or (b) increased or decreased as required to reflect adjustments to Upgrade Customer'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

Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA. Transmission Provider shall bill Upgrade Customer, on behalf of Transmission Owner, for Transmission Owner's expected costs during the subsequent three months. Upgrade Customer shall pay each bill within twenty (20) days after receipt thereof. Upon receipt of each of Upgrade Customer's payments of such bills, Transmission Provider shall reimburse the Transmission Owner. Upgrade Customer 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 Customer-Funded Upgrades under this Upgrade CSA, Transmission Provider shall provide Upgrade Customer with an accounting of, and the appropriate Party shall make any payment to the other that is necessary to resolve, any difference between: (a) Upgrade Customer's responsibility under the PJM Tariff for the Costs of the or Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA; and (b) Upgrade Customer's previous aggregate payments to Transmission Provider for the Costs of the facilities identified in Appendix I to this Upgrade CSA. Notwithstanding the foregoing, however, Transmission Provider shall not be obligated to make any payment to the Upgrade Customer 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 Upgrade Customer, Transmission Provider and the Transmission Owner shall continue to perform their respective obligations pursuant to this Upgrade CSA so long as: (a) the Upgrade Customer 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 Upgrade Customer pays to Transmission Provider, or into an independent escrow account established by the Upgrade Customer, the portion of the invoice in dispute, pending resolution of such dispute. If the Upgrade Customer 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 Upgrade Customer of a Breach pursuant to Section 13 of this Appendix III. Within 30 days after the resolution of the dispute, the party that owes money to the other party shall pay the amount due with interest calculated in accord with section 9.6 (interest).

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 Upgrade Customer from any other responsibilities or obligations it has under this Upgrade 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 Upgrade 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. In addition, the Transmission Owner shall be entitled, subject to Applicable Laws and Regulations, to assign this Upgrade 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.

Such written consent can be in the form of a consent to assignment or other written agreement. Such written consent of the other Parties to this Upgrade CSA 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 request that the assignment agreement be filed unexecuted with the Commission. Such agreement shall be deemed 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 the 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 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

10.2 Assignment Without Prior Consent

10.2.1 Assignment by Upgrade Customer.

Upgrade Customer may assign this Upgrade 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 Upgrade Customer'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 Upgrade CSA and assumes in a writing provided to the Transmission Owner and Transmission Provider all rights, duties, and obligations of Upgrade Customer arising under this Upgrade CSA. However, any assignment described herein shall not relieve or discharge the Upgrade Customer from any of its obligations hereunder absent the written consent of the Transmission Owner, such consent not to be unreasonably withheld, conditioned, or delayed.

Such written consent can be in the form of a consent to assignment or other written agreement. Such written consent of the other Parties to this Upgrade CSA 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 Upgrade Customer. No later than fifteen (15) Business Days after Transmission Provider's tender for execution of such agreement, Upgrade Customer 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. Such agreement shall be deemed to be terminated and withdrawn if Upgrade Customer fails to comply with these requirements. Not later than fifteen (15) Business Days after execution by Upgrade Customer, 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 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.

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.

Upgrade Customer may, without the consent of the Transmission Provider or the Transmission Owner, assign this Upgrade CSA to any Project Finance Entity(ies), provided that such assignment shall not alter or diminish Upgrade Customer's duties and obligations under this Upgrade CSA. If Upgrade Customer 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 Upgrade CSA, the Transmission Provider or Transmission Owner shall provide notice and reasonable opportunity for such entity(ies) to cure any Breach under this Upgrade CSA in accordance with this Upgrade 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 Upgrade CSA, provided that such documents do not alter or diminish the rights of the Transmission Provider or Transmission Owner under this Upgrade 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, Upgrade Customer 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 Upgrade Customer from any of its obligations hereunder absent the written consent of the Transmission Owner and Transmission Provider.

10.3 Successors and Assigns.

This Upgrade 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 Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, will be located. Failure to maintain required insurance shall be a Breach of this Upgrade 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 Upgrade 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 Customer-Funded Upgrades, identified in Appendix I to this Upgrade 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 Customer-Funded Upgrades, identified in Appendix I to this Upgrade 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 Customer-Funded 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 Upgrade 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 Upgrade 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 Upgrade 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 Upgrade 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 Upgrade 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 Upgrade 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 Upgrade 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 Owning.

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 Upgrade CSA. The provisions of this Section 12 shall survive the termination or expiration of this Upgrade 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 Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, the Transmission System, or Transmission Service, or associated with damage to the Customer-Funded Upgrades identified in Appendix I to this Upgrade 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 Upgrade 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, Upgrade Customer 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 Upgrade 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 Upgrade CSA including but not limited to any material breach of a representation, warranty or covenant made in this Upgrade CSA;
- (c) Assignment of this Upgrade CSA in a manner inconsistent with the terms of this Upgrade CSA; or
- (d) Failure of any Party to provide information or data required to be provided to another Party under this Upgrade CSA for such other Party to satisfy its obligations under this Upgrade CSA.

13.2 Notice of Breach.

In the event of a Breach, a Party not in Breach of this Upgrade CSA shall give written notice of such Breach to the Breaching Party, the other Party and to any other persons that the Breaching Party identifies in writing prior to the Breach. 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 Upgrade Customer, Transmission Provider or the Transmission Owner agree to provide notice of such Breach, in the same manner as its or their notice to Upgrade Customer, to any Project Finance Entity, provided that the Upgrade Customer has provided Transmission Provider and the Transmission Owner with notice of an assignment to such Project Finance Entity(ies) and has identified such Project Finance Entities as contacts for notice.

13.3 Cure and Default.

A Party that commits a Breach and does not take steps to cure the Breach pursuant to this Section is automatically in Default of this Upgrade CSA, and its Upgrade Request 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.

13.3.1 Cure of Breach.

13.3.1.1 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.

13.3.1.2 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 Upgrade Customer, and the Upgrade Customer 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, Upgrade Customer shall be in automatic Default and its project and this Agreement shall be deemed terminated and withdrawn.

13.4 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 9.5, no remedy conferred by any provision of this Upgrade CSA 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.

13.5 Remedies Cumulative.

No remedy conferred by any provision of this Upgrade CSA 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.

14.0 Termination

14.1 Termination

14.1.1 Upon Completion of Construction:

14.1.1.1 Conforming Upgrade CSAs

If this Upgrade 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 that the following conditions have occurred: (i) completion of construction of all Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA; (ii) final payment of all Costs due and owing under this Upgrade CSA; and (iii) termination of all rights provided under this Upgrade CSA.

14.1.1.2 Non-Conforming Upgrade CSAs

If this Upgrade 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 Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA;; (ii) final payment of all Costs due and owing under this Upgrade CSA; (iii) termination of all rights provided under this Upgrade CSA; and (b) the effective date of Transmission Provider's cancellation of the Upgrade CSA in accordance with Commission rules and regulations. Transmission Provider shall serve the Transmission Owner and Upgrade Customer with a copy of the notice of cancellation of any Upgrade CSA in accordance with Commission rules and regulations.

14.2 Cancellation By Upgrade Customer

14.2.1 Applicability.

The following provisions shall apply in the event that Upgrade Customer terminates this Upgrade CSA:

14.2.2 Cancellation Cost Responsibility.

Upon the cancellation of this Upgrade CSA by the Upgrade Customer, the Upgrade Customer shall be liable to pay to the Transmission Owner or Transmission Provider all Cancellation Costs in connection with the Upgrade CSA. Cancellation costs may include costs for Network Upgrades assigned to Upgrade Customer, in accordance with the Tariff and as reflected in this Upgrade CSA, that remain the responsibility of Upgrade Customer 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 Upgrade Customers in the Cycle. In the event the Transmission Owner incurs Cancellation Costs, it shall provide the Transmission Provider, with a copy to the Upgrade Customer, with a written demand for payment and with reasonable documentation of such Cancellation Costs. The Upgrade Customer 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 Upgrade Customer 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

Upgrade Customer's payments of such bills of the Transmission Owner, Transmission Provider shall reimburse the Transmission Owner for Cancellation Costs incurred by the latter.

14.2.3 Disposition of Customer-Funded Upgrades Upon Cancellation.

Upon cancellation of this Upgrade CSA by the Upgrade Customer, Transmission Provider, after consulting with the Transmission Owner, may, at the sole cost and expense of the Upgrade Customer, authorize the Transmission Owner to: (a) cancel supplier and contractor orders and agreements entered into by the Transmission Owner to design, engineer, construct, install, operate, maintain and own Customer-Funded Upgrades identified in Appendix I to this Upgrade CSA, provided, however, that Upgrade Customer 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; (b) remove any Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, built by the Transmission Owner; (c) partially or entirely complete the Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA, as necessary to preserve the integrity or reliability of the Transmission System, provided that Upgrade Customer shall be entitled to receive any rights associated with such Customer-Funded Upgrades as determined in accordance with the PJM Tariff; or (d) undo any of the changes to the Transmission System that were made pursuant to this Upgrade CSA. To the extent that the Upgrade Customer has fully paid for equipment that is unused upon cancellation or which is removed pursuant to this Section, the Upgrade Customer shall have the right to take back title to such equipment; alternatively, in the event that the Upgrade Customer does not wish to take back title, the Transmission Owner may elect to pay the Upgrade Customer a mutually agreed amount to acquire and own such equipment.

14.2.4 Termination Upon Default.

In the event that Upgrade Customer exercises its right to terminate under this Section notwithstanding any other provision of this Upgrade CSA, the Upgrade Customer shall be liable for payment of the Transmission Owner's Costs incurred up to the date of Upgrade Customer's notice of termination pursuant to this Section and the costs of completion of some or all of the Customer-Funded Upgrades, or specific unfinished portions thereof, and/or removal of any or all of such Customer-Funded Upgrades that have been installed, to the extent that Transmission Provider determines such completion or removal to be required for the Transmission Provider and/or the Transmission Owner to perform their respective obligations under the PJM Tariff, provided, however, that Upgrade Customer's payment of such costs shall be without prejudice to any remedies that otherwise may be available to it under this Upgrade CSA for the Default of the Transmission Owner.

14.3 Survival of Rights.

The obligations of the Parties hereunder with respect to payments, Cancellation Costs, warranties, liability and indemnification shall survive termination to the extent necessary

to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Upgrade CSA was in effect. In addition, applicable provisions of this Upgrade CSA will continue in effect after expiration, cancellation or termination to the extent necessary to provide for final billings, payments, and billing adjustments.

14.4 Filing at FERC.

The Transmission Provider shall make a filing with FERC pursuant to Section 205 of the Federal Power Act effectuating the termination of this Upgrade CSA as required.

15.0 Force Majeure

15.1 Notice.

A Party that is unable to carry out an obligation imposed on it by this Upgrade CSA due to Force Majeure shall notify the other Parties 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 responsible for any non-performance or considered in Breach or Default under this Upgrade CSA, for any non-performance, any interruption or failure of service, deficiency in the quality or quantity of service, or any other failure to perform any obligation hereunder to the extent that such failure or deficiency is due to Force Majeure. A 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 notice thereof to the other Party.

15.3 Obligation to Make Payments.

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

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 Upgrade CSA, and for a period of three (3) years after the termination of this Upgrade CSA, except as otherwise provided in Section 16 of this Upgrade 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 Upgrade 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 Upgrade 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 Upgrade Customer on a need-to-know basis in connection with this Upgrade 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 Upgrade 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 Upgrade 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 Upgrade Construction Service Agreement.

Upon termination of this Upgrade 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 Upgrade 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 Upgrade 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 Upgrade 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 Upgrade CSA and the PJM Tariff; and (ii) to carry out obligations and responsibilities under this Upgrade 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 Upgrade 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 Upgrade 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 Upgrade CSA and the PJM Tariff.

17.3 Audit Rights.

Subject to the requirements of confidentiality of this Upgrade 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 Upgrade 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 Upgrade 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 Upgrade CSA, or with respect to any other matters arising in connection with

this Upgrade 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 Upgrade CSA may be amended, modified, or supplemented only by written agreement of the Parties. Such amendment shall become effective and a part of this Upgrade 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, 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.

Notwithstanding the foregoing, nothing contained in this Upgrade 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 Upgrade 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 Upgrade 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 Upgrade 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 Upgrade CSA, to become a Party thereto and to perform its obligations thereunder. This Upgrade 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 Upgrade 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.

Upgrade Customer and the Transmission Owner shall coordinate the timing and schedule of all inspection and testing of the Customer-Funded Upgrades, identified in Appendix I to this Upgrade CSA.

19.2 Inspection and Testing.

Each Constructing Entity shall cause inspection and testing of any Customer-Funded 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.

Upon the completion of the construction and installation, but prior to energization, of any Customer-Funded 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 Upgrade Customer and Transmission Provider shall have the right to attend and observe, and to obtain the written results of, such testing.

19.4 Notification and Correction of Defects

In the event that inspection and/or testing of any Customer-Funded 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.

20.0 [Reserved]

24.0 Operation and Maintenance of Merchant Network Upgrades.

Unless otherwise provided in this Upgrade CSA, the Transmission Owner that owns Merchant Network Upgrades constructed on behalf of and at the expense of the Upgrade Customer shall operate and maintain such Merchant Network Upgrades at the expense of the Upgrade Customer. The charge for operation and maintenance of such Merchant Network Upgrade charges is set forth in SCHEDULE B of this Upgrade CSA.

25.0 Charges

25.1 Specified Charges.

If and to the extent required by the Transmission Owner, after the Initial Operation of the Merchant Network Upgrade, Upgrade Customer 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. All such charges shall be stated in SCHEDULE B of the Upgrade CSA. 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 Upgrade Customer under the same Upgrade CSA include an allocation of the Transmission Owner's administrative and general expenses and/or other corporate overhead costs.

(b) Merchant 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 Upgrade Customer's Merchant Network Upgrade owned by the Transmission Owner.

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

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SCHEDULE A

NEGOTIATED CONTRACT OPTIONS

List or state "None."

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SCHEDULE B

**OPERATION AND MAINTENANCE CHARGES FOR
MERCHANT NETWORK UPGRADES**

List or state "None."

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SCHEDULE C

A. Network 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.

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